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## FOURTH EVALUATION ROUND

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

### EVALUATION REPORT

### ICELAND

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## EXECUTIVE SUMMARY

1. Iceland is a northern island state with a population of 320,000 which means it is both small in terms of population and fairly isolated geographically. The collapse of Iceland's banking system in 2008 severely shook the confidence of the country, its population and its institutions, and has resulted in a reappraisal of the transparency and the informal checks and balances that were assumed to exist and to act as a restraint on power and wrongdoing in its community. More particularly, the banking crisis has raised some fundamental questions in Iceland about the integrity of its governing institutions and the concept of corruption as it should be understood in the Icelandic context. A recurring issue is that of the extensive personal and professional relationship networks that exist and therefore permeate the institutions of government and decision making. Across all three professional functions under evaluation in the present report (i.e. parliamentarians, judges and prosecutors), handling inter-relationships and addressing real or potential conflicts of interest is clearly a constant, and now a heightened, challenge.

2. For parliamentarians, the issue of business links and independence, as well as conflicts of interest more generally is a live one. A reflection process has already started in this area and some tools have been developed to increase transparency, not only of parliamentary proceedings (an area in which the country has a tradition of openness), but also of the activities of its individual members, including through the introduction of a financial declaration system and the on-going development of a code of conduct. The authorities can only be encouraged to further develop the applicable rules so that they are meaningful and effective in promoting a parliamentary ethos that acknowledges and openly addresses corruption prevention, conflicts of interest and more generally, deontological matters, and in increasing public confidence in this sector.

3. The Icelandic judiciary is of a high standard and no allegations of corruption have ever been made involving judges. Positive steps have been taken to improve transparency in the judiciary, including through the issuing in 2010 of new detailed rules on the appointment of judges – an area which had prompted public criticism because of the potential for political interference in the process. The prosecution system appears to enjoy high levels of public satisfaction, particularly as cases related to the banking crisis start to be solved. The Government set up a Special Prosecutor Office to handle these cases specifically. Additional measures can be taken to strengthen the independence of the prosecution services, including by ensuring security of tenure and by providing a stricter separation of roles between public prosecutors and police at district level.

4. As to the prevention of conflicts of interest with respect to judges and prosecutors, these categories of officials are clear on the rules guiding them in specific cases (e.g. rules on incompatibility, bans on additional activities, recusal). However, there is room for greater reflection on issues of ethics and conduct not clearly covered by such rules. This is particularly important in small districts. A reflection process has started concerning the drafting of a code of conduct for the profession. There is a Committee on Judicial Functions which authorises additional activities (as provided by law) and decides on conflicts of interest situations and infringement of the applicable rules. The Committee is currently reevaluating its role in order to become more proactive and to look into conflicts of interest from a broader perspective. In the prosecution service, plans are underway to develop a comprehensive policy on training and education of prosecutors.

5. Finally, there are also important considerations referring to the structure of the judicial system which is currently a two-tier court system and is mirrored to some degree in the organisation of the prosecution service. A number of reforms were delayed when the banking crisis hit the country. Actual implementation of the proposed changes, including through the establishment of a three tier system, could result in improvements concerning the available appeal channels at both courts and prosecution services; this can only strengthen independence, impartiality and fairness in judicial processes.

## **I. INTRODUCTION AND METHODOLOGY**

6. Iceland joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in September 2001), Second (in July 2004) and Third (in April 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).

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

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

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

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

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco (2012) 11E) by Iceland, 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 Iceland from 1 to 5 October 2012. The GET was composed of Mr Kazimir ÅBERG, Judge, Svea Court of Appeal (Sweden), Mr Jens-Oscar NERGÅRD, Senior Adviser, Ministry of Government Administration, Reform and Church Affairs (Norway), Mr Erikas TAMASAUSKAS, Member of the Seimas, Committee on State Administration and Local Authorities (Lithuania) and Ms Vesna RATKOVIC, Director, Directorate for Anti-corruption Initiative (Montenegro). The GET was supported by Ms Anna MYERS and Ms Laura SANZ-LEVIA from GRECO's Secretariat.

11. The GET interviewed representatives of the Ministry of the Interior, the Judicial Council and the Committee on Judicial Functions. Moreover, the GET held interviews with judges from the Supreme Court, the Labour Court and from Reykjavik District Court, as well as with prosecutors of the Prosecutor General's Office, the Office of the Special Prosecutor, and the Reykjavik district. Finally, the GET spoke with members of Parliament and representatives of political parties, the Association of Judges, the Association of Prosecutors, the Bar Association, journalists and academics.

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Iceland in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved,

as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Iceland, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Iceland shall report back on the action taken in response to the recommendations contained herein.

## II. CONTEXT

13. Iceland is a northern island state with a population of approximately 320,000. It has a small population and is isolated geographically. The collapse of Iceland's banking system in 2008 severely shook the confidence of the country, its population and its institutions, and has resulted in a reappraisal of the transparency and the informal checks and balances that were assumed to exist and to act as a restraint on power and wrongdoing given the size of its community.

14. In particular the crisis raised serious questions about conflicts of interests created by the closeness that had developed for example, between government/parliamentarians and business, as well as concerns about the independence of state oversight institutions, the capacity of parliament to question government activity and to hold the government to account, and, in the particular circumstances of the collapse, how to ensure an independent prosecution of those who might be found criminally responsible. Across all three of the professional functions which are the focus of this fourth round evaluation of Iceland (i.e. parliamentarians, judges and prosecutors) handling inter-relationships and addressing real or potential conflicts of interest is clearly a constant, and now a heightened, challenge.

15. Traditionally Iceland has had no policy to address corruption on the premise that none was necessary. For years, Iceland was among the top seven countries in the TI's Corruption Perception Index and even shared first place with Finland in 2005 and 2006. However, in 2007 Iceland fell to sixth place and in 2011, the country ranked 13<sup>th</sup>, its lowest ever on the perception index. In 2012, Iceland moved up in rank to 11<sup>th</sup>. Most observers link the rapid deterioration in the perception of corruption in Iceland to the collapse of its three major investment banks in October 2008 and the serious doubts this raised about the integrity of Iceland's governing institutions, particularly its political parties and the elected representatives in the Althingi, and their capacity and commitment to protecting the interests of all citizens<sup>1</sup>. Public opinion polls in 2007 and 2009 showed that while public perception of private sector corruption deteriorated (62% said sector rather or very corrupt in 2007 and 78% said so in 2009), the deterioration was most dramatic in relation to members of ruling parties, from 12% to 71%.

16. That said, prior to the financial collapse concerns were raised intermittently (including by GRECO itself in its First, Second and Third Evaluation Reports on Iceland) about matters of integrity, democratic accountability and possible corruption. Some of these included suggestions of nepotism, close personal ties, and political patronage at the local level; concern that too narrow a view of corruption (i.e. equated to classic bribery) meant too little attention was paid in public administration to corruption prevention; scandals regarding large undisclosed donations to political parties which brought about reform to the funding laws in 2007; controversy surrounding decisions on issues of national importance being made by government leaders without reverting to cabinet or parliament<sup>2</sup>; and perceived conflicts of interests of politicians voting on matters related to their private or close personal interests (e.g. fishing quotas<sup>3</sup>).

17. In an effort to better understand what led to the financial collapse, the Althingi set up a Special Investigation Committee (SIC) at the end of 2008. The SIC's assessment

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<sup>1</sup> See *Capascent-Gallup* statistics as cited in Viaman, V., T.O. Sigurjonsson and P.A. Davidsson (July 2010) "Weak Business Culture as an Antecedent of Economic Crisis: The Case of Iceland," *Journal of Business Ethics*, Springer p. 3. <http://ssrn.com/abstract=1700143>.

<sup>2</sup> According to Sustainable Governance Indicators (SGI) (2011) Iceland Report by Bertelsmann Stiftung, the decision of two ministers to commit Iceland to participate in the war in Iraq in 2003 was a prime example of growing levels of informal cooperation between groups of ministers outside cabinet (see p. 30). There is currently renewed interest in amending the Icelandic constitution to clarify and support the work of government and the separation of powers between the legislative, executive and judicial branches (see Thorarensen, B. (2011) *Constitutional Reform Process in Iceland*).

<sup>3</sup> *Ibid*, p. 5 and issue raised on-site.



was mainly aimed at the activities of public bodies and those who might be responsible for mistakes or negligence. A separate working group on ethics was also formed to examine whether the collapse of the banks could, to some extent, be explained by morality and work practices. A further report was commissioned to analyse the SIC report from a gender perspective. Finally, a separate Parliamentary Review Committee was set up to address the SIC report and to make recommendations in response.

18. The SIC 9 volume report, completed in 2010, singled out three former ministers including the former Prime Minister and four other public officials for showing negligence in failing to respond appropriately to the danger that the deteriorating situation of the banks posed to the Icelandic economy. As a result, the Althingi used its power under Article 14 of the Constitution for the first time to indict the former Prime Minister in the Court of Impeachment and he was convicted in April 2012 of one count of negligence but was not sentenced. The trial was controversial in Iceland and attracted international criticism (see also paragraph 71 for details). Likewise, the SIC found levels of debt to the banks that were at the centre of the financial collapse to be very high among MPs.

19. As outlined above, the banking crisis has raised some fundamental questions in Iceland about the integrity of its governing institutions and the concept of corruption as it should be understood in the Icelandic context. A recurring issue voiced by many interlocutors on site was that of the extensive personal and professional relationship networks that exist and therefore permeate the institutions of government and decision making. While there was a marked willingness to discuss this issue on site, there was a sense (if not a concern) that the conflicts that can and do arise from these relationships within Icelandic society are almost too entrenched, if not too natural, to address. There was also a noticeable sense of impatience with the pace of change in response to what has been learned so far.

20. While the GET shares the view that conflicts of interests are unavoidable and a constant feature of public life in Iceland, it encourages the Icelandic authorities to confront this phenomenon head-on and to use all the tools available. These include the development of codes of conduct, rules on conflict of interest and their enforcement, as well as training and awareness-raising to develop and enhance a corruption prevention system which is tailored to Iceland. In many ways there may be an even greater responsibility in Iceland to be vigilant, to avoid assumptions that smaller societies can have about the ability of its decision makers to self-regulate and to ensure a real shift away from a culture and value system in which informal relationships may have, at times, prevailed over the rules and responsibilities that accompany those in positions of power and public service. It must be recalled that it is not only the fact of a conflict but the perception of its potential to influence and bias decision-making, particularly when it is not acknowledged, that undermines public confidence in democratic institutions.

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

#### Overview of the parliamentary system

21. Iceland is a republic with a parliamentary form of government. It has a unicameral Parliament, the Althingi, arguably the oldest parliament in Europe, first established in 930. It is composed of 63 members elected by secret ballot on the basis of proportional representation (d'Hondt system) for a term of four years. In 2009, 27 women were elected to the Althingi, thus forming 43% of the Parliament, the largest percentage of women elected to date.

22. The country is divided into six constituencies – three of the largest are located in the capital Reykjavík and its surroundings. Each constituency has nine seats in Parliament, which are awarded on the basis of the outcome of voting for the respective constituency. The additional nine seats (referred to as “equalisation seats”) are distributed to the constituencies and allocated to political parties so that the parliamentary representation of each reflects as closely as possible the total votes it received. Only parties receiving at least 5% of valid votes cast can be allocated equalisation seats.

23. The independence of the Althingi is guaranteed by Article 36 of the Constitution and members of the Althingi are bound solely by their conviction and not by any instructions from their constituents (Article 48). As soon as a new MP is elected, s/he is required to take an oath to uphold the Constitution. MPs are protected in their right to freedom of expression, and no member of the Althingi may be held accountable outside the Althingi for statements made in the Althingi, without the consent of the Althingi. Further, no member of the Althingi may be taken into custody during a session of the Althingi and no criminal charge may be brought unless he or she is caught in the act of committing a crime (Article 46, Constitution). One MP has been sentenced so far, in 2003, for a corruption-related offence (*Case No. 393/2002*); however, the offence in question did not relate to the parliamentary work of the offender<sup>4</sup>.

24. While Articles 38 and 39 of the Constitution give members (and Ministers) the right to introduce bills and draft resolutions and for the Althingi to appoint committees to investigate matters of public interest and to request reports, oral or written, from officials and individuals, the functions of the Althingi are established in its Standing Orders. Its primary function is to legislate and also to “monitor the work of the executive branch”. However, questions about the capacity of the Althingi to act as an effective check on executive power and to hold the government to account were brought into sharp relief with the collapse of Iceland’s banking system in October 2008. Before that, the Althingi itself had already embarked on a review process concerning parliamentary control of the executive branch. A commission to work on the matter was appointed, in July 2008, by the Speaker’s Committee; an extensive report was drafted thereafter which included proposals to strengthen parliamentary oversight, some of which have led to several amendments to the Standing Orders of the Althingi (see also paragraph 31).

25. The President is elected by direct ballot for four years, without limit to the number of terms<sup>5</sup>. While the Constitution grants the president strong powers (the role replaced that of the Danish monarch), the function is primarily representative with the main responsibility being to help form the government after the election. In 2004, the President used his power under Article 26, for the first time, to reject a media-related

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<sup>4</sup> In Case No. 393/2002, the Chairman of the National Theatre Construction Committee (who was also a Member of Parliament) was found guilty *inter alia* of a passive bribery offence for demanding and accepting 650,000 ISK<sup>4</sup> (approximately 5,390 EUR). He was initially sentenced to 15 months’ imprisonment by the District Court of Reykjavík. The whole case was subsequently appealed to the Supreme Court, which changed the penalty to two years’ imprisonment.

<sup>5</sup> In 2012, the President was elected for the 5<sup>th</sup> consecutive time.

bill. The power to reject bills which had been passed by the Althingi was then used again in 2010 and 2011, in relation to the so-called *Icesave* bills, which forced public referenda.<sup>6</sup>

26. The Prime Minister and the cabinet exercise executive functions. While the constitution is silent as to the function of the Prime Minister, Article 13 states that the President entrusts his authority to Ministers. Thus the Prime Minister is the head of government but there is also a long tradition of strong ministerial independence and power. In practice this means, for example, that the Prime Minister is not necessarily consulted on draft policy proposals of line ministers<sup>7</sup> (particularly when the Ministers are not members of the Prime Minister's party as is usually the case with Icelandic coalition governments).

27. The Speaker of the Althingi and the Deputy Speakers form the Speaker's Committee which decides on issues affecting the Althingi (e.g. organising the conduct of work in the Althingi, preparing a schedule for sessions, establishing general rules on the management of the Althingi and related administrative matters, etc. – as established by Articles 10 and 11 of the Standing Orders of the Althingi). The Speaker also co-operates with the chairmen of the party groups in organising the agenda of the assembly. The Speaker presides over the meetings of the Althingi. The Speaker's Committee chooses a Secretary General who manages the Secretariat of the Althingi and is responsible for the operation, finances and property of the Althingi with the authority vested in the office of the Secretary General by the Speaker. It is the Secretary General who manages the financial aspects of MPs work and who holds the register of MPs' interests.

28. There are no specific rules on expelling MPs or terminating their mandate other than provided for by the election system (i.e. by public vote) and the criminal law.

#### Transparency of the legislative process

29. In Iceland, the practice of ensuring access to the details of draft legislation to allow for comment once it has been introduced in Parliament is well developed. In particular, draft laws proposed by the Government are often subject to consultation (in written form and via meetings with interested parties or sectors)<sup>8</sup>; in some cases, drafts are published in the respective Ministry's website.

30. All draft laws are made publicly available on the Althingi website once they are formally introduced. When a draft law has been submitted to the Althingi, the public and other interested parties can submit their opinions in writing to the relevant parliamentary committee. When discussing a draft law, committees request statements from concerned parties (e.g. Government institutions, non-governmental bodies, private entities) regarding the proposed bill.

31. There are currently eight standing committees<sup>9</sup> each comprised of nine members broadly reflecting the representation of the parties in the Althingi. As explained before in paragraph 24, one recurring criticism, particularly in the wake of the banking crisis, related to the relative power of the executive vis-à-vis the legislature. However, the Althingi's rules of procedure were amended in 2011 to strengthen parliament's power of political supervision, creating a standing committee on constitutional matters and

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<sup>6</sup> So-called *Icesave* bills attempted to address the issue of Iceland's obligations to guarantee the deposits of account holders outside of Iceland, particularly in the UK and the Netherlands.

<sup>7</sup> SGI 2011 Iceland Report, p. 28.

<sup>8</sup> The Prime Minister's Office and Althingi manual on preparing and finalising draft laws recommends consultation as a general rule.

<sup>9</sup> Reduced from 12 in October 2011, these are: the Budget Committee, Welfare Committee, Economic Affairs and Trade Committee, Environment and Communications Committee, Foreign Affairs Committee, Industrial Affairs Committee, Judicial Affairs and Education Committee, and Constitutional Affairs and Scrutiny Committee.

government scrutiny<sup>10</sup>, requiring the Prime Minister to present an annual report on follow-up given to parliamentary resolutions, obliging ministers to provide information to the parliament on important matters and enhancing the opportunities for the minority party members to request information<sup>11</sup>.

32. Regular meetings of the standing committees are generally closed. When guests appear before a committee meeting, the committee may open such meetings, or a part of the meeting, to the press. A committee may also hold open meetings (which usually take the form of open hearings). The GET heard the view on-site that open committee meetings could and should occur more often. Open meetings are broadcast on television and on the Althingi's website and the results of committees' work are published on the Althingi's website.

33. Parliamentary debates are invariably open to the public and are broadcast on television and the internet. The GET was told that newspapers tend to report from internet broadcasts rather than attending the sessions. While it is possible for the Althingi to sit in a closed session (Article 57 of the Constitution), this has not occurred since 1949. The results of parliamentary votes are recorded and published in the parliamentary gazette and are also available at the Althingi's website.

34. The issue of politicians being lobbied was not specifically raised as a matter for discussion on-site. Rather the main thrust of comments put to the GET focused on the appearance or reality of bias or influence resulting from MPs' wide and long-standing personal and professional relationship networks. Thus, while the GET encourages the Icelandic authorities to keep an eye on the issue of lobbying with a view to responding to it when necessary, the GET reserves its specific comments for the sections on ethical rules, conflicts of interest and the registering of members' interests.

#### Remuneration and economic benefits

35. The average gross salary in 2011 in Iceland was 5,628,000 ISK (37,900 EUR).

36. The Senior Civil Servants Salary Board, which is an independent public authority responsible for determining the salaries and benefits of state officials, decides on the remuneration of members of the Althingi (MPs). The annual gross salary of an MP amounts to 7,322,328 ISK (49,300 EUR) and MPs are part of a pension scheme. Participation in the work of the Althingi is a full-time job and office expenses including postal and telephone services are provided. Information on the salaries of MPs and the Speaker of the Althingi are published on the Althingi's website (<http://www.althingi.is/vefur/thingfarakaup.html>). Because of the economic crisis, Law No. 148/2008 gave a mandate to the Senior Civil Servants Salary Board to issue a ruling imposing salary cuts of 5-15% for members of the Althingi and cabinet ministers effective 1 January 2009. This decision was later revoked by the Board in 2011.

37. MPs are also entitled to receive "attendance costs" which as of 1 January 2012, amount to the following: (i) housing and living expenses up to 125,000 ISK (842 EUR); (ii) surcharge on housing and living expenses up to 50,000 ISK (337 EUR); (iii) commuting expenses up to 41,667 ISK (280 EUR); (iv) travel costs in electoral districts up to 78,200 ISK (526 EUR); and (v) working expenses up to 84,500 ISK (569 EUR). Their parliamentary travel expenses within Iceland are covered; any international travel must be approved by the Secretary General of the Althingi. The GET did not hear any concerns on-site regarding the pay of MPs, their levels of expenses, nor about the manner in which these amounts are provided for and accounted.

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<sup>10</sup> Constitutional Affairs and Scrutiny Committee

<sup>11</sup> European Commission, Iceland 2012 Progress Report, Brussels, SWD(2012) 337 Final, p. 6.

38. The abovementioned payments are made monthly and are subject to income tax. The Althingi Secretariat is responsible for processing payments. MPs may refer disputes on payments of attendance costs to the Speaker's Committee. Attendance costs are paid out of the State Treasury. The Althingi Secretariat provides MPs with office facilities and appoints staff; the work of clerks and assistants of MPs is also paid out of the State Treasury.

39. MPs are not paid any other amounts from the State budget, other than the ones detailed above, nor do they enjoy any special privileges. Information on MPs' attendance costs and the applicable rules are published on the Althingi website.

40. When an MP ceases to be a member, either during or after an electoral term, s/he is entitled to severance pay for three months. Following two terms of office, severance pay is paid for six months. The severance pay is limited to the salary; other payments are discontinued. Wages earned by an MP for other work during the severance period is deducted from the severance pay.

#### Ethical principles and rules of conduct

41. There is currently no code of conduct or ethics for members of the Althingi though one is being prepared (see below). The only explicit rule which requires a member to exclude him or herself from voting (though not from participating in any debate on the matter) is with respect to any matter proposing a financial allocation to the member personally<sup>12</sup> which was invoked only once in 1967. The rule has not been interpreted to cover those instances where a financial allocation is proposed to a group or class to which the member of the Althingi belongs<sup>13</sup>. Otherwise the decision to exclude oneself from a parliamentary vote, whether by reason of a conflict of interest or otherwise, is up to the member himself or herself.

42. The GET heard that in the last election almost half of the MPs (27 out of 63) were new to the Althingi. The Althingi Secretariat provides new MPs with a handbook and a day's introductory training; the content of the induction training is reportedly reviewed on a routine basis to better adapt to topical questions and challenges in the carrying out of parliamentary duties. Some of the MPs interviewed during the on-site visit felt that they could benefit from additional support to orient them concerning the rules and expectations of the Althingi, particularly with respect to their on-going duties vis-à-vis registering interests and dealing with actual or potential conflicts of interest. This additional support was felt to be particularly important for new MPs of parties which had not been represented before in the Althingi and who had no colleagues within the party with prior experience; the GET was informed that the Secretariat of the Althingi intends to launch follow-up briefings for these MPs in the future. The GET was also told that the heightened awareness of the possibility of conflicts since the banking crisis, along with a lack of clarity or developed thinking in the Althingi around this issue and in particular, how these could or, indeed, ought to impact on an MP's parliamentary activity was a source of concern and frustration.

43. Furthermore, amendments to the Standing Orders in 2011 included an obligation on the Althingi to develop a code of conduct for its members and this task has been given to the Speakers' Committee. The Committee has delegated the work to a sub-committee consisting of five members (one from each party), and assisted by two professors on ethics of the University of Iceland; it first met in May 2012.

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<sup>12</sup> Paragraph 3 of Article 71 of the Standing Orders of the Althingi (which has been part of Icelandic law since 1915)

<sup>13</sup> In fact two rulings of the Speaker of the Althingi, in 1995 and again in 2004, confirmed that neither the Constitution nor the Standing Orders precludes a member from participating in deliberations on matters that concern him or herself personally and that Article 71 "represented an exhaustive list of disqualification rules as regards the legislature".

In November 2012, the sub-committee invited all MPs to brief them on work in progress and it is now working on a draft to be submitted to party groups for further discussion. The GET welcomes this development, which took place after the on-site visit, to better involve MPs themselves in the drafting of the code; such a move enhances ownership and understanding of conduct standards by MPs from the start, thus providing better guarantee that the code be fully embedded within the Althingi when adopted. Moreover, there appears to be some momentum and political desire to move beyond the traditional and limited view of conflicts of interests as they relate to MPs and the standards of conduct expected of them. This is certainly a positive sign; it is essential that MPs themselves think expansively regarding opportunities for on-going dialogues on issues of ethics and integrity.

44. In light of the foregoing considerations, **GRECO recommends (i) developing a code of conduct for members of the Althingi (MPs) and (ii) ensuring there is a mechanism both to promote the code and raise awareness among MPs on the standards expected of them, but also to enforce such standards where necessary.** In addition, the existing rules and regulations on conflicts of interest, the acceptance of gifts and the disclosure of outside ties need to be further developed, as recommended below.

#### Conflicts of interest

45. As indicated above there is only one legal rule requiring an MP to recuse him or herself from a vote, otherwise there is neither a general definition of conflicts of interest nor any specific guidance for MPs. The GET heard how some members excuse themselves informally from sessions in the Althingi without making any statements as to why. Clearly MPs endeavour to abide by the rules and their own understanding of potential conflicts and to conduct themselves accordingly. The GET also heard how unsatisfactory this is for many of those participating and/or observing parliament, particularly in light of the financial collapse, and the acknowledgement that close links between politicians and business contributed to the weakness of the regulatory system and aggravated the risks to Iceland's economic system and governing institutions.

46. A particular issue and concern that was raised on site was how to begin to address in a broader and more considered fashion the potential and perceived impact of personal and professional relationships on MPs in their public functions, particularly on whether and how ad hoc conflicts of interest should be declared and addressed as they arise in relation to an MPs' parliamentary work. It is for these reasons, and to ensure that the members and the public can begin to properly monitor and determine when and how the interests of members may be perceived to influence the decision-making process, that **GRECO recommends that the Althingi introduce a requirement of ad hoc disclosure when, in the course of parliamentary proceedings, a conflict between the private interests of individual MPs may emerge in relation to the matter under consideration.**

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

47. Since 2009 and after the banking crisis, MPs were asked to provide a public account of their financial interests and positions of trust outside Parliament. At first this was a voluntary system of registration but it is, since November 2011, mandatory. The rules were last reviewed on 28 November 2011 and are published on the Althingi website.

48. The obligation to declare also extends to alternate members who take a permanent seat in Parliament, or those who have served for four consecutive weeks in it. Ministers who are not MPs are also subject to the declaration requirement. The obligation

to declare does not, however, include the financial interests of MPs' spouses or other family members.

49. The following interests must be disclosed (Articles 4 and 5 of the Rules on the declaration of financial interests):

(i) Remunerated activities

- Paid service on the board of directors of private or public companies. Position and name of company should be disclosed.
- Remunerated work or tasks (other than salaried parliamentary work). The position and name of employer or contractor should be disclosed.
- Business conducted concurrently with parliamentary work, which generates income for the member or a company that he owns in part or in full. The type of business should be disclosed.

(ii) Financial support, gifts, travels abroad and debt cancellation

- Financial contributions or other financial support from domestic and foreign legal entities and private individuals, including support in the form of office facilities or similar services not included in the support provided by Althingi or the member's party, where the value of the support exceeds 50,000 ISK (336 EUR) per year. Furthermore, all financial support in the form of discounts on market price and other concessions exceeding 50,000 ISK (336 EUR) in value, which may be regarded as having been provided because of the membership of Althingi. The provider and nature of the support should be disclosed.
- Gifts from domestic and foreign legal entities and private individuals when the value of the gift is estimated at over 50,000 ISK (336 EUR) and the gift is given because of membership of Althingi. The name of the giver, the occasion of the gift, its nature and time of gift should be disclosed.
- Travels and visits in Iceland and abroad which could be linked to an MPs parliamentary duties, where the expenses are not paid in full by the State Treasury, the member's political party or the member himself/herself. The person carrying the expense of the travel, its duration and destinations should be disclosed.
- Forgiveness of residual debt and concessive changes in the terms of contract with the lender. The name of the lender and the nature of the contract should be disclosed.

(iii) Assets

- Any property which is one third or more in the ownership of a member of parliament or a company in which he holds a quarter share or more, other than premises for the personal use of the member of parliament and his family, and the land rights to such property. The name of the land holding and its location should be disclosed.
- The name of any company, savings bank or foundation engaged in business activities in which the member holds a share exceeding any of the following criteria:
- the share at fair value amounts to more than 1,000,000 ISK (6,734 EUR) as at 31 December each year;
- the share is 1% or more in a company, savings bank or foundation where assets at year-end are 230,000,000 ISK (1,550,000 EUR) or more, or the operating income is 460,000,000 ISK (3,100,000 EUR) or more;
- the share amounts to 25% or more of the share capital or initial capital of a company, savings bank or foundation.

(iv) Agreements with former or prospective employers (the amount of value of the items detailed below should not be disclosed)

- Any agreement with a former employer which is financial in nature, including any agreement on vacation, unpaid leave of absence, continued wage payments or benefits, pension rights etc. during membership of parliament. The type of agreement and name of employer should be disclosed.
- Any agreement with a prospective employer on employment, regardless of whether the employment does not take effect until after the member leaves parliament. The type of agreement and name of employer should be disclosed.

(v) Positions of trust outside the Althingi: information on service on boards of directors and other positions of trust for interest groups, public organisations, municipalities and associations other than political parties should be disclosed, regardless of whether such work is remunerated or not. The name of the association, interest group organisation or municipality and the nature of the position of trust should be disclosed.

50. When looking at the applicable rules, as well as the declarations posted on-line by individual MPs, the GET could not find a clear obligation to report actual numbers of the financial assets/contributions received by MPs. Moreover, it is clear that a register of interests is only helpful if it provides as full a picture as possible of an individual MP's interests, and that debts and liabilities, particularly in light of recent Icelandic history, are an important part of those interests. The SIC Report revealed the scale of indebtedness among the politicians who had been in power during the period in which the banks were privatised and their rapid growth and extensive debts put the Icelandic economy in danger. Not only has it come to light that three of the four main parties accepted large donations from the banks and their affiliated concerns<sup>14</sup> but of the 63 members in the Althingi at the time, 10 owed the failed banks €1 million or more each (at the pre-crash exchange rate of the krona) and their personal debts ranged from €1 to €40 million<sup>15</sup>. In the current disclosure system, there is no requirement for MPs to declare financial liabilities; only debts that have been forgiven, and are thus considered a benefit, must be declared. Concerns were also expressed on-site as to the possibility of circumventing the aim of the registration system by channeling MPs' assets to other members of their families. In this connection, the GET is fully aware of the associated challenges that may arise in relation to privacy concerns of family members, but considers that a compromise may be found between the need to protect privacy and the significance of monitoring MPs' links to business in the particular Icelandic context. The types of conflicts of interest that emerged during the financial crisis, as reflected above, evidence the importance of widening the scope of the declaration system. The GET notes that several interlocutors openly supported such an approach, although there is at present no consensus in the Althingi in this respect. **GRECO recommends that the existing registration system be further developed, in particular, (i) by including quantitative data of the financial assets/contributions received by MPs; (ii) by providing details of financial liabilities (i.e. debts) of MPs excluding reasonable house loans linked to ordinary market rates and minor loans not exceeding a reasonable limit; and (iii) by considering widening the scope of asset 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).**

51. Declaration forms are to be submitted to the Secretariat of the Althingi within one month from the time that a newly elected Parliament convenes; an electronic form is supplied by the Secretariat of the Althingi to all MPs to this effect. MPs are responsible for keeping their declarations up to date during their term of office and any new information must be disclosed within one month of it occurring. The Secretariat of the Althingi is responsible for publishing asset declarations on the Althingi website.

<sup>14</sup> In fact the three banks were the largest single donors to all three major parties.

<sup>15</sup> As quoted in the SGI 2011, Iceland Report at 15. Further, the average debt of these 10 members of parliament, including the leader of the Independent Party, his deputy and five other party colleagues was 9,000,000 EUR.



52. The GET heard that MPs have some difficulty in accessing the database to ensure their declarations are up to date and to add new information, and that there is little or no follow up from the Secretariat, other than occasional reminders, and certainly no duty on the Secretariat to monitor declarations, the deadlines attached to them, or their content. The GET heard that there are no random checks of MPs' declarations against any other sources of information such as tax forms to verify their veracity.

53. Again, in light of the fierce public criticism of politicians in the wake of the collapse of Iceland's banking system, it is incumbent on politicians themselves, in the GET's view, to develop and promote a more open, transparent and considered ethos of ethics and self-responsibility that is supported by clear and simple rules and enforcement mechanisms. **Thus, GRECO recommends that the Althingi strengthen the credibility of the registration system pertaining to MPs' declarations of financial interests by ensuring greater adherence to the rules through a system of monitoring, providing MPs with access to advice and guidance, and implementing a mechanism to sanction MPs who fail to meet the requirements on them.** In setting in place the recommended monitoring and sanctioning mechanisms due attention must be paid to their guarantees of independence and effectiveness.

#### Prohibition or restriction of certain activities

##### *Gifts*

54. There are no specific rules or guidance concerning the receipt of gifts, other than the applicable criminal law provisions on bribery namely Articles 128 and 109 of the General Penal Code. These provisions make it a criminal offence for a public official to demand or accept, or on any other person to give, promise or offer a public official, a gift or any other undue advantage in connection with the public official acting or refraining from acting in his or her official capacity. The punishment for such an offence is up to 6 years for the public official and 4 years for an individual.

55. That said, one of the issues that was brought into sharper relief after the collapse of the banks, and which was raised on-site, was the way in which the lines may be, or have been, blurred between hospitality between "friends" – e.g. politicians and powerful members of the business community – and gifts that could be defined as creating a potential conflict of interest for someone in public office. So while gifts are included in MPs' mandatory declarations, the GET suggests that the Icelandic authorities give greater consideration, including consulting with MPs themselves, about whether the current thresholds for gifts adequately respond to some of these concerns. Likewise, it would appear that the current rules allow for a discretionary interpretation of situations where gifts may or may not be reported by MPs since only gifts "that are given because of membership of Althingi" must be reported. This in the GET's opinion, is an ambiguous formulation which opens up for possibilities to circumvent the mandatory reporting requirements. The GET encourages the authorities to look further into this matter when developing tailored guidance in relation to the registration system as recommended above.

##### *Incompatibilities and accessory activities*

56. There are no restrictions on MPs holding outside posts. Any state civil servant who is elected as an MP is considered to be on leave of absence – for up to five years – during his/her term of office if s/he does not choose to resign. If s/he decides to revert back to civil service after the expiry of his/her term as an MP, s/he is normally given priority in a comparable position to the one s/he left in the public sector. An exception to this is possible, by which an MP could be employed by the State or a State institution with a salary for that assignment of up to a maximum of 50% (sum to be decided by the responsible Ministry). The authorities explained that, although this is formally possible, in

practice, the duties arising from the parliamentary mandate require full time dedication from MPs and the possibility provided by law to work for the State has not been used for a very long time.

#### *Financial interests*

57. There are no prohibitions or restrictions on the holding of financial interests by MPs. Concerns were expressed on-site about the fact that MPs who are owners within the fishing industry - one of Iceland's main industries - for example, are not required to recuse themselves from voting on matters which could have a direct impact on their financial interests. The GET has made recommendations as to ad-hoc declarations and encourages the Icelandic authorities and members of the Althingi to further reflect on this issue in order to develop appropriate rules in this area, and as such GRECO restrains from making any specific comment or recommendation on financial interests per se.

#### *Contracts with State authorities*

58. There are no prohibitions or restrictions on MPs entering into contracts with State authorities. The general legislation on public procurement is fully applicable in this context.

#### *Post-employment restrictions*

59. There are no regulations that would prohibit MPs from being employed in certain positions or in specific sectors upon expiry of their term of office. This has been identified as a source of concern in a number of independent reports, and was raised on-site. The particular concern expressed, as it applies to MPs, was with respect to the ease with which MPs have been able to move in and out of positions in the civil service, including sought-after positions in state institutions (and thus recruitment based on politics rather than merit), and then move to the private sector. One striking example is that of a former Minister of Commerce and Industry (1995 - 1999) who became Governor of the Central Bank (2000-2002) and resigned before the expiry of his 5-year term in order to join an investment group. The investment group he joined was a major investor in one of the banks that was privatised in 2002 and then collapsed in 2008<sup>16</sup>.

60. Improvements have been made to public administration after the SIC Report identified some key weaknesses. This includes amendments in April 2012 on the rules on the transparency of the recruitment process for central government and the preparation of rules on mobility within the civil service. Whereas a code of conduct has been developed for central government staff, a code of conduct for civil servants in general remains to be established<sup>17</sup>. As the focus of this fourth round evaluation is on MPs themselves and thus GRECO can only make recommendations with respect to them, the GET welcomes the improvements that have already been made to the civil service recruitment process and would encourage the Icelandic authorities to pay attention to the issue of revolving doors – i.e. situations where public officials move to the private sector – and its specific regulation, including through the introduction of post-employment restrictions, particularly for high-level civil servants. This was indeed a recommendation issued by GRECO in the Second Evaluation Round, which implementation remains pending<sup>18</sup>.

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<sup>16</sup> Jensdottir, JS (2012) *Integrity Scorecard Iceland 2012: Assessment of Anti-Corruption Safeguards*, University of Toronto Research Project, p. 18. The author describes how Finnur Ingolfsson, a former minister and central bank governor, joined S-Group.

<sup>17</sup> EC, *Iceland 2012 Progress Report*, Brussels, SWD(2012) 337 Final, p.7.

<sup>18</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2006\)10\\_Add\\_Iceland\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2006)10_Add_Iceland_EN.pdf)

### *Misuse of confidential information*

61. MPs are subject to confidentiality pursuant to Article 52 of the Standing Orders of Althingi. If an MP is in breach of his/her confidentiality, such a breach is subject to the punishment provided by Article 136 of the General Penal Code, i.e. imprisonment for up to three years.

62. While this issue was not raised as a particular problem, a recent case was reported by the Icelandic media about an MP who was rebuked for a breach of confidentiality for comments she made on her twitter account about matters being discussed in a closed committee meeting.

### *Misuse of public resources*

63. There are no specific rules on misuse of public resources by MPs, but the criminal law provisions of abuse of office contained in Article 139 of the General Penal Code are applicable. Abuse of office is punished with fines or imprisonment of up to two years.

### Supervision and enforcement

64. There is no investigatory or supervisory mechanism to oversee the implementation of rules governing conflicts of interest and notifications of assets and interests of MPs. It is the MP him or herself who is responsible for the accuracy of the information provided. No disciplinary sanctions or other specific enforcement measures are in place. It is to respond to serious concerns about the need to ensure appropriate enforcement, that GRECO has made a recommendation in paragraph 53 that sanctioning mechanisms be developed.

### Advice, training and awareness

65. The Secretariat of the Althingi prepares instructions/forms and provides members with any assistance required when filling in their declarations of financial interests and outside activities. As already mentioned, at the start of a new session of Parliament, members receive special instructions on parliamentary work, as well as a manual, which contains a review of the rules on the declaration of interests. It is clear, however, that the role of the Secretariat can only be a limited one and that the will and tools to better monitor, support and enforce rules on ethics and conflicts of interests needs to come from the members of the Althingi.

66. As was described in paragraphs 41 to 44, GRECO has recommended that a code of conduct, setting out the ethical standards and rules to guide and inform MPs in their parliamentary activities should be developed, and that these should then be enhanced by providing advice, training and information available to MPs in their daily work. It was clear to the GET that members of the Althingi are fully aware of the challenges that face them, both in terms of developing and implementing a clear, simple and effective set of rules and guidelines, given both the size and inter-connected society in which they live and work, but also the high public expectation on them to ensure something changes. The key will be to strengthen the organisational culture and value system to ensure that informal relationships are not viewed as more important than the duties and responsibilities of public office and the formal rules that guide them.

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

##### Overview of the judicial system

67. Iceland has a two-tier court system consisting of 8 district courts and a Supreme Court with jurisdiction in criminal, civil and administrative cases. Iceland does not have a separate constitutional court. District courts and the Supreme Court are empowered to resolve the constitutionality of cases; they are also vested with a review capacity over decisions made by the executive power, which includes the power to render invalid laws that conflict with constitutional provisions or infringe on human rights. There are 43 district court judges (28 male and 15 female judges, respectively) and 12 judges (9 male and 3 female judges, respectively) in the Supreme Court<sup>19</sup>. It is possible to call experts to the bench when a case requires special knowledge.

68. The GET was informed of the plans underway to move to a three-tier court system, i.e. adding a court of appeals to the present system of district courts and the Supreme Court. The GET has looked into this reported plan, and into how it can positively add to the present system, under paragraph 94. Likewise, the authorities indicated that consideration was being paid to replacing the existing 8 district courts with one single district court. It should be noted that some district courts consist of no more than one judge and a secretary. A district court of that size could have jurisdiction over 5,000-7,000 inhabitants. The GET notices that such a situation may well give rise to conflicts of interest instances. In this context, the GET can see the benefits of the merger plans under discussion.

69. There are also two special courts in Iceland, i.e. the Labour Court and the Court of Impeachment. The Labour Court, which is based in Reykjavik, falls under the auspices of the Minister of Welfare. It has jurisdiction over the entire country, resolves work-related disputes, and is the only instance of judgement for these types of matters, since its decisions cannot generally be appealed to any other court, except in specific cases as provided by law which allow for referral to the Supreme Court. The way of procedure before the Labour Court is in principle the same as in the ordinary lower courts.

70. The Court of Impeachment adjudicates criminal actions brought by the Althingi against current and former ministers. It is composed of 15 judges: five Supreme Court justices, a district court president, a constitutional law professor and eight people chosen by the Althingi every six years. Its judgements cannot be appealed. However, the Court of Impeachment may reopen the case at the request of the sentenced person and if certain conditions are met as provided for by law (i.e. if new evidence comes to light which clearly indicates, or is likely to indicate, that the sentenced person was incorrectly found guilty or would have been sentenced for lesser offences had such evidence been submitted to the judges prior to judgment, or if it may be assumed that forged evidence caused a judgment of guilt in some or every respect).

71. The Court of Impeachment has only been convened once, since its establishment in 1905, and this was to try the former Prime Minister for his role in the events leading to the 2008 financial crisis. In April 2012, the Court of Impeachment found the former Prime Minister guilty of one of four charges against him, notably that he had failed to place the imminent banking crisis on the agenda of the Cabinet of Ministers. No sentence was passed. In October 2012, the Parliamentary Assembly of the Council of Europe (PACE) issued an information memorandum raising questions as to the prosecution process of the Prime Minister and singling it out as a case from which lessons can be

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<sup>19</sup> The statutory numbers are lower, i.e. 9 judges in the Supreme Court and 38 district judges, but these numbers were increased temporarily in a way to foresee the need for greater resources to deal with the cases emanating from the financial crisis. The temporary increase in district court judges will be maintained until 1 January 2014; as of 1 January 2013, the number of Supreme Court judges is also to gradually go back to the statutory levels.

drawn for keeping political and criminal responsibility separate<sup>20</sup>. The case has been taken to the European Court of Human Rights. In addition, the GET was informed, that the on-going constitutional amendments (Article 95) foresee the abolishment of the Court of Impeachment<sup>21</sup>.

72. The Judicial Council consists of five members. Two are elected by district court judges from among their peers, two by the chief judges of the district courts from among their peers, and the Minister of the Interior appoints one more member, who is not an active judge. The members are appointed for five years and cannot serve more than two terms. The Judicial Council has mainly administrative functions, which include the control of the financial affairs of the courts, issuing rules on the harmonisation of judicial practice, determining the number of judges and staff in district courts, collecting statistics, organising continuing education programmes for judges and lawyers serving the courts, etc.

73. The Committee on Judicial Functions is composed of three members (and three substitutes) whose term of appointment lasts six years (six-year term is subject to confirmation every two years). One member is nominated by the Icelandic Association of Judges, another by the Law Faculty of the University of Iceland and the third without a nomination, given that the latter meets the same criteria for appointment established for judges of the Supreme Court. The nomination is followed by formal appointment by the Minister of the Interior. The person appointed without a nomination serves as chairperson of the Committee. Alternate members are appointed in the same manner. The Committee on Judicial Functions has main responsibility for defining general rules, principles and opinions concerning incompatibilities of judicial office holders (Articles 26-29, Act No. 15/1998).

#### The principle of independence

74. Judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials. The independence of judges in Iceland is guaranteed in the Constitution and the Act on the Judiciary No. 15/1998. Article 2 of the Constitution provides for the separation of powers in Iceland. Article 61 of the Constitution specifies that in the performance of their official duties, judges shall only be guided by the law. Article 70 of the Constitution provides for everyone's right – be it in civil, criminal or administrative cases – to have his/her case decided upon by an independent and impartial court, following a fair trial and within a reasonable time. Article 24 of Act No. 15/1998 confirms the principle of independence of judges: when resolving a case, judges are only bound by the law and shall never be subject to the authority of another person; a judicial decision cannot be overturned, except by appeal to a higher court.

75. Generally speaking, the GET found the judiciary in Iceland to be of a high standard. Steps have been taken to address public criticism as regards appointment and recruitment to the judiciary, an area where misgivings have been expressed in the past as to appointments to office being politically motivated rather than based on merit. That

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<sup>20</sup> Parliamentary Assembly of the Council of Europe (PACE), Committee on Legal Affairs and Human Rights. AS/Jur (2012) 28 declassified.

<sup>21</sup> Draft Constitution, Article 95 on responsibility of ministers: Ministers bear the legal responsibility for all administrative activity. Should a minister note in minutes his opposition to a Cabinet decision he is not responsible therefor. The responsibility for infractions in office shall be laid down by law. The Committee of Governance and Overseers of Althingi shall decide, following an inquiry, whether an investigation shall be initiated into the alleged infractions of a minister. The Committee appoints a prosecutor who conducts the investigation. He shall assess whether the conclusion of the investigation is adequate or likely to lead to a conviction upon which he issues an indictment and prosecutes the case before the courts. The investigation and handling of such cases shall be further laid down by law.

said, the GET identified some shortcomings which call into question the required independence and impartiality of the judiciary, not only in law but also in practice (see paragraphs 83, 84 and 94). The GET wishes to highlight that judges must not only be independent, but also seem to be independent. This is of particular relevance in Iceland where opinion polls in recent years have shown that only about 30% of the public expresses confidence in the judicial system as a whole<sup>22</sup> – a striking figure, all the more so since the professionalism and competence of judges do not appear to be questioned by the population. Further consideration could be paid by the judiciary to the additional measures which could be developed to tackle this negative public perception and thereby strengthen public trust and confidence in this sector. The GET was told that the governing bodies of the judiciary are looking into possible ways to better communicate with the public and the media, including through the appointment of spokespersons or communication officers in courts, etc. The GET acknowledges all the positive efforts already being shown in this area and trusts that the recommendations made in this section of the report will further assist the authorities to better communicate improvements, progress and achievements in preserving and strengthening, in appearance and reality, the required independence, impartiality, integrity and transparency of the judiciary.

#### Recruitment, career and conditions of service

76. The rules for the appointment of judges were changed in May 2010, pursuant to Act No. 45/2010 amending Act No. 15/1998. District court judges are appointed to office for an indefinite period by the Minister of the Interior (Article 12, Act No. 15/1998). Supreme Court judges are appointed for an indefinite period of time by the President of Iceland, as proposed by the Minister of the Interior (Article 4(1), Act No. 15/1998).

77. Appointment criteria are examined for each applicant by an evaluation committee consisting of five members. Two members are appointed by the Supreme Court (one of them is also the Chair), one by the Judicial Council, one by the Icelandic Bar Association and one by the Althingi. The evaluation committee assesses the applications received; it can also conduct interviews with the candidate, review his/her published work, and/or seek references from former employers. The most suitable candidate is then appointed as a judge by the Minister of the Interior. In order to promote gender equality, the Supreme Court has interpreted legislation<sup>23</sup> to confirm that where two candidates are deemed equally suitable and one is a female candidate, the female candidate must be appointed unless there is already gender parity (equal representation of men and women) at that court level. No applicant may be appointed to the office of judge without the endorsement of the evaluation committee. However, the provisions allow an exception to this rule: the Minister of the Interior can appoint a candidate from the list of suitable candidates, who meets all the requirements but has not been ranked as the most suitable candidate by the evaluation committee, if the Althingi adopts, by simple majority, such a motion by the Minister.

78. However, the exception described above, which requires an appropriate justification by the Minister, has not applied since the new rules on judicial appointments came into force in 2010. The GET heard that, before the new system applied, the Minister was not bound to follow the advice of the relevant judicial bodies when appointing a person to judicial office and indeed it happened in the past that appointments were made arbitrarily raising criticism as to political influence having filtered in the process. The GET was told that under the new system, it is extremely difficult for the Minister to deviate from the decisions made by the evaluation committee: firstly, the Minister has to choose from the list of candidates prepared by the evaluation committee (s/he can only choose someone who, although not ranked as the most suitable candidate by the evaluation

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<sup>22</sup> Sustainable Governance Indicators (SGI) (2011) Iceland Report by Bertelsmann Stiftung.

<sup>23</sup> Act on Equal Status and Equal Rights of Women and Men No. 10/2008, Articles 20 and 24.

committee, is on that list); secondly, s/he has to go public with the reasons for taking such a decision; and thirdly, the decision must be approved Parliament, including members of his/her own party, but also political opponents). The GET was also told that the exception provided by law is meant to work more as a safety measure to ensure some sort of review mechanism for the decisions made by the evaluation committee (in the event, for example, of criticisms of corporatism).

79. Positions for both district court judges and Supreme Court judges are advertised in the Icelandic Official Journal and/or newspapers. Criteria for the appointment as a judge relate to the merits of the applicant, including education and experience, integrity, competence and job efficiency. No formal training for entering the judiciary is required, but judges have to meet high standards to be appointed; this includes qualification as a lawyer. Assessment guidelines are contained in Rules No. 620/2010 on the work of the evaluation committee. The Administrative Procedure Act No. 37/1993 and the Government Employees Act No. 70/1996 also contain provisions which need to be taken into account in the appointment of judges, e.g. as stated above with respect to gender equality and also with respect to non-discrimination.

80. The Minister of the Interior may appoint an ad-hoc judge when the chief judge of a district court and the Judicial Council determine that no other district judge has the competency to deal with a given case. Ad-hoc judges must meet the same criteria requirements set for appointment to the office of district judges and can only be relieved from his/her office subject to the conditions of other district court judges. The salary of ad-hoc judges is decided by the Judicial Council.

81. Judges have permanent tenure until reaching retirement age. Judges may be relieved from office at their own request, if, for example, they accept a commission or appointment to another office. A judge may be relieved from office when s/he attains the age of 65 years. A judge shall in any case be relieved from office when s/he attains the age of 70 years. Judges can be temporarily suspended or dismissed following a disciplinary or a criminal action against them (see paragraph 116).

82. The GET welcomes the measures taken in recent years to further regulate and strengthen the appointment and recruitment procedures in the judiciary (see paragraphs 77 and 78) to respond to concerns that had been raised previously in Iceland. The GET also took into account the fact that the Venice Commission takes a nuanced approach and acknowledges that there is no single model of judicial appointments that apply to all countries. The interlocutors met on-site agreed that the reforms undertaken in this field have provided greater safeguards against improper political influence and have decisively improved the general transparency of the system. Appointment criteria are set out in law, as are the rules governing the work of the committee evaluating the qualifications of applicants for judicial office whose conclusions must be founded on a comprehensive assessment based on objective viewpoints, taking into account the merits of the applicants, including education and experience, integrity, competence and job efficiency. Applicants cannot be appointed to judicial office without the endorsement of the evaluation committee. The GET has nevertheless identified in the course of the on-site interviews that some judicial appointments would benefit from more detailed regulation.

83. In particular, the GET considers that the system of appointment to the Labour Court merits further review; the law regulating its function dates back to 1938. The Labour Court is composed of five persons appointed for three-year' terms: the two representative bodies (Confederation of Icelandic Employers and the Icelandic Federation of Labour) appoint one person each, the Supreme Court appoints two and the Minister of Welfare appoints the fifth from a group of three chosen by the Supreme Court. It is a civil duty to take a seat in the Labour Court; the persons sitting must be Icelandic citizens, in charge of their financial affairs and with an unblemished reputation. Only the two judges appointed by the Supreme Court have to be lawyers. The current President of the Labour

Court is a district court judge from Reykjavik. However, according to the GET's findings, it is not stipulated that it is a prerequisite for any of the persons sitting in the Labour Court to uphold a position as a judge. Nor is there any rule as to the selection and appointment procedures for the persons who are not representative of the employee/employers' interests, i.e. the persons nominated by the Supreme Court; there is, for example, no requirement that such positions are publicly advertised when vacant. The GET has some misgivings about this, all the more so since, as was explained earlier, a case that can be litigated before the Labour Court cannot be heard in the general courts; moreover, decisions of the court can generally not be appealed to any other court, so they constitute the final result of the dispute. At the very least, the persons appointed by the Supreme Court should be subject to an appointment process which is vested with the same guarantees of independence, impartiality, publicity and transparency governing all other judicial appointments.

84. Likewise, in the Icelandic system, it is possible for district courts, both on civil and criminal proceedings, to call for experts to the bench if the case requires special knowledge. These experts have the same rights and obligations as the judge when it comes to resolving the case; the experts may theoretically finish by deciding the case against the vote of the regular judge. However, contrary to professional judges, these experts do not undergo any administrative scrutiny and the judge calling the experts is pretty much free to choose the actual individuals who will serve as ad hoc expert judges in the case (subject to the review of the Supreme Court on appeal). It is clear that the selection and appointment of experts does not offer the necessary guarantees to preserve judicial independence. In this connection, the European Court of Human Rights (ECHR) held unanimously in the *Sara Lind Eggersdóttir v. Iceland* case (No. 31930/04) that there was a violation of Article 6.1 of the Convention (right to a fair hearing) since the expertise brought into the case (members from the State Medico-Legal Board – SMLB) had not acted with proper neutrality in the proceedings before the Supreme Court. The GET was made aware during the on-site visit of some possible non-cumbersome ways to improve the current system, including through a pool of approved experts who have undergone some sort of prior scrutiny. The Ministry of the Interior has asked the Permanent Committee on Procedural Law to look further into this matter.

85. In light of the abovementioned concerns, **GRECO recommends reviewing the present situation concerning election, nomination and appointment procedures of (i) members of the Labour Court (and more particularly the persons nominated by the Supreme Court) and (ii) experts to the bench, in order to ensure that those procedures are vested with appropriate guarantees of independence, impartiality and transparency.**

86. There is no regular system of evaluation for judges, nor is there a promotion system in place within the judiciary. District court judges can apply to work in the Supreme Court. Chief judges are selected in each court by their peers for a five-year term; in cases where there is no agreement in the selection, the Judicial Council has a say. Formal appointment of a chief judge is the responsibility of the Minister of the Interior. Complaints regarding the performance of judges are handled by the Committee on Judicial Function.

87. Decisions regarding the transfer of judges are made by the Judicial Council according to the procedure laid out in Act No. 15/1998 (Article 15). Judges cannot be transferred or moved against their will, except in the event of a re-organisation of the judiciary (Article 61, Constitution). The GET was told that, in order to prevent conflicts of interest, the system provides for the possibility of rotation. However, rotation seldom occurs in practice. The GET does see the risks in districts with just one judge in remote areas of Iceland where the post has been held for years. It is inevitable in those cases that conflicts of interest may arise and, for that reason, the GET encourages the



authorities to look into ways to ensure that the rotation principle is not only a possibility in law, but is also implemented in practice.

88. The Senior Civil Servants Salary Board decides on the remuneration of judges. The salary is on the basis of full time work and no extra payments (other than wages for on-call shifts) are made unless decided by the Senior Civil Servants Salary Board. Due to the increased workload of judges resulting from the economic crisis, the Senior Civil Servants Salary Board decided to pay 20 extra units per month to judges during the period 1 February 2011 – 31 January 2013. As of 1 March 2012, the annual salary of judges is as follows: 12,171,864 ISK (82,185 EUR) for district judges; 13,257,552 ISK (89,516 EUR) for chief district court judges outside the capital; 14,574,456 ISK (98,408 EUR) for the chief district court judge of Reykjavik; 15,167,232 ISK (102,411 EUR) for judges of the Supreme Court; and 16,620,132 ISK (112,221 EUR) for the President of the Supreme Court. There are no other additional benefits (e.g. no tax exemption, no housing benefits) provided by the State to judges. Because of the economic crisis in Iceland, the Government decided to resort to temporary cuts on state employees; the Senior Civil Servants Salary Board, in a ruling of 10 March 2009, reduced Icelandic judges' remuneration by 10-15%. The Board later decided to pay judges some additional sums due to a temporary increase in their workload; the additional pay is to be effected from 19 December 2012 until 30 June 2013 when judicial salaries will be re-evaluated. In this connection, the GET heard that the judicial profession, and more specifically the current level of pay, is not appealing enough for young lawyers and that this represents a challenge which needs to be taken into account to keep ensuring the current high standards of the profession.

#### Case management and court procedure

##### *Case management at district courts*

89. The district court chief judge is responsible for the day-to-day management of the court, including with respect to the assignment of cases. The chief judge may also decide to divide the court into different chambers of expertise. When assigning a case, the chief judge is to maintain, as far as possible, an even workload among the different judges working in the district court (Articles 16 and 18, Act No. 15/1998). Cases are handled, as a general rule, by one single judge, but different arrangements may exist, upon decision of the chief judge, e.g. by assigning the case to various judges, to a chamber/s, or by bringing in the expertise of a judge in another court (the Judicial Council being consulted in the latter case). Act No. 15/1998 specifically foresees the development, by the Judicial Council, of further rules regarding case allocation; however, this has not been done to date.

90. Judges may request not to be given a particular case due to conflict of interest situations or by reason of workload. The chief judge is to consider the motives stated and to take a decision on that basis. The requesting judge can always turn to the Judicial Council to review the decision taken by the chief judge.

91. The chief judge may also withdraw a case already assigned to a judge, without the petition of the judge to whom the case was assigned, if the judge does not heed the chief judge's recommendation to bring the case to a conclusion within a reasonable period of time, or if illness or other special circumstances impair a judge's capacity to adjudicate the case. The judge in question can refer the decision of the chief judge to the Judicial Council for review.

92. If no judge serving in a particular district court fulfils the competency requirements needed to handle a given case, the chief judge is to issue a court decision requesting all judges in the district court to withdraw. If no judge serving in another court proves to have the competency to handle the case, the Judicial Council must

prepare a written and reasoned opinion on the matter. The Minister of the Interior then appoints an ad-hoc judge to deal with the case (Article 19, Act No. 15/1998).

#### *Case management at Supreme Court*

93. The Supreme Court operates in three different divisions A, B and C. The president and the four most senior judges of the court sit in division A, the remaining seven judges are divided into division B (four judges) and division C (three judges). Cases heard by the Supreme Court are to be heard by either three or five judges, but in cases that are especially important, it can be decided that more than five judges (generally seven) hear the case. In practice the most serious cases, very extensive cases and potentially precedent-setting cases are assigned to division A, and the rest of the cases are allocated to divisions B and C. The GET heard during the on-site visit that the workload of the Supreme Court is heavy, with a turnaround of 600-700 cases per year.

94. As already mentioned, a proposal to establish an appeal court for civil and criminal cases – and thereby move from the present two-tier to a three-tier system – is under examination by the Ministry of the Interior; the reported plan has suffered delay because of the economic crisis and the budgetary cuts which have followed. The GET is certainly convinced of the benefits that such a move could entail. The heavy workload of the Supreme Court was already highlighted above. The GET heard several times during the evaluation visit that the large number of cases the Supreme Court receives, in conjunction with the short timeframes for judicial proceedings in Iceland, lead to a situation in which many perceive that the judgments issued are not at the level of detail as those released by district courts. In this connection it must be noted that in Iceland the Supreme Court acts more like a court of cassation rather than an appeal court for all district court cases – ie. which can reconsider every aspect of a case and conduct a new examination of the facts if necessary. In practice, the Supreme Court very seldom hears witnesses – the GET was told that it has only happened once in the last decade – and sends the case back to the district court pointing out the weaknesses in the initial court decision. This situation most frequently occurs in criminal cases. The GET heard concerns as to the “pressure” effect that this practice of acting more like a cassation court can play in the decisions taken later by the responsible district court judges. That said, virtually all interlocutors conceded that it would be better if the Supreme Court fully performed the tasks of a conventional court of this type, and acted as a last instance court and provided guidance in interpreting the law, rather than acting as a court of appeal without the resources and the guarantees that the latter must have. According to the interlocutors, the current system raises questions not only as to the principle of ensuring a fair hearing and trial (since the Supreme Court does not, in practice, hear witnesses as a normal appeal court in this type of legal system might), but also for the due independence of the lower courts to whom decisions are returned in this manner. In this connection it should also be borne in mind that judicial independence from undue influence is not only with respect to the independence of the judiciary as a whole vis-à-vis the other powers of the State, but also within the judiciary itself. Such independence can play an important role in counteracting corruption in the judiciary; it makes it easier for individual judges to defend themselves from undue influence or interference. Thus GRECO welcomes the reported intention of the authorities to carry on with the intended reforms to strengthen the court system.

#### *Court procedure*

95. Court procedures must be conducted efficiently; judges must deal with cases without undue delay (Article 70 of the Constitution, Article 24 Act No. 15/1998 on the Judiciary, Article 171 of the Act on Criminal Procedure). A chief judge may decide to withdraw a case from the judge to whom it was originally assigned to if the latter does not conclude it within a reasonable period of time (Article 18, Act No. 15/1998). The Judicial Council has issued guidelines for district courts on efficiency when conducting

civil and criminal cases. The Act on Criminal Procedure (Article 209) and the Act on Civil Procedure (Article 165) establish a maximum delay of four weeks for the Supreme Court to deal with a case submitted for judgement and ruling. If that is not possible, in a case where there has been an oral hearing, the case is to be heard again insofar as the Supreme Court deems it necessary. The average duration of cases dealt with by district courts in 2012 was around 90 days for criminal cases and 350 days for civil cases, respectively. An excessive length of proceedings is extremely rare and there is no backlog of cases in Iceland. No single complaint against Iceland concerning Article 6 of the European Convention on Human Rights has ever been declared admissible before the European Court of Human Rights.

96. As a general rule, court hearings are to be conducted in public (Article 70 of Constitution). Exceptions are provided by law (i.e. Article 10 of the Act on Criminal Procedure; Article 8 of the Act on Civil Procedure), pursuant to which, the responsible judge may decide to hold a hearing in camera (e.g. to protect the victim in cases of sexual or child abuse, to protect witnesses, or if it is in the interest of State or public security, etc.). The Judicial Council has issued Guidelines No. 4/2010 regarding the publication of judgments and the exceptions to this principle. These exceptions relate to judgements concerning incapacity, bankruptcy and cessation of payments, as well as judgements concerning minor offences sanctioned with low fines. The general rule for the Supreme Court is that all judgments are released immediately on the website; there are a few exceptions to this obligation of publicity, namely regarding judgements on pre-trial detention in cases so as not to jeopardise the relevant investigation.

97. During the on-site visit no problematic issues were identified in these areas. Case management appears to be adequate, external influence in the adjudication of particular cases is not perceived as a source of concern in Iceland. Moreover, Iceland is internationally recognised as a country with a highly efficient court system.

#### Ethical principles, rules of conduct and conflicts of interest

98. Judges take an oath of office at the start of their judicial career, which binds them to honour the Constitution, to uphold the principle of office and to avoid misconduct. The authorities initially reported on their intention to start drafting a code of conduct for judges in 2012. After the on-site visit, the GET was told that the Judicial Council had referred to the Association of Judges the question of whether a code of conduct for judges should be crafted.

99. There is no definition of conflict of interest provided by law. Judges cannot act in a particular case in which they hold a private interest; the specific grounds for disqualification are provided by law (Article 5, Act on Civil Procedure and Article 6, Act on Criminal Procedure). Act No. 15/1998 contains provisions, further developed by Regulation No. 463/2000, on additional activities and incompatibilities of judges, as described below.

100. The GET welcomes the reflection process which has started concerning the possible elaboration of a code of conduct for judges and court staff; in the GET's view, the adoption of a code of conduct for the profession would undoubtedly send a positive message to the public as to the high standards of conduct to be upheld in and by the judiciary. It would also be important to couple the development of this code with more detailed guidance on how to act if and when confronted with a conflict of interest, an issue of key importance given the size of the country and the close links that may exist between its inhabitants. In this connection, the GET found that while judges are clear on the general rules concerning incompatibilities and recusal, they did also recognise that there could be specific individual cases which statutory rules may not sufficiently address and where they could benefit from additional guidance. This can be particularly important in smaller (and remote) district courts where the single judge in charge may have well

developed close ties within the community which may give rise to potential or actual conflicts of interest. Moreover, while the GET was told that these aspects are left to the self-assessment of the judge, the GET also heard that disqualification due to conflicts of interest can be taken personally or be considered an insult against the personal integrity of the individual judge (i.e. a judge of high principles would never let friendship interfere with professional judgement). The interlocutors also recognised that most of the regulation on conflicts of interest focuses on financial ties, despite the fact that the issue is acknowledged as being much broader in the Icelandic context where family/personal ties play a decisive influence. The Committee on Judicial Functions indicated that it is reevaluating its policy in this respect and in order to issue additional guidance thereafter. Likewise, the Judicial Council explained its intention to look more closely into providing guidance on ethical rules to district court judges. In light of the foregoing considerations, **GRECO recommends that (i) a set of standards of professional conduct, accompanied by explanatory comments and/or practical examples, be adopted for the judiciary and be made public; (ii) judges are provided with appropriate training and counselling services on ethics, integrity and the prevention of conflicts of interest.**

#### Prohibition or restriction of certain activities

##### *Incompatibilities, accessory activities and financial interests*

101. Judges cannot accept an occupation or own a share in a company or enterprise if it is not compatible with the office or carries a risk that the official duties will not be discharged properly (Article 26, Act No. 15/1998). The Committee of Judicial Functions was entrusted with developing additional rules concerning additional employment and shareholdings; Regulation No. 463/2000 has been issued to this effect.

102. With respect to additional activities in which a judge may engage, these refer to academic activities (e.g. lecturing and examining at University, serving on academic committees) and projects commissioned by the Althingi or one of its standing committees. Judges are prohibited from acting as advocates and sitting on the board or taking any other position of responsibility in a profit-making entity. Judges are generally banned from participating in arbitration panels, with the limited exceptions provided by law and subject to the authorisation of the Committee on Judicial Functions. Judges may accept other salaried functions not listed in Regulation No. 463/2000 if they obtain prior consent from the Committee. Non-salaried functions for non-profit organisations do not need to be declared to the Committee, nor do judges need the Committee's approval. A judge must report any additional activity to the Committee before accepting it.

103. In connection with the acquisition of shares in a private entity, judges are permitted to own shares in companies and enterprises (other than those where ownership is specifically limited by legislation). However, judges must report any shares they acquire to the Committee on Judicial Functions. If a judge wants to own more than 3,000,000 ISK (20,000 EUR) in a publicly traded company or more than 5% of shares in a company or enterprise, authorisation from the Committee is necessary.

104. The Committee on Judicial Functions can, by way of a reasoned opinion, prevent a judge from discharging an additional function or acquiring a share in a company or enterprise. The judge is bound to heed to such prohibition but is entitled to seek a judicial resolution on its legality. The duty to declare does not extend to family members or relatives of judges.

##### *Recusal and routine withdrawal*

105. The general rule is that a judge assesses his/her own qualification to hear a case but that a party may also call for his/her disqualification. The reasons for disqualification

are enumerated in law (Article 5, Act on Civil Procedure and Article 6, Act on Criminal Procedure), including when the judge is a party to the case, has provided legal advice or guidance to a party, has testified or been requested to testify, has acted as an appraiser or inspector with regard to the subject matter of the case, is or has been a spouse or partner of the party or is related to him/her, is connected to the party's agent or attorney, is connected to a witness, or if there are other conditions or circumstances which are likely to cast reasonable doubt about the judge's impartiality. A judge must also recuse him/herself in a criminal case following the issue of an indictment, when s/he has upheld a request for the accused to be remanded in custody.

106. When a judge asks to withdraw from a case due to a potential conflict of interest, it is for the court president/chief to decide on the reassignment of the case to another judge.

#### *Gifts*

107. There are no detailed rules on the acceptance of gifts specifically by judges, but the GET was told that there is a zero-tolerance to gift giving to judges and that this is not an acceptable or usual practice in Iceland. Moreover, the relevant provisions of the General Penal Code concerning bribery (Article 128) and related offences apply. These provisions make it a criminal offence for a public official to demand or accept, or on any other person to give, promise or offer a public official, a gift or any other undue advantage in connection with the public official acting or refraining from acting in his or her official capacity. The punishment for such an offence is up to 6 years for the public official and 4 years for an individual.

#### *Post-employment restrictions*

108. There are no regulations that would prohibit judges from being employed in certain posts/functions or engaging in other paid or unpaid activities after exercising a judicial function. The GET did not find this to be a particular source of concern in Iceland: the majority of judges leave service when they have reached retirement age (65-70 years old) and the few cases of judges who had left their position to act as attorneys (a couple of instances to date) had not given rise to any problem or conflict of interest. This is nevertheless a challenging area where conflicts of interest may well emerge and which deserves to be kept under review by the authorities.

#### *Contacts with third parties outside court proceedings, confidential information*

109. While court proceedings are generally public (with the few exceptions provided by law as described above under paragraph 96), confidentiality obligations apply concerning the handling of information in the case. Any violations of the confidentiality obligations are punishable under the General Penal Code (Article 136). Moreover, a communication by a judge with a third party regarding the matters of a case being handled in court will be considered a breach of the judicial oath.

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

110. As mentioned above, judges are to report to the Committee on Judicial Functions on additional activities and shares acquired in a company or enterprise. This obligation does not extend to judges' relatives or family members. Judges themselves are responsible for reporting, without delay, on changes or corrections to the declarations they make (e.g. if the time devoted to or the salary received in connection to an additional activity increases).

111. Information on the posts or shares held by judges is kept by the Committee on Judicial Functions and remains confidential. That said, a party to judicial proceedings has

the right to information about additional functions or shares owned by the judge deciding his/her case, at the discretion of the Committee on Judicial Functions. If a party considers that a judge may have a conflict of interest in the given case which will prevent him/her from discharging the official duties properly, the party is entitled to lodge a written complaint with the Committee on Judicial Functions (see also paragraph 118).

### Supervision and enforcement

112. The Committee on Judicial Functions regularly receives declarations from judges about additional functions, including information on the remuneration received. While the same duties apply for owning shares in companies and enterprises, the reporting of these seldom occurs in practice. The Committee trusts the information as provided by the judges and does not have mechanisms in place to verify it, other than sending a letter to the relevant judge requesting additional clarifications or further information. The lack of authority of the Committee to verify judges' declarations does not pose, in the authorities' opinion, a threat to compliance with the relevant rules on conflicts of interest as these should be relatively easy to detect given the size of the country and the total number of judges. If it becomes apparent that a judge has intentionally supplied wrong information or not supplied relevant information, the enforcement measures described below under paragraphs 115 and 116 apply.

113. Judges do not enjoy any immunity. The criminal procedure is the same for judges and for citizens and is implemented in accordance with the Act on Criminal Procedure. The General Penal Code (including the provisions concerning offences involving abuse of office, bribery, breach of secrecy, etc.) applies equally to judges. There has been no criminal proceeding instituted for a corruption-related offence involving a judge.

114. Judges are subject to disciplinary proceedings as provided for in Articles 27 to 31 of Act No. 15/1998; the Administrative Procedures Act applies to the proceedings. If the person in charge of a court considers that the professional conduct or performance of a judge, or his private conduct, is worthy of censure, s/he may request, orally or in writing, that the judge corrects the matter.

115. If such a request is not successful, or if the person in charge of the court considers the matter so serious that a request of this kind is not suitable, s/he is to refer the matter to the Committee on Judicial Functions, in writing and stating the reasons. The same procedure is followed if a judge does not respect the applicable rules on incompatibilities and conflicts of interest (additional activities/shareholding in companies or enterprises). The Minister of the Interior can refer the matter to the Committee on Judicial Functions in the same manner. The Committee can also act ex-officio. The Committee has to afford the judge in question the opportunity to respond in writing to the allegations. The Committee is empowered to collect any evidence which may be necessary to impose discipline. The Committee then issues a written and reasoned opinion on whether the judge in question shall be admonished. An admonition is made in a manner offering proof; a copy must be sent to the person in charge of the relevant court and to the Minister of the Interior. If the judge is a district judge, the Judicial Council also has to receive a copy. A judge who has been admonished may take legal action within one month of the decision being taken.

116. Temporary removal is possible in those case where, if found guilty, a judge would lose his/her right to act, for example, in criminal investigation or criminal actions brought against the judge that, if sustained, would deprive him/her of the right to office, or if the judge has been admonished twice in three years or if s/he has not heeded the admonition. In all cases of temporary removal, the Committee on Judicial Functions must be consulted in writing; in cases of temporary removal, other than when this is due to ongoing criminal investigations, a legal action must be brought against the judge within

two months. Judges can be dismissed only by a judgment of the District Court of Reykjavik.

117. An appeal against disciplinary measures is possible before the courts, but decisions on dismissal cannot be reversed. Judges (in so far as they are public officials) can turn to the Parliamentary Ombudsman for an opinion, but the opinions of the Ombudsman are of a non-binding nature.

118. Any person who considers that a judge has committed an infringement against him/her can lodge a written complaint on the matter before the Committee on Judicial Functions, stating the events, the reasons, and the rights infringed upon. The Committee may dismiss or accept the complaint. If the complaint is accepted, the Committee is to grant to both the judge and his/her chief an opportunity to present their written observations within a specified period of time. The Committee may consider two or more complainants at the same time, if they relate to the same judge (Article 27, Act No. 15/1998). There have been no disciplinary proceedings initiated against a judge for failure to comply with ethical/conflicts of interest rules.

119. The GET has no reason to doubt that the system to make the judiciary accountable is well construed and operates effectively. Individual judges are subject to a system of internal accountability in respect of legal errors (i.e. maladministration rather than on the merits of the case) and personal conduct. The GET was also told that no allegation has ever been made of corruption within the judiciary.

#### Advice, training and awareness

120. There is no specific training provided to judges on ethics, prevention of corruption and conflicts of interest. There is no special mechanism in place to provide advice to judges on this matter; judges are expected to use their own judgement, abide by the oath made when entering office and conduct themselves properly when discharging their functions. During the on-site visit, the authorities explained that the training opportunities provided to judges in the course of their careers were limited and that this was reportedly due to the fact that the budget available for this type of activity in the judiciary was rather low. Education of judges largely relies on the classical system of legal studies during university. In this connection, the interlocutors acknowledged no formal measures for guidance and advice were in place, the practice being for junior judges to turn to more senior or chief judges for advice. In the GET's view, the ability for judges to speak openly with colleagues is vital, but it is also important to build up the knowledge base within the judiciary to handle specific issues that arise and to respond appropriately as they change over time. The authorities recognised that more could be done in this area, and that the issue is particularly relevant when it comes to isolated district courts with a single judge in charge. The GET also believes that better and more tailored guidance and counselling mechanisms on judicial conduct and the prevention of conflicts of interest could be developed; a recommendation has been made to this end in paragraph 100.

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

### Overview of the prosecution service

121. The prosecution service is part of the executive branch. The prosecution service in Iceland has responsibility for the investigation of crime, as well as for prosecuting criminal cases. It is currently divided into two administrative levels and discussions are on-going as to the feasibility of establishing a three-tier system which would include district prosecutors' offices (for concrete details, see paragraph 139).

122. The Director of Public Prosecutions (DPP) is the highest holder of the prosecution authority. The DPP is assisted by a Deputy DPP and other prosecutors (five superior prosecutors and two inferior prosecutors), thus all in all, the Office of the DPP is staffed with nine prosecutors. The role of the DPP is to ensure that legally prescribed sanctions are applied. S/he provides general instructions on the exercise of the prosecution authority and supervises the exercise of the prosecution authority. The DPP may give instructions to other prosecutors concerning specific cases which they have a duty to obey. In this connection, the DPP, and the superior prosecutors at the office, acting on behalf of the DPP and in his/her name, can give directions or make decisions in cases, take over prosecution, and decide on whether to continue or discontinue an investigation.

123. The DPP prosecutes most serious offences under the General Penal Code (e.g. homicide, sex crimes, narcotics). S/he may decide to commence an investigation, give orders as to its conduct and supervise it. The DPP decides whether to appeal against a judgement, and is in charge of any appeals to the Supreme Court.

124. The DPP is answerable to the Minister of the Interior although his/her prosecution powers are independent from the Minister and the Ministry. In particular, the Minister of the Interior supervises the exercise of the prosecution authority and may demand reports on particular cases from the DPP. The GET was, however, told that the possibility of requesting a report is reminiscent of the old system which no longer occurs in practice. Only in specific cases, i.e. acts of treason and offences against the President of Iceland (Articles 97 and 105, General Penal Code), is the Minister of the Interior empowered to give the DPP instructions to conduct investigations; in such cases, the Minister of the Interior approves prosecution and appeal (Article 19, Act on Criminal Procedure). The GET looked carefully into this state of affairs during the interviews held on-site and it was explained that, even in the case of the exception provided by law for acts of treason and offences against the President and although it is formally the Minister who would approve prosecution, s/he would first refer the case to the DPP and follow the latter's advice on whether to prosecute or not. The authorities further emphasised that although the DPP is formally and administratively linked to the Minister of the Interior, the DPP is not subject to any instruction from the Minister of the Interior or the Ministry regarding the handling of individual cases. Moreover, the Act on Criminal Procedure (Article 18) states that the prosecutors do not receive instructions from other authorities regarding the application of public prosecutions, unless specifically provided for in law. The authorities further indicated that, in the framework of the on-going review of the Icelandic Constitution, the current draft enshrines for the very first time the principle of independence of prosecution. The GET further notes that no concerns were raised on-site by any of the other interlocutors interviewed that would suggest that political or other improper influence in the decision-making of specific cases constitute a problem in Iceland.

125. Following the collapse of the Icelandic banking sector, a new prosecutorial office was established – the Office of the Special Prosecutor. It has national competence and investigates suspicions of criminal actions connected with the operations of financial undertakings and by those who have held shares in those undertakings or have exercised voting rights in them and similarly, suspicions of criminal actions on the part of the managers, advisors and employees of financial undertakings and other persons who have



been involved in the activities of the undertakings (Article 1(1), Act on the Office of the Special Prosecutor).

126. At the lower level, there are 15 Chiefs of Police geographically spread in districts all over Iceland. There are a total of 83 prosecutors in Iceland (44 male and 39 female prosecutors, respectively). There are 19 superior prosecutors: the Chiefs of Police (15) and the Office of the Special Prosecutor (4) who are responsible for decisions on prosecutions at district level and supervise a total of 55 inferior prosecutors. Most of the 15 police districts have up to four prosecutors, with the exception of one which has the Chief of Police to handle all cases and the bigger district of Reykjavik (covering 63% of the Icelandic population) which is staffed with the Chief of Police and 19 inferior prosecutors. The Office of the Special Prosecutor has four superior prosecutors and 19 inferior prosecutors. During the on-site visit, the GET was told that a proposal had been made to reduce the number of police districts to eight (instead of the current 15); the prosecution service deemed this to be a valuable measure to better manage all prosecutorial units within the national territory.

127. The GET found the prosecution service enjoys good levels of public satisfaction, particularly as cases related to the banking crisis start to be solved. In this connection, the Office of the Special Prosecutor has proved to work efficiently since its establishment. While, as highlighted above, formal independence was not considered to be an issue, the GET noted some internal discontent in the profession concerning their involvement in key policy and decision making by government with respect to and affecting the structure, working capacity and means of the prosecution service. In particular, complaints were raised on-site that prosecution representatives are not being included in on-going discussions concerning future reform of the structure of prosecutorial power, nor in decisions concerning their own budget. In relation to this, the GET heard recurrent concerns on-site as to the lack of manpower and resources in the prosecution service, as well as the heavy workload, which was an issue even before the banking crisis and is a continuing problem. These concerns certainly present a challenge to further strengthening the operational independence of the prosecutorial system. In this particular context, the GET makes reference to Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe concerning the role of public prosecution in the criminal justice system which calls for effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions, including budgetary means at their disposal. The Recommendation stresses that such conditions should be established in close cooperation with the representatives of public prosecutors.

#### Recruitment, career and conditions of service

128. The DPP and his/her Deputy are appointed by the Minister of the Interior for an indefinite period of time. The DPP enjoys the same terms of service and salary – and the same legal benefits – as Supreme Court judges. As well, the appointment requirements for the DPP and his/her Deputy are the same as those established for Supreme Court Judges. As for the latest appointment process, an independent ad-hoc committee was established in 2011 (composed of representatives of the judiciary and academics) to evaluate the different applications received and the qualifications of the relevant candidates in the same way as has been provided for in Act No. 15/1998 on the Judiciary. The Minister of the Interior can temporarily relieve the DPP from office but must take legal action before the District Court of Reykjavik within two months to have him/her dismissed. The procedure and grounds for dismissal are the same as those for a Supreme Court judge.

129. The tenure of the Special Prosecutor and the prosecutors working in the Office of the Special Prosecutor is limited to the existence of the Office itself. In this connection, the Office of the Special Prosecutor was created to investigate cases resulting from the

banking crisis in Iceland. Work is on-going concerning revision of the system for investigation and prosecution of economic crime in Iceland; a report including recommendations on the action to be taken in this field is to be issued in the first quarter of 2013. A decision has to be taken as to the existence of the Office of the Special Prosecutor; such a decision is to be made by the Minister of the Interior, after obtaining the opinion of the DPP and on the basis of a bill submitted to Parliament to this effect. If the Office ceases to exist, its personnel will continue to earn wages for three months following its closure. The functions of the Office will then be transferred to the police or other public prosecutors as provided by law.

130. All other prosecutors are given a five-year renewable mandate. The authorities explain that, in Iceland, all civil servants (other than judges, the DPP and his/her Deputy) are subject to the same rules on tenure under the Government Employees Act No. 70/1996 and their term of tenure is limited to five years which can be renewed. An exception to this principle applies for those persons appointed for life prior to 1996. If an individual has been appointed to a five-year term post, s/he must be informed no later than six months before his/her term of appointment expires whether the post is going to be advertised as vacant. Otherwise and unless the post holder wishes to resign, the contract is automatically extended by five years. The authorities indicated that, in practice, contracts are systematically extended. If a civil servant does wish to resign, s/he must do so in writing giving three months' notice, unless there are unforeseen circumstances which have rendered him/her incapable for the job or the employing authority agrees to a shorter notice period. The GET refers to the Bordeaux Declaration on judges and prosecutors in a democratic society<sup>24</sup> which lays out some minimal requirements for an independent status of public prosecutors, including security of tenure. In the same vein, the Venice Commission has reiterated that prosecutors are appointed until retirement and states that appointments for limited periods with the possibility of reappointment bear the risk that the prosecutor will make his or her decisions not on the basis of the law but with the idea to secure reappointment<sup>25</sup>. **GRECO recommends that measures be taken to ensure security of tenure for all prosecutors.**

131. Open positions in the prosecution service are generally advertised in the Icelandic Official Journal and/or newspapers. It is however possible, pursuant to the Government Employees Act No. 70/1996 (Article 36), that the vacancy is not advertised and that another civil servant is moved to the vacant post. This, however, has not occurred in practice in recent years. Criteria for the appointment as a prosecutor relate to the merits of the applicant, including education and experience, integrity, competence and job efficiency. The DPP interviews all applicants to office and prepares a list of candidates, which is then validated by the Minister of the Interior who is responsible for the formal appointment of prosecutors.

132. There is no regular official assessment of the performance of prosecutors or a promotion system in place. If a prosecutor wishes to become DPP or Deputy DPP, s/he can apply when a vacant position is advertised.

133. The Senior Civil Servants Salary Board decides on the remuneration of prosecutors. The salary is on the basis of full time work and no extra payments (other than wages for on-call shifts) are made unless decided by the Senior Civil Servants Salary Board. Extra-hours are paid at approximately 45 EUR/hour. As of 1 March 2012, the annual salary of prosecutors is as follows: 15,167,232 ISK (102,411 EUR) for the DPP (the salary of the DPP is equal to that received by judges of the Supreme Court, pursuant to the Act on Criminal Procedure); 11,268,756 ISK (75,260 EUR) for the Deputy DPP;

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<sup>24</sup> Opinion No. 12 (2009) of the Consultative Council of European Judges (CCJE). Opinion No. 4 (2009) of the Consultative Council of European Prosecutors (CCPE) on "Judges and prosecutors in a democratic society".

<sup>25</sup> Report on European Standards as regards the Independence of the Judicial System. Part II – The Prosecution Service. CDL-AD(2010)040.

and 9,407,304 ISK (62,830 EUR) for other prosecutors working in the DPP. The average salary for other prosecutors amounts to approximately 7,200,000 ISK (42,132 EUR). There are no other additional benefits (e.g. no tax exemption, no housing benefits) provided by the State to prosecutors.

#### Case management and procedure

134. Superior prosecutors validate or invalidate every decision of responsible inferior prosecutors. Superior prosecutors distribute cases to the inferior prosecutors and can redistribute or take over cases themselves. Inferior prosecutors can always notify the DPP regarding decisions made by their superiors if they think that the superior has acted against the law. To date, this has never happened.

135. Each superior prosecutor at the Office of the DPP supervises prosecutions and investigations of one or more of the 15 Chiefs of Police and the Office of the Special Prosecutors. They also prosecute cases on behalf of the DPP in district courts (serious offences, e.g. homicide, sex crimes, narcotics, etc.) that have been investigated by the same Chief of Police they supervise. When assigning cases in the Supreme Court, the DPP most often assigns them to the same prosecutor who dealt with the case in the district court. When the inferior prosecutors at the Office of the DPP prosecute cases in district courts, they are supervised by a superior prosecutor within the DPP. If the judgment in such a case is appealed, the DPP assigns the case to the superior prosecutor supervising it, or some other available superior prosecutor.

136. The cases that are handled at the lower levels of the prosecution service are assigned to prosecutors primarily on the basis of their workload. There are little opportunities for specialisation at district court level. The Metropolitan Police and the Office of the Special Prosecutors have the means to specialise their prosecutors and can take into account the experience and specialisation of these prosecutors when assigning cases.

137. Prosecution is mandatory in Iceland. There are limited exceptions to this principle, as provided by law (e.g. suspension of indictment, acceptance of a settlement by the suspect, offences of a very minor nature, etc.). Court procedure must be conducted efficiently; prosecutors must deal with cases without undue delay. A superior prosecutor may decide to withdraw the case from the inferior prosecutor it was originally assigned to, if the latter does not conclude it within a reasonable period of time.

138. A decision taken by a prosecutor not to prosecute during a preliminary investigation can be appealed by the victim to the DPP. However, the GET notes that the prosecutors of the DPP Office can also prosecute some serious offences on behalf of the DPP in district courts. Decisions taken by the DPP prosecutor in those instances cannot be appealed. The interlocutors met on-site identified this as a weakness in a system of mandatory prosecution and the GET can only share these misgivings. **GRECO recommends introducing a possibility to appeal the decisions taken by a prosecutor during the preliminary investigative phase.**

139. The GET was informed of an important change in the structure of prosecutorial power which will consist of three administrative levels instead of two. The decision to make the change was reached in 2008 but has been postponed on three separate occasions due to financial constraints. A law amending the Act on Criminal Procedure was adopted in December 2011 which delayed the setting up of district prosecutors' offices until 2014. This intervening period being provided in order to re-evaluate whether this new administrative level of prosecution should be established at all. The Ministry of the Interior has established a working group looking into possible options for reforming the prosecution services; it is expected to come up with some conclusions during the first quarter of 2013.

140. As detailed above, both the police and the public prosecutors in Iceland are involved in the prosecution of offences before the courts. In particular, chiefs of police are in charge of the investigation and of prosecution of less serious offences within their area of office. The chiefs of police also indict in cases as provided for in Article 23 of the Act on Criminal Procedure, i.e. all minor offences, profiteering offences, physical assault and minor narcotics violations. The Office of the Reykjavík Metropolitan Chief of Police has a special legal department for indictments; this is the only district where there is a clear separation of police and prosecutorial power. Cases that do not fall under the prosecutorial power of the chief of police are investigated and then brought to the Director of Public Prosecutions for indictment at the district court level.

141. The lack of a stricter separation of roles between public prosecutors and police at district level was viewed by some working in the prosecution services as a problem. In the GET's view, there are good reasons to exclude the police from any role in deciding upon or pursuing prosecutions: most obviously, that police officers, having the most immediate role in investigating offences and identifying and questioning suspects, may be less objective in determining whether to charge an individual than a more distant public prosecutor. This is fundamental to ensuring the fairness, efficiency and accountability of the prosecution process. Some interlocutors met on-site also questioned the effective independence of police officers who are closely linked to the Ministry of the Interior, while the prosecution services offer more guarantees of independence and impartiality in this regard. The GET recalls that, in general, prosecutors are to scrutinise the lawfulness of police investigations overall or at the very least when deciding whether a prosecution should commence or continue. The role of prosecutors is key in ensuring the regularity of the proceedings; this implies formal control of the prosecutor over police investigative acts. When both responsibilities converge in a chief of police, this can naturally create a conflict of interest for the latter.

142. The GET considers the fact that police districts are small already gives rise to conflicts of interests. To that is added the fact that the chief of police is responsible for the criminal investigation as well as for decisions on indictments. Moreover, the GET was told that some chiefs of police at district level were also charged with "sýslumaður" powers (i.e. the power to act as county governors). This confluence of tasks in the hands of the same person may give rise to actual, but also perceived conflicts of interest in respect of a given case. In such a context, the GET can certainly see the reasons for restructuring prosecutorial powers and moving to a three-tiered system to include district prosecutor offices. **GRECO recommends that a system be introduced to enable greater independence and impartiality of the prosecutorial decisions taken at district level.**

#### Ethical principles and rules of conduct

143. No standards of conduct have been specifically issued for the prosecution services in Iceland. That said, the DPP has translated and distributed to all prosecutors in Iceland the European Guidelines of Ethics and Conduct for Public Prosecutors (the so-called Budapest Guidelines)<sup>26</sup>. Since 2006, the DPP has presented the aforementioned guidelines in its Annual Report as the code of ethics for the prosecution service in Iceland to which all prosecutors must abide.

144. Additionally, public prosecutors are considered public officials and therefore bound by the provisions of the Government Employees Act No. 70/1996 (Chapter IV, "Duties") which deals with the performance of official duties, e.g. fairness and impartiality, diligence and care, confidentiality, obligation to report secondary work, etc.

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<sup>26</sup> European Guidelines of Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"), adopted by the Conference of Prosecutors General of Europe of 31 May 2005. CPGE (2005)05.

## Conflicts of interest

145. There is no definition of conflict of interest provided by law. Prosecutors are required to recuse themselves when there is a conflict of interest (Article 26, Act on Criminal Procedure); the specific grounds for disqualification are provided by law (Article 6, Act on Criminal Procedure). If a prosecutor handles a case in spite of knowing that s/he has a potential conflict of interest and does not recuse him/herself, s/he can be held civilly or criminally liable.

## Prohibition or restriction of certain activities

### *Incompatibilities, accessory activities and financial interests*

146. Public prosecutors are bound by the provisions of the Government Employees Act No. 70/1996 (Article 20) which requires them to inform their superior when they intend to take up a paid secondary activity, to join the management of an enterprise or to establish an enterprise. Authorisation, or refusal on incompatibility grounds, takes place in the two weeks following the official's request.

147. There are no other limitations in place concerning the holding of financial interests, sources of income or liabilities by prosecutors.

### *Recusal and routine withdrawal*

148. The general rule is that a prosecutor assesses his/her qualification to prosecute a case. The reasons for disqualification are enumerated in law (Article 6, Act on Criminal Procedure), including when the prosecutor is a party to the case, has provided legal advice or guidance to a party, has testified or been requested to testify, has acted as an appraiser or inspector with regard to the subject matter of the case, is or has been a spouse or partner of a party or has a family relationship with him/her, is connected to a party's agent or attorney, is connected to a witness, or if there are other conditions or circumstances which are likely to cast reasonable doubt about the prosecutor's impartiality. A prosecutor must also recuse him/herself in a criminal case following the issue of an indictment in which s/he has upheld a request for the accused to be remanded in custody.

149. When a prosecutor asks to withdraw from a case on the grounds of a potential conflict of interest, it is the responsibility of the superior prosecutor to reassign the case to another prosecutor. If it is the DPP who recuses him/herself, then the Minister of the Interior is to decide on his/her replacement (Article 26, Act on Criminal Procedure).

150. It is possible for an individual to call for a prosecutor's disqualification. In particular, the accused or his/her defendant lawyer can, in the pre-trial investigation phase, refer their suspicion of a conflict of interest to the DPP or the responsible superior at district level (Article 102 (2), Act on Criminal Procedure).

## *Gifts*

151. There are no detailed rules on the acceptance of gifts specifically by prosecutors. The relevant provisions of the General Penal Code concerning bribery (Article 128) and related offences apply. These provisions make it a criminal offence for a public official to demand or accept, or on any other person to give, promise or offer a public official, a gift or any other undue advantage in connection with the public official acting or refraining from acting in his or her official capacity. The punishment for such an offence is up to 6 years for the public official and 4 years for an individual. As explained for judges, the practice of gift giving to a public official, including prosecutors, is not tolerated in Iceland.

152. The Ministry of Finance issued, on 15 February 2006, a Circular on the general considerations and values that public officials are expected to observe in the execution of their work. This Circular is based on written and unwritten legal principles regarding the work of public officials and is intended to clarify the obligations of public officials in their work, concerning situations of conflicting interests such as gift giving. With regard to gifts, the Circular reiterates that public officials are to use their positions and power solely in the service of the public interest; they must not accept or demand gifts or other advantages to which they are not entitled in connection with the performance of their work.

#### *Post-employment restrictions*

153. There are no regulations that would prohibit prosecutors from being employed in certain posts, or engaging in other paid or unpaid activities after exercising prosecutorial/investigative functions. Prosecutors are free to take up new employment after serving as a prosecutor. Two former DPPs left office to take up employment at law firms and this has reportedly given rise to some concern. The authorities are themselves of the view that this is a matter that merits further attention. The GET encourages the authorities to further reflect on the necessity of introducing adequate rules/guidelines for situations where prosecutors move to the private sector, in order to avoid conflicts of interest.

#### *Contacts with third parties outside court proceedings, confidential information*

154. Prosecutors have a duty to maintain the confidentiality of information received in the course of their work. This covers information regarding private individuals, relating to the working procedures of the public prosecutor and the police, and planned actions about which must be maintained in the interest of the investigation (Article 26, Act on Criminal Procedure). The obligation of confidentiality remains post-employment. Any violation of the confidentiality obligation is punishable under the General Penal Code (Article 136).

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

155. Apart from disclosure requirements set for secondary employment (see paragraph 146) and the applicable disqualification provisions (see paragraph 148), there is no legal requirement for prosecutors to regularly declare their assets, income and liabilities. Prosecutors fall under the general regime of civil servants which does not require them to file asset declarations. Given that no concerns have come to light as to instances of corrupt behaviour by prosecutors and that the prosecution service is generally perceived as a much trusted institution, the GET does not consider it necessary to address a recommendation in this connection.

#### Supervision and enforcement

156. Prosecutors do not enjoy any immunity. The General Penal Code (including the provisions concerning offences involving abuse of office, bribery, breach of secrecy, etc.) is fully applicable in respect of the unlawful conduct of prosecutors. There has been no criminal proceeding instituted for a corruption-related offence involving a prosecutor.

157. Prosecutors (other than the DPP who enjoys the same status as a judge of the Supreme Court; see paragraph 116 on procedure and reasons for removal) fall under the relevant disciplinary-related provisions contained in the Government Employees Act No. 70/1996. Disciplinary measures include reprimand and termination of work. Before a reprimand or other decision is decided by a public agency, the public official concerned must be consulted. Any such decision must be accompanied by an explanation. A disciplinary committee is established to investigate disciplinary cases; it consists of three

persons with specialised knowledge of public administration, who are appointed by the Minister of Finance for a four-year term (Article 27, Government Employees Act No. 70/1996). An appeal against a disciplinary measure is possible before the courts. Prosecutors (in so far as they are public officials) can turn to the Parliamentary Ombudsman for an opinion, but the opinions of the Ombudsman are non-binding. There have been no disciplinary proceedings initiated against a prosecutor for failure to comply with ethical/conflicts of interest rules.

158. The GET is satisfied with the rules in place to punish the misconduct of prosecutors. Prosecutors do not enjoy immunity from prosecution for criminal conduct. Disciplinary procedures are statutorily regulated and appear to provide a sound basis for deciding on misconduct, as well as providing mechanisms for the prosecutors concerned to seek independent and impartial review.

#### Advice, training and awareness

159. There is no specific training provided to prosecutors on ethics, prevention of corruption and conflicts of interest. Likewise, there is no special mechanism in place to provide counselling services to prosecutors on these matters; prosecutors normally turn to other colleagues or their superiors for advice. The authorities nevertheless recognised that an important challenge in the prosecution service was that of providing continuing education of its officials. The authorities explained that there are now many young professionals who could additionally benefit from a better transfer of know-how within the service. The lack of resources has reportedly been an obstacle to undertaking more activities in this area. The GET found, in the course of the interviews performed on-site, that prosecutors were quite clear as to the rules, principles and responsibilities tied to their function, including with respect to the prevention of corruption, addressing conflicts of interest and resorting to recusal whenever necessary. Furthermore, as noted above, there has been no single case entailing criminal or disciplinary liability for corrupt behaviour or conflicts of interest by prosecutors. That said, the GET considers that some more attention could be devoted to the issue of conflicts of interest. The GET has already explained throughout this report its reasons to believe that this issue, in the particular context of Iceland, merits further discussion and the development of more targeted preventive actions. There can be more specialised and dedicated counselling within the prosecution service, in order to provide prosecutors at all levels, whether new or experienced, with confidential advice on such questions, to raise their awareness and to thus prevent risks of conflicts of interest. Likewise, while the GET refrains from issuing a formal recommendation on the development of a specific code of conduct for prosecutors, it notes, however, that codes of conduct are living documents which change over time and need continued attention. As described in paragraph 143, the prosecution service has taken the Budapest Guidelines and adapted them to its own needs and as experience in this area evolves, including through training and counselling activities, the authorities may find it useful to further develop its own set of ethical standards and adjust them to the Icelandic reality, as well as to make these public. In this connection, inspiration is likely to arise from practical examples presented and analysed during regular in-service training sessions. **GRECO recommends that prosecutors are provided with appropriate training (dedicated courses and practical examples) and counselling services on ethics, integrity and the prevention of conflicts of interest; and (ii) as a result of, and in connection with, the experience gained in these areas that consideration is paid to further tailoring/updating the applicable deontological standards in the profession.**

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

160. In view of the findings of the present report, GRECO addresses the following recommendations to Iceland:

### *Regarding members of parliament*

- i. (i) developing a code of conduct for members of the Althingi (MPs) and (ii) ensuring there is a mechanism both to promote the code and raise awareness among MPs on the standards expected of them, but also to enforce such standards where necessary (paragraph 44);**
- ii. that the Althingi introduce a requirement of ad hoc disclosure when, in the course of parliamentary proceedings, a conflict between the private interests of individual MPs may emerge in relation to the matter under consideration (paragraph 46);**
- iii. that the existing registration system be further developed, in particular, (i) by including quantitative data of the financial assets/contributions received by MPs; (ii) by providing details of financial liabilities (i.e. debts) of MPs excluding reasonable house loans linked to ordinary market rates and minor loans not exceeding a reasonable limit; and (iii) by considering widening the scope of asset 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 50);**
- iv. that the Althingi strengthen the credibility of the registration system pertaining to MPs' declarations of financial interests by ensuring greater adherence to the rules through a system of monitoring, providing MPs with access to advice and guidance, and implementing a mechanism to sanction MPs who fail to meet the requirements on them (paragraph 53);**

### *Regarding judges*

- v. reviewing the present situation concerning election, nomination and appointment procedures of (i) members of the Labour Court (and more particularly the persons nominated by the Supreme Court) and (ii) experts to the bench, in order to ensure that those procedures are vested with appropriate guarantees of independence, impartiality and transparency (paragraph 85);**
- vi. that (i) a set of standards of professional conduct, accompanied by explanatory comments and/or practical examples, be adopted for the judiciary and be made public; (ii) judges are provided with appropriate training and counselling services on ethics, integrity and the prevention of conflicts of interest (paragraph 100);**

### *Regarding prosecutors*

- vii. that measures be taken to ensure security of tenure for all prosecutors (paragraph 130);**
- viii. introducing a possibility to appeal the decisions taken by a prosecutor during the preliminary investigative phase (paragraph 138);**



- ix. **that a system be introduced to enable greater independence and impartiality of the prosecutorial decisions taken at district level** (paragraph 142);
- x. **that prosecutors are provided with appropriate training (dedicated courses and practical examples) and counselling services on ethics, integrity and the prevention of conflicts of interest; and (ii) as a result of, and in connection with, the experience gained in these areas that consideration is paid to further tailoring/updating the applicable deontological standards in the profession** (paragraph 159).

161. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Iceland to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2014. These measures will be assessed by GRECO through its specific compliance procedure.

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

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### About GRECO

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

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

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

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