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Judicial corruption: urgent need to implement the Assembly's proposals

Addendum to the report¹

Committee on Legal Affairs and Human Rights

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1. Introduction

1. This document is an addendum to the report on “Judicial corruption: urgent need to implement the Assembly’s proposals” (rapporteur: Mr Kimmo Sasi, Finland, EPP/CD), which was approved by the Committee on Legal Affairs and Human Rights during its meeting in Yerevan (Armenia) on 19 May 2015, when the committee also adopted a draft resolution and a draft recommendation on this subject. The present addendum is aimed at updating the information contained in the said report by making reference to the recent work of the Council of Europe and the European Commission since May 2015, and, to the extent possible, to recent cases of judicial corruption in some member States of the Council of Europe. The developments mentioned below are not exhaustive but illustrative of judicial corruption in some countries. They highlight the urgency and relevance of continued work on judicial corruption in order to tackle corruption in other fields. Some of the most recurrent issues seem to be bribery among judicial officers and the politicisation of judicial systems, with undue political influence over judicial appointments and decisions.

2. After the adoption by the committee of the draft resolution and draft recommendation contained in the report of Mr Sasi, the Group of States against Corruption (GRECO) presented its annual report and adopted it on 16 June 2015. GRECO has stressed the need to ensure the independence of the prosecution service from the executive branch and the need for a uniform code of conduct for prosecutors.² It also published additional reports (on Greece, Montenegro and Serbia) based on its fourth evaluation round “Corruption prevention in respect of members of parliament, judges and prosecutors”.

3. The European Court of Human Rights has not rendered any judgments related to cases of judicial corruption since Mr Sasi’s report was adopted by the committee.

4. The Conference of the States Parties to the United Nations Convention against Corruption, during its sixth session in November 2015, adopted a resolution which called on States Parties to:

“strengthen integrity across the entire criminal justice system, as called for in paragraph 5 (d) of the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, while bearing in mind the independence of the judiciary.”³

5. The United Office on Drugs and Crime (UNODC) had already developed, in March 2015, the “Implementation guide and evaluation framework for Article 11” to provide some guidance on enhancing integrity in the judiciary.⁴

1. Addendum approved by the committee on 26 January 2016.

2. GRECO, [15th General activity report](#) (2014).

3. United Nations, [Follow-up to the Marrakech declaration on the prevention of corruption](#), 4 November 2015.



2. Overview by country

2.1. Albania

6. The Assembly expressed concerns about the widespread corruption in the judiciary in [Resolution 2078 \(2015\)](#) on the progress of the Assembly's monitoring procedure (October 2014-August 2015) and noted "the persistent and widespread corruption at many levels of Albanian society, the continued politicisation of the civil service and the lack of independence and impartiality of the judiciary". Consequently, it called on the Albanian authorities to "implement a comprehensive reform of the justice system, including of the prosecution service".

7. As far as the European Union is concerned, the European Commission issued a report, on 10 November 2015, which presented its assessment of what Albania had achieved over the last year in view of its accession to the European Union, and set out some guidelines for reforms. Corruption in the judiciary is highlighted in the report as "an issue of serious concern" and judicial reform is one of the five conditions that Albania has to fulfil in order to gain candidate status. The European Commission suggests that:

*"Substantial efforts are needed to increase transparency and accountability, and to implement the relevant recommendations made by the Group of States against Corruption (GRECO) in its fourth-round evaluation report on corruption prevention in respect of judges and prosecutors."*⁵

8. The report also noted the insufficient accountability of judges and prosecutors.⁶ Moreover, it stressed that:

*"In 2015, there has been one first instance conviction of a corruption case involving a mayor and one conviction at appeal court level of a judge on corruption related grounds. The General Prosecutor's Office dismissed a prosecutor for a corruption-related offence."*⁷

9. In October 2015, a judge and a lawyer at the District Court of Lezha were sentenced to four years in prison on grounds of "passive corruption of judges and judicial officials" and of "active corruption of judges and judicial officials" committed in complicity in relation to a case which was being processed at the District Court of Lezha. They were proven guilty of asking an accused person to pay 200 000 Albanian LEK in order to avoid a prison sentence.

2.2. Azerbaijan

10. In [Resolution 2062 \(2015\)](#) on the functioning of democratic institutions in Azerbaijan, adopted on 23 June 2015, the Assembly recalled that "the independence of the judiciary is one of the basic preconditions of the separation of powers and of the system of checks and balances" and expressed its concern that "the executive branch is alleged to continue to exert undue influence" on the judiciary. It then called on the Azerbaijani authorities "to ensure independence of the judiciary and judges, and prevent any pressure being exerted on them" and put an end to "politically motivated prosecutions".

11. While the Assembly acknowledged "the recent legal amendments reducing the length of the probationary period for judges from five to three years", it also recalled that "the Venice Commission has constantly opposed probationary periods for judges and only tolerates them under strict conditions". It also recommended that the role of the Judicial Legal Council in the appointment of all categories of judges and court chairpersons be further increased. The Assembly was concerned about dubiously motivated criminal prosecutions and disproportionate sentences and about the use of pretrial detention as a means of punishing individuals for criticising the government, as stated by the European Court of Human Rights in its judgment in the case of *Ilgar Mammadov v. Azerbaijan*, in which it found a violation of Article 18 of the European Convention on Human Rights (ETS No. 5, "the Convention").

4. UNODC, [Implementation guide and evaluation framework for article 11](#), March 2015.

5. European Commission, [Commission staff working document, EU Enlargement strategy, Albania 2015 report](#), p. 17.

6. *Ibid.*, p. 12.

7. *Ibid.*, p. 54.

2.3. Bosnia and Herzegovina

12. The European Commission issued a report, on 10 November 2015, which presented its assessment of what Bosnia and Herzegovina achieved over the last year in view of its accession to the European Union. It recommended improving the legislative framework for protection of whistle-blowers.⁸ It also urged Bosnia and Herzegovina to improve the independence and efficiency of courts. It noted indeed that:

“While external and internal independence and autonomy have a legal basis, there is no effective oversight for their implementation. There are no formal procedures carrying penalties against undue influence or threats to judicial independence.”⁹

2.4. Cyprus

13. In October 2015, the Deputy Attorney General was removed from office for inappropriate behaviour and conflict of interest by way of a Presidential Act, which implemented a ruling of the Supreme Judicial Council.¹⁰ The trial against him for corruption and bribery is still ongoing. This said, the very fact that such a case has come to the fore and is not covered up, is a sign that Cyprus takes the fight against judicial corruption seriously.

2.5. Georgia

14. In its [Resolution 2078 \(2015\)](#), the Assembly expressed its concern with regard to “the systemic deficiencies in court proceedings that negatively affect the respect for a fair trial in certain cases, including of opposition political figures” in Georgia, and called on “the Georgian authorities to continue the reform of the justice system, and especially of the prosecution service, with a view to establishing a genuinely independent judiciary”. In [Resolution 2077 \(2015\)](#) on abuse of pretrial detention in States Parties to the European Convention on Human Rights, the Assembly also noted the abusive grounds for pretrial detention in Georgia such as neutralisation of political competitors.

15. The Venice Commission, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), and the Consultative Council of European Prosecutors (CCPE) issued a joint opinion on the draft amendments to the law on the Prosecutor’s Office of Georgia. The Venice Commission recommended *inter alia* that the draft law “must include the necessary guarantees for the independence of the Prosecutorial Council” and that “the nominations to the position of the Chief Prosecutor should be based on clear qualification/experience criteria set out in the Draft Law”.¹¹ The Venice Commission also added that “the law should include statutory provisions concerning the nomination, promotion and dismissal of prosecutors, as well as disciplinary proceedings brought against them”.¹²

2.6. Greece

16. GRECO published, in October 2015, its evaluation report on Greece based on its fourth evaluation round. It urged the Greek authorities to review the selection process and the term of tenure of most senior positions of judges and prosecutors to improve their independence from the executive. It recommended the introduction of “a set of clear standards of professional conduct and integrity for judges and prosecutors” and the development of training on integrity-related issues for judges and prosecutors.¹³ It was also concerned about the backlog of cases which creates additional risks of undue interference for instance to accelerate procedures.¹⁴

8. European Commission, [Commission staff working document. EU Enlargement strategy, Bosnia and Herzegovina 2015 report](#), p. 16.

9. *Ibid.*, p. 13.

10. Signalive of 2 October 2015, “Anastasiades officially fires Rikkos Erotokritou”.

11. Venice Commission, [Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors \(CCPE\) and OSCE Office for Democratic Institutions and Human Rights \(OSCE/ODIHR\), on the draft Amendments to the Law on the Prosecutor’s Office of Georgia, endorsed by the Venice Commission at its 104th Plenary Session \(Venice, 23-24 October 2015\)](#), p. 4.

12. *Ibid.*, p. 19.

13. GRECO, [Fourth evaluation round – Evaluation report – GREECE](#), adopted on 19 June 2015, p. 53.

14. *Ibid.*, p. 40.

2.7. Hungary

17. GRECO published, in July 2015, its evaluation report on Hungary based on its fourth evaluation round. Concerning the prosecution service, GRECO recommended that more should be done to ensure checks and balances to prevent the potential for malpractice and corruption. The issue of accountability of ordinary prosecutors was also raised with the suggestion that disciplinary proceedings in respect of those ordinary prosecutors would benefit from being made more transparent and connected to broader accountability. GRECO welcomed a recently adopted Code of Ethics for judges but suggested revising it to include “guidance in respect of conflicts of interests and other integrity related matters, such as gifts, recusal, third party contacts, etc.” It was also concerned by the lack of dedicated training on ethics for judges.¹⁵

2.8. “The former Yugoslav Republic of Macedonia”

18. On 10 November 2015, the European Commission issued a report which contains its assessment of what “the former Yugoslav Republic of Macedonia” achieved over the last year in view of its accession to the European Union. The European Commission noted that:

“Widespread allegations of politicisation and of political interference by the executive and the ruling political parties in the work of the law enforcement agencies and the judiciary need to be addressed. The content of the intercepted communications has implicated members of the government and senior officials in abuses of power and corruption in public procurement, urban planning, political party financing and public employment, as well as in interfering in the independence of the judiciary, the media and elections. The reluctance of the relevant law enforcement bodies, including the Public Prosecutor’s Office, to follow up on these revelations in a swift and decisive manner is of concern.”¹⁶

19. The Parliament of “the former Yugoslav Republic of Macedonia” is planning to adopt a whistle-blower protection law following the case of the wire-taps which revealed that the political system might be seriously undermined by political interference and corruption. Those revelations had provoked massive demonstrations in the country.¹⁷ After EU-brokered talks between the opposition and the government, a special prosecutor was appointed to probe the illegal surveillance claims. To guarantee her independence, she will be subject to the regular prosecution hierarchy.¹⁸

2.9. Italy

20. The United Nations Committee on Economic, Social and Cultural rights urged Italy “to increase its efforts to combat corruption, including in the judiciary”. It called on Italy, “among other measures, to guarantee the transparency and independence of its anti-corruption institutions, investigate all allegations of corruption and ensure effective implementation of the anti-corruption law”.¹⁹ To illustrate this point, we can mention the case of Silvana Saguto, a Palermo judge who is currently under investigation for alleged corruption and abuse of office. She is said to have “assigned posts and stipends to judicial administrators ‘in exchange for jobs and consultancy for close family members’”.²⁰

21. The Chamber of Deputies in Italy is currently debating a law for the protection of whistle-blowers.²¹

2.10. Kosovo^{*22}

22. The European Commission issued a report, on 10 November 2015, which presented its assessment of what Kosovo achieved over the last year in view of its accession to the European Union. The Commission noted that “further efforts are required to ensure independence in law and practice, to prevent and fight corruption within the judiciary, to recruit and train more qualified staff”.²³

15. GRECO, [Fourth evaluation round – Evaluation report – Hungary](#), adopted on 27 March 2015, pp. 51-52.

16. European Commission, [Commission staff working document, EU enlargement strategy, The Former Yugoslav Republic of Macedonia 2015 report](#), p. 15.

17. Balkan Insight of 16 October 2015, [Macedonia plans whistleblower protection plan](#).

18. Balkan Insight of 15 September 2015, [Macedonia Parties Clinch Deal on Special Prosecutor and Organized Crime and Reporting Project, Macedonia: Mystery Prosecutor, Big Job](#).

19. UN Committee on Economic and Social Rights, [Concluding observations on the fifth periodic report of Italy](#), 28 October 2015, paragraph 11.

20. ANSA of 27 October 2015, [Orlando says Saguto “distorted her post”](#) and ANSA of 12 November 2015, [ANM to discipline suspended Judge Saguto](#).

21. Transparency Italy, press release of 23 October 2015, [“It’s time to say stop”](#).

2.11. Malta

23. In an evaluation report based on its fourth evaluation round and published in June 2015, GRECO noted that in Malta:

“there have been some scandals in recent years involving judges which have somewhat tarnished the traditionally acknowledged sound reputation of the Maltese judicial system and have triggered a debate on integrity and accountability matters within the judiciary.”²⁴

GRECO criticised the lack of a formal appointment process, with no invitation to apply and no interviews held, which leads to a perception of corruption or undue political influence.

2.12. Republic of Moldova

24. The Assembly called on the Moldovan Parliament to adopt the required constitutional changes with regard to “the appointment of the Prosecutor General” and “to adopt the law on the prosecution service”.²⁵ The General Prosecutor is currently appointed by the parliament. In order to limit the politicisation of the appointment procedure, “the Ministry of Justice of Moldova recently proposed a new draft law that would require the General Prosecutor to be nominated by the President from a list of candidates proposed by the Supreme Council of Prosecutors (a professional body)”.²⁶ This draft law was discussed during the summer of 2015 but was not adopted. The reforms of the judicial system are postponed while a newly established working group was in charge of coming up with a reform for the whole anti-corruption system before the end of November 2015.²⁷

25. The Assembly noted as well as a point of concern “impunity for corruption, as reflected by the low number of convictions for corruption in the Republic of Moldova”.²⁸

2.13. Montenegro

26. The Assembly considered that Montenegro had made considerable progress on the independence of the judiciary and the fight against corruption. It especially noted that:

“The implementation of the laws on the courts, on the rights and duties of judges, on the Judicial Council, ... and on the Public Prosecutor’s Office which ... were subsequently adopted in 2015, is an essential to ensure an efficient and genuinely independent judicial system and judiciary.”²⁹

27. GRECO published, in August 2015, an evaluation report on Montenegro based on its fourth evaluation round. It acknowledged the steps taken to curb corruption but noted that corruption remained an important concern in Montenegro. Some of the issues highlighted in the report include:

- Conflicts of interest: the Law on the Prevention of Conflicts of Interest is applicable to judges and prosecutors but is not effectively implemented by the Commission for the Prevention of Conflicts of Interest. As of 1 January 2016, the Agency for the Prevention of Corruption will take over its implementation;
- Political influence over the Judicial Council: GRECO recommended that Montenegro take additional measures to strengthen the Judicial Council’s independence – both real and perceived;
- Lack of transparency of the work of the prosecution service: GRECO recommended increasing transparency by adopting a public communication strategy and developing relevant training.³⁰

22. * Any references to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

23. European Commission, [Commission staff working document- EU enlargement strategy- Kosovo](#), p. 5.

24. GRECO, [Fourth evaluation round- Evaluation report- Malta](#), Adopted 23 June 2015, p. 4.

25. [Resolution 2078 \(2015\)](#), paragraph 12.6.

26. Transparency International, [The State of Corruption : Armenia, Azerbaijan, Georgia, Moldova and Ukraine](#), (Berlin: Transparency International, 2015).

27. Teleradio Moldova of 9 October 2015, [Working group to relaunch anti-corruption system resumed its activity](#).

28. Report on the progress of the Assembly’s monitoring procedure (October 2014-August 2015), [Doc. 13868 Part 1](#), paragraph 52 of the explanatory memorandum.

29. *Ibid.*, paragraph 86.

30. GRECO, [Fourth evaluation round – Evaluation report – Montenegro](#), adopted on 19 June 2015, pp. 3, 38-39.

2.14. Serbia

28. GRECO, in its fourth evaluation round report on Serbia, recommended that Serbia changed “the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members ... and taking appropriate measures to further develop the role of the High Judicial Council in a genuine self-governing body which acts in a proactive and transparent manner”.³¹

29. On 10 November 2015, the European Commission made similar recommendations when it issued a report which assessed Serbia’s efforts in preparing to meet the EU requirements. The European Commission noted that even though “codes of ethics are in place for judges, prosecutors and lawyers”, “there are no integrity plans in place for the judiciary” and “integrity is not a standard criterion in the selection and nomination process”.³² There was therefore still room for political influence over judicial appointments.

30. The European Commission therefore recommended that Serbia “consolidate the justice reform process, addressing existing gaps in the independence, accountability and effectiveness of the judicial system and ensure its effective implementation”.³³

2.15. Turkey

31. In [Resolution 2078 \(2015\)](#), the Assembly called on the Turkish authorities to “respect and strengthen the independence of the judiciary and prosecution service”.

32. The Committee on Legal Affairs and Human Rights, in a report presented to the Assembly, entitled “Abuse of pretrial detention in States Parties to the European Convention on Human Rights”, highlighted a worrisome recent development, namely the dismissal, on 12 May 2015 by the High Judicial Council (HSYK), of judges and prosecutors who had taken part in a corruption probe in December 2013, which involved persons close to members of the government. It stressed that:

*“This decision comes shortly after the suspension by the HSYK and arrest of two judges who had refused the prolongation of pretrial detention against a journalist and a number of police officers who had respectively reported on and participated in anticorruption investigations. Reportedly, numerous members of the legal profession as well as a former Justice Minister strongly criticised these decisions, which were seen as punishing judges and prosecutors for their judicial decisions and as the result of political influence on the HSYK.”*³⁴

33. On 10 November 2015, the European Commission issued a report which assessed Turkey’s efforts in preparing to meet EU requirements. The European Commission also stressed that “the undue influence by the executive in the investigation and prosecution of high-profile corruption cases continues to constitute a major concern”.³⁵ It recommended that Turkey should “strengthen the independence of prosecution and law enforcement agencies in high level corruption cases”.³⁶

2.16. Ukraine

34. The Venice Commission gave an opinion on amendments to the Constitution of Ukraine, which aimed *inter alia* to fight corruption within the judiciary. It welcomed the removal of the power of the Verkhovna Rada to appoint the judges; “the reform of the Public Prosecutor’s Office, the guarantees for its independence ... and the removal of its non-prosecutorial supervisory powers”.³⁷

35. The Assembly expressed in October 2015 its concern over “the postponement of the implementation of the Law on the General Prosecutor”, and called on the Ukrainian authorities to “continue the judicial and anti-corruption reforms”.³⁸

31. GRECO, [Fourth evaluation round – Evaluation report – Serbia](#), adopted on 19 June 2015, p. 30.

32. European Commission, [Commission staff working document, EU Enlargement strategy, Serbia 2015 report](#), p. 12.

33. *Ibid.*, p. 49.

34. [Doc. 13863](#), “Abuse of pretrial detention in States Parties to the European Convention on Human Rights” (rapporteur: Mr Pedro Agramunt, Spain, EPP/CD), paragraph 68.

35. European Commission, [Commission staff working document, EU Enlargement strategy, Turkey 2015 report](#), p. 5.

36. *Ibid.*, p. 16.

37. Venice Commission, Opinion on the amendments to the constitution of Ukraine regarding the judiciary as proposed by the working group of the constitutional commission in July 2015, 23-24 October 2015, paragraph 55.

38. [Resolution 2078 \(2015\)](#), paragraph 11.8 and 12.9.

3. Conclusion: relevant recent and ongoing thematic work

36. The above country-by-country update shows that the issue of judicial corruption is still highly relevant in many Council of Europe member States. The fact that judicial corruption cases have actually come up to the fore and led to successful prosecutions and convictions is in fact a positive sign for the countries concerned, as it shows that corrupt practices in courts are neither, or no longer, tolerated nor hushed up.

37. In addition to country-specific developments, the Assembly has recently adopted two thematic reports which are also relevant with respect to the fight against judicial corruption.

38. Firstly, the report on “Abuse of pretrial detention in States Parties to the European Convention on Human Rights” highlights how corruption in the judiciary can threaten democracy and the rule of law and notes that “pretrial detention without effective controls creates opportunities for corruption and generally undermines the public’s trust in the proper functioning of the criminal justice system”.³⁹

39. Secondly, the report on “Improving the protection of whistle-blowers” (rapporteur: Pieter Omtzigt, Netherlands, EPP/CD) recalls that the effective protection of whistle-blowers is an essential element to promote transparency and good governance and a useful tool to combat corruption, also in the judiciary. Legislation and initiatives on whistle-blower protection are not limited to judicial corruption, but most cover members of the judiciary, too, as part of the public sector. The Assembly adopted, on 23 June 2015, the [Resolution 2060 \(2015\)](#) on improving the protection of whistle-blowers, which calls for the development and adoption of a binding legal instrument on whistle-blower protection.

40. An overview of laws, practice and recent initiatives on whistle-blower protection in Southeastern Europe was published in June 2015 by the regional anti-corruption initiative in partnership with Blueprint for Free Speech.⁴⁰ Initiatives to draft and adopt legislation on whistle-blower protection are under way in the Czech Republic, Italy and France. In Serbia, a new law on the protection of whistle-blowers came into force in June 2015.⁴¹

41. Last but not least, a report under preparation by the Committee on Legal Affairs and Human Rights on “Strengthening the rule of law in South-East European countries through targeted reform of the legal system” (rapporteur: Mr Bernd Fabritius, Germany, EPP/CD) is likely to cover issues related to judicial independence as well as corruption, as indicated during a hearing with experts at the Committee’s meeting in Yerevan last May.

39. [Resolution 2077 \(2015\)](#), paragraph 2.2.3.

40. Regional Anti-corruption Initiative, [An overview of laws, practice and recent initiatives](#), June 2015.

41. Council of Europe, [Update on Europe](#), 20 April 2015.