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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

FOURTH EVALUATION ROUND

Adoption: 1 July 2016
Publication: 2 November 2016

Public
GrecoEval4Rep(2016)4

FOURTH EVALUATION ROUND

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

EVALUATION REPORT

CZECH REPUBLIC

Adopted by GRECO at its 72th Plenary Meeting
(Strasbourg, 27 June - 1 July 2016)

GRECO Secretariat
Council of Europe
F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00

www.coe.int/greco

Directorate General I
Human Rights and Rule of Law
Information Society and Action
against Crime Directorate

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. Corruption, and weak anti-corruption measures, have been among the more serious public policy problems in the Czech Republic for years according to several observers, in particular in relation to the management of EU funds, public procurement and other interactions between business and the public sector. The anti-corruption strategy for the years 2013-2014 addressed those challenges. There has been a renewal of political will to fight high-level corruption and law enforcement activities have also resulted in the arrest of several senior officials on corruption charges, the subsequent resignation of the Prime Minister and early parliamentary elections in October 2013. At the same time, the political turbulance in 2013 hampered the implementation of the strategy. It would appear that a period of greater political stability has since been reached and that it is a good time for implementing substantial reforms. The current government declares that the fight against corruption is among its priorities. A new Civil Service Act entered into force in January 2015, and the Anti-Corruption Conception for the years 2015-2017 includes several further legislative tasks, some of which are directly relevant to the present evaluation report.

2. As far as members of parliament are concerned, GRECO recommends that reforms aimed at increasing transparency of the legislative process be continued and, in the absence of any lobbying regulations, that rules be introduced for members of parliament on how to interact with third parties seeking to influence the legislative process and that such interactions be made more transparent. Moreover, several amendments to the existing declaration regime are necessary, such as requiring members of parliament to submit declarations of activities, declarations of assets and declarations of income, gifts and liabilities also at the beginning of their mandate, the introduction of an electronic declaration system and making declarations more easily accessible on the internet. It is to be noted that draft legislation to amend the Act on Conflicts of Interest pending before Parliament would appear to address many of the shortcomings identified in this report. However, more needs to be done to ensure adequate supervision and enforcement of the rules in order to make the system work effectively in practice.

3. Turning to the judiciary, the legal regulation on judges' recruitment and career advancement is clearly insufficient. It is therefore recommended that legislative steps be taken to provide for uniform, transparent procedures and to ensure that decisions are based on pre-established objective criteria, notably merit; and that any decisions in those procedures are reasoned and can be appealed to a court. Regarding public prosecutors, a reform process aimed at strengthening the independence of the prosecution service from political influence, increasing transparency in internal relations, reducing the possibility of covert interference in dealing with specific matters and strengthening the accountability of individual prosecutors for the outcome of cases is currently underway which appears promising and is clearly to be supported. The present report contains several specific recommendations, *inter alia*, with a view to ensuring that decisions on the appointment of the Supreme Public Prosecutor and other chief public prosecutors are based on transparent selection procedures; that their recall is possible only in the context of disciplinary proceedings; and as is the case for judges, that the recruitment and promotion of public prosecutors be regulated in more detail. In addition, the possibility for both judges and public prosecutors to challenge disciplinary decisions, including dismissals, before a court needs to be introduced.

4. Finally, with respect to all categories of officials under review, the adoption of codes of conduct by Parliament, the judiciary and the prosecution service which provide guidance on conflicts of interest and related matters and which are complemented by practical measures such as dedicated training, counselling and awareness-raising is recommended.

I. INTRODUCTION AND METHODOLOGY

5. The Czech Republic joined GRECO in February 2002. Since its accession, the country has been evaluated in the framework of GRECO's First (in March 2003), Second (in May 2006) and Third (in April 2011) Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

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

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

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

8. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including 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.

9. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2015) 7E) by the Czech Republic, 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 the Czech Republic from 23-27 November 2015. The GET was composed of Mr Ömer Faruk GENCKAYA, Professor, Marmara University SBF (Turkey), Ms Anita LEWANDOWSKA, Judge at the District Court Warszawa Zoliborz (Poland), Mr Jens-Oscar NERGARD, Senior Adviser, Ministry of Local Government and Modernisation (Norway) and Ms Theodora PIPERI, Law officer, Office of the Attorney General, Counsel of the Republic (Cyprus). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat.

10. The GET held interviews with representatives of the Ministry of Justice, the Office of the Government – Unit for fight against corruption, members of the Chamber of Deputies and the Senate and of relevant committees, officials of the Offices of both Chambers of Parliament and of the Parliamentary Institute, judges from the Supreme Court, the Supreme Administrative Court and the Municipal Court in Prague (Regional Court), a representative of the Union of Judges, prosecutors from all levels of prosecutor's offices, representatives of the Union of prosecutors and of the Judicial Academy and of non-governmental organisations (Frank Bold Society, Transparency International).

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of the Czech Republic in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their

integrity and improve how they are perceived. 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 the Czech Republic, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, the Czech Republic shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

12. Corruption, and weak anti-corruption measures, have been cited by several observers as being among the more serious public policy problems in the Czech Republic in recent years, in particular in relation to the management of EU funds, public procurement and other interactions between business and the public sector.[1] According to the 2013 Special Eurobarometer on corruption,[2] 95% of Czech respondents believed that corruption was widespread in their country (EU average: 76%), 28% felt affected by corruption in their daily lives (EU average: 26%), 8% of those who had dealt with the institutions named in the survey stated that they had been expected to pay a bribe in the preceding 12 months (EU average: 4%), and 76% of those surveyed thought that corruption had increased in recent years (EU average: 56%). That said, the most recent corruption perception index (CPI) by Transparency International (TI) notes significant improvements: in 2015, the Czech Republic ranked 37 out of 167 countries surveyed (with a score of 56 out of 100), as compared to rank 53 in 2014 (with a score of 51).[3]

13. In terms of the focus of the Fourth Evaluation Round, according to the 2013 Special Eurobarometer on corruption, 73% and 69% of Czech respondents thought that corruption was widespread in political parties and politicians respectively (EU average: 56% and 58%). According to TI's Global Corruption Barometer 2013 (GCB), 75% of those surveyed considered political parties corrupt/extremely corrupt – and thus as the most corrupted institution – 59% (global average: 57%) thought the same of the national parliament; and 52% (global average: 56%) thought the same of the judiciary.

14. Since 1999, the government has adopted comprehensive strategies against corruption. Among the legislative acts adopted which are particularly relevant to the present evaluation is the 2006 Act on Conflicts of Interest (ACI) which provides the legal framework for the prevention and resolution of conflicts of interest of public officials including MPs. However, the Act does not currently cover judges and prosecutors. The 2013 amendments to the Constitution limiting the immunities of MPs and justices of the Constitutional Court to their term of office are also to be highlighted. The anti-corruption strategy for the years 2013-2014[4] addressed many of the remaining challenges. There has been a renewal of political will to fight high-level corruption and law enforcement activities have also resulted in the arrest of several senior officials on corruption charges, the subsequent resignation of the Prime Minister and early parliamentary elections in October 2013. At the same time, the political turbulance in 2013 hampered the implementation of the strategy.

15. The current government declares that the fight against corruption is among its priorities.[5] A new Civil Service Act entered into force in January 2015, and the Anti-Corruption Conception for the years 2015-2017 includes several further legislative tasks – such as amendments to the ACI, which would i.a. extend its scope to judges and public prosecutors, and new legislation on the prosecution service – which are currently pending before Parliament. It is to be noted that the Prosecutor General's Office had already undergone personnel and structural changes in 2011 and 2012, following scandals in 2009, and has in recent years been committed to pursuing politically sensitive cases.

---

[1] See the 2014 country report on the Czech Republic by Bertelsmann Stiftung (http://www.bti-project.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Czech%20Republic.pdf). See also, for example, the EU Anti-Corruption Report of February 2014 (http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_czech_republic_chapter_en.pdf); the Freedom House study "Nations in Transit 2015 – Czech Republic" (hhttps://freedomhouse.org/sites/default/files/NIT2015_Czech%20Republic.pdf); the 2011 National Integrity System Assessment of the Czech Republic by Transparency International (http://issuu.com/transparencyinternational/docs/2011_nisczechrepublic_en?e=2496456/2975108).

[2] http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

[3] http://www.transparency.org/cpi2015#results-table

[4] "From corruption to integrity – the government's strategy to combat corruption in the years 2013 and 2014"

[5] See e.g. the Czech Republic's National Reform Programme for 2015 (http://ec.europa.eu/europe2020/pdf/csr2015/nrp2015_czech_en.pdf).

Nevertheless, further changes to the prosecution service are planned – focussing mainly on ensuring its independence from political influence – in line with repeated calls by a number of national and international instances and observers.

16. In the First, Second and Third Evaluation Rounds, GRECO has addressed altogether 34 recommendations to the Czech Republic in order to improve its capacity to fight corruption, and to date 17 of them have been fully implemented. At the time of the close of the Second Round Compliance procedure, four recommendations on "Public administration and corruption" had not been satisfactorily addressed, and 11 of the 13 recommendations issued under the Third Evaluation Round – including all nine recommendations on "Transparency of party funding" – are still awaiting full implementation. That said, in its most recent Compliance Report GRECO was pleased to note that, after a substantial delay, a package of amendments to the Political Parties and Movements Act and to several electoral laws had finally been agreed and was pending before Parliament.[6]

[6] Under the Third Evaluation Round, the Czech Republic is still subject to the "non-compliance procedure" meaning that the overall implementation rate is considered "globally unsatisfactory". The most recent 3rd Interim Compliance Report was adopted by GRECO in December 2015, see document Greco RC-III (2015) 18E (http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/RC3%20Interim/GrecoRC3(2015)18_CzechRep_3rd_Interim_EN.pdf).

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

17. The Czech Republic is a parliamentary republic with a multi-party system. Since legal amendments in 2012, the head of state, the President, is elected by a direct vote. Parliament is bicameral, composed of the Chamber of Deputies (*Poslanecká sněmovna*) and the Senate (*Senát*). Their roles are defined by the 1992 Constitution[7] and their inner workings are specified in their rules of procedure (RoP) which are acts of law. The 200 deputies are elected for a four-year term under a party-list proportional representation system, with a 5% election threshold. The 81 senators sit for six years, every two years one third of that number are elected from one-seat constituencies under a two-round majority system. Currently 39 deputies (19.5%) and 15 senators (18.5%) are female.

18. According to article 26 of the Constitution, MPs[8] are to perform their duties personally in accordance with their oath of office and they shall not be bound by anyone's instructions. The authorities explain that the MP's mandate is thus based on the principle of the free mandate. MPs are expected to represent the interest of all the people, to their best knowledge and conscience.

19. The office of an MP is terminated in case of refusal to take the oath of office or by taking the oath with reservations; expiry of the electoral term; resignation; loss of eligibility; dissolution of the Chamber of Deputies – in the case of deputies; incompatibility of offices held.

20. Both chambers of Parliament elect and recall a president and vice-presidents.[9] They establish committees and commissions whose members are elected by a majority vote. Committees are established in accordance with the principle of proportional representation, unless specified otherwise by the RoP.[10] An MP who is a member of the government may not be the president or vice-president of the Chamber of Deputies or of the Senate, or a member of a parliamentary committee, an investigation commission or commission.[11] Among the obligatory permanent committees are the Mandate and Immunity Committees of each chamber which are tasked, *inter alia*, with analysing whether the immunity-related conditions allowing criminal prosecution of an MP have been met and with conducting disciplinary proceedings against MPs and deciding on their outcome.

21. Each chamber has at its disposal a parliamentary office which provides professional, organisational and technical support for the activities carried out by the chamber, its bodies and offices, the MPs and political groups. The office is funded from the state budget and headed by the Secretary General who reports on all activities to the relevant chamber's president and is appointed and dismissed by the latter, with the consent of the chamber's Steering Committee.[12] In addition, the Parliamentary Institute, a directorate of the office of the Chamber of Deputies, performs research and training tasks for both chambers, for committees and other sub-bodies, for individual MPs and parliamentary offices.

---

[7] English version: www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Ustava_EN_ve_zneni_zak_c._98-2013.pdf

[8] When this report refers to the term "MPs" without any reference to them being either a deputy or a senator, it encompasses both members of the Chamber of Deputies and of the Senate.

[9] Article 29 of the Constitution

[10] See section 115 RoP of the Chamber of Deputies; section 47 RoP of the Senate.

[11] See articles 31 and 32 of the Constitution.

[12] See section 117 RoP of the Chamber of Deputies; section 146 RoP of the Senate. – The Steering Committee is composed of the chamber's president and vice-presidents and other MPs in accordance with the principle of proportional representation of political groups in the given chamber.

22. Bills may be introduced in the Chamber of Deputies by a deputy, a group of deputies, the Senate, the government or the representative body of a higher self-governing region.[13] In the regular legislative procedure, a bill passed by the Chamber of Deputies is to be referred by it to the Senate which has to decide within thirty days whether to pass or reject the bill or to return it to the Chamber of Deputies with amendments, or to declare its intention not to deal with it. If the Senate rejects a bill, the Chamber of Deputies takes a second vote, the bill passes if approved by an absolute majority of all deputies. If the Senate returns a bill with amendments, the Chamber of Deputies votes on its version as passed by the Senate. If the Chamber of Deputies does not pass that version, it takes a new vote on the version which it referred to the Senate, the bill then passes if approved by an absolute majority of all deputies. No amendments may be introduced when a rejected or returned bill is considered in the Chamber of Deputies.[14]

23. As a rule, draft bills are examined in three readings in the Chamber of Deputies. Under exceptional circumstances, when fundamental human rights and liberties or the state's security are in jeopardy or the state might suffer considerable economic losses, the chamber's president – at the government's request – is to declare a state of legislative emergency for a definite period of time. S/he may then – at the government's request – decide to conduct summary consideration of any draft bill presented by the government. The Senate may then – at the government's request – also apply fast-track consideration of the bill.[15]

Transparency of the legislative process

24. Upon submission of a draft act to the Chamber of Deputies, its content is immediately published in electronic version on the freely accessible internet websites of the Chamber.[16] The same applies to amendments submitted at later phases of the legislative process and to final texts adopted. The authorities add that expert seminars or conferences relating to the thematic content of presented draft acts are often organised on parliamentary premises.

25. In the case of governmental draft acts (which are in practice the vast majority), governmental materials are published already in the pre-legislative process.[17] The public has the opportunity to familiarise itself with the texts of departmental draft acts presented to the "inter-departmental comment procedure" and to send comments to the responsible ministry, in compliance with the Government Legislative Rules.[18] Even before that stage, responsible departments are to consult the public in the context of obligatory application of the Regulatory Impact Assessment (RIA) related to the preparation of governmental draft acts.[19] Comments on the draft act may thus be made not only by state administration bodies, but also by the bodies of territorial (regional) self-government, trade unions or labour unions, and by a wider public (which is not obligatorily consulted, but may send comments by the same deadlines, i.e. as a rule, within 20 working days in the case of draft legislation[20]). As far as draft acts that do not emanate from government are concerned, the authorities indicate that as a rule, the government submits a statement (of approval, disapproval or refusal) which is presented to the Chamber of Deputies. They furthermore indicate that the government may submit

[13] Article 41 of the Constitution
[14] See articles 45 to 47 of the Constitution.
[15] See sections 99 *et seqq.* RoP of the Chamber of Deputies; section 118 RoP of the Senate.
[16] See www.psp.cz.
[17] Materials are published in the eKLEP database, which is to a large extent available to the public through the governmental web portal ODOK, see www.odok.cz.
[18] For more details, see http://www.vlada.cz/cz/ppov/lrv/dokumenty/legislativni-pravidla-vlady-91209/.
[19] This obligation has been stipulated in the General Principles for Regulatory Impact Assessment, see http://www.vlada.cz/cz/ppov/lrv/ria/uvod-87615/.
[20] Section 8(3) of the Government Legislative Rules. Pursuant to section 8(4) of the Rules, the deadline may exceptionally be shortened to five working days.

comments which are published on the parliamentary website and that, according to common practice, petitioners of draft laws (deputies or groups of deputies) organise public seminars or conferences on the subjects concerned.

26. While the GET acknowledges the above arrangements, it also came across criticism from civil society representatives that would suggest that the RIA rules are not sufficiently applied. They claimed that the process was not perspicuous, that in practice not all the relevant institutions and organisations were involved and that public hearings were rarely organised in this framework. While, strictly speaking, transparency of the pre-parliamentary process goes beyond the scope of the current evaluation – and therefore no recommendation is made in this context – the authorities are invited to take account of such concerns and to reflect on possibilities for making the process more transparent in practice. The same goes for the preparation of draft legislation by other proponents such as individual deputies, groups of deputies or the Senate, in respect of which the above transparency arrangements do not apply. Finally, the GET interested to hear, after the visit, that the electronic library of bills "eKLEP" – which *inter alia* contains information on the whole preparatory process of governmental draft acts including the comments made by ministries and other relevant institutions – has been made accessible to the public at large.[21]

27. Final versions of laws adopted are published in the paper-based Collection of Laws which is the only legally binding version. Non-binding versions of the laws adopted are also published on the website of the Ministry of the Interior;[22] in order to search laws in this collection, it is necessary to know the exact number of the law (or other precise information), fulltext search is not available. This state of affairs has repeatedly been criticised by civil society organisations. The GET was informed that since 2009, the Ministry has been working on enhancing public access to the official Collection of Laws and that draft legislation is pending before Parliament to replace the paper version by an electronic system ("e-Sbírka") as of 2019, which is clearly to be welcomed.

28. As a rule, committee meetings are open to the public unless specified otherwise by the RoP, or unless a committee resolves that its meeting or a part of it will be closed to the public.[23] All disciplinary proceedings and meetings of the Mandate and Immunity Committees are always closed to the public. Information on the programme, the name of the chair, possibly a list of presented proposals, the names of persons taking part in debates, the names of MPs voting on individual issues and voting results, the text of written amendments, new proposals, adopted resolutions, statements and other documents discussed must feature in the written records of committee meetings. The records of public meetings are disclosed on the websites of the respective chambers. An audio recording of Committee meetings is archived for six months. Discussions in sub-committees are held behind closed doors, unless the relevant committee decides otherwise.

29. Meetings of both chambers are open to the public.[24] The public may be excluded only under conditions defined by law. In accordance with the RoP, on a motion by the government or any MP, the chambers may decide to close a meeting or any part of it to the public, especially if its programme includes classified issues related to state security, defence or other confidential areas.[25] Written records of chamber meetings must feature information on their programme, the name of their chair, the proposals presented, the names of speakers, the number of MPs present, voting results, the text of written petitions, resolutions adopted and declarations and other documents discussed. The

[21] The electronic library is available to the public as "VeKLEP" since 8 March 2016, see https://apps.odok.cz/veklep-news .
[22] See http://aplikace.mvcr.cz/sbirka-zakonu/.
[23] See sections 37 *et seqq*. RoP of the Chamber of Deputies; sections 90 *et seqq*. RoP of the Senate.
[24] Article 36 of the Constitution.
[25] Section 56 RoP of the Chamber of Deputies; section 52 RoP of the Senate.

records of public meetings are disclosed on the websites of the respective chambers. Audio and audio-visual recordings of meetings are archived for at least six months.[26] Furthermore, direct TV transmission from the plenary sessions is provided and is often included in other TV broadcasts. Stenographic records are also published on the parliamentary websites. The voting in plenary sessions may be open or secret. Voting on all acts of law must be open. Information on voting results which allows the public to see how individual MPs have voted is published on the websites of the respective chambers, unless the meeting was closed to the public.[27] That information will also be provided to interested persons by the employees of the information centres of both parliamentary chambers.

30. On a motion submitted by a group of at least five senators or by a Senate committee, the Senate may resolve that a public hearing by the Senate is to be held in order to consider certain questions along with experts and other persons who may provide information on the issue under consideration. The public hearing is announced in a published invitation letter to the Senate and/or by the mass media. The participants invited have the right to speak during the debate on the issues considered and to submit written motions and opinions on the questions discussed. A detailed report on the public hearing is to be made public. A Senate committee may also decide by resolution that a public hearing by the committee is to be held and the above rules apply accordingly.[28] As far as the Chamber of Deputies is concerned, the authorities indicate that despite the absence of corresponding rules, in practice committees or sub-committees organise public expert seminars on matters covered by draft legislation.

31. The GET was pleased to hear that in 2014, measures were taken by the Czech Republic in order to increase transparency of the legislative process and that civil society organisations had been involved in that reform process. In particular, the law now provides that (1) written records of public committee meetings must be published and must include i.a. the text of amendments tabled as well as information on their proponents, on the course of discussions and on voting results by name; (2) amendments to draft laws introduced by committees during the second reading in the Chamber of Deputies must be justified by way of an expert position of the committee; (3) the period between second and third readings is extended to a minimum of 14 days.[29] That means that the third reading of an act takes place at a chamber meeting that is different to the one at which the second reading – during which amendments are submitted – takes place. These arrangements are clearly to be welcomed as they make it possible for the public to trace back any amendments to individual MPs, and for MPs themselves to carefully examine amendments proposed. That said, the GET's attention was also drawn to some remaining areas of concern.

32. First, as the timeframe for publishing records of committee meetings is two months, it would appear that such records – which include detailed information on proposed amendments to draft legislation, as seen above – frequently appear on the parliamentary website only after the second reading in the Chamber of Deputies, at which amendments are submitted, has taken place. This significantly affects the transparency of the law-making process. Furthermore, sub-committee meetings are as a rule closed to the public and, as a consequence, no written records of such meetings are disclosed. This makes it impossible for the public to follow closely the way in which the fine details of draft legislation are shaped and amended in sub-committee meetings, or to identify which MPs – and possibly which guests – participated and what role they played. The GET shares the concerns expressed by some of its interlocutors about this state of affairs again weakening the effectiveness of the legal reforms described above.

[26] Section 68 RoP of the Chamber of Deputies; section 95 RoP of the Senate. See www.psp.cz for the Chamber of Deputies and www.senat.cz for the Senate.
[27] See sections 73 *et seqq*. RoP of the Chamber of Deputies; sections 71 *et seqq*. RoP of the Senate.
[28] See sections 144 *et seq*. RoP of the Senate.
[29] The period may however be reduced to seven days. Before the reform, the minimum period was 48 hours.

33. A second area which leaves room for improvement relates to MPs' contacts with third parties such as lobbyists. At present, such contacts are not recorded and the influence of third parties on the legislative process is not revealed in the explanatory reports of bills. Civil society organisations met during the visit reported that relations between MPs and major enterprises are close and they claimed that grey zones surround lobbying and state-owned enterprises in particular. Given that lobbying is completely unregulated, they suggested that transparency could be significantly increased by introducing tools such as open diaries of politicians, a mandatory register of lobbyists – which should cover not only professional lobbyists but any interest group – and/or a "legislative footprint" – which should reveal which actors have been involved in the preparation of legislation and how this has had an impact on the outcome of the law-making process.

34. In this context, the GET was interested to hear that despite several unsuccessful attempts in the past to regulate lobbying activities and to require MPs to disclose their contacts with third parties, a working group had recently been established under the Office of the Government to prepare an analysis of the situation by the end of 2016, in view of possible future legislation in this area. In the view of the GET, measures need to be taken in order to enhance transparency, to make it possible for the public to retrace whose interests came into play in the law-making process and to limit the risk of undue influence by third parties on MPs. It would be clearly desirable to regulate MPs' relations with third parties and also to place contacts with persons or groups representing specific or sectorial interests on an institutional footing, for example by introducing compulsory registration of lobbyists, requiring MPs to disclose their contacts with third parties in relation to draft legislation (as described above), introducing rules of conduct for the third parties concerned – and for MPs, so as to provide guidance on how to deal with third parties seeking to influence their work, and to actively promote transparency in this area. In view of the preceding paragraphs, **GRECO recommends (i) ensuring timely publication of records of parliamentary committee meetings and enhancing the transparency of the work conducted in sub-committee meetings; (ii) introducing rules for members of parliament on how to interact with lobbyists and other third parties seeking to influence the legislative process and making such interactions more transparent.**

Remuneration and economic benefits

35. In accordance with the provisions of Act no. 236/1995 Coll.,[30] MPs are entitled to a salary, reimbursement of costs, in-kind benefits and severance pay.

36. MPs' salaries are based on coefficients multiplying a salary base which amounted to 56 814.75 CZK/approximately 2 102 EUR in 2015.[31] The coefficient is 1.08 for MPs. On this basis, monthly gross salaries amounted to 61 359.93 CZK/approximately 2 270 EUR (for a normal MP) in 2015.[32] The coefficient is increased for chairs and vice-chairs of sub-committees, committees, groups of MPs and the chambers, chairs of commissions and of delegations in international organisations. The increase ranges from 0.11 to 1.82 (for chamber chairs).

[30] Act no. 236/1995 Coll., as amended, on Salaries and other benefits connected with the execution of the office of representatives of state power, some state bodies, judges and members of the European Parliament

[31] In 2015, the salary base for MPs was 2.25 times the average nominal monthly income of natural persons in the non-business sphere achieved after the published data of the Czech Statistical Office for the year before last calendar year. It was declared in the Announcement of the Ministry of Labour and Social Affairs no. 31/2015 Coll., on declaration of amount of base salary for calculation of some reimbursement of expenses of the representatives in accordance with Act no. 236/1995 Coll.

[32] According to the Czech Statistical Office, in 2014 the average gross monthly salary pursuant to CZ-NACE (which is applied to natural persons) was 24,838 CZK/approximately 919 EUR, in the non-commercial sphere 24,224 CZK/approximately 896 EUR. See https://www.czso.cz/documents/10180/20552275/w-11002414q4p2b.pdf/27d41b7a-e666-4331-b5d3-df6074d91d10?version=1.1

37. Reimbursement of costs is granted to MPs, in particular with respect to travel expenses (flat-rate reimbursement for domestic travel), temporary accommodation at the seat of Parliament (unless the MP prefers to have accommodation provided) and for expert and administrative work (up to the amount of 25% of the salary base). In-kind benefits available to MPs take the form of accommodation at the seat of Parliament if they do not have a permanent residence there (unless they choose reimbursement of related expenses), use of one adequately equipped office in their electoral region or district and preferential establishment of a telephone line. The budget for an MP's office is provided from public resources.

38. The authorities indicate that information on MPs' remuneration and benefits is available to the public in compliance with Act no. 106/1999 Coll., on Free Access to Information, as amended. Supervision (e.g. of accounting documents presented by MPs in view of reimbursement of proven expenses) is ensured, in the first place, by the parliamentary offices. Furthermore, the audit of the management of budgetary resources designated for salaries, reimbursement of expenses, in-kind benefits and severance pay is performed by the Supreme Audit Office.[33]

39. Each political group established in the Chamber of Deputies or in the Senate, composed, as a general rule, in accordance with the political parties and political movements MPs stood for in the elections, is entitled 1) to the use of rooms located within the chamber's premises for its activities, including all technical means, and 2) to financial contributions from the relevant chamber's budget to cover operating expenses – the exact amount depends on the number of members of the political group.[34] Each calendar year, the chamber adopts a set of economic regulations. The political group must record all contributions provided in a specified way and at the request of the Steering Committee/Committee on Agenda and Procedure, political parties must present their current supporting documents and account statement.[35]

Ethical principles and rules of conduct

40. There is no dedicated code of conduct or ethics for MPs. According to article 26 of the Constitution, deputies and senators are to perform their duties personally in accordance with their oath of office[36] and shall not be bound by anyone's instructions. The authorities indicate that in 2005 the president of the Chamber of Deputies submitted a draft code of ethics for deputies which was only supported by a small number of deputies. Another draft code was proposed by a government working group in 2014. According to the authorities, discussions on the introduction of such a code are ongoing. During the on-site visit the GET was informed that several political parties have developed codes of ethics.

41. The GET wishes to draw attention to the support repeatedly expressed in GRECO reports in favour of parliaments having their own set of common standards and guidelines on ethical principles and the conduct expected of their members which are drawn up with a strong involvement of the MPs themselves – in line with Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption. In this connection,

[33] In compliance with the Constitution and Act no. 166/1993 Coll., on the Supreme Audit Office, as amended.
[34] Regarding the Senate, as from June 2015, financial contributions amounted to 31 850 CZK/approximately 1 178 EUR per political group and 6 615 CZK/approximately 245 EUR per member. Regarding the Chamber of Deputies, in 2015 financial contributions amounted to 24 500 CZK/approximately 907 EUR per political group and 5 314 CZK/approximately 197 EUR per member (in case of governmental parties) and 6 908 CZK/approximately 256 EUR (in case of opposition parties).
[35] See section 78 RoP of the Chamber of Deputies; section 33 RoP of the Senate.
[36] Pursuant to article 23(3) of the Constitution, the oath of office of MPs reads: "I pledge loyalty to the Czech Republic. I pledge that I will uphold its Constitution and laws. I pledge on my honor that I will carry out my duties in the interest of all the people, to the best of my knowledge and conscience."

attention is also drawn to Resolution 1214 (2000) of the Parliamentary Assembly of the Council of Europe on the role of parliaments in fighting corruption, according to which parliaments should "instil in their own ranks the notion that parliamentarians have a duty not only to obey the letter of the law, but to set an example of incorruptibility to society as a whole by implementing and enforcing their own codes of conduct".[37] The standards developed by political parties, referred to during the interviews, have no direct legitimacy in Parliament. Experience shows that the mere process of developing such standards raises MPs' awareness of integrity issues, assists them to act proactively in difficult ethical situations and – not least – allows them to demonstrate to the general public their commitment. Consequently, such codes and guidelines may raise public confidence in parliamentary institutions as they inform citizens of the conduct they should be able to expect from their elected members. The GET also wishes to stress that codes of ethics/conduct are not intended to replace existing constitutional rules, legislation or other forms of regulation, rather to further develop those provisions, to complement, clarify and provide guidance in a flexible way in situations which might give rise to controversy and various forms of conflicting interests. Moreover, such codes are less static than legislation and need to evolve over time.

42. In addition, given that not everything can be captured by written rules, it is crucial that further guidance on ethical standards and awareness-raising measures be provided to MPs. This includes establishing effective channels for discussing and resolving issues that raise ethical concerns, both on an individual basis (e.g. advice on a confidential basis) and at institutional level (e.g. training, institutional discussions on integrity and ethical issues related to parliamentary conduct, etc.). Information gathered by the GET clearly suggests that a culture of prevention and avoidance of possible conflicts of interest is not fully rooted in the Czech Parliament. In view of the above, **GRECO recommends (i) that a code of conduct be adopted for members of parliament, made easily accessible to the public, and accompanied by explanatory notes and/or practical guidance, including on conflicts of interest and related matters (e.g. gifts and other advantages, incompatibilities, additional activities and financial interests, post-employment situations, contacts with third parties such as lobbyists, declaration requirements, etc.); (ii) that the code of conduct be complemented by practical measures for their implementation, such as dedicated training, confidential counselling and awareness-raising.**

Conflicts of interest

43. Section 3 of the 2006 Act on Conflicts of Interest (ACI) contains general rules on conflicts of interest of public officials including MPs. Namely, "if any conflict between the interest of the public and his/her private interest occurs, no public official may prefer his/her own interest over the interests that s/he is obligated to enforce and defend as a public official." In this context, personal interest is to be understood as "any interest securing any private benefit or preventing possible reduction of any material or other benefit."

44. Furthermore, MPs (like other public officials) are prohibited from jeopardising the public interest by using their official standing, their executive powers or any information obtained in connection with their office to acquire material or other benefit for themselves or any other person; by referring to their office in matters related to their personal interests, in particular to their job, occupation or business; by allowing any party to use their name or image together with their official title for commercial advertising purposes in return for payment.

[37] Paragraph 6b of Resolution 1214 (2000). See http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16794&lang=en.

45. Under section 8 ACI, MPs (like other public officials) are required to declare personal interests when they address, present a petition to or are entitled to vote in any constitutional body, another state body or any body of a territorial self-governed unit. They have to announce any relationship with the issue being considered, point out any personal benefit or injury that they might obtain or suffer as a result and state whether they have "any other personal interest" in the issue being considered. This rule does not apply to "obvious benefits or interests". According to the authorities, the term "any other personal interests" includes advantages or other benefits for persons other than the officials/MPs if the latter act in their interest.[38] Personal interests must be declared before consideration of an issue commences, during consideration and at the latest before a vote is held. Each declaration becomes an integral part of the meeting minutes. According to the authorities, MPs may seek advice on conflicts of interest and on the declaration requirement from the Mandate and Immunity Committee, the Parliamentary Institute and the legislative department of the respective chamber. The GET has not been provided with examples of written guidance or of cases; the authorities refer only to an expert commentary on the ACI.

46. The GET notes that civil society organisations have repeatedly pointed to several weaknesses of the current arrangements on conflicts of interest. They consider the definition of such conflicts in section 3 ACI to be unsatisfactory, as it only refers to the rather vague concept of "public interest" and does not explicitly include private interests that are such as to influence, "or appear to influence", "the impartial and objective performance of his of her official duties" as defined in the Council of Europe's Model Code of Conduct for public officals.[39] The GET very much welcomes that the Czech government has included a new definition in the draft law amending the ACI (recently submitted to Parliament), which would be more in line with Council of Europe standards.

47. As far as the provisions on declarations of personal interests under section 8 ACI are concerned, the GET has some doubts about their effectiveness in practice. Some of the officials interviewed on the subject were not aware of any such declarations having been made by MPs. Others referred to cases where MPs had declared that in their capacity as mayors they might be particulary affected by certain bills, but not to cases involving clearly "personal" interests. According to civil society organisations, the public knows of "very few" such cases.[40] Overall, the GET was left with the impression that MPs' awareness of conflicts of interest – and of the obligation to disclose them – is quite low. It also notes that the regulatory framework does not make any recommendations as to how to behave in situations where personal interest might come into play, e.g. not taking part in the discussion, refraining from voting, etc.[41] Against this background, the GET is concerned about the absence of common guidelines about acceptable behaviour in Parliament, and of a body that would provide advice on the practical application of the rules (e.g. on the question of what constitutes an "obvious benefit or interest" and thus needs not to be declared). It is therefore crucial that this issue be specifically dealt with in the course of the preparation of the codes of conduct recommended above[42] and that internal rules and guidance to MPs on conflicts of interest be provided. In this connection, the authorities indicate that according to the draft amendments to the ACI, the Ministry

[38] The authorities refer in this respect to a commentary on the ACI.
[39] See article 13 of the Model Code of Conduct for public officals, Appendix to Recommendation No. R (2000) 10 of the Committee of Ministers to member states.
[40] See e.g. the 2014 "Analysis of the enforceability of conflict of interest laws in the Czech Republic" (http://www.bezkorupce.cz/wp-content/uploads/2014/08/oziveni_analyza_stret_zajmu_en.pdf) prepared by the NGO Oživení (co-funded by the EU and the Visegrad Fund). One case referred to concerned discussions on a ban on smoking in public areas in which MPs who are smokers often made mention of the fact. – Shortly after the on-site visit, media reported on the case of an MP with a representative role in one of the biggest construction firms involved in several big corruption cases, who was a member of the parliamentary committee preparing draft legislation concerning liability of legal persons. It would appear that the MP concerned had not informed the committee about her position in the construction firm.
[41] It would appear that the possibility of restricting voting rights in cases of conflict of interest has been rejected in discussions as being in conflict with the Constitution.
[42] See above under "Ethical principles and rules of conduct" (paragraph 42).

of Justice will be the future coordinator of legislation related to conflicts of interest and also the authority responsible for supervision and support, e.g. through the provision of guidelines and methodology, as planned.

Prohibition or restriction of certain activities

Gifts

48. There is no legally binding prohibition or restriction on the acceptance of gifts by MPs other than the applicable criminal law provisions on bribery. Regarding the definition of a gift, the authorities refer to the general rules under article 2055 of the Civil Code: "By a donation agreement the donator transfers his/her ownership rights to the item free of charge or commits him/herself to transfer the item free of charge to the recipient´s ownership and the recipients accept his/her gift or offer."

49. MPs (like other public officials) are required to declare material benefits including gifts received in the framework of the annual "declaration of income, gifts and liabilities" – see below.[43] The GET notes that those declarations do not explicitly cover advantages in kind such as hospitality and invitations to various kinds of events. It also has misgivings about the lack of rules and guidance to parliamentarians about the conduct expected when receiving gifts and other advantages. It would appear that MPs are not always fully aware of the issues such situations may raise in terms of external influence on their parliamentary work, possible conflicts of interest and public perception. During the interviews held on site, some interlocutors referred to a recent example where several MPs invited by an IT company to a golf tour had apparently not given any consideration to the above matters. In this connection, the GET wishes to stress that what matters is not only the value of a gift or an invitation, but the identity/position of the person who offered it and the context in which it was given. It believes that it would be helpful if a clear line was drawn, and explained to parliamentarians and to the public, between acceptable and unacceptable gifts, benefits and hospitality. Consequently, **GRECO recommends that enforceable rules on gifts and other advantages – including advantages in kind – be developed for members of parliament and made easily accessible to the public; they should, in particular, determine what kinds of gifts and other advantages may be acceptable and define what conduct is expected of members of parliament who are given or offered such advantages.**

Incompatibilities and accessory activities, post-employment restrictions

50. Article 21 of the Constitution provides that "no person may be at the same time a member of both chambers of the Parliament." Pursuant to article 22, the office of deputy or senator is incompatible with the exercising the office of President of the Republic, judge or other offices specified by law. On the day an MP assumes an office that is incompatible, his/her mandate as MP ceases. Section 7 RoP of both chambers states that if an MP assumes an office that is incompatible with his/her mandate, s/he must immediately report this fact to the chamber's president.

51. Pursuant to section 5(3) ACI, MPs may not accept any appointment or office in the public administration, whether on an employment or service basis, which would involve them in decision making in a ministry or other public administration office; in a public prosecution office or court of justice; in the security services, armed forces, the Supreme Audit Office, the Office of the President of the Republic, the parliamentary offices, state funds or in the Ombudsman's Office.

[43] See below under "Declaration of assets, income, liabilities and interests" (paragraph 64).

52. The authorities state that several specific laws declare other positions incompatible with the mandate of an MP, such as membership of the Council for Radio and Television Broadcasting, membership of the Bank Council of the Czech National Bank or the office of a financial arbiter, etc. On the other hand, MPs may in principle carry out any activity in the private sector. In this connection, it is to be borne in mind, however, that according to section 5(1) ACI MPs representing the state in any managerial, supervisory or controlling body of any corporate entity partially or fully owned or controlled by the state, or in the Czech National Bank or in all of them are prohibited from receiving any reimbursement for such representation.

53. Under section 9 ACI, MPs (like other public officials) are obliged to submit written "declarations of activities" if they are engaged in business or other gainful activities. They must declare the sector, nature and type of the business or other gainful activity; whether they are partners or members of a business corporation, stating its name and registered office; whether they are statutory bodies or members of a statutory body, managerial body, supervisory body or controlling body of any business corporation, stating its name and registered office; whether they are employed, in service or in any similar relation, other than public administration employment or service.

54. Declarations of activities must be produced annually, by 30 June of each following calendar year, and no later than 30 days following the end of the term in office, based on the situation as of the last day of the term in office. If none of the above conditions occurs during a calendar year, the public official concerned must report that fact by 30 June of the following calendar year. Declarations of activities are to be submitted to the relevant registration authority, i.e. in the case of MPs, to the Mandate and Immunity Committee of the relevant chamber. The structure and format of the declaration form are specified by a Ministry of Justice edict. Details such as the firm/name, address/location and identification number of legal persons in which MPs are engaged or of their employers must be provided.

55. The authorities indicate that in practice, MPs perform functions or activities such as member of government, member of municipal and regional councils, president (or deputy) of a region, mayor (or deputy), regional deputy or barrister, doctor, member of supervisory and management boards, member of a board of trustees of an insurance company, consultant, etc.

56. In the view of the GET, the regime of various declarations under the ACI, including declarations of activities, warrants amendment in several respects. A recommendation to that effect is made below.[44] Furthermore, the GET has some concerns about the fact that, alongside their parliamentary mandate, MPs may be – and often are – members of the government and may exercise political functions at local government level. The GET also heard some critical voices on this combining of functions and the questions it raises with respect to the efficiency of the MPs concerned in their parliamentary work,[45] the strong connection of individual legislators to regional politics[46] and the separation of powers. The GET shares these concerns and invites the authorities to reflect on possibilities to extend MPs' incompatibilities to include any function in the executive branch of power, as is the case in many other European states.[47]

[44] See below under "Declaration of assets, income, liabilities and interests" (paragraph 70).
[45] According to the above-mentioned 2014 "Analysis of the enforceability of conflict of interest laws in the Czech Republic" by Oživení, "statistical data published by the media or NGOs shows that ministers attend far fewer meetings of the Chamber of Deputies of the Czech Parliament in their role as MPs than their colleagues, limiting their efficiency".
[46] See e.g. the 2011 National Integrity System Assessment of the Czech Republic by Transparency International, according to which such – quite common – combinations "have a significant impact on the debate cconcerning nation-wide issues which are subsequently marginalised."
[47] Another possible solution has been proposed, namely the introduction of a "sliding mandate" in which the position of an MP is suspended while the same person acts as a minister and his/her seat is taken by a substitute from the list of election candidates.

57. No rules or measures prohibit or restrict the employment options of MPs, or their engagement in other paid or unpaid activities, on completion of their term in office. Restrictions provided by section 6 ACI are not applicable to MPs. 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.

Financial interests, contracts with State authorities, misuse of public resources

58. There is no prohibition or restriction on MPs holding of financial interests – but MPs must provide information on their business activities within annual declarations (see below) – or on entering into contracts with public authorities. MPs are thereby only restricted by the general prohibition on preferring their private interests over the public interest. Besides, the general legislation on public procurement is fully applicable in this context. Moreover, there are no specific rules on misuse of public resources by MPs. The general provisions of the Criminal Code (hereafter CC) on economic crimes such as theft, fraud and embezzlement apply to MPs.

59. The GET notes that a number of national and international reports, including by the EU and several non-governmental organisations, refer to persistent problems related to the misuse of public funds, the management of EU funds in particular, public procurement and other interactions between business and the public sector.[48] The current government declares that the fight against corruption is among its priorities and has engaged in a reform programme which also includes several measures to improve the management of EU funds and public procurement.[49] Moreover, draft legislation to extend the powers of the Supreme Audit Office – e.g. with respect to control of the use of state funds in municipalities and state-owned enterprises – is pending before Parliament. Such measures, which have also been advocated for by several non-governmental organisations,[50] can only be supported.

Misuse of confidential information, third party contacts

60. The authorities refer to the above-mentioned rule under section 3(2) ACI according to which MPs (like other public officials) are prohibited from jeopardising the public interest by "using their official standing, their executive powers or any information obtained in connection with their office to acquire material or other benefit for themselves or any other person." They indicate that breach of this provision is subject to sanctioning as an offence – misdemeanour or criminal offence, depending on the case, or where appropriate, settlement in the course of disciplinary proceedings before the Mandate and Immunity Committee of the relevant parliamentary chamber.

61. There are no specific prohibitions or restrictions or transparency regulations as regards MPs' contacts with third parties who might try to influence their decisions. MPs are free to have contacts with whoever they wish as part of their political work, including

[48] See e.g. the EU Anti-Corruption Report of February 2014; the 2014 country report on the Czech Republic by Bertelsmann Stiftung; the Freedom House study "Nations in Transit 2015 – Czech Republic"; the 2011 National Integrity System Assessment of the Czech Republic by Transparency International.
[49] See e.g. the Czech Republic's National Reform Programme for 2015.
[50] See e.g. the website of the NGO platform "Reconstruction of the State" (http://www.rekonstrukcestatu.cz/en), which also refers to some further reform proposals, such as increasing transparency in appointments to state companies' boards.

lobbyists, interest groups, NGOs, trade unions, employers' associations or other organisations. The only restriction mentioned by the authorities in this context is the constitutional principle of the free mandate. Notably, any agreements between MPs and third parties restricting the free mandate would be invalid. In this context, the GET refers to the recommendation made above concerning the interaction of MPs with lobbyists and other third parties seeking to influence the parliamentary process.[51]

Declaration of assets, income, liabilities and interests

62. In addition to "declarations on personal interests" and "declarations of activities", mentioned above, under sections 10 and 11 ACI MPs (like other public officials) are required to submit annually (by 30 June of each following calendar year) and within 30 days after the end of the term in office "declarations of assets" and "declarations of income, gifts and liabilities" to the relevant registration authority, i.e. in the case of MPs, to the Mandate and Immunity Committee of the relevant chamber.[52] The structure and format of the declaration form are specified by a Ministry of Justice edict.

63. In the declarations of assets, MPs (like other public officials) are required to declare whether they have acquired during their term in their office

- ownership rights or other material rights to real estate, including the price of such real estate or the price of acquisition of the ownership or other material right to such real estate and the method of acquisition,
- ownership rights to chattels, other rights or other material assets, including the method of acquisition of such chattels, other rights or other material assets, if the overall value of such chattels, other rights or other material assets acquired in the course of one calendar year exceeds 500 000 CZK/approximately 18 500 EUR; this sum does not include chattels, other rights or other material assets whose value does not exceed 25 000 CZK /approximately 925 EUR,
- securities or securities-related rights in compliance with special legal regulations, if their overall purchase price exceeds 50 000 CZK/approximately 1 850 EUR in the case of the same issuer or 100 000 CZK/approximately 3 700 EUR in the case of several issuers,
- interests in other business corporations, if the value of such interests exceeds 50 000 CZK in the case of one business corporation or 100 000 CZK in the case of several business corporations.

The type of property, type of ownership, amount and form of its acquisition, the type of securities purchased, their amount and their issuer, and the firm/name and identification number of companies in which other shares are held, as well as the amount of shares, must be specified.

64. In the declarations of income, gifts and liabilities public officials have to declare whether they

- have acquired during the term of their office any income or other material benefits, if their overall amount exceeds 100 000 CZK/approximately 3 700 EUR in one calendar year (this sum does not include gifts whose value does not exceed 10 000 CZK/approximately 370 EUR); the term "income or other material benefit" includes, in particular, gifts (except for gifts included in the declaration of assets), bonuses, revenues from business or other gainful activities, dividends or other income from interests in or for their services for business corporations; it does not include salaries, remuneration or allowances to which public officials are entitled in connection with their execution of official duties in compliance with special legal regulations;

[51] See above under "Transparency of the legislative process" (paragraph 34).
[52] If none of the above conditions (i.e. acquisition of assets etc.) occurs during a calendar year, the public official concerned must report this fact by 30 June of the following calendar year.

- have unsettled financial liabilities, especially loans, credits, rental charges, obligations resulting from leasing contracts or bill payables, if the overall amount of such liabilities exceeds 100 000 CZK/approximately 3 700 EUR as of 31 December of the relevant calendar year.

The amount, type and source of income, as well as the amount and type of liabilities and the name of the creditor must be specified.

65. MPs are not obliged to include information on their family members in the above declarations. On the other hand, they have to provide relevant information irrespective of the nature of the ownership titles, including, for example, assets acquired by means of exclusive ownership or shared co-ownership, as well as common property of spouses.

66. The information contained in public officials' declarations of assets, declarations of income, gifts and liabilities and declarations of activities is maintained in a "register of declarations" kept by the relevant registration authority,[53] i.e. in the case of MPs, the Mandate and Immunity Committee of the relevant chamber. The data registered is stored for five years. The information archived in the register may be used and further processed for the purpose of establishing a possible conflict of interests for public officials only. On written application, anyone is entitled to search the register free of charge and to use its content to make duplicates and excerpts. Persons interested in searching in register electronically are allocated a username and password. During the interviews, officials indicated to the GET that normally less than 20 persons (including media) per year used this procedure in order to search information provided by MPs. Anyone is entitled to inform the registration authority in writing of any fact indicating that the data featured in the register is not correct or complete; the authority has to inform the applicant on how his/her application has been processed within 30 days.

67. The GET in principle acknowledges the quite comprehensive and detailed disclosure requirements under the ACI. That said, several deficiencies in current legislation have been recognised by the government which included in its draft law reforming the ACI several amendments concerning the declaration regime applicable to MPs and other officials. *Inter alia*, the draft attempts to widen the categories of officials covered, to require officials to also submit declarations at the beginning of their term in office, to introduce an electronic declaration system and a single register for all officials concerned (except for judges)[54] – to be kept by the Ministry of Justice – and to enhance public accessibility to declarations by political officials, as well as to introduce more graduated sanctions including minimum sanctions in case of violation of the law.

68. The GET welcomes the current reform initiative which takes up the criticism of the existing situation voiced, *inter alia*, by various civil society organisations. For example, they had drawn attention to the fact that officials do not have to report their finances at the beginning of their term in office, which made it difficult to determine the nature of the officials' assets and whether the assets had increased disproportionately during their term in office. They also noted that declaration forms were generally filled in by hand, making them difficult to review, that the information provided tended to be general and lacked detail, that access to declarations – published online since 2011 – remained complicated because it required a time-limited password issued by the relevant registration authority, that information was published in an unsuitable format and that registers were not user friendly. After the on-site visit, the GET was left with the clear impression that for these reasons, the declaration regime is quite ineffective in practice and does not allow for meaningful public scrutiny. It wishes to stress how important it is that the interested public is given easy – and free – access to available information, which needs to be published in an adequate format, shortly after its submission by MPs

[53] See section 13 ACI.
[54] The draft amendments to the ACI foresee a special register for judges, to be kept by the Supreme Court.

(and other officials) and for longer periods of time, so as to facilitate comparisons over time.

69. In addition to the above deficiencies which the authorities plan to remedy in the present reform process, the GET identified some further details of the current declaration regime which leave room for improvement. Namely, as far as the declarations of income, gifts and liabilities are concerned, the law does not make it clear whether only tangible objects are to be declared or whether the term "income or other material benefit" is broad enough to also cover in-kind benefits such as hospitality, free travel and accommodation provided by third parties or invitations to cultural or sports events. The GET wishes to stress how important it is that such benefits are disclosed as well, given the significant value and attractiveness they may have for MPs and the influence that may potentially be exerted on MPs as a result of such services and favours. The authorities state that benefits in kind are covered by the existing legislation. After the on-site visit, the GET was however left with the impression that there is no clear common understanding and awareness about such an interpretation of the law among MPs. It takes the view that any possible doubts in this important area need to be removed by way of clear and explicit guidance.

70. Finally, the GET notes that no information is provided with respect to spouses (except for common property) or dependent family members. This may well hamper the identification of conflicts of interest and bears a certain risk that the existing transparency regulations may be circumvented by transferring property to such persons. In this connection, the GET is fully aware of the associated challenges that may arise in relation to concerns for the privacy of family members, but it holds the view that a reasonable compromise can be found by requiring MPs to provide information on significant assets, income and liabilities of spouses and dependent family members, though not necessarily to make it public. Given the foregoing, **GRECO recommends (i) requiring members of parliament to also submit declarations of activities, declarations of assets and declarations of income, gifts and liabilities at the beginning of their mandate, introducing an electronic declaration system and making declarations more easily accessible on the internet; (ii) making it clear that declarations must also include in-kind benefits provided to members of parliament; and (iii) considering widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).**

Supervision and enforcement

71. If a deputy or a senator is elected or appointed to a public office incompatible with execution of the mandate of an MP according to the Constitution or a relevant legal provision, the deputy's or senator's mandate terminates *ipso facto*, i.e. at the same moment as appointment to the new officetakes effect. In recent years, this has happened in several such cases, e.g. where deputies or senators were elected to the other Chamber or to the European Parliament or became judges of the Constitutional Court.

72. If an MP commits an administrative offence, it may be considered in ordinary administrative proceedings (i.e. before a body of the police, an offence commission or within a decision-making activity of an administrative authority).[55] The MP concerned may however ask for the offence to be considered by the relevant chamber in the framework of disciplinary proceedings instead.

[55] Since 2002, when amendments to the Misdemeanours Act became effective.

73. Regarding the declaration requirements under the ACI, a fine of up to 50 000 CZK/approximately 1 850 EUR may be imposed on MPs (like other public officials) who have committed one of the following offences:[56]

- failure to submit a declaration on personal interest under section 8 ACI;
- failure to meet the time limit for submitting declarations of activities, declarations of assets and declarations of income, gifts and liabilities under sections 9 to 12 ACI and not submitting them within an additional period;
- stating inaccurate, incomplete or false data in the above declarations;
- performing a function or activity that is incompatible with the duties of a public official under the ACI.

Such offences are considered by a special commission of the municipality in which the public official concerned has his/her permanent address (or by the municipal office or mayor him/herself in small municipalities). The procedure is governed by the Misdemeanours Act.

74. Review of the accuracy of the information contained in the above declarations is mainly left to the public. As mentioned above, every citizen has the right to search in the register of declarations and if s/he considers that the data is obviously inaccurate or incomplete, s/he may submit a proposal to open an administrative offence proceeding against the responsible public official. The ACI does not stipulate a duty for the registration authority to review the accuracy or credibility of information contained in the declarations submitted. The registration authority, i.e. in the case of MPs the Mandate and Immunity Committee, thus only reviews the completeness of the submitted forms. According to section 14(2) ACI, the registration authority checks whether all details featured in the declarations are presented in compliance with the ACI provisions and, where necessary, requests that additional details be supplied. If it learns from publicly available information of conduct by the public official that has elements of an offence, it must inform the relevant state administration body promptly.[57]

75. According to section 13 RoP of the Chamber of Deputies, disciplinary proceedings (1) are to be applied against a deputy whose speech in the Chamber of Deputies, in the Senate or in their bodies is classified as an act that could otherwise result in criminal prosecution; (2) may be applied against a deputy whose speech in the Chamber of Deputies, in the Senate or in their bodies insults a deputy, senator or constitutional judge or another person authorised by law to take part in the sessions; (3) are to be applied against a deputy who commits an administrative offence and asks the competent body to consider such an offence via disciplinary proceedings. The Mandate and Immunity Committee initiates disciplinary proceedings on the disciplinary offences specified under (1) on a motion by the Chamber's president or at its own instance, on the offences specified; under (2) on a motion by the person offended; and on the violations specified under (3) in response to a transfer of the case by the relevant authority in compliance with a special legal regulation.

76. After completing its investigation, the Committee decides to impose a disciplinary measure or to discontinue the disciplinary proceedings. A deputy guilty of the disciplinary offences specified above under (1) and (2) can be ordered to apologise for his/her statement within a specified time limit or to pay a fine totalling up to his/her monthly salary. For any offence specified above under (3) a deputy may be sanctioned in compliance with a special legal regulation; namely, under the Act on Administrative Offences or other pertinent legislation a warning or a penalty of up to an amount stipulated for administrative offences by the relevant law may be imposed on the deputy for such an offence. Any disciplinary measure against a deputy may only be imposed one

[56] See sections 23 *et seqq*. ACI.
[57] Section 13(7) ACI.

year at the latest after the disciplinary offence or violation has been committed. The deputy concerned is entitled to challenge the disciplinary decision and to appeal to the Chamber of Deputies within 15 days of receiving such a decision in writing.[58] Similar rules on disciplinary proceedings against senators are provided by sections 14 to 19 RoP of the Senate.

77. Regarding statistical information on recent disciplinary proceedings and measures against MPs, the authorities indicate that during the current (seventh) term of the Chamber of Deputies, there have been five reports on insulting speech by deputies under section 13(2) RoP; proceedings were initiated in one of those cases and the sanction of public apology was imposed. There was also one disciplinary proceeding in the case of a senator for insulting speech which was later discontinued. Furthermore, a fine of 20 000 CZK/approximately 740 EUR was imposed on a senator by the Mandate and Immunity Committee. The Senate confirmed the fine, the senator concerned launched an appeal to the competent Municipal Court (i.e. the administrative court of first instance) and at the same time filed a constitutional complaint and recently submitted the case to the Supreme Administrative Court. As far as violations of the declaration requirements are concerned, the authorities indicate that during the current term of the Chamber of Deputies, five complaints were filed under section 13(7) ACI which related to compliance with the deadline for submission of a declaration (the declaration was subsequently submitted within the deadline set by the Mandate and Immunity Committee) and to the content of declarations (the complaints were not considered reasonable and those who submitted them were advised to submit them to the competent authority under the Misdemeanour Act). Moreover, in 2013, one senator did not submit the obligatory declaration on time on leaving office. Finally, the authorities refer to information provided by the NGO Oživení, according to which in 2012 three senators did not submit complete declaration forms. In one of those cases, a fine of 2 000 CZK/approximately 74 EUR was applied, in the other two cases the declarations were rectified during the disciplinary proceedings.

78. It appears obvious to the GET that there is currently no meaningful control of MPs' compliance with the various declaration requirements under the ACI. As stated above, the law does not require the registration authority – i.e. in the case of MPs the Mandate and Immunity Committee of the relevant chamber – to review the accuracy of information contained in the declarations submitted, but only to check that the forms submitted are complete. Some of the GET's interlocutors claimed that even this very limited task was not performed satisfactorily in practice. The ACI in its present form is thus toothless and the absence of any substantial checks tends to undermine the whole purpose of the declaration system (all the more so as control by the public is equally hampered by the cumbersome modalities for access to declarations). As GRECO has repeatedly pointed out, it is crucial that a monitoring mechanism with an adequate degree of independence is in place and that it is provided with a clear mandate and adequate competence to check and verify declarations in-depth, to investigate infringements of the rules, including *ex officio* – which would i.a. imply having access to all relevant state databases – and to initiate proceedings against MPs. One may also question whether the assignment of such supervisory tasks to parliamentary committees – i.e. to politicians themselves – is the ideal solution. It might be more convincing for the public if complaints against MPs were not investigated by other MPs but by an independent body. While it is ultimately up to the authorities themselves to decide which body should be entrusted with such tasks, it is clear that the resources of the body would need to be brought into line with these increased responsibilities – at present, it would appear that there is no dedicated specialised staff involved.[59] Furthermore, the

[58] See sections 14 to 18 RoP of the Chamber of Deputies.
[59] The authorities indicate that in the Senate only one secretary is responsible for dealing with senators' declarations, with the assistance of one employee of the IT Department. Regarding the chamber of Deputies, two secretaries support the Mandate and Immunity Committee with respect to disciplinary proceedings;

monitoring body needs to be given access to relevant information held by other authorities such as tax agencies, ownership registry offices, etc. The GET notes that the draft amendments to the ACI which are currently pending before Parliament foresee a single registration authority – the Ministry of Justice – being made competent for comparing the information contained in the various declarations against data in other information systems (such as the basic register of population, cadastre of immovable property, and if necessary also from the basic register of legal entities, the commercial register, etc.). That said, the GET is of the firm opinion that, as a matter of priority, more needs to be done to ensure pro-active and substantial monitoring to address the above concerns, and that the current reform process provides a good opportunity to take appropriate action.

79. Moreover, it is essential that violation of the rules is subject to effective, proportionate and dissuasive sanctions. Some of the GET's interlocutors took the view that it would be preferable to define more precisely a gradation of sanctions proportionate to the severity of infringements. The government apparently shares this view and has included such an approach in the bill amending the ACI, as well as minimum sanctions, which is to be welcomed. The authorities may also wish to consider increasing the level of maximum sanctions, including for violations such as submitting false information. One might question whether the current maximum fines – approximately 1 850 EUR, in administrative proceedings, or in an amount equal to the monthly salary of the MP, in disciplinary proceedings – can be considered an effective deterrent. In addition, the GET takes the view that publication of sanctions imposed would significantly add to the effectiveness and credibility of the system. The GET would also have a preference for giving the monitoring body itself competence for imposing administrative sanctions. At present, it is of the competence of special commissions at municipal level (whereas disciplinary proceedings are of the competence of the parliamentary committees). It would appear that this sanctioning system is ineffective and rarely applied in practice.[60] As the GET learned on site, the relevant commissions do not even systematically receive MPs' declarations (they simply have access to them as any citizen would through the online registration system) and they do not report back to the parliamentary committees on cases referred to them. Therefore, at the very least, cooperation between the monitoring body/registration authority and local commissions would have to be strengthened and be of an institutional nature, e.g. provided for in a memorandum of understanding. Finally, the GET wishes to stress that effective monitoring and enforcement of the rules need to apply to all the different types of declarations required under the ACI, i.e. declarations of activities, declarations of assets, declarations of income, gifts and liabilities and also declarations of personal interests under section 8 ACI. As described above, the latter instrument is rarely used in practice and no cases of sanctioning non-compliance have been reported. Proper supervision is clearly required in order to make this arrangement work in practice and to avoid inadequate conflicts of interest in Parliament. Consequently, **GRECO recommends significantly strengthening the supervision and enforcement of the various declaration requirements on members of parliament under the Act on Conflicts of Interest, notably by giving an independent monitoring mechanism the clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated.** It would also be highly desirable that the sanctions imposed on MPs be made public.

80. Besides disciplinary proceedings, a sanction may also be imposed on an MP in the form of a procedural measure, namely in case of improper behaviour in the chamber. The presiding person may issue a warning to the MP, and in case of repeated improper

---

furthermore, opinions can be sought from the Legislative Department or the Parliamentary Institute and IT support is provided by the ITC Department.

[60] See e.g. the above-mentioned 2014 "Analysis of the enforceability of conflict of interest laws in the Czech Republic" by Oživení.

behaviour the MP may be ordered to leave the chamber for a period not exceeding the end of the meeting day. The MP must, however, be permitted to participate in voting.

81. In principle, MPs may be subject to criminal proceedings and sanctions if they commit offences such as theft, fraud, embezzlement, bribery, trading in influence or breach of professional confidentiality. The authorities indicate that during the current term of the Chamber of Deputies, there have been criminal proceedings against two deputies for abuse of public office, breaches of competition rules and breach of trust in property administration. In one of those cases the deputy was finally acquitted, the other one has not yet been decided. In this context, it is to be noted that MPs enjoy parliamentary immunity, as outlined below.

82. In accordance with article 27 of the Constitution, MPs are protected from being disciplined for their voting in the Chamber of Deputies or in the Senate, or in their bodies. Furthermore, they may not be criminally prosecuted for oral or written statements made in the chambers or in their bodies; an MP is subject only to the disciplinary authority of the chamber of which s/he is a member (non-liability). Moreover, an MP may not be criminally prosecuted without the consent of the chamber of which s/he is a member (inviolalibilty). If that chamber withholds its consent, such criminal prosecution is foreclosed for the duration of the mandate; before constitutional amendments which took effect in June 2013, prosecution was precluded for life. An MP may be detained only if s/he has been apprehended when committing a criminal offence or immediately afterwards. The arresting authority must immediately report the detention to the president of the chamber of which the detainee is a member; if the president does not consent, within twenty-four hours of the detention, to the handing-over of the detainee to a court, the arresting authority must release him/her. At its first subsequent meeting the respective chamber has to decide with final validity on the admissibility of the prosecution.

83. The RoP make it clear that when the relevant chamber has been asked to lift the immunity of an MP to allow for criminal prosecution or when it has been informed that an MP has been arrested when committing a criminal offence or immediately afterwards, the president of the chamber must decide without delay whether the MP may be handed over to a court, and inform the relevant authority without unnecessary delay. At the same time, the president is to forward the request or notification concerned to the Mandate and Immunity Committee of the relevant chamber for consideration and preparation of a report and recommendation to the chamber. The chamber is to pass a resolution on each request or notification of this nature at its next meeting and to send it to the relevant authority within five days following the date of its adoption.[61]

84. Several questions relating to the lifting of immunities were clarified during the on-site visit. It was indicated that the Mandate and Immunity Committee, when preparing its recommendation, takes account of all relevant circumstances, such as the risk of undue delay in criminal proceedings, the length of the mandate which remains to be served by the MP concerned, etc. – the main question being whether full functionality of Parliament or immediate prosecution is more important in the concrete case. It was also explained that during the mandate, statutes of limitation are suspended and that investigations (but not criminal prosecution) can be carried out without immunity being lifted. In recent years, two requests to lift deputies' immunity were granted, another one was later withdrawn by the police and one was considered insufficient by the committee and the chamber. Furthermore, two requests to lift senators' immunity were granted, and two were refused for several reasons including the fact that the senators concerned were approaching the end of their mandate. Given the above explanations and bearing in mind the constitutional amendments of 2013, the GET is under the impression that the scope

[61] See section 12 RoP of the Chamber of Deputies; section 13 RoP of the Senate.

of the immunity afforded to MPs is generally acceptable and does not represent an unacceptable obstacle to the prosecution of corruption.

Advice, training and awareness

85. The authorities indicate that all newly elected deputies and senators are invited to an introductory seminar on parliamentary procedures organised by the office of the Chamber of Deputies which also covers legislation relating to conflict of interests.

86. MPs can contact the specialised departments of the office of the relevant chamber to obtain advice on the rules. The authorities state that for example, MPs discuss contracts with the Legal Department, invoices with the Economic Department, asset declarations with the Mandate and Immunities Department, etc. Moreover, several expert opinions relating to more complicated cases of possible conflicts of interest are prepared by the Parliamentary Institute each year. Its studies and opinions on prints and selected themes are public.

87. The GET believes that much more could be done to raise MPs' awareness of conflict of interest and related issues and of integrity standards more generally, and also to further explain the rules, in particular in view of the development of the more comprehensive rules and standards of conduct advocated for in this report. The lack of a suitable form of metholodogical guidance or consultation, including through confidential counselling, specific training and manuals or guidelines, has also been identified by civil society organisations as one of the key factors hampering the effectiveness of existing rules, in particular under the ACI. A specific recommendation aimed at the provision of further guidance to MPs, e.g. through dedicated training or counselling, has been made above.[62]

[62] See above under "Ethical principles and rules of conduct" (paragraph 42).

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

88. The judicial system in the Czech Republic is established by the Constitution (Chapter 4, Judicial power) and several laws, in particular the 2001 Act on Courts and Judges (ACJ).[63] In accordance with the Constitution, "judicial power shall be exercised in the name of the Republic by independent courts." Furthermore, "judges shall be independent in the performance of their duties. Nobody may threaten their impartiality."[64] Judges are bound in their decision-making by the law and international treaties which are part of the legal order; they are authorised to assess consistence of other legal regulations with the law or with such international treaties.[65] Independence of the judiciary means a strict separation from the other branches of state power and from the political system. Interference with the independence of the court is a criminal offence under article 335 CC.

89. Pursuant to article 91(1) of the Constitution, the court system comprises the Supreme Court, the Supreme Administrative Court and High, Regional and District Courts. The Supreme Court is the highest judicial body in matters that fall within the jurisdiction of courts, save matters ruled on by the Supreme Administrative Court or the Constitutional Court – the latter being "a judicial body responsible for the protection of constitutionality"[66] and not part of the general court system. There are no specialised courts.

90. On 1 January 2016, the body of professional judges was composed of 3 018 judges, namely 1 212 male judges (40%) and 1 806 female judges (60%). Lay judges participate in the decision-making of Regional and District Courts. On 1 January 2016, there were 5 563 lay judges. During the on-site visit, the GET was informed that a reflection process had started on whether to abolish the participation of lay judges in judicial proceedings in order to make them more efficient. However, these reflections were at an early stage, no draft legislation had been prepared at the time of the visit.

91. The central administration of the courts rests with the Ministry of Justice.[67] Judicial Councils are established at the Supreme Court, Supreme Administrative Court, High Courts, Regional Courts and at District Courts to which more than 10 judges have been assigned or transferred for the exercise of office.[68] They are advisory bodies for the court president and issue opinions, *inter alia*, on candidates for court president or on judges to be assigned or transferred to the court concerned, discuss draft schedules of work of the court etc. As a rule, judicial councils consist of five members elected by all judges of the relevant court from among their members (the court president and vice-presidents are excluded).

92. In District Courts, civil cases are as a rule tried by a sole judge or, in cases specified by law – namely labour cases –, by panels consisting of a professional judge as president and two lay judges. Furthermore, as a rule, criminal acts for which the law sets a sanction of imprisonment of up to five years are tried by a sole judge; other cases are tried by a panel consisting of either a presiding professional judge and two lay judges or three professional judges.[69] In Regional Courts, when deciding in civil proceedings as a first instance court, cases are as a rule tried by a sole judge; and when deciding as an

[63] Act no. 6/2002 Coll., as amended, on the Courts, Judges, Lay judges and on amendment to some other laws, of 30 November 2001.
[64] See articles 81 and 82(1) of the Constitution.
[65] Article 95(1) of the Constitution.
[66] See article 83 of the Constitution.
[67] See sections 118 *et seqq*. ACJ.
[68] See sections 46 *et seqq*. ACJ; article 23 *et seq*. of the Administrative Procedure Code.
[69] See section 35 ACJ; articles 36(a) and (b) *et seq*. of the Civil Procedure Code; article 314a of the Act on Criminal Judicial Procedure.

appeal court, by a panel of three judges. In criminal cases, the Regional Court always decides in panels of three judges (two of which are lay judges, in cases of first instance).[70] Where lay judges participate, they have full voting rights and may – and according to the authorities, in some cases do – overrule the professional judge. In the proceedings of administrative justice, Regional Courts decide in specialised benches comprised of a presiding judge and two judges; in certain matters specified by law,[71] decisions are made by a specialised judge sitting alone.

93. From the interviews conducted on site, it would appear that the current administration of the courts works well and that the executive does not interfere with the judicial activity. However, according to several interlocutors of the GET there is a broad consensus among judges that there is a need for strengthening the independence of the judiciary as regards personnel and budgetary matters. It was highlighted that in the absence of a council for the judiciary or equivalent body, the judiciary "does not have its own voice" and there is no body to represent the profession – except for the Union of Judges of the Czech Republic, a non-governmental, non-political, professional and voluntary organisation (around one third of judges are members) which has itself been pushing for the establishment of a self-governing body for around 20 years. As far as the Judicial Councils at court level are concerned, the GET understood that their role in practice is rather limited, to varying degrees from one court to another. They are advisory bodies and are often primarily heard on questions regarding administration or court equipment, even if the law also foresees some involvement in personnel matters. In this connection, the GET was interested to learn that the Ministry of Justice was preparing a White Paper on Justice – and had already submitted parts of the draft to representatives of the judiciary for comments – it deals i.a. with a possible reform of the recruitment procedure for judges. It would appear, however, that the establishment of a self-governing council for the judiciary is not envisaged in that document.

94. While there are no binding international standards requiring the establishment of such a body, the GET shares the preference expressed by various instances – including of the Council of Europe – for a council for the judiciary or equivalent body, independent from legislative and executive powers, entrusted with broad competence for questions concerning the status of judges (including appointment, promotion and disciplinary matters) as well as the organisation, the functioning and the image of judicial institutions.[72] Such a body should be composed either of judges exclusively or of a substantial majority of judges elected by their peers; its members should not be active politicians, in particular members of government. To conclude, the GET abstains from making a recommendation in this respect, given that it had not identified any particular problems in practice relating to undue interference, e.g. by the executive, with the judicial activity (see above). It nevertheless invites the authorities to reflect on the advisability of setting up such an independent body as a large number of European states have done.

---

[70] Cf. section 31 ACJ.

[71] Namely in matters of retirement insurance, social security, sickness benefit insurance, sickness care in the armed forces, job applicants and their material benefits according to the regulations governing employment, and state social benefits, in matters of infractions as well as in other matters provided for by a special law cf. article 31 of the Act no. 150/2002 Coll., Code of Administrative Justice.

[72] See, *inter alia*, the Report on the Independence of the Judicial System, Part I – the Independence of Judges, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)004, paragraphs 32 and 82 (http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e); and the Magna Charta of Judges adopted by the Consultative Council of European Judges (CCJE), paragraph 13 (https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&BackColor%20Internet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864); Opinion No.10(2007) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf).

Recruitment, career and conditions of service

95. In accordance with article 93(1) of the Constitution, judges are appointed for an unlimited term by the President of the Republic. For the decision of the President on appointment of judges to be valid, signature of the Prime Minister or an authorised member of the government is necessary.

96. The procedure for the appointment of judges is not regulated in detail by law. The selection of candidates for the office of a judge lies within the competence of the presidents of Regional Courts. They submit documents concerning individual candidates to the Ministry of Justice. The Ministry of Justice processes the documentation and the Minister submits the candidates to the President of the Republic. As a rule, newly appointed judges are assigned by the Minister of Justice to a certain District Court.[73] The authorities indicate that neither appointment decisions by the President of the Republic nor decisions by the Minister of Justice on assigning newly appointed judges to a certain court have to be reasoned. They state, however, that if the President decides not to appoint a candidate presented by the government, he has a duty to clearly and comprehensively justify his decision, which is subject to judicial review by the administrative court.[74] At the same time, the GET was informed that such cases almost never occur in practice (more than 10 years ago, the President rejected one candidate because of his young age).

97. Lay judges are elected to their office for a renewable period of four years by municipal councils and regional councils. The latter are to request an opinion of the president of the relevant court in relation to the proposed candidates. Citizens who are registered for permanent residence within the jurisdiction of the council by whom they are elected to the office and within the jurisdiction of the court to which they are elected or who work in these jurisdictions may be elected as lay judges.[75]

98. Pursuant to section 60 ACJ on the preconditions for the office of a judge or lay judge, citizens of the Czech Republic who enjoy full legal capacity and have no criminal record may be appointed as a judge or lay judge, provided that their experience and moral characteristics guarantee that they will properly exercise their office, that they have reached at least 30 years of age on the day of appointment and agree with their appointment as a judge or lay judge and with the assignement to a certain court. In order to assess the moral character of candidates, the previous and current life is taken into account, including the absence of criminal and administrative sanctions, the content of different references, sometimes assessment from previous employments, etc.

99. Furthermore, in the case of professional judges, the law requires a university education acquired by proper completion of studies in a master's study programme in the sphere of law at a university in the Czech Republic and the passing of an expert judicial examination. The latter is usually taken, after a 36 month preparatory service, before an examination committee which is appointed by the Ministry of Justice and includes judges, employees of the Ministry and other legal experts.[76] The bar examination, the final examination for prosecution trainees, the notarial examination and the expert executor's examination are also considered as expert judicial examination; furthermore, the exercise of the office of judge of the Constitutional Court for a period of at least two years has the same effect.

100. In principle, a judge may be transferred to another court only with his/her consent or upon request.[77] However, if a change occurs on the basis of a law in the organisation

[73] Section 67 ACJ.
[74] The authorities refer in this respect to the Supreme Administrative Court Decision no. 4 Ans 9/2007.
[75] See sections 61 and 64 *et seqq*. ACJ.
[76] See sections 109 *et seqq*. ACJ.
[77] Cf. article 82(2) of the Constitution.

of courts, in the change of a district of a court or in the jurisdiction of courts and proper administration of justice cannot be ensured otherwise, a judge may be transferred to another court even without his/her consent or request.[78] Moreover, the Minister of Justice may temporarily assign a District Court judge to another District Court, even without his/her consent, if proper administration of justice at this court cannot be ensured otherwise.[79] There are no specific legal provisions on judges' career advancement. The law only stipulates that the transfer of a judge to a court of higher instance must take into account the professional competence achieved by the judge concerned, that judges with eight years' legal practice may in principle be transferred to a Regional or High Court and judges with 10 years' legal practice, to the Supreme Court or the Supreme Administrative Court.[80]

101. The decision on the transfer of a judge is taken by the Minister of Justice after discussion with the president of the court to which the judge is being transferred (and with the president of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction) and with the president of the court from which the judge is being transferred (and with the president of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction). For a transfer of a judge to the Supreme Court or the Supreme Administrative Court the consent of the president of such court is necessary.

102. Court presidents are appointed for non-renewable terms of 10 years at the Supreme Court/Supreme Administrative Court and seven years at High, Regional and District Courts.[81] They are appointed by the President of the Republic from among judges on the proposal of the Minister of Justice, with the exception of District Court presidents who are appointed by the Minister of Justice on the proposal of the relevant Regional Court president. Court presidents may be recalled from the office of president only in the context of disciplinary proceedings.

103. The evidence gathered by the GET clearly indicates that the legal regulation on judges' recruitment and career advancement is insufficient. In practice, the presidents of Regional Courts determine the procedure for the selection of candidates, which thus varies from one Regional Court to another. It would appear that e.g. some Regional Court presidents hold competitions, some freely select judicial assistants, etc. Furthermore, there are no uniform and precise selection criteria, the Regional Court presidents thus have quite a large margin of discretion within the framework set by the ACJ as described above. According to some interlocutors, even if the selection of candidates may in most cases be justified by objective reasons, in some cases it may also be grounded on personal connections. They further argued that the quite frequent disciplinary cases concerning judges' misconduct might be explained by deficiencies in the recruitment process, which has sometimes led to the recruitment of persons lacking the necessary moral characteristics for the profession of judge. As mentioned above, the Ministry of Justice has been preparing a White Paper on Justice which deals i.a. with a possible reform of the recruitment procedure for judges. It is apparently planned to introduce uniform and clear criteria for the selection of candidates, including moral characteristics, a high sense of justice, the ability to formulate objectively, communication skills, etc.

104. The GET can only support such a move and refers to European standards according to which decisions concerning the selection and career of judges must be

[78] For more details, see section 72 ACJ.
[79] Section 69 ACJ. For a period of five years from the expiry of a temporary assignment of a judge, the judge can not again be temporarily assigned to another court without his/her consent.
[80] Section 71 ACJ.
[81] See sections 102 to 107 ACJ.

based only on objective and pre-established criteria, notably on merit.[82] On top of that, clear and uniform selection procedures must also be developed – both for the initial appointment of judges and for their promotion and the appointment of court presidents. Furthermore, according to existing standards, procedures need to be transparent with reasons for decisions being made available to applicants on request, and unsuccessful candidates are to be given the possibility to challenge decisions taken (or at least the procedure) in the recruitment process.[83] It would appear that the current regulations under the ACJ are not in line with these requirements.

105. Finally, the GET draws attention to European standards regarding institutional safeguards for ensuring objective decision-making with regard to the recruitment and career of judges. Namely, they require in cases where such decisions are taken by the head of state, that "an independent and competent authority drawn in substantial part from the judiciary (…) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice." Such an authority "should ensure the widest possible representation."[84] While the GET acknowledges that there is no unique European model of judicial governance, it would have a preference for assigning such tasks to an independent council for the judiciary and it refers to its comments made above in this respect.[85] In any case, institutional safeguards need to be in place to ensure uniform, objective and transparent procedures. In view of the preceding paragraphs, **GRECO recommends (i) regulating in more detail the recruitment and promotion of judges and court presidents so as to provide for uniform, transparent procedures and to ensure that decisions are based on precise, objective and uniform criteria, notably merit; and (ii) ensuring that any decisions in those procedures are reasoned and can be appealed to a court.**

106. Judges may be dismissed only in disciplinary proceedings by decision of the Disciplinary Court, for disciplinary violations specified by law.[86]

107. In accordance with the provisions of Act no. 236/1995 Coll.,[87] judges are entitled to a salary, additional salary and reimbursement of costs. Judges' salaries are based on coefficients multiplying a salary base which amounted to 75 753 CZK/approximately 2 803 EUR in 2015. The amount of the salary coefficient depends on the type of court to which the judge is assigned or transferred, as well as on the duration of practice for salary purposes. On this basis, monthly gross salaries ranged from 66 663 CZK/approximately 2 467 EUR for a District Court judge (with 1 to 5 years of practice) to 139 386 CZK/approximately 5 157 EUR for a Supreme Court judge. For the duration of their office, judges are furthermore entitled to a multi-purpose flat-rate compensation (5.5% of the salary base) and some other compensation similar to compensation under the Act on compensation of travel costs.

[82] See, in particular, Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraphs 44 and 48.
[83] See, in particular, Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraph 48.
[84] Cf. Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraphs 47 and 48. See also the Report on the Independence of the Judicial System, Part I – the Independence of Judges, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)004, paragraphs 32 and 82; and the Magna Charta of Judges adopted by the CCJE, paragraph 5, which is even more far-reaching in this respect: namely, decisions on judges' recruitment and career should be "taken by the body in charge of guaranteeing independence" of judges.
[85] See above under "Overview of the judicial system" (paragraph 94).
[86] Cf. 86 *et seqq*. ACJ. See below under "Supervision and enforcement" (paragraphs 131 *et seqq*.).
[87] Act no. 236/1995 Coll., as amended, on Salaries and other benefits connected with the execution of the office of representatives of state power, some state bodies, judges and members of the European Parliament

Case management and procedure

108. The distribution of individual cases to be heard and decided in court is governed by the work schedule which is adopted for each court by its president and which is publicly available on the court website. It is prepared by the court president for each calendar year and discussed with the Judicial Council. On this basis, cases are allocated electronically according to the time of arrival ("caseload rounds").

109. The court president may change the work schedule during a calendar year only if required by a new division of work at the court. A judge may be removed from a specific case only for the reasons set out in the ACJ, namely if the judge is biased and therefore must be excluded from the case heard.

110. One of the duties of judges is to decide within reasonable time without delays. In case of unjustified delays or inaction of a judge, the judge risks initiation of disciplinary proceedings for intentional breach of obligation to work without delays. Section 164 ACJ stipulates that everyone has the right to file a complaint with the bodies of state administration of courts in relation to delays in the proceedings (or against misbehaviour of judicial actors or violation of dignity of the proceedings before court). The Ministry of Justice, the president of the Supreme Court, the president of a High Court, of a Regional Court or of a District Court is competent to settle the complaint, depending on the case.

111. The length of proceedings has been a significant problem for a number of years. According to observers, "the delays in judicial proceedings constitute a persistent obstacle for Czech citizens exercising their right of access to the courts."[88] Professionals interviewed by the GET admitted that the overall rather positive image of judges suffered from this long-standing problem – which had various reasons including the low number of judges applying for posts in unattractive regions, high rates of staff fluctuation, lack of resources due to the economic crisis, etc. However, they also indicated that the situation had much improved in recent years following several measures taken (with EU support granted initially in the context of the pre-accession process) such as increasing the number of judges and administrative support staff, improved technical equipment, procedural reforms facilitating the expediting of cases, etc. Some of the GET's interlocutors stressed that further measures are needed, including reforms and broader use of mediation and other alternative dispute resolution mechanisms. The existing voluntary arbitration system was described as highly defective and subject to misuse. The authorities are therefore encouraged to persist in their reform efforts in order to ensure that the judiciary works efficiently and thus gains citizens' trust.

112. As a rule, proceedings before a court are oral and public; exceptions are defined by law. Judgments must always be pronounced publicly.[89] The public may be excluded from the court in criminal proceedings e.g. to ensure the dignified course of proceedings or in case of minors/victims of sexual crimes. Furthermore, the public may be excluded from the court in civil proceedings if their publicity would impede the secrecy of confidential information under special law, trade secret, important interest of participants or morality.

Ethical principles, rules of conduct and conflicts of interest

113. Some basic principles are set forth by the Constitution which states that judges are to be independent and impartial in the performance of their duties; that in making their decisions, judges are bound by statutes and treaties which form a part of the legal order; and that all parties to a proceeding have equal rights before the court.[90]

[88] Cf. the 2014 country report on the Czech Republic by Bertelsmann Stiftung. See also e.g. the 2011 National Integrity System Assessment of the Czech Republic by Transparency International.
[89] See article 96(2) of the Constitution.
[90] See articles 82, 95 and 96 of the Constitution.

114. According to section 62 ACJ, judges and lay judges are to take an oath of office.[91] Furthermore, under sections 79 *et seqq*. ACJ on rights and duties of judges and lay judges, they are obliged to interpret laws according to their best knowledge and conscience and make decisions within appropriate deadlines without delay, impartially and fairly and on the basis of facts established in accordance with law. They are to exercise their office conscientiously and refrain in the exercise of office and in civil life from any conduct that could affect the dignity of the office of judge or endanger confidence in independent, impartial and fair decision-making by the courts.

115. The procedural laws include rules on conflicts of interest in the provisions on the disqualification of a judge (see below), but the concept of "conflict of interest" is not otherwise described by law. In this connection, it is recalled that conflicts of interest of officials are regulated by the ACI, as described in the chapter on MPs, and that amendments to the ACI which would i.a. extend its scope to judges (and public prosecutors) are currently pending before Parliament. Moreover, as mentioned above, sections 79 *et seqq*. ACJ contain requirements on judges' behaviour in the exercise of their office and in civil life in order to safeguard their independence and impartiality, including the obligation to reject any intervention, coercion, influence, wish or request likely to endanger the independence of the judiciary. Judges must not to be affected in the exercise of their office by interests of political parties, public opinion and the mass media; they must act without bias and approach the parties or participants in proceedings without any economic, social, racial, ethnical, sexual, religious or other prejudice; they must not abuse of their office for the promotion of private interests.

116. The 15th Assembly of the Union of Judges adopted a Code of Conduct of Judges on 26 November 2005 which is based on the 2002 Bangalore Principles of Judicial Conduct[92] and has been published on the Union's website.[93] The principles laid down in the code of conduct are intended to establish standards for the ethical conduct of judges, to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct, to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. The document revolves around six tenets: independence, impartiality, integrity, dignity, equality and competence. The Union of Judges also gives advice on ethical questions and monitors compliance of its members with the code of conduct. Violation of the rules does not give rise to disciplinary proceedings but can, ultimately, lead to exclusion of the judge concerned from the Union. That said, it would appear that the practical importance of this advisory and monitoring role of the Union is quite low, an average of one or two requests for advice being recorded per year.

117. In the view of the GET, the code of conduct established by the Union of Judges is a valuable document which spells out the basic ethical values and principles for the profession of a judge. That said, it wishes to highlight that the code only applies directly to the members of the Union and only one third, approximately, of the (professional) judges in the Czech Republic are members. As GRECO has frequently pointed out, a code of ethics/conduct applicable to all judges – and which is actively communicated to them – is a necessary complement to the legal duties and disciplinary proceedings. The GET sees a clear need for such a code also in the Czech Republic. During the on-site visit, it was informed that cases concerning judges' misconduct were quite frequently brought before the Disciplinary Court. Some of its interlocutors stressed that a clear ethical framework – which could possibly already be fed into the recruitment process – would be beneficial for ensuring the necessary moral integrity of judges. The GET also draws attention to

[91] The oath of office of judges and lay judges reads: "I promise on my honour and conscience that I will follow the laws of the Czech Republic and that I will interpret them according to my best knowledge and conscience and that I will make independent, impartial and fair decisions in accordance with these laws."
[92] See http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.
[93] See http://www.soudci.cz .

European standards according to which professional standards of conduct "represent best practices, which all judges should aim to develop and towards which all judges should aspire."[94] They should offer guidance to judges on how to conduct themselves and at the same time inspire public confidence in judges and the judiciary.[95] They are to be developed by the judges themselves and to be living texts that can evolve over time. They also need to be adapted to the particular situation in a given country in order to secure "ownership" among the users.

118. In the view of the GET, a code of conduct applicable to all judges could be inspired by the code established by the Union of Judges. However, given the very general nature of that code, the new instrument would have to be more specific. It would offer a good opportunity to clarify particular questions and provide detailed guidance, including practical examples, e.g. on gifts, secondary activities, third party contacts/confidentiality and on how to act if and when confronted with a conflict of interest. Moreover, it is essential that the implementation of such a code is ensured by complementary measures including confidential counselling within the judiciary and specific (preferably regular) training activities of a practice-oriented nature. To conclude, the GET wishes to stress how important it is that such measures are also taken for the benefit of lay judges – who are currently not provided with any training or advice – and of professional judges who are recruited from other branches (e.g. attorneys in private practice). In view of the above, **GRECO recommends (i) that a code of professional conduct for all judges – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues (e.g. on gifts, secondary activities, third party contacts/confidentiality, etc.) – be developed, communicated effectively to all judges and made easily accessible to the public; (ii) that it be complemented by practical measures for its implementation, including confidential counselling and dedicated training for both professional and lay judges.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

119. Article 82(3) of the Constitution makes it clear that the office of judge is incompatible with the office of President of the Republic, MP or any other function in public administration; the law shall specify which other activities are incompatible with the performance of judicial office.

120. According to section 74 ACJ the office of judge is not compatible with any office or activities stipulated by law. Except for the office of court president or vice-president, a judge may not perform any other functions within the state administration. The office of lay judge is not compatible with the office of MP and with other activities stipulated by law. Section 80(5) ACJ states that a judge may not act as an arbitrator or mediator in a legal dispute, represent participants in court proceedings or act as a representative of the injured person or a person involved in court or administrative proceedings, except for representation under law and cases where a participant is represented in proceedings that also involve the judge him/herself.

121. Pursuant to section 85 ACJ, a judge may not hold any office for remuneration other than office of judge and court administration functions and/or other activities

[94] Opinion No.3(2002) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paragraph 60 (https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3).

[95] Cf. Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraph 72 and 73. See also the Magna Carta of Judges adopted by the CCJE, paragraph 18.

related to the temporary assignment to the Judicial Academy. S/he may not perform other gainful activities except for management of his/her own property and scientific, pedagogical, literary, columnist's and artistic activities and activities in advisory bodies of the ministry, the government or parliamentary bodies, provided that such activities do not impair the dignity of the office of judge or endanger the confidence in the independence and impartiality of the judiciary.

122. The GET notes that judges are subject to a strict regime of incompatibilities and prohibitions on secondary activities. At the same time, it has misgivings about the low level of transparency in this area. Notably, the law does not require judges to report permitted secondary activities such as pedagogical or artistic activities or activities in advisory bodies of the ministry, let alone to ask for permission to carry them out. Consequently, such occupations – and the question of whether they "impair the dignity of the office of judge or endanger the confidence in the independence and impartiality of the judiciary" – are not subject to any supervision. This state of affairs is clearly unsatisfactory, bearing also in mind the absence of any requirements on judges to declare their assets and income (see further below). The GET holds the view that appropriate measures need to be taken to ensure that secondary activities of judges are compatible with judicial status and do not distract from the proper performance of judicial duties. To be credible, such measures would have to include at least adequate obligations to report – e.g. on the type of activities, the income received and the working time spent – to the court president or another suitable person, and possibly also public disclosure; more precise regulations – e.g. appropriate ceilings for the remuneration a judge may receive annually from such activity and for the number of weekly working hours s/he may spend on it – and corresponding monitoring. To conclude, the GET wishes to stress that while such rules need to be reflected in the code of conduct as recommended above, clear legal regulations are also required. Consequently, **GRECO recommends regulating more closely the exercise by judges of secondary activities, including by introducing a reporting requirement and, as appropriate, monitoring of compliance with the existing restrictions on the exercise of such activities.**

123. No post-employment restrictions apply to judges. The GET did not find this to be a particular source of concern as judges generally leave judicial service on reaching retirement age. That said, some guidance on possible challenges which might arise in some situations, for example where judges quit their functions to work as an attorney – including a clear rule that a person may not act as an attorney in a case if s/he has previously dealt with the matter as a judge – could be usefully provided by the code of conduct recommended above.

Recusal and routine withdrawal

124. The conditions for disqualification in criminal proceedings are specified in sections 30 *et seqq*. of the Act on Criminal Judicial Procedure (ACJP). Judges and lay judges are disqualified from a criminal case whenever there are reasonable grounds to question their impartiality because of their relationship to the case under consideration or to persons directly involved in the proceedings, their attorneys, legal representatives and agents, or to other law enforcement authorities. Judges are also disqualified, *inter alia*, if they have served as a prosecutor, investigator, member of the police body, representative of civil association, defence counsel or proxy of a participating person or the injured in the same matter, or if they took part in the decision of a lower-instance court. Actions that were taken by excluded judges may not be the basis for decisions in the criminal proceedings. The removal of a judge or a lay judge, if they rule in the court, is decided on by the court, even when no motion has been made. Complaints against disqualification decisions are decided by the immediately higher authority.

125. Similar rules apply in civil proceedings.

Gifts

126. There are no detailed rules on the acceptance of gifts specifically by judges. The authorities refer in this respect to the bribery offences under the Criminal Code and to the above-mentioned general ACJ rules on judges' rights and duties, such as the duty to refrain from any conduct that could impede the dignity of the function of a judge or trust in impartial, independent and fair decision-making. The GET has the clear impression that judges do not consider it permissible for them to accept gifts. That said, it believes that a clear prohibition in principle as well as some clarifications concerning the exceptional circumstances under which gifts or other advantages may possibly be acceptable (e.g. protocol gifts) could usefully be provided by the code of conduct recommended above.

Third party contacts, confidential information

127. There are no specific rules concerning communication between a judge and third parties outside the official procedures. Section 80(6) ACJ contains a general rule which states that, in relation to representatives of participants or representatives of parties to court proceedings, judges are obliged to refrain from any manifestation of personal likes, favours or negative approaches.

128. According to section 81 ACJ, also after expiry of the office of judge, judges are obliged to maintain confidentiality of all facts that they learnt in connection with the exercise of their office, unless they are relieved from this obligation by a special regulation or a person authorised thereto. They may be relieved from the obligation of confidentiality for serious reasons by the court president. The matter of secrecy of certain information is regulated in detail in Act no. 412/2005 Coll., on Protection of classified information and security eligibility and implementing regulations to this act. Depending on the case, breach of confidentiality on the part of a public prosecutor may constitute a disciplinary offence, an administrative offence (e.g. under the Act on the Protection of Personal Data and the Act on the Protection of Classified Information) or a criminal offence (e.g. unauthorised use of personal data in accordance with article 180 CC, endangering classified information pursuant to article 317 CC or endangering classified information or negligence under article 318 CC).

Declaration of assets, income, liabilities and interests

129. Judges are obliged to disclose any circumstance that can be considered to warrant disqualification in a particular case (see above). However, there are no specific requirements, duties or regulations in place for judges and their relatives to submit asset declarations. The declaration requirements on public officials in the meaning of the ACI as described in the chapter on MPs above are at present not applicable to judges since the latter were removed (together with public prosecutors) from the scope of the ACI in 2008. The reasons for this reform remain unclear, no explanatory comments on this part of the law amending the ACI are available. The authorities indicate that the current draft law amending the ACI, which is pending before Parliament and which i.a. foresees widening the scope of the ACI, re-extends the scope to judges (and public prosecutors).

130. While the GET does not see the need to issue a formal recommendation on the establishment of an asset declaration system, it notes and draws attention to the varied and evolving experience being gathered by GRECO member states in this domain and encourages the Czech authorities to carry through the above-mentioned reform in order to better safeguard independence and impartiality vis-à-vis parties to proceedings or regarding the outcome of a given case.

Supervision and enforcement

131. Judges bear disciplinary liability for disciplinary violations specified by law, namely for the voluntary breach of duties of a judge, as well as voluntary behaviour or conduct impairing the dignity of the office of judge or endangering the confidence in independent, impartial, professionally competent and fair decision-making by the courts. Presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court are also liable for the voluntary breach of duties connected to their function.[96]

132. The following disciplinary measures may be imposed on judges for disciplinary violations:[97] reprimand; reduction of salary of up to 30% for a period not exceeding one year, and in case of repeated disciplinary violations committed by a judge prior to erasure of the disciplinary violation, for a period not exceeding two years; recall from the office of president of a panel; recall from the office of judge. Presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court may be disciplined by a reprimand; temporary withdrawal of an increase in salary coefficient for their function; temporary salary reduction, as for other judges; recall from the office of president of court, presidents of panels of the Supreme Court or Supreme Administrative Court. Disciplinary measures may be waived if discussion of the disciplinary violation is sufficient. Disciplinary liability of judges is subject to statutes of limitation, i.e. it terminates if a proposal for commencement of disciplinary proceedings is not submitted within six months from the day the petitioner learnt of the facts relating to disciplinary violation and within three years of its commitment.[98]

133. Disciplinary proceedings are dealt with by the Disciplinary Court. Its composition, procedure and decisions are regulated in detail by Act no. 7/2002 Coll., on proceedings relating to judges, public prosecutors and court executors. It stipulates that the Supreme Administrative Court is the Disciplinary Court, which (in cases regarding judges) acts and decides in chambers composed of a judge of the Supreme Administrative Court as the presiding judge, a judge of the Supreme Court as his/her deputy, a judge of a High, Regional or District Court and three lay judges.[99] The lay judges must include at least one public prosecutor, one attorney and one person exercising another legal profession, if registered in the list of lay judges in proceedings relating to judges. The members of the chambers and their presidents are drawn by lots from lists of suitable candidates, for a five year term.

134. The proposal to initiate proceedings on disciplinary liability of a judge can be submitted by the President of the Republic and the Minister of Justice against any judge; the President of the Supreme Court (Supreme Administrative Court) against any judge of this court, and against a judge of a lower court deciding on matters belonging to the jurisdiction of courts, where the Supreme Court (Supreme Administrative Court) is the highest instance; the president of the High Court (Regional Court) against any judge of that Court and against a judge of a lower court; the president of a District Court against a judge of any District Court.[100] During the interviews it held on site, the GET was informed that most typically proceedings were initiated by court presidents or the Minister of Justice. Disciplinary proceedings include a preliminary investigation, if necessary, and an oral court hearing which is public.

[96] Section 87 ACJ.
[97] See section 88 ACJ.
[98] See section 89 ACJ and section 9 of Act no. 7/2002 Coll., on proceedings relating to judges, public prosecutors and court executors.
[99] Section 4 of Act no. 7/2002 Coll. In the case of proceedings relating to judges deciding in administrative court proceedings, the presiding judge is a judge of the Supreme Court and his/her deputy a judge of the Supreme Administrative Court.
[100] Section 8 of Act no. 7/2002 Coll. Specific rules are provided for disciplinary proceedings against court presidents and vice-presidents.

135. According to statistics provided by the authorities, during the period 2013-2015, 68 disciplinary proceedings against judges were recorded, which led to a reprimand in eight cases, reduction of salary in 17 cases and dismissal of the judge in four cases. In five cases, the judges concerned were not punished, six cases were terminated by acquittal and 13 cases by discontinuation of proceedings. During the interviews held on site, it was indicated that the most typical disciplinary cases concerned delays in proceedings. It would appear that cases of judges' misconduct are also quite frequent. Some of the GET's interlocutors argued that this might be explained by the deficiencies in the recruitment process, i.a. the absence of clear and uniform selection criteria, which sometimes led to the recruitment of persons lacking the necessary moral characteristics for the profession of judge. A recommendation to that effect has been made above.[101]

136. After the on-site visit, the GET was left with the impression that the regime of disciplinary proceedings works well and that the composition of the Disciplinary Court as well as the procedural arrangements are adequate to ensure effective proceedings and fair trial. That said, the GET notes with concern that decisions by the Disciplinary Court are not subject to appeal.[102] During the interviews it held, it was stated that this situation had been criticised in the past and challenged before the Constitutional Court, but the latter had ruled that the present legislation did not violate the Constitution. Nevertheless, the GET wishes to draw the attention of the authorities to European standards according to which, in disciplinary proceedings, a judge should be given "the right to challenge the decision and sanction"[103] and that there should be "the possibility of recourse before a court."[104] The GET is particularly concerned about the fact that even dismissal cannot be challenged by the judge concerned and is of the firm opinion that this matter needs to be included in the current reform plans regarding the justice system. Consequently, **GRECO recommends introducing the possibility for judges to challenge disciplinary decisions including for dismissal before a court.**

137. Judges may be subject to criminal proceedings and sanctions if they commit offences such as theft, fraud, embezzlement, bribery, trading in influence or breach of professional confidentiality. However, they enjoy functional immunity as they may be criminally prosecuted or put into custody for acts committed during the exercise of the office of judge or in relation to the exercise of this office only with the consent of the President of the Republic.[105] Justices of the Constitutional Court enjoy immunities under article 86 of the Constitution, in that they may not be subject to any criminal prosecution without the consent of the Senate. If the Senate withholds its consent, such criminal prosecution shall be foreclosed for the duration of their office as Justice of the Constitutional Court; as for MPs, before constitutional amendments which took effect in June 2013, prosecution was forever precluded. A justice may be detained only if s/he is apprehended while committing a criminal act or immediately thereafter.

138. According to statistics provided by the authorities, during the period 2013-2015, criminal proceedings against seven judges were recorded. As of November 2015, four of those cases (one of which concerned abuse of power of a public official and acceptance of a bribe) had not yet been finally decided, two cases were conditionally discontinued and in one case (regarding attempt at theft, unlawful provision, counterfeiting and amendment of means of payment), the judge resigned from office.

[101] See above under "Recruitment, career and condictions of service" (paragraph 105).
[102] Section 21 of Act no. 7/2002 Coll.
[103] Cf. Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, paragraph 69.
[104] Cf. the Magna Charta of Judges adopted by the CCJE, paragraph 6. See also the Report on the Independence of the Judicial System, Part I – the Independence of Judges, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)004, paragraphs 43 and 82.
[105] Section 76 ACJ.

Advice, training and awareness

139. Training of judges regarding ethics, expected conduct, prevention of corruption and conflicts of interest is organised by Regional Courts and by the Judicial Academy. The authorities state that the Judicial Academy prepares educational training events in close cooperation with the courts, so that these activities best suit their needs. During the on-site visit, the GET was informed that ethical questions are included in the mandatory initial training programme for future judges (and public prosecutors) and also in specific seminars proposed to sitting judges (and public prosecutors). Normally, the Judicial Academy organises such voluntary three-day seminars twice a year and they are attended by around 100 judges and public prosecutors per year. The focus of such seminars is on professional conduct in concrete real-life situations and on the decision-making process of disciplinary bodies. In contrast, training or introductory sessions are not organised for lay judges.

140. Judges can obtain advice and information on questions of ethics and conduct from court presidents, the Ministry of Justice and the Union of Judges. That said, according to information gathered by the GET, judges rarely seek advice from the Union (on average, one or two cases per year).

141. The GET notes that optional training courses are provided to judges, some of which also cover ethical questions. It would appear that the Judicial Academy takes this matter seriously and would like to see all judges participate in such training. In the view of the GET, it needs to be ensured that future training takes into account the code of conduct advocated for in this report, and that a high number of professional judges – including those who are recruited from other branches – as well as lay judges benefit from such training. A recommendation to that effect has been made above.[106] Finally, the GET wishes to stress again that confidential counselling services would be an additional asset. They could be provided, for example, by a yet-to-be created judicial council[107] which is advocated for in the present report. The authorities may wish to explore the possibility of establishing such a special body or entrusting an appropriate body/bodies within the existing institutional framework with consultative functions in respect of judges who seek advice on questions of ethics and conduct.

[106] See above under "Ethical principles, rules of conduct and conflicts of interest" (paragraph 118).
[107] See also Opinion No. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

142. According to article 80 of the Constitution the public prosecution service is part of the executive branch of power. Its statute and powers are defined by the Act on Public Prosecutor's Office (APPO). The public prosecutor's office acts as a body of public prosecution before criminal courts, and in addition it performs supervision of pre-trial criminal proceedings and has some powers in civil court proceedings, administrative proceedings and out of court proceedings (e.g. supervision of places, where personal freedom is limited). Matters entrusted to the competence of the public prosecutor's office may only be conducted by public prosecutors. Other persons or authorities are not allowed to interfere with their activities.[108]

143. The prosecutorial system is formed by the Supreme Public Prosecutor's Office, the High Public Prosecutor's Office and Regional and District Public Prosecutors' Offices, the system being essentially based on the organisation of courts and on the principle of hierarchy. The internal organisation of public prosecutors' offices is provided by the model organisational rules, which is a General Instruction of the Supreme Public Prosecutor's Office. According to these model rules each chief public prosecutor, i.e. the head of the office, issues organisational rules of a particular public prosecutor's office. Supervision is performed both between different instances of the prosecution service and inside the individual public prosecutors' offices.[109] On 1 January 2016, there were 1 255 public prosecutors in the Czech Republic, 580 male public prosecutors (46%) and 675 female public prosecutors (54%).

144. The Supreme Public Prosecutor is the head of the prosecution service. S/he may issue binding instructions of a general nature in order to unify and regulate procedures of public prosecutors' work and to ensure the unified internal organisation of the Public Prosecutor's Office. S/he may provide opinions for the public prosecutor's offices to unify the interpretation of relevant laws and regulations, and if s/he notes disunity in court decisions, s/he may propose that the Supreme Court adopts an opinion on interpretation of the law or other legal regulation. The Supreme Public Prosecutor may also order that closed cases be checked and impose remedial measures in case of fault.[110]

145. The Ministry of Justice is the central body of the administration of the Public Prosecutor's Office. It may also, at any time, ask any public prosecutor's office to provide information on the state of proceedings in each case it is engaged in, if such information is needed to fulfil the objectives of the Ministry or if the Minister of Justice needs such information as a member of the government. The chief public prosecutors and their deputies administer the bodies of the Public Prosecutor's Office.[111]

146. Both the government's anti-corruption strategy for the years 2013-2014 and the subsequent anti-corruption action plan for the year 2015, which was issued on the basis of the government's Anti-Corruption Conception for the years 2015-2017, included the preparation of a new law on public prosecution. One of the main focuses of the reform is ensuring the independence of the public prosecution service from political influence. The Ministry of Justice prepared a draft Law on the Public Prosecutor's Office and, following the comment procedure, submitted it to the government on 12 October 2015 for further deliberation. On 21 April 2016, the government submitted the draft law to Parliament.

147. The most significant changes proposed by the draft law include arrangements to increase the independence of the Supreme Public Prosecutor and other chief public

[108] Cf. section 3(1) APPO.
[109] Cf. sections 12c *et seqq*. APPO. See below under "Case management and procedure" (paragraphs 164).
[110] See section 12 APPO.
[111] See sections 13 *et seqq*. APPO.

prosecutors, to ensure the transparency of their selection and to eliminate the risk of possible external influence especially by the executive; changes to the status of public prosecutors, whose function will in the future be carried out as a public function (i.e. the subsidiary use of the Labour Code will be excluded); the abolishment of the High Public Prosecutor´s Office and the establishment of a nationwide Special Prosecutor's Office focused mainly on the most serious forms of property and economic crimes and corruption; the creation of a consultative body, the Advisory Board which will be linked to the Supreme Public Prosecutor's Office and be composed of public prosecutors from different levels elected for six-year terms. The draft law, if adopted, would also introduce/regulate regular performance evaluation of public prosecutors and their work schedule, and restrict the issuance of so-called negative guidance/allow such guidance to be rejected if it is obviously in contradiction to the established interpretation of the law. It also aims at increasing transparency in internal relations, reducing the possibility of covert interference in how specific matters are dealt with and strengthening the accountability of individual prosecutors for the outcome of cases.

148. The current reform initiative is clearly to be supported. The Public Prosecutor's Office, and especially the Supreme Public Prosecutor, has for a long time been considered by many observers as the weakest link of the Czech judicial system, given the government's substantial influence on its composition.[112] It is to be noted that following scandals in 2009, the Prosecutor General's Office underwent personnel and structural changes in 2011 and 2012, and has in recent years been committed to prosecuting politically sensitive cases. During the on-site visit, the GET was told that public trust in the prosecution service had therefore improved significantly in recent years (even though the outcome of those cases was seen by many as disappointing). Nevertheless, various national and international instances and observers have called for continued reform of the prosecution service. The GET agrees that further structural changes are needed to foster independence from political influence and to ensure sustainable effects of the reform process.

149. Following several previous attempts to amend the legislation on public prosecution, strengthen its independence and provide for more detailed regulations in several key areas, it is crucial that the present reform is carried through without being further delayed or diluted. In the view of the GET, the bill presented has many positive features and clear potential to achieve its objectives if properly implemented. It is noteworthy that the profession itself – through the Supreme Public Prosecutor's Office – was involved in the preparation of the bill, and practitioners interviewed on the subject generally considered this reform initiative as a step in the right direction. While this report is not the place for commenting on the bill in its entirety, some elements – in particular regarding the status of the Supreme Public Prosecutor and other chief public prosecutors – are examined more in detail below.

Recruitment, career and conditions of service

150. Public prosecutors are appointed by the Ministry of Justice for an indefinite period upon a proposal of the Supreme Public Prosecutor. They must be Czech citizens, have full legal capacity, no criminal conviction, be over 25 years old, have achieved university education by studying a masters study programme in the area of law at a university in the Czech Republic, have successfully passed the final examination and have moral attributes guaranteeing due execution of the office.[113] As for judges, in order to assess the moral character of candidates, the previous and current life is taken into account,

[112] See e.g. the 2011 National Integrity System Assessment of the Czech Republic by Transparency International; the Freedom House study "Nations in Transit 2014 – Czech Republic" (https://freedomhouse.org/sites/default/files/NIT14_Czech%20Republic_final.pdf). See also the Phase 3 report on the Czech Republic by the OECD Working Group on Bribery (http://www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf).
[113] See sections 17 *et seq*. APPO.

including the absence of criminal and administrative sanctions, the content of different references, sometimes assessment from previous employment, etc. The final examination is taken, after a 36 month internship, before the examination board which is appointed by the Ministry of Justice and includes public prosecutors, judges and other legal experts.[114] Some other examinations specified by law – such as the bar examination and the judges examination – have the same status as the final examination concluding the prosecutorial internship.

151. The authorities indicate that the selection of candidate public prosecutors is under the responsibility of Regional Public Prosecutors.[115] Mostly it includes a written test (model situation) and an oral interview, usually attended by the head of prosecutor's offices where posts are to be occupied, which is focused on confirming the expert level of the applicant in substantive and procedural criminal law. The selection of candidates by Regional Public Prosecutors and the appointment decisions by the Ministry of Justice do not have to be reasoned and are not subject to appeal by unsuccessful candidates.

152. Public prosecutors are assigned by the Minister of Justice upon a proposal of the Supreme Public Prosecutor[116] to perform their position at a specific public prosecutor's office with their previous approval. The Minister of Justice may transfer a public prosecutor to another public prosecutor's office of the same or higher instance with his/her approval or at his/her request; as a rule, a public prosecutor can be transferred to a public prosecutor's office of a lower instance at his/her request only. Unless due performance of the responsibilities of the Public Prosecutor's Office can be secured by the above procedure, the Minister of Justice may, upon hearing the opinion of the chief public prosecutor of the public prosecutor's office concerned, transfer a public prosecutor even without his/her approval or application to another public prosecutor's office if its organisation or jurisdiction has been changed by law; the decision by the Ministry of Justice may be appealed to the administrative court.[117] Temporary assignment of a public prosecutor to another public prosecutor's office, to the Ministry of Justice or the Judicial Academy requires his/her approval.[118]

153. The promotion of public prosecutors is not regulated in detail by the APPO. Section 19(2) only states that when public prosecutors are transferred to a higher public prosecutor's office, their level of expertise is taken into account. The authorities indicate that the draft Law on the Public Prosecutor's Office defines the minimum experience required, namely five years for Regional Public Prosecutor's Offices and eight years for the High Public Prosecutor's Office and the Supreme Public Prosecutor's Office.

154. As in the case of judges, the GET notes that the recruitment and career advancement of public prosecutors is only sparsely regulated. At present, the selection procedure is under the responsibility of Regional Public Prosecutors. The appointment decision is then taken by the Ministry of Justice based on a proposal by the Supreme Public Prosecutor. During the interviews, the GET was told that the Ministry usually accepts the candidates proposed, at least for initial appointments, but not necessarily for more senior positions. The authorities stress that the recruitment procedure follows an established practice involving an open competition and a ranking of candidates based on a written test and an oral interview with a committee of (usually four) prosecutors of different offices and an expert from the Ministry of Justice. Nevertheless, the GET shares the concerns of several interlocutors about the low level of regulation. It is of the firm opinion that clear, precise and uniform selection procedures and criteria, notably merit,

[114] Cf. sections 33 *et seq*. APPO.
[115] Cf. section 13g APPO and section 2 of the Decree of the Ministry of Justice no. 303/2002 Coll., on selection procedure, enrolment and training of interns and on specialised judicial examination and professional final examinations of interns.
[116] Cf. section 18(2) APPO.
[117] Cf. article 4 of the Code of Administrative Justice.
[118] See sections 19 *et seq*. APPO.

need to be enshrined in the law, both for the first appointment of public prosecutors and for promotion. Furthermore, as GRECO has pointed out on previous occasions, it is crucial to ensure that procedures are transparent, that all decisions taken by the Ministry of Justice – both on the selection of candidates and on appointment/promotion – are reasoned and that unsuccessful candidates are given the possibility to challenge such decisions. In this connection, the GET refers to European standards and reference texts according to which "the careers of public prosecutors, their promotions and their mobility must be governed by known and objective criteria, such as competence and experience"[119] and "should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review."[120] To conclude, the GET wishes to stress that such arrangements will be conducive to strengthening the independence and impartiality of the prosecution service – as well as public trust in this institution – in line with the intentions underlying the reform process currently underway in the Czech Republic. In view of the above, **GRECO recommends (i) regulating in more detail the recruitment and promotion of public prosecutors so as to provide for uniform, transparent procedures and to ensure that decisions are based on precise, objective and uniform criteria, notably merit; (ii) ensuring that any decisions in those procedures are reasoned and can be appealed to a court.**

155. At present, the APPO does not provide for regular performance evaluation of public prosecutors. The authorities indicate that currently, evaluation is based on internal guidelines. During the on-site visit, the GET was informed that regular evaluation is mainly performed at the Supreme Public Prosecutor's Office based on an internal binding act, but also in some lower level prosecutor's offices on a voluntary basis. The authorities furthermore indicate that the draft Law on the Public Prosecutor's Office foresees the introduction of a clear legal basis for regular performance evaluation of all public prosecutors (at least every three years) and the right to challenge evaluation results. Among the evaluation criteria are fulfillment of the public prosecutor's obligations, his/her expertise, impartiality, independence and responsible approach to fulfilling his/her duties and the handling of allocated affairs without undue delay. It is planned that more details will be defined by special instruction of the Supreme Public Prosecutor. While the GET welcomes the draft provisions, their practical implications will have to be kept under review.

156. Public prosecutors can be employed up until the age of 70. They can be dismissed only in disciplinary proceedings by decision of the Disciplinary Court, for disciplinary violations specified by law.[121]

157. The Supreme Public Prosecutor is appointed – and can be removed – by the government at the proposal of the Minister of Justice, for an indefinite period of time. S/he is appointed from among the public prosecutors, so s/he has to fulfil the same requirements for appointment. The decision by the government to dismiss the Supreme Public Prosecutor does not have to be reasoned. As far as the Supreme Public Prosecutor deputies are concerned, they are appointed and may be removed by the Minister of Justice at the proposal of the Supreme Public Prosecutor.[122]

---

[119] Cf. Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, paragraph 5b (https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2719990&SecMode=1&DocId=366374&Usage=2).

[120] Cf. Opinion No. 9 of the Consultative Council of European Prosecutors (CCPE) on "European norms and principles concerning prosecutors" ("Rome Charter"), Article XII (https://wcd.coe.int/ViewDoc.jsp?Ref=CCPE(2014)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

[121] Cf. 27 *et seqq*. APPO. See below under "Supervision and enforcement" (paragraphs 181 *et seqq*.).

[122] Section 9 APPO.

158. The appointment of other chief public prosecutors is regulated by section 10 APPO as follows. The Minister of Justice appoints high public prosecutors at the proposal of the Supreme Public Prosecutor, regional public prosecutors at the proposal of the relevant high public prosecutor, and district public prosecutors at the proposal of the relevant regional public prosecutor. Chief public prosecutors are appointed for an indefinite period of time. The Minister may remove them from office 1) in case of a serious breach of duties resulting from the execution of the public prosecutor's competence or 2) at the proposal of the relevant chief public prosecutor of the superior level.[123] The Minister may also appoint or remove chief public prosecutors of Regional or District Public Prosecutors' Offices at the proposal of the Supreme Public Prosecutor. The authorities indicate that decisions on appointment of chief public prosecutors are not reasoned, whereas decisions on their dismissal are reasoned and are subject to appeal under the Administrative Procedure Code.

159. As mentioned above, changes to the status of the Supreme Public Prosecutor and other chief public prosecutors are one of the cornerstones of the current reform initiative. The authorities indicate that the draft Law on the Public Prosecutor's Office attempts to increase the independence of the Supreme Public Prosecutor and other chief public prosecutors, to eliminate the risk of possible external influence especially by the executive and to ensure the transparency of their selection. More precisely, the draft would introduce a seven-year term of office for all chief public prosecutors – including for the Supreme Public Prosecutor whose mandate will not be renewable; mandatory selection procedures with transparent competitions, except for the position of Supreme Public Prosecutor; minimum requirements for being appointed chief public prosecutor, such as moral integrity, absence of disciplinary offences and a specified length of legal service. Furthermore, it would only be possible to recall chief public prosecutors including the Supreme Public Prosecutor in the context of disciplinary proceedings. The GET clearly supports these draft amendments and wishes to stress that in line with GRECO's previous pronouncements on these matters, it needs to be ensured that both decisions on appointment and recall of the Supreme Public Prosecutor – and of any chief public prosecutor – are reasoned, based on clear and objective criteria, transparent, and can be appealed to a court.

160. In this connection, the GET wishes to stress how important it is that the procedure for the appointment and recall of chief public prosecutors, and especially of the Supreme Public Prosecutor, serves to prevent any risk of improper political influence or pressure in connection with the functioning of the prosecution service. As has been pointed out, "it is important that the method of selection and appointment of the Prosecutor General is such as to gain the confidence of the public and the respect of the judiciary and the legal profession."[124] To achieve this, "professional, non-political expertise should be involved in the selection process," e.g. by seeking advice on the professional qualification of candidates from relevant persons such as representatives of the legal community (including prosecutors) and pertinent civil society bodies, or, at the level of Parliament, through the preparation of the election by a parliamentary committee which should take into account the advice of experts. Similarly, it has been stated that an "expert body should give an opinion whether there are sufficient grounds for dismissal" of a Prosecutor General and the possible grounds for such dismissal need to be clearly defined by law.[125] The current situation in the Czech Republic whereby the Supreme Public Prosecutor is appointed and can be removed freely by the government at the proposal of the Minister of Justice is clearly not in line with such requirements. Criticism

[123] I.e. the chief public prosecutor who is competent to propose the appointment to the office from which the public prosecutor is to be removed.
[124] See the Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)040, paragraph 34.
(http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf).
[125] See the above-mentioned report CDL-AD (2010)040, paragraphs 39 and 87.

has repeatedly been aimed at the fact that such decisions need not be reasoned.[126] Even though the authorities state that proposals made by the Minister of Justice to the government on appointment and dismissal have to be reasoned and are subject to appeal in administrative judicial proceedings, this is not explicitly specified by law. Finally, as far as other chief public prosecutors are concerned, the GET refers to the European standards and its comments made with respect to the appointment and dismissal of public prosecutors in general,[127] which apply accordingly. In view of the foregoing and notably in the context of the reform process underway, **GRECO recommends reforming the procedures for the appointment and recall of the Supreme Public Prosecutor and other chief public prosecutors, in particular by ensuring (i) that any decisions in those procedures are reasoned, based on clear and objective criteria and can be appealed to a court; (ii) that appointment decisions are based on mandatory, transparent selection procedures and; (iii) that recall is possible only in the context of disciplinary proceedings.**

161. In accordance with the provisions of Act no. 201/1997 Coll.,[128] the salary of a public prosecutor is derived from the salary bases of judges (including the coefficients), lowered by 10%. Thus, in 2015, the salary base of a public prosecutor was 68 178 CZK/approximately 2 523 EUR and the monthly gross salary of a public prosecutor at the District Public Prosecutor's Office was 59 997 CZK/approximately 2 220 EUR. The Supreme Public Prosecutor's salary was 184 762 CZK/approximately 6 836 EUR and that of public prosecutors assigned to the Supreme Public Prosecutor's Office, 125 448 CZK/approximately 4 641 EUR, regardless of the length of practice.

Case management and procedure

162. There are currently no work schedules for public prosecutors. Individual cases are assigned to public prosecutors by the chief public prosecutor as a means of ensuring equal distribution and on the basis of territorial competence.[129] If a specialisation is created in the public prosecutor's office, the cases are allocated with respect to this specialisation. The authorities indicate that the draft Law on the Public Prosecutor's Office foresees the introduction of work schedules for public prosecutors, which is clearly to be welcomed as a step in the right direction. Clear written rules for the allocation of cases among public prosecutors and their publication have a clear potential for increasing transparency, limiting risks of undue influence and strengthening citizens' trust in the prosecution service.

163. The chief public prosecutor may remove a public prosecutor from a case in writing and allocate the case to another prosecutor.

164. The closest hierarchically superior public prosecutor's office is competent for performing supervision[130] of the procedures of the public prosecutor's offices directly below it in its jurisdiction in disposing of cases in their jurisdiction and for issuing written instructions for their procedures. The public prosecutor's offices directly below the super public prosecutor's office are obliged to follow written instructions except for instructions in a specific case which are in conflict with the law. Moreover, the chief public prosecutor is competent for supervising the procedural aspects of the work of the public prosecutors and officers of his/her office and for instructing them on the procedure in the handling of cases (this competence may be delegated to another public prosecutor). If an instruction

[126] See e.g. the EU Anti-Corruption Report of February 2014; the Phase 3 report on the Czech Republic by the OECD Working Group on Bribery.
[127] Namely that such decisions need to be reasoned, based on clear and objective criteria in a transparent manner and can be appealed to a court. See paragraph 154 above, as well as paragraph 186 below (under "Supervision and enforcement").
[128] Act no. 201/1997 Coll., as amended, on Salary and Some Other Requisites of Public Prosecutors
[129] Cf. section 7 APPO in conjunction with article 18 of the Criminal Procedure Code.
[130] See sections 12c *et seqq*. APPO.

in a specific case is in conflict with the law, the public prosecutor may refuse by putting in writing the reasons. If the instruction is then not cancelled by the chief public prosecutor, the case is handled by the public prosecutor who issued the instruction. The authorities indicate that the draft Law on the Public Prosecutor's Office attempts to restrict the issuance of so-called negative (internal) instructions (which must be in writing and reasoned) and to extend the right to reject internal instructions (namely, in cases where instructions obviously contradict the established interpretation of the law). The new legislation is aimed at increasing transparency in internal relations, reducing the possibility of covert interference in dealing with specific matters and strengthening the accountability of individual prosecutors for the outcome of cases. These moves – which have been repeatedly called for by various observers[131] – are clearly to be supported.

165. Pursuant to section 24 APPO, public prosecutors are obliged to carry out their tasks without undue delay. A public prosecutor who wilfully violates this obligation is subject to disciplinary sanctions. Section 16b APPO stipulates that everyone has the right to file a complaint against delays in the performance of the duties of the prosecution service (or against misbehaviour of public prosecutors). The chief public prosecutor superior to the public prosecutor against whom the complaint is directed is competent to settle the complaint.

166. Prosecution in the Czech Republic is governed by the principle of mandatory prosecution.

Ethical principles, rules of conduct and conflicts of interest

167. According to section 18 APPO, public prosecutors are to take an oath of office.[132] Furthermore, section 24 APPO stipulates public prosecutors' obligations and rules of conduct. *Inter alia*, in performance of their position public prosecutors are obliged to duly perform their duties, to proceed professionally, thoroughly, duly, impartially and righteously without undue delay, and to refuse any external intervention or other influence, the result of which might be violating some of these duties. Moreover, in performance of their position, personal life and exercising their political rights, public prosecutors are obliged to avoid all that might indicate justifiable doubts about their observance of the above-mentioned duties, endanger the solemnity of the public prosecutor's position or the Public Prosecutor's Office or endanger trust in the impartial and professional performance of the competence of the Public Prosecutor's Office or the public prosecutor.

168. The procedural laws include rules on conflicts of interest in the provisions on the disqualification of a public prosecutor (see below), but the concept of "conflict of interest" is not otherwise described by law. In this connection, it is recalled that conflicts of interest of officials are regulated by the ACI, as described in the chapter on MPs, and that amendments to the ACI which would i.a. extend its scope to public prosecutors (and judges) are currently pending before Parliament. Moreover, as mentioned above, section 24 APPO contains requirements on public prosecutors' behaviour in the exercise of their office and in their personal life, including the obligation to perform their position impartially, not to allow the public prosecutor's position to be abused for enforcing private interests, and to manage their own property as well as the property which has been entrusted to them with responsibility, to only enter into obligations which do not

[131] See e.g. the Phase 3 report on the Czech Republic by the OECD Working Group on Bribery; the 2011 National Integrity System Assessment of the Czech Republic by Transparency International.

[132] The oath of office of public prosecutors reads:
"I do swear to my honour and conscience to always proceed in protection of public interest in accordance with the Constitution and laws of the Czech Republic, as well as international treaties binding the Czech Republic, to respect human rights, basic liberties and human dignity and keep confidentiality of facts I shall learn in connection with execution of the public prosecutor's powers even after my office is terminated. In execution of the public prosecutor's powers as well as in my personal life I shall protect the dignity of my occupation. "

harm the due performance of the public prosecutor's position and to manage their finances so that they may not be used for impermissibly influencing their person in connection with the public prosecutor's position.

169. The Union of Public Prosecutors of the Czech Republic adopted a Code of Ethics of the Public Prosecutor in April 1999 and urged its members to voluntarily apply it. The code is published on the Union's website.[133] It consists of a list of 10 basic obligations. The Union of Public Prosecutors is an independent, voluntary, professional organisation which also provides training and advice (not only to its members) on ethical questions and monitors compliance of its members with the code of ethics. Violation of the rules does not give rise to disciplinary proceedings but can, ultimately, lead to exclusion of the public prosecutor concerned from the Union. The practical importance of this advisory and monitoring role of the Union appears to be rather limited, as altogether only some eight requests in particular cases and one general question (regarding public prosecutors' appearance in the TV) have so far been recorded. During the on-site visit, the GET learned that several other codes of ethics or professional conduct exist at different prosecutor's offices including i.a. the Supreme Public Prosecutor's Office and the High Public Prosecutor's Office. It would appear that their content follows the same pattern and consists of the main values of the profession, with some further description/guidance. The code of conduct of the Supreme Public Prosecutor's Office was adopted, together with a map of corruption risks in the Office, in pursuance of a detailed internal anti-corruption programme of the Office which foresees a range of measures and is built on principles such as transparency, development and strengthening of an anti-corruption environment, etc.

170. The GET acknowledges the adoption of codes of ethics/professional conduct by the Union of Public Prosecutors and by several public prosecutor's offices of different levels. However, it notes that their respective scope is limited. Only around one fourth of all public prosecutors are members of the Union of Public Prosecutors and thus directly addressed by its code. Even if the content of the various codes seems to be similar, the multiplicy of such instruments can be confusing. The GET sees a clear need for establishing one common code of ethics/conduct for the whole profession, setting common standards and covering all public prosecutors in the country, in line with European standards and reference texts.[134] Such a code might usefully build on the existing ones, but it would have to be more precise, clarify specific issues and provide detailed guidance, including practical examples, e.g. on gifts, secondary activities, third party contacts/confidentiality and on how to act if and when confronted with a conflict of interests. Moreover, it is essential that the implementation of such a code is ensured by complementary measures including confidential counselling within the prosecution service and specific (preferably regular) training activities of a practice-oriented nature.[135] As in the case of judges, the GET wishes to stress that such instruments serve to guide public prosecutors on appropriate conduct and, at the same time, to inspire public confidence in the prosecution service. They are to be developed by or with the involvement of public prosecutors themselves, should be living texts that can evolve over time and be adapted to the particular situation in a given country in order to secure "ownership" among the users. Given the foregoing, **GRECO recommends (i) that a code of professional conduct for all public prosecutors – accompanied by**

[133] See http://www.uniesz.cz.

[134] See in particular Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, paragraph 35; the European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"), adopted by the Conference of Prosecutors General of Europe of 31 May 2005, CPGE (2005)05, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Budapest_guidelines_EN.pdf; Opinion No. 9 of the CCPE on "European norms and principles concerning prosecutors" ("Rome Charter").

[135] The authorities stress in this connection that the Supreme Public Prosecutor's Office considers training in professional conduct as essential, especially at the beginning of a career and among interns. Its code of professional conduct is an important part of the entry training for interns held by the Justice Academy, which also organises other seminars focused on professional conduct.

explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues (e.g. on gifts, secondary activities, third party contacts/confidentiality, etc.) – be developed, communicated effectively to all public prosecutors and made easily accessible to the public; (ii) that it be complemented by practical measures for its implementation, including confidential counselling and dedicated training.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

171. Pursuant to section 24 APPO a public prosecutor may not, from the day determined as the day of entering a position, until termination of the position, unless s/he holds the position of chief public prosecutor or his/her deputy, or activities associated with temporary assignment to the Ministry or the Judicial Academy, perform any other profit-making position or perform other profit-making activity except for the case of management of his/her own property and scientific, pedagogic, literary, publishing and artistic activity and activity in advisory bodies of the Ministry, Government and in bodies of the chambers of the Parliament, providing these activities are compatible with demands for due performance of the public prosecutor's position. The law also makes it clear that s/he must not act as an arbitrator or mediator of a legal dispute settlement, represent participants in judicial proceedings or act as an agent of an injured person or a person being a participant in judicial or administrative proceedings, excluding legal representation or cases when such procedure is allowed by a special legal regulation, or cases when it is representation of another participant in proceeding, where the public prosecutor is a participant as well. The authorities indicate that the draft Law on the Public Prosecutor's Office further refines the above rules. *Inter alia*, it makes it clear that the duties of a public prosecutor are also incompatible with duties within statutory, management and control bodies of legal entities, if their performance would diminish the credibility of the prosecutor's office, threaten confidence in the professional and impartial performance of the public prosecutor or could lead to delays in the handling of cases.

172. The GET notes that public prosecutors are subject to a strict regime of incompatibilities and prohibitions on secondary activities and welcomes the planned further refinement of this regime. That said, as in the case of judges, it has misgivings about the low level of transparency in this area. Notably, the law does not require public prosecutors to report permitted secondary activities such as pedagogical or artistic activities or activities in advisory bodies of the ministry, or to seek permission; it does not foresee any monitoring of such occupations or of whether they "are compatible with demands for due performance of the public prosecutor's position". During the interviews, the GET was informed that in practice, public prosecutors of the Supreme Public Prosecutor's Office are to report their secondary activities. Nevertheless, it takes the view that clear legal regulations for all public prosecutors are necessary to ensure that secondary activities (e.g. expert activities outside the public prosecution system) are compatible with their status and do not distract from the proper performance of their duties. Such measures would have to include at least adequate obligations to report – e.g. the type of activities, the income received and the working time spent – and possibly also public disclosure; more precise regulations – e.g. appropriate ceilings for the remuneration a public prosecutor may receive annually from such activity and for the number of weekly working hours s/he may spend on it – and corresponding monitoring. To conclude, the GET notes that such rules also need to be reflected in the code of conduct recommended above. Consequently, **GRECO recommends regulating more closely the exercise by public prosecutors of secondary activities, including by introducing a reporting requirement and, as appropriate, monitoring compliance with the existing restrictions on the exercise of such activities.**

173. No post-employment restrictions apply to public prosecutors. While the GET did not find this to be a particular source of concern, it shares the opinion of some professionals interviewed that there is a need for guidance on possible challenges which might arise in some situations, for example when public prosecutors quit their functions to work as an attorney – including a clear rule that a person may not act as an attorney in a case if s/he has previously dealt with the matter as a public prosecutor – since such situations appear to occur quite frequently in practice. The authorities may wish to deal with this matter by including it in the draft Law on the Public Prosecutor's Office. In any case, clear guidance needs to be provided by the code of conduct recommended above.

Recusal and routine withdrawal

174. As for judges, the conditions for disqualification in criminal proceedings are specified in sections 30 *et seqq*. ACJP. Public prosecutors are disqualified from a criminal case whenever there are reasonable grounds to question their impartiality because of their relationship to the case under consideration or to persons directly involved in the proceedings, their attorneys, legal representatives and agents, or to other law enforcement authorities. Actions that were taken by excluded public prosecutors may not be the basis for decisions in the criminal proceedings.

175. According to section 31 ACJP, the disqualification decision is made by the authority to which these grounds relate, even when no motion has been made. Complaints against disqualification decisions are decided by the immediately higher authority.

Gifts

176. There are no detailed rules on the acceptance of gifts specifically by public prosecutors. The authorities refer in this respect to the bribery offences under the Criminal Code and to the above-mentioned general APPO rules on public prosecutors' obligations and rules of conduct, such as the duty to proceed impartially and to refrain from any conduct that could endanger trust in the impartial and professional performance of the competence of the Public Prosecutor's Office or the public prosecutor. After the interviews, the GET was left with the clear impression that public prosecutors do not consider it permissible for them to accept gifts, except for protocol gifts. It was furthermore informed that the draft Law on the Public Prosecutor's Office foresees an explicit prohibition in principle, which can only be supported. That said, some clarification of the exceptional circumstances under which gifts or other advantages may possibly be acceptable (notably protocol gifts) could be usefully provided by the code of conduct recommended above.

Third party contacts, confidential information

177. There are no specific rules concerning communication between a public prosecutor and third parties outside the official procedures. Section 24 APPO contains a general rule which states that public prosecutors must perform their position impartially, without economic, social, racial, ethnic, sexual, religious or other prejudice and, in relation to persons with whom they negotiate in their capacity, they must avoid expressions of personal sympathies or negative attitudes.

178. According to section 25 APPO, public prosecutors are obliged to keep confidentiality of facts that they have learned within their capacity, even after expiry of the office of public prosecutor. Unless specified otherwise by a special legal regulation,[136] the Supreme Public Prosecutor may release the public prosecutor from the confidentiality duty for serious reasons and the Ministry of Justice releases the Supreme Public

[136] E.g. section 63(3) h) of the Act no. 412/2005 Coll., on Protection of classified information and security eligibility.

Prosecutor from the confidentiality duty. Depending on the case, breach of confidentiality on the part of a public prosecutor may constitute a disciplinary offence, an administrative offence (e.g. under the Act on the Protection of Personal Data and the Act on the Protection of Classified Information) or a criminal offence (e.g. unauthorised use of personal data in accordance with article 180 CC, endangering classified information pursuant to article 317 CC or endangering classified information or negligence under article 318 CC).

Declaration of assets, income, liabilities and interests

179. Public prosecutors are obliged to disclose any circumstance that can be considered to warrant disqualification in a particular case. However, there are no specific requirements, duties or regulations in place for all public prosecutors and their relatives to submit asset declarations. That said, the GET was informed after the visit that approximately 1/3 of public prosecutors (namely higher-level public prosecutors and especially those dealing with the most serious criminal cases) submit to some extent an asset declaration, as an attachment to their request for security classification levels by the National Security Authority. Furthermore, while the declaration requirements on public officials in the meaning of the ACI as described in the chapter on MPs above are at present not applicable to public prosecutors, the current draft law amending the ACI re-extends its scope to all public prosecutors (and judges).

180. While the GET does not see the need to issue a formal recommendation on the establishment of an asset declaration system, earlier in this report it encourages the authorities to carry through the above-mentioned reform with respect to judges and does likewise here for public prosecutors, in order to better safeguard independence and impartiality vis-à-vis parties to proceedings or regarding the outcome of a given case.

Supervision and enforcement

181. Public prosecutors bear disciplinary liability for disciplinary violations specified by law, namely for deliberate violation of the public prosecutor's duties, deliberate behaviour or conduct diminishing the trust in the activity of the Public Prosecutor's Office or in the proficiency of its operation or degrading the reputation and dignity of the public prosecutor's position.[137]

182. The following disciplinary measures may be imposed on public prosecutors for disciplinary violations:[138] reprimand; reduction of salary of up to 30% for a period not exceeding one year, and in case of repeated disciplinary violation committed by a public prosecutor prior to erasure of the disciplinary violation, for a period not exceeding two years; removal from the office. Disciplinary measures may be waived if discussion of the disciplinary violation is sufficient. Disciplinary liability of public prosecutors is subject to statutes of limitation, i.e. it terminates if a proposal for commencement of disciplinary proceedings is not submitted within six months from the day the petitioner learnt of the facts relating to disciplinary violation and within two years of its commitment.[139]

183. As for judges, disciplinary proceedings are dealt with by the Disciplinary Court, which (in cases regarding public prosecutors) acts and decides in panels composed of a judge of the Supreme Administrative Court as the presiding judge, a judge of the Supreme Court as his/her deputy and four lay judges, two of whom are public prosecutors; there should also be at least one attorney and one person exercising

[137] Section 28 APPO.
[138] See section 30 APPO.
[139] See section 29 APPO and section 9 of Act no. 7/2002 Coll., on proceedings relating to judges, public prosecutors and court executors.

another legal profession. The members of the panels and their presidents are drawn by lots from lists of suitable candidates, for a five year term.[140]

184. The proposal to initiate disciplinary proceedings on disciplinary liability of a public prosecutor can be submitted by the Minister of Justice and the Supreme Public Prosecutor against any public prosecutor; a high public prosecutor against a public prosecutor of his/her office or of a Regional or District Public Prosecutor's Office in its jurisdiction; a regional public prosecutor against a public prosecutor of his/her office or of a District Public Prosecutor's Office in its jurisdiction; a district public prosecutor against public prosecutor of his/her office.[141] As for judges, disciplinary proceedings include a preliminary investigation, if necessary, and an oral court hearing which is public.

185. According to statistics provided by the authorities, during the period 2013-2015, 31 disciplinary proceedings against public prosecutors were recorded, which as of November 2015, led to a reprimand in four cases, reduction of salary in 11 cases and recall from office in one case. Three cases were terminated by acquittal, 3 cases by discontinuation of proceedings and three cases by waiver. The GET was informed that disciplinary cases most typically concerned alcoholism at work, unprofessional conduct (including e.g. prolonged custody) or delays in proceedings.

186. As has been outlined in the chapter on judges, the GET has the impression that the regime of disciplinary proceedings works well and that the composition of the Disciplinary Court as well as the procedural arrangements are adequate to ensure effective proceedings and fair trial. That said, the GET again notes with concern that decisions by the Disciplinary Court are not subject to appeal,[142] and that even dismissal cannot be challenged by the public prosecutor concerned. It again draws the attention of the authorities to European standards and reference texts according to which decisions in disciplinary proceedings against public prosecutors "should be subject to independent and impartial review"[143] and that "an appeal to a court against disciplinary decisions should be available."[144] The GET invites the authorities to include this matter in the current reform process – it is apparently not planned so far to deal with disciplinary proceedings in the APPO. In view of the above, **GRECO recommends introducing the possibility for public prosecutors to challenge disciplinary decisions including dismissal before a court.**

187. Public prosecutors may be subject to criminal proceedings and sanctions if they commit offences such as theft, fraud, embezzlement, bribery, trading in influence or breach of professional confidentiality. According to statistics provided by the authorities, during the period 2013-2015, criminal proceedings against two public prosecutors were recorded. In one of those cases (regarding abuse of person living in the common dwelling), a conditional sentence of four months with a probation period of 18 months and dismissal from the function of public prosecutor was issued. As of November 2015, the other case (regarding abuse of power by a public official) had not yet been finally decided.

Advice, training and awareness

188. Training of public prosecutors regarding ethics, expected conduct, prevention of corruption and conflicts of interest is organised by Regional Public Prosecutor's Offices

[140] Section 4 of Act no. 7/2002 Coll.
[141] Section 8 of Act no. 7/2002 Coll.
[142] Section 21 of Act no. 7/2002 Coll.
[143] Cf. Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, paragraph 5e. See also Opinion No. 9 of the CCPE on "European norms and principles concerning prosecutors" ("Rome Charter"), Article XII.
[144] Cf. the Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), paragraphs 52 and 87.

and by the Judicial Academy. The authorities state that the Judicial Academy prepares educational training events in close cooperation with the public prosecutor's offices, so that these activities best suit their needs. As described more in detail in the chapter on judges, ethical questions are included in the mandatory initial training programme for future public prosecutors (and judges) and also in specific seminars proposed to sitting public prosecutors (and judges).

189. Public prosecutors can obtain advice and information on questions of ethics and conduct from senior public prosecutors, the Ministry of Justice and the Union of Public Prosecutors. That said, according to information gathered by the GET, public prosecutors very rarely seek advice from the Union (altogether around nine cases until now).

190. As in the case of judges, the GET acknowledges the positive role of the Judicial Academy in raising awareness and training public prosecutors in ethical questions. At the same time, future training needs will need to be taken into account in the context of the code of conduct advocated for in this report. A high number of public prosecutors – including those who are recruited from other branches – need to benefit from such training. A recommendation to that effect has been made above.[145]

[145] See above under "Ethical principles, rules of conduct and conflicts of interest" (paragraph 170).

VI. RECOMMENDATIONS AND FOLLOW-UP

191. In view of the findings of the present report, GRECO addresses the following recommendations to the Czech Republic:

Regarding members of parliament

i. **(i) ensuring timely publication of records of parliamentary committee meetings and enhancing the transparency of the work conducted in sub-committee meetings; (ii) introducing rules for members of parliament on how to interact with lobbyists and other third parties seeking to influence the legislative process and making such interactions more transparent** (paragraph 34);

ii. **(i) that a code of conduct be adopted for members of parliament, made easily accessible to the public, and accompanied by explanatory notes and/or practical guidance, including on conflicts of interest and related matters (e.g. gifts and other advantages, incompatibilities, additional activities and financial interests, post-employment situations, contacts with third parties such as lobbyists, declaration requirements, etc.); (ii) that the code of conduct be complemented by practical measures for their implementation, such as dedicated training, confidential counselling and awareness-raising** (paragraph 42);

iii. **that enforceable rules on gifts and other advantages – including advantages in kind – be developed for members of parliament and made easily accessible to the public; they should, in particular, determine what kinds of gifts and other advantages may be acceptable and define what conduct is expected of members of parliament who are given or offered such advantages** (paragraph 49);

iv. **(i) requiring members of parliament to also submit declarations of activities, declarations of assets and declarations of income, gifts and liabilities at the beginning of their mandate, introducing an electronic declaration system and making declarations more easily accessible on the internet; (ii) making it clear that declarations must also include in-kind benefits provided to members of parliament; and (iii) considering widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public)** (paragraph 70);

v. **significantly strengthening the supervision and enforcement of the various declaration requirements on members of parliament under the Act on Conflicts of Interest, notably by giving an independent monitoring mechanism the clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated** (paragraph 79);

Regarding judges

vi. **(i) regulating in more detail the recruitment and promotion of judges and court presidents so as to provide for uniform, transparent procedures and to ensure that decisions are based on precise, objective and uniform criteria, notably merit; and (ii) ensuring that any decisions in those procedures are reasoned and can be appealed to a court** (paragraph 105);

vii. **(i) that a code of professional conduct for all judges – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues (e.g. on gifts, secondary activities, third party contacts/confidentiality, etc.) – be developed, communicated effectively to all judges and made easily accessible to the public; (ii) that it be complemented by practical measures for its implementation, including confidential counselling and dedicated training for both professional and lay judges** (paragraph 118);

viii. **regulating more closely the exercise by judges of secondary activities, including by introducing a reporting requirement and, as appropriate, monitoring of compliance with the existing restrictions on the exercise of such activities** (paragraph 122);

ix. **introducing the possibility for judges to challenge disciplinary decisions including for dismissal before a court** (paragraph 136);

Regarding prosecutors

x. **(i) regulating in more detail the recruitment and promotion of public prosecutors so as to provide for uniform, transparent procedures and to ensure that decisions are based on precise, objective and uniform criteria, notably merit; (ii) ensuring that any decisions in those procedures are reasoned and can be appealed to a court** (paragraph 154);

xi. **reforming the procedures for the appointment and recall of the Supreme Public Prosecutor and other chief public prosecutors, in particular by ensuring (i) that any decisions in those procedures are reasoned, based on clear and objective criteria and can be appealed to a court; (ii) that appointment decisions are based on mandatory, transparent selection procedures and; (iii) that recall is possible only in the context of disciplinary proceedings** (paragraph 160);

xii. **(i) that a code of professional conduct for all public prosecutors – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues (e.g. on gifts, secondary activities, third party contacts/confidentiality, etc.) – be developed, communicated effectively to all public prosecutors and made easily accessible to the public; (ii) that it be complemented by practical measures for its implementation, including confidential counselling and dedicated training** (paragraph 170);

xiii. **regulating more closely the exercise by public prosecutors of secondary activities, including by introducing a reporting requirement and, as appropriate, monitoring compliance with the existing restrictions on the exercise of such activities** (paragraph 172);

xiv. **introducing the possibility for public prosecutors to challenge disciplinary decisions including dismissal before a court** (paragraph 186).

192. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Czech Republic to submit a report on the measures taken to implement the above-mentioned recommendations by 31 January 2018. These measures will be assessed by GRECO through its specific compliance procedure.

193. GRECO invites the authorities of the Czech Republic to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.

About GRECO

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

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

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