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

EVALUATION REPORT

SLOVENIA

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EXECUTIVE SUMMARY

1. Slovenia has a well-developed legal framework covering most of the areas under review in GRECO's Fourth Evaluation Round. It has clearly undertaken a lot of efforts to improve the integrity rules and standards applicable to the three sectors under evaluation. The main relevant piece of legislation, namely the Integrity and Prevention of Corruption Act (IPCA), was adopted in 2010 and amended in 2011. In the absence of other more specific legislative texts indicating otherwise, the IPCA applies to all public officials in Slovenia, including Members of Parliament (MPs), judges and prosecutors. It contains detailed rules on conflicts of interest, incompatibilities, accessory activities, gifts, lobbying and asset declarations. The IPCA confers a central role to the Commission for the Prevention of Corruption (CPC), an independent body, in supervising the implementation of these rules, developing awareness on integrity issues and preventing corruption.

2. Despite this good legal framework and the action of the CPC, MPs, judges and prosecutors all suffer, to various degrees, from a low degree of public confidence in their integrity and performance. It would appear that this negative perception is somewhat undeserved. This discrepancy is however indicative of the fact that much remains to be done to educate the members of the categories under review about integrity and conflicts of interest, to ensure a better implementation of the legal framework and to improve the public image of MPs, judges and prosecutors.

3. In so far as rules applicable specifically to Members of Parliament are concerned, those on transparency of the legislative process are commendable. GRECO notes incidentally that the integrity of the parliamentary process and the information available to MPs could be improved by shedding more light on the interests presiding over the drafting of legislative texts, thereby preventing covert lobbying occurring at a later stage. A new online system of asset declarations – which also applies to judges and prosecutors – has recently been introduced and seems to offer guarantees for improved compliance in the future. There are also clear and quite strict rules on gifts, incompatibilities and accessory activities, and they appear to be well-known by those whom they are applicable to. This is not the case of the regulations on lobbying and on conflicts of interest, which are new and not well understood. Implementation of these rules is not yet taken seriously. Moreover, there is not as yet a genuine widespread culture of integrity, which contributes to the MP's negative public image. Several attempts to introduce a set of rules of conduct and the necessary accompanying mechanism of supervision and sanction have failed. Addressing these gaps is important if their public image is to be improved.

4. Although judges also suffer from a lack of trust by the public, it seems to be as a result of judicial backlogs, weak internal management of courts and lack of a public relations policy as opposed to a systemic corruption problem. Judges are subject to specific rules on incompatibilities, conflicts of interest, accessory activities and gifts, which are even stricter than those contained in the IPCA. There is however room for improvement as regards for instance the process of selection, nomination and promotion of judges and the role of the Judicial Council in the development of integrity and the management of corruption risks.

5. Prosecutors are subject to similar rules as judges. Their level of public confidence is also comparable, the main criticism addressed to them being a lack of transparency, weak internal management and poor communication with the public. These criticisms need to be addressed, by strengthening the managerial and oversight role of the State Prosecutor General and the State Prosecutorial Council and by devoting more efforts to a communication policy with the public and the media. Concerns have also been raised about the transfer of the responsibilities over the prosecution service from the Ministry of Justice to the Ministry of the Interior and its possible effect on the independence of prosecutors.

6. The Commission for the Prevention of Corruption's plays an important role in the anti-corruption policy in Slovenia. Its ability to act concerning the prevention of corruption in respect of MPs, judges and prosecutors, however, is hampered by budgetary and staff constraints, which need to be addressed.

I. INTRODUCTION AND METHODOLOGY

7. Slovenia joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in December 2000), Second (in December 2003) and Third (in December 2007) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).

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

9. 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.

10. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament, 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.

11. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2012) 2E) by Slovenia, 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 Slovenia from 16 to 20 April 2012. The GET was composed of Mr Francisco JIMÉNEZ VILLAREJO, Senior Prosecutor, International Co-operation Unit, Representative of the Special Anticorruption Prosecution Office, Prosecution Office of Málaga, General Prosecution Office (Spain), Ms Anca JURMA, Chief Prosecutor, International Cooperation Service, National Anticorruption Directorate, Prosecutors' Office attached to the High Court of Cassation and Justice (Romania), Ms Zorana MARKOVIC, Director of the Anticorruption Agency (Serbia), and Mr David WADDELL, Secretary to the Irish Standards Commission, Secretary, Standards in Public Office Commission (Ireland). The GET was supported by Ms Sophie MEUDAL-LEENDERS from GRECO's Secretariat.

12. The GET interviewed representatives of the CPC, National Assembly, National Council, State Elections Commission, Ministry of Justice and Public Administration, Ministry of the Interior, Government's Office of Legislation, Human Rights Ombudsman, Constitutional Court, Supreme Court, Administrative Court, Labour and Social Court, Court of Appeal of Ljubljana, District Court of Ljubljana, District Court of Kranj, County Court of Ljubljana, County Court of Kamnik, County Court of Domžale, Judicial Council, Judicial Training Centre, Office of the State Prosecutor General, Specialised State Prosecutor's Office, District State Prosecutor's Office of Ljubljana, District State Prosecutor's Office of Kranj, State Prosecutorial Council. The GET also met with

representatives from civil society, namely CNVOS, Transparency International, Slovenian Association of Judges, Slovenian Association of Lobbyists, as well as several academics and media representatives.

13. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Slovenia 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 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 Slovenia, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Slovenia shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

14. In recent years, there has been a strong public perception in Slovenia that corruption is increasing and that it constitutes a major national problem. This general perception also affects judges, prosecutors and especially members of parliament (hereafter MPs), following recent high-profile cases concerning some members of these categories.

15. Public confidence is particularly weak vis-à-vis political parties and politicians. There is a widespread opinion that private interests decidedly affect the public sector. In this connection, a recent report from Transparency International on the National Integrity System (NIS)¹, warns of too close links between business and politics, and also expresses misgivings as to examples of low integrity levels among some members of the National Assembly. Transparency and control of party funding remain a primary source for public mistrust, despite GRECO's recommendations in this respect. The latest Eurobarometers on "Attitudes of Europeans towards Corruption", provide further evidence of how negative perceptions of national politicians have worryingly worsened over the past few years. According to these surveys, 69% of respondents in Slovenia believed that corruption was widespread among politicians in 2009, and this percentage had increased to 83% in 2011, to be compared to an average in other EU member states of 57% over the same period. In-so-far as the judiciary is concerned, 65% of Slovenian respondents thought in 2011, that corruption was widespread among people working in the judicial services. Even though it has been stable over the past few years, this perceived level of corruption is about twice the average levels observed within the other EU member states (37% in 2011).

16. Despite the recent high profile corruption cases involving MPs and members of the judiciary, corruption does not appear to be as widespread in Slovenia as the perception reflected in the mentioned international surveys would seem to indicate. Nevertheless, they point at a disconcerting lack of public trust in the institutions under review in the current Evaluation Round, and also indicate a pronounced scepticism towards the endeavours of the government to tackle corruption.

17. As a matter of fact, while a vast corpus of legislation concerning anticorruption measures is now in place in Slovenia, its implementation is yet to be secured. There is a significant gap between legislation and practice, an issue which is also raised by Transparency International in its NIS report. Key institutions have been established to prevent and fight corruption, e.g. the Commission for the Prevention of Corruption, Court of Audit, Ombudsman, specialised units in law enforcement bodies. Public trust in these institutions is high, but there is a generalised view that they still require a considerable upgrade in resources and powers to effectively perform their decisive role in uncovering and punishing corruption. Major public discontent is expressed regarding the inability of prosecution services to efficiently deter corruption, and consequently, the lack of real punitive measures in this important area of concern.

18. As underlined above, the Commission for the Prevention of Corruption (hereafter the CPC), has a central role in devising and implementing anti-corruption policies in Slovenia. It is an independent government body, which has gone through several development periods since its establishment in 2002 and is one of the public institutions enjoying the highest level of trust in the country. Following the adoption in 2010 of the new Integrity and Prevention of Corruption Act (Official Gazette Nos 45/10, 26/11 and 43/11, hereafter IPCA), which is the main legal instrument governing the areas under review in the present evaluation, the CPC has been given an even broader mandate, ranging from the prevention of corruption to the conduct of administrative investigations and the imposition of fines. Its tasks include in particular the adoption and coordination of the National Anti-Corruption plan, the design and implementation of awareness-raising

¹ National Integrity System Assessment on Slovenia. Transparency International (2012).

and educational measures in the field of corruption and integrity, the provision of advice on the implementation of the IPCA and on anti-corruption issues, the assistance of public institutions in developing and monitoring their own integrity plans, the maintenance of the central register of lobbyists, and the monitoring of a wide system of online asset declarations. These different tasks will be described in further detail in this report.

19. The IPCA applies to all public officials, including MPs, judges and prosecutors, in the absence of more specific sectorial provisions governing the areas it covers. It gives the Commission broad legal powers to carry out its tasks. It can access necessary documents and databases, including those of a financial nature, question officials, conduct administrative investigations and proceedings and instruct law enforcement bodies to gather additional evidence. As indicated above, it can also issue fines. The CPC's authority in all matters pertaining to its mandate is widely recognised and its rulings, proposals and opinions are generally complied with. However, its action is hampered by financial and staff constraints, which will be addressed later in this report.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

20. Slovenia is a parliamentary republic. Its legislature is a modified bi-cameral Parliament, which is comprised of the National Assembly and the National Council, the latter having limited powers. The National Assembly is composed of 90 deputies, two of whom are representatives of the Italian and Hungarian national communities. MPs are elected for a 4-year term, through universal, equal, direct suffrage by secret ballot (Articles 80-81 of the Constitution), on the basis of a mixed system combining proportional representation and a majority element. MPs elected by proportional representation are allocated seats using the *d'Hondt* formula with a 4% electoral threshold required at the national level. MPs representing the Italian and Hungarian minority communities are elected through a simple majority system.

21. An MP loses his/her mandate if s/he loses his/her right to vote; if s/he becomes permanently unable to perform his/her functions; if convicted by final judgment to unconditional imprisonment for a period of more than 6 months (unless the National Assembly decides that s/he may continue to hold office); if three months have elapsed after election and s/he continues to perform activities or functions which are incompatible with the office of MP or if s/he takes up a function or begins to perform an activity which is incompatible with the office of MP; if s/he resigns.

22. The National Assembly exercises legislative, voting and monitoring functions. As a legislative authority, it enacts constitutional amendments, laws, national programmes, resolutions, etc. It also creates its own internal rules, adopts the State budget, ratifies international treaties, and calls for referendums. As a voting body, the National Assembly elects the Prime Minister and other ministers, the President of the National Assembly and up to three Vice-Presidents. On the recommendation of the President, it also elects judges to the Constitutional Court, the Supreme Court, the Governor of the Bank of Slovenia, members of the Court of Audit, the Ombudsman, etc. The supervisory function of the National Assembly includes the launching of parliamentary inquiries, the holding of votes of no confidence in the government or ministers, and of motions of impeachment against the President of the Republic, the Prime Minister or ministers in the Constitutional Court.

23. The National Assembly sets up working bodies, namely committees, which are set up to monitor and discuss the work of the government and commissions, which discuss certain general issues or issues of particular importance. A commission can be either a standing one or established ad-hoc to discuss specific matters². For example, a commission of enquiry is established to determine the political responsibility of holders of public office. Committees and commissions are created after elections in accordance with an agreement reached by the Council of the President of the National Assembly³ and pursuant to the relevant provisions in the Rules of Procedure of the National Assembly (Articles 32-56). As a general rule, each parliamentary group is guaranteed at least one seat in every working body.

24. The National Council is composed of 40 members, who are elected indirectly for 5-year terms by interest groups and local communities. They are representatives of

² The National Assembly has the following standing commissions: the Commission for Public Office and Elections, the Commission for the Rules of Procedure, the Commission for National Communities, the Commission for Public Finance Control, the Commission for the Supervision of Intelligence and Security Services, the Commission for Relations with Slovenes in Neighbouring and Other Countries.

³ The Council of the President of the National Assembly is the consultative body of the President. The Council consists of the President and Vice-Presidents of the National Assembly, the leaders of the deputy groups, and the deputies of the national communities. The Secretary General of the National Assembly and the Head of the Legislative and Legal Service of the National Assembly participate in the work of the Council; the chairmen of the working bodies, the representatives of the Government, specialised staff members of the National Assembly, and other persons may also participate (Article 21 of the Rules of Procedure).

employers (4), employees (4), farmers, crafts, trade and self-employed persons (4), tradesmen, non-economic sector (6) and local communities (22). They may lose their mandate on the same grounds as those applicable to MPs (see paragraph 21).

25. The competence of the National Council in the legislative process is limited: it may propose laws to the National Assembly, and generally has an advisory role. It may demand that the National Assembly reviews decisions on legislation prior to its promulgation (suspended veto). It also may demand the commissioning of a parliamentary inquiry or require the calling of a referendum. The National Council is convened by its President, on his/her initiative or by decision of the Council at the request of a committee or of the head of one or more interest groups or at the request of eight national councillors. The National Council sits at least twice a month.

26. It was brought to the attention of the GET during the on-site visit, that there were controversies surrounding the role of the National Council. These controversies stem from the fact that members of the National Council represent different interests than MPs and that as a result, they may have a different position than the National Assembly on certain laws, the promulgation of which they may delay or block. Although they have used their powers sparingly in the past – the power to call a referendum was used only twice, in 1997 and 2009 – some political parties resent such powers and have proposed to abolish the National Council, in order to make the legislative process more efficient and cost-effective. Such a constitutional change would require a two-thirds majority in the National Assembly, which the proposal did not seem to enjoy at the time of the visit. Other political parties favoured a modification of the role of the National Council rather than an abolition of this chamber, to have it represent only local interests, or to ensure a better representation of social interests. It is not the role of the GET to take a position on this matter. It will only observe that the National Council occupies an interesting, if somewhat peculiar, position in the institutional setup of Slovenia. Most interlocutors met during the on-site visit considered that the National Council formed a valuable part of the system of checks and balances in the system, and that it allowed a representation of civil society in the legislative process that was complementary to the role of directly elected representatives.

Transparency of the legislative process

27. Measures are in place to ensure transparency of the legislative process from the first reading stage of a legislative instrument. Working sessions and meetings, both of the Assembly's plenary and of its working bodies are announced online and their agenda is published, with links to all working documents.

28. Working sessions of the National Assembly and its working groups, are as a general rule, open to the public and broadcasted on national television and on the internet. The only exception to publicity of the legislative process refers to matters containing classified or confidential information (in accordance, with the provisions of the Act on the Access to Information of Public Character⁴). On the proposal of the Chairperson of the working body responsible, of a parliamentary group, or of the Government, the National Assembly may decide that a session or part of it be closed to the public even if materials containing confidential information are not being discussed, as provided by the Rules of Procedure of the National Assembly or where it can be justifiably expected that questions related to such information might arise during the debate. However, the GET was informed that this possibility had only been used on one occasion for matters not involving confidential information.

⁴ The Act on the Access to Information of Public Character enumerates the situations when no access to information is allowed: information designated as secret according to the law, for state security reasons, business secrecy (applicable to certain activities of State companies, which are protected by confidentiality rules) and such.

29. The National Assembly decides, as a general rule, by public vote; results are immediately published on the National Assembly's website. Secret voting takes place in the cases provided by law, e.g. elections, appointments and dismissals, impeachment of the President of the Republic, the President of Government or a Minister. When secret ballot takes place, results are published electronically as soon as they are known, i.e. when the votes are counted.

30. Public participation processes may also be organised in the context of the drafting of a legislative instrument, if there is public interest. The public is informed of such processes through the media or on the website of the National Assembly. Public comments may be gathered in written or oral form. A dedicated e-democracy web portal also facilitates information and participation of the public in law drafting. The GET was informed that public consultation is organised in practice for 10 to 20% of all draft laws.

31. The same transparency measures apply to the National Council. Its meetings are announced online, with links to the agenda and working documents. The National Council also organises conferences and similar events (e.g. public speaking events, roundtables) to promote active engagement of civil society in decision-making processes on matters of public importance. The National Council publishes conference proceedings; these contain, in addition to the papers presented, summaries of participants' discussions.

32. Finally, citizens have the right to file petitions and to pursue other initiatives of general significance, including putting forward proposals for laws (legislative initiatives are to be proposed by at least 5,000 citizens).

33. All interlocutors of the GET agreed that the legislative process in Slovenia was very transparent overall, with online access by citizens to all official information, including records of the votes of each MP and documents discussed in committees of both chambers of Parliament. The GET wishes to commend this wide transparency, which seems to exist not only on paper but also in practice, with quick online publication of all relevant documents. It is clearly an asset in the prevention of corruption, by exposing the work of MPs to public scrutiny and contributing to ensuring their accountability. It is also an example of the use that can be made of new technologies to facilitate public information and to foster citizens' confidence in the work of public institutions.

34. Notwithstanding this positive assessment and bearing in mind that a great majority of the legislative initiatives comes from the government, the GET wishes to highlight two areas in which transparency and public participation could be improved. First, publicity measures apply from the moment legislative texts are discussed in the National Assembly's working bodies. Some of the GET's interlocutors regretted that they do not apply before this stage, where there is no information on the authors, sources and interests presiding over the drafting of a legislative text. They mentioned possibilities of conflicts of interest and described a phenomenon of "privatisation of legislation" or covert lobbying, with texts being outsourced to be drafted by a small number of legal experts, who are paid large sums of money by various interest groups and later advise these groups on how best to bypass adopted legislation. According to data gathered by the CPC, during the years 2004-2010, 7 million EUR was outsourced for the drafting of 66 laws, 22 books of rules and associated legal services. The current state of affairs is clearly unsatisfactory from the point of view of transparency and accountability. Not only does it undermine the transparency of the legislative process as a whole, it may also affect the integrity of MPs and prevent them from carrying out their legislative work in a fully informed and transparent manner. While refraining from issuing a formal recommendation because of the scope of the present evaluation round, GRECO strongly encourages the authorities to address this issue.

35. Secondly, the GET was informed of a more frequent use of the emergency procedure during the current legislature. According to this procedure, all documents are still made public, but time frames for public consultations are reduced, making it difficult

for interested persons and groups to take an informed position on draft laws. The GET heard different information about the extent of the use of this procedure, but there were some allegations that it was being abused and that the draft laws that had been discussed in emergency procedure did not all fulfil the conditions for its use. The authorities may therefore wish to keep the use of the emergency procedure under review, to ensure that it is not being abused.

Remuneration and economic benefits

36. Salaries of MPs are fixed on the basis of the Public Sector Salary System Act. The gross monthly salary for the year 2011 ranges from 3,979.62 EUR for an MP to 5,236.91 EUR for Vice-Presidents of the National Assembly and 5,890.80 EUR for its President. Salary grades within this range are determined by the Commission for Public Office and Elections of the Assembly. MPs, like other public officials, are also entitled to a bonus for their active employment period (of up to 80% of their total remuneration for each working year), which includes their working time outside the Assembly.

37. MPs enjoy additional benefits, as follows:

- serviced housing: separate living allowance of 312.13 EUR per month. Monthly operating costs (e.g. electricity, heating) are to be covered by the respective MP;
- education allowance;
- monthly lump sum to cover the costs related to the performance of office in the relevant constituency;
- monthly costs of the use of office mobile phones and wireless internet;
- per diems for missions abroad (12.5 EUR/day);
- parking space in the vicinity of the National Assembly building.

38. A total of 200 EUR per month is provided to each individual MP for operative costs of his/her office (e.g. payment of rent for business premises, administrative and technical support, office supplies) in his/her constituency. Furthermore, as part of the facilities and subsidies provided to parliamentary groups, MPs are entitled to use all informational and documentary material, as well as communication facilities, at the seat of the National Assembly. Each parliamentary group is allocated funds, calculated on the basis of the number of MPs which the group is composed of, to enable the hiring of technical advisors.

39. An MP whose term of office has expired and who for objective reasons can no longer perform his/her previous work or obtain other appropriate employment opportunities, and who does not meet the conditions for retirement, is entitled to receive a benefit equal to the salary s/he would receive if performing office, until s/he obtains employment or meets the conditions for retirement, but for no longer than one year following termination of office; this period can be extended to a maximum of one additional year, if the MP meets the conditions for retirement. The period of time in which the MP receives the aforementioned benefit is counted as part of the number of years of active employment of the MP and future compensation for retirement; likewise, during this period, the MP is covered by the social insurance regime applicable to active professionals and has the right to annual holiday.

40. Members of the National Council work on an honorary basis and do not receive a salary. They receive an attendance fee of 124.35 EUR per plenary meeting and of 75.50 EUR per working body meeting. They also receive a monthly lump sum (of 414.52 EUR per member, 559.40 EUR for the president of a working body and 600.02 EUR for a Vice-President of the National Council) and per diems for missions and travel expenses. The President and Secretary of the National Council receive also reimbursement for monthly costs of their use of mobile phones and wireless internet. All of the aforementioned allocations are covered by public funds.

Ethical principles and rules of conduct

41. Some rules of conduct that apply to MPs are scattered in different legislative acts, e.g. Constitution (dignity, obligation not to be bound by any instruction other than the general interest of the electorate, incompatibility of office), Criminal Code (provisions against corruption, abuse of office, disclosure of classified information, fraud, etc.), the Deputies Act (rules on incompatibility), Integrity and Prevention of Corruption Act (rules on integrity, transparency and prevention of conflicts of interest), Rules of Procedure of the National Assembly (conduct to be followed during sessions), House Rules of the National Assembly of the Republic of Slovenia (code of behaviour on the National Assembly's premises), Protocol Rules of the National Assembly (rules on protocol gifts), etc. Some political parties and parliamentary groups also have internal rules of conduct.

42. There is however no unified code of conduct for MPs or members of the National Council. Although several such codes of conduct have been drafted for MPs over the years, none of them have ever been finalised and entered into force. The GET discussed at length the reasons for this gap during the on-site visit. Most MPs it met with, raised doubts about the added value of such an aspirational set of standards of conduct, stating that the basis for MPs' behaviour should be set down in the relevant laws and coupled with sanctions. This scepticism goes even beyond political circles. MPs also questioned the way in which such standards could be enforced and the body that would be in charge of such enforcement. They claimed that enforcement should be left to political parties and parliamentary groups, as is currently the case. The enforcement issue has namely been the main reason for which initiatives to adopt a code/standards of conduct have failed in the past.

43. The GET takes the view that current arrangements regarding ethical principles and standards of conduct are clearly insufficient. The mere fact that many MPs fail to see that a code/set of standards of conduct may have a clear added value – both for themselves and for their public image – is symptomatic of their lack of awareness of ethical issues as a whole. It has already been highlighted earlier in this report that, in Slovenia, the Parliament is one of the least trusted institutions. This perception has been fed by numerous scandals involving politicians in the past years and irregularities uncovered by the CPC, the National Bureau of Investigations and the media. Instead of taking responsibility and adopting a proactive approach to prevent such occurrences in the future and improve their public image, many MPs tend to shift the blame and claim that such misconducts come from a few "bad apples".

44. The GET is convinced that adopting a code/standards of conduct for MPs – and members of the National Council – would be beneficial, both for parliamentarians themselves and for their image in the public. Such a document is not meant to replace the various legislative acts imposing obligations on MPs, coupled with sanctions, but to complement and clarify them. It would increase MPs awareness about integrity issues, provide guidance for their behaviour and demonstrate to the public that they are willing to take action to improve their integrity and that of their peers. These guidelines would also be beneficial to citizens, who are entitled to be aware of the conduct they can expect from their elected representatives, thereby strengthening the rule of law and citizens' confidence in their parliamentary institutions. This implies of course that such a code of conduct emanates from parliamentarians themselves or, at least, that they take an active part in its preparation. In this context, the GET was informed that the CPC recently issued a formal proposal to the President of the Parliament to adopt a Code of Ethics for parliamentarians and that the President lent his support to this proposal. It sees this initiative positively and hopes that it will bear fruit. Turning to the issue of the enforcement of provisions contained in code/standards of conduct, the GET stresses that such enforcement is an essential part of any integrity system. The effectiveness of a set of standards depends on the awareness of those to whom it is directed, on their willingness to comply with its provisions but also on appropriate tools to secure its implementation, i.e. ensuring that misconduct comes to light and attracts appropriate

sanctions. In light of the preceding paragraphs, **GRECO recommends (i) that a code/standards of conduct for members of the National Assembly and the National Council is/are adopted (including guidance on e.g. conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties, including lobbyists, preservation of reputation) and (ii) that, in order to make these standards work, a credible mechanism of supervision and sanction be elaborated.**

45. Finally, the IPCA prescribes the obligation for all public institutions in Slovenia to prepare and implement Integrity Plans (see below, paragraphs 138-139) in order to prevent and manage corruption risks. This obligation applies however to members of the Secretariat of both chambers of Parliament, who are public officials. As such, it does not concern members of the National Assembly and of the National Council.

Conflicts of interest

46. The IPCA contains the key provisions on preventing and managing conflicts of interest. It applies to Slovenian officials, including members of the National Assembly and members of the National Council, who are also considered as "officials" in the meaning of the text. As indicated above, these provisions are quite new, having been introduced in their current form in law by the adoption of the IPCA in 2010. The notion of conflict of interest previously only appeared in the code of conduct for public officials.

47. Conflicts of interest are defined as "*circumstances in which the private interest of an official influences or appears to influence the impartial and objective performance of his/her public duties*" (article 9 IPCA). Private interests could target both pecuniary and non-pecuniary benefits, and could be to the advantage of the official himself/herself or to that of his/her family members or other natural or legal persons with whom s/he maintains or has maintained personal, business or political relations.

48. Whenever an actual or potential conflict of interest occurs, the person has to: (i) a) immediately inform his/her superior in writing, or b) if there is no superior, inform the CPC; (ii) cease to perform any work with regard to the matter in which the conflict of interest has arisen, unless a delay in performing such an activity would pose a risk. The relevant superior or the CPC is to decide on the conflict of interest within 15 days and notify the decision to the concerned person, accordingly. If the case is decided by the official's superior, the CPC is not informed of it. According to the information submitted to the GET, the CPC detected and issued opinions on possible conflicts of interest in 20 cases in 2011. It also issues on a regular basis preliminary opinions in response to questions from the public sector.

49. The GET is under the impression that, unlike other aspects of the IPCA, its provisions on conflicts of interest were largely unknown by the MPs and the members of the National Council – both institutions which have confirmed that there had been no reported cases of conflict of interest yet. The CPC informed the GET that they received many questions on the legal provisions on conflicts of interest and sometimes opposition from officials to whom they apply, who criticize their overly strict character, in a country the size of Slovenia. The GET also had the impression that the officials met during the visit did not yet understand the current scope of conflicts of interest and how it needs to inform their choices and decisions both in their work, their private interests and those of their relatives. A culture of prevention and avoidance of possible conflicts of interest has not yet emerged in Slovenia. The relevant supervisory bodies, namely the Commission for Public Office and Elections of the National Assembly and the Secretary of the National Council, have not developed a proactive attitude towards it and have confirmed to the GET that, would a potential case arise, they would not feel able to take a position on it and would defer the case to the CPC. The CPC, for its part, needs to reinforce its action to ensure that the notion of conflicts of interest and its implications are assimilated by those to which they apply. The GET encourages therefore the CPC to pursue and

intensify its efforts to inform, explain and raise awareness of members of the National Assembly and the National Council and of the relevant supervisory bodies, on conflicts of interest.

Prohibition or restriction of certain activities

Gifts

50. The applicable rules on gifts are contained in articles 30-34 of the IPCA. Like other officials, MPs and members of the National Council, cannot accept gifts, irrespective of their value, if their acceptance could pose a risk to the required objectivity and impartiality of the MP or member of the National Council concerned. This prohibition applies to MPs/member of the National Council, as well as to their family members.

51. Protocol gifts and occasional gifts, which are nominal in value (i.e. gifts given on special occasions), are acceptable, provided they do not exceed 75 EUR in value or over 150 EUR in a year, if the gifts are offered by the same person. In no circumstances may money, securities or precious metals be accepted as a gift of nominal value. Whenever the gift received exceeds the total value of 75 EUR, it becomes the property of the body in which the person exercises his/her office, i.e. the National Assembly or the National Council.

52. All gifts exceeding 25 EUR are to be recorded on a list which is kept by the body concerned, National Assembly or National Council; this information is forwarded annually to the CPC, which prepares an annual catalogue of gifts accepted by the public bodies of Slovenia and publishes this catalogue on its website.

53. The Protocol rules of the National Assembly also contain a chapter dedicated to gifts, which regulates the receipt of gifts by senior members, such as the President of the Assembly, Vice-Presidents, leaders of parliamentary groups, chairs of working bodies, heads of permanent delegations and chairs of parliamentary friendship groups.

54. According to the information gathered by the GET, the rules applicable to gifts are clear and they appear generally well known by MPs and members of the National Council. Their implementation does not seem to raise problems in practice.

Incompatibilities and accessory activities

55. The Deputies Act (articles 10-14) establishes that an MP cannot simultaneously be a member of the National Council, nor may s/he perform other functions or work in State bodies. S/he cannot perform a function of mayor or deputy mayor in a municipality, or that of the Prime Minister or a minister. On the day of confirmation of election as an MP, s/he must cease to hold any of these incompatible offices.

56. MPs cannot perform profit-making activities which are incompatible with the performance of public office and they cannot be members of the supervisory board of a commercial enterprise. MPs must cease to perform the aforementioned activities no later than three months after the confirmation of election as MP; otherwise, their term of office must be terminated.

57. The only exception to the aforementioned prohibitions refers to activities (professional, scientific, educational or research work) performed by MPs, independently or as employees, which should not exceed one fifth of the working time necessary or determined for the regular performance of their activity as MPs. This exception is subject to the notification and authorisation of the Commission for Public Office and Elections of the National Assembly. The Commission may refuse its permission if there is a risk that the activity would affect the performance of the office by the MP, or if it hinders the objective and independent performance of public office. There is no requirement that

information about MPs' accessory activities be disclosed to the public. However, in practice, MPs do generally declare their accessory activities, along with the name of their employer, to the public.

58. According to the National Council Act, the only incompatibility applicable to a member of the National Council is that s/he cannot simultaneously be a member of the National Assembly, nor may s/he perform other functions or work in State bodies. Members of the National Council may perform profit-making activities, as their function is honorary and they do not receive a salary for it. The body in charge of ensuring that the rules on incompatibilities are respected is the Commission for Public Office and Immunity of the National Council.

59. The incompatibility between the mandate of a MP and the function of mayor or deputy mayor is the most recent addition to the rules on incompatibilities and it was highlighted positively to the GET as a step forward and an efficient way of dealing with possible conflicts between national and local interests. The possibility of adding the function of municipal councillor to the list of incompatible functions with the mandate of MP is currently under consideration.

60. On the other hand, the rules applicable to MPs' additional activities are rather vague, and the GET was informed that the practice of the Commission for Public Office and Elections regarding authorisations was not uniform, rather sometimes affected by political considerations and alliances. The CPC intends to improve the situation by asking the government to centralise incompatibility rules for all officials, including from the legislative and the judicial power, under its roof. The GET welcomes this solution, which would enable the development of transparent common standards and practice.

Financial interests

61. Neither the Deputies Act, nor the IPCA, prohibit MPs from holding financial interests; however, MPs are bound to declare such interests in their asset declarations. There is no prohibition or restriction either to the holding of financial interests by members of the National Council. As they do not receive a salary for this function, they are furthermore not bound by the rules on assets declarations.

Contracts with State authorities

62. In case MPs or their family members are members of the management or legal representatives of private entities, or if they participate in the capital of such entities, they have to notify this, as well as any subsequent changes to their situation, to the National Assembly or the National Council. The relevant Chamber forwards this information to the CPC, which publishes a list of such entities on its website. Neither chamber can order goods, services or enter into any business relations using public funds, with any such entities.

63. This prohibition is limited to the procedures or ways of obtaining public funds detailed above. In any other case, the prohibition does not apply, provided that the rules on conflicts of interest are duly complied with or the parliamentarian is consistently excluded from all stages of decision-making contracting processes which could interfere with his/her independence. This prohibition does not apply either to operations on the basis of contracts concluded prior to the member taking office.

Post-employment restrictions

64. Relevant rules are contained in articles 35-36 of the IPCA and are thus the same as those applying to other public officials. According to these rules, a two-year ban is imposed to Parliament from entering into a business contract with an entity in which a parliamentarian who has left office acts as a legal representative. A one-year ban is

imposed on entering into a business contract with an entity in the management or capital of which the parliamentarian participates, either directly, or through other legal persons. A two-year ban is in place for lobbying activities.

65. If a former parliamentarian approaches Parliament and falls under the aforementioned types of situation, the Parliament must, within 30 days, inform the CPC.

66. Other than the aforementioned restrictions, there are no other post-employment rules in place for MPs/members of National Council. The Deputies Act foresees the return of MPs, following termination of their term of office, to their judicial career or their permanent function in a State body, if that was the case. If they wish to return to their former employment, they just need to notify their former employer within three months of conclusion of their term of office as MP. The GET was not made aware of any particular issues in connection with post-employment restrictions.

Third party contacts

67. The only applicable restrictions in this domain refer to lobbying activities. Regulation of lobbying is new in Slovenia, as it has been introduced by the IPCA (articles 56-74) in 2010.

68. Lobbyists have to register and to report in writing to the CPC details concerning their fiscal identification number, the interest group which they represent, the payment received for each lobbying activity, the names of the State bodies which they have lobbied, types and methods of lobbying, and type and value of donations made to political parties and campaign organisers. Reports on contacts with State bodies, including individual MPs or members of the National Council, are to be made on a yearly basis.

69. MPs and members of the National Council may meet registered lobbyists, provided that no conflict of interest exists or arises in such a contact. Whenever approached by a lobbyist, the official concerned must make a signed record of the identity of the lobbyist, the area of lobbying and the interest group or organisation represented, the documents received (if any), and the date and place where the encounter took place. The record must be forwarded, within three days of the meeting, to the superior and the CPC; records are kept for a period of five years.

70. If a lobbyist acts in contravention of the law (i.e. provides incorrect, incomplete or misleading information to the person lobbied or disregards the applicable rules on gifts) or is not registered, the lobbied person must refuse the contact and report the lobbyist to the CPC, within 10 days of the attempt to lobby in question.

71. As is the case with other matters covered by the IPCA, the regulation of lobbying is new and has yet to take root in Slovenia. Unlike provisions of the IPCA on conflicts of interest, however, those on lobbying appear to be rather well known by MPs and members of the National Council. This is mainly because they give rise to many questions and doubts from parliamentarians on what constitutes lobbying, what contacts are allowed with lobbyists and other third parties and the manner in which these contacts have to be reported. The CPC does its best to address these issues by distributing explanatory material, organising information sessions and answering the questions of those concerned. The GET encourages the Commission to pursue and intensify these efforts, in order to further promote awareness and to provide guidance to parliamentarians in their dealings with lobbyists and other third parties.

72. The GET also takes the view that some aspects of the regulation of lobbying need to be improved. First, the position and duties of the members of the National Council vis-à-vis lobbying are unclear. It must be borne in mind that these members are elected to represent various private interests – either of professional groups or of local communities

– so in essence, their role is akin to that of lobbyists. Members of the National Council are unsure whether the rules on contacts with lobbyists apply to them also in the context of the private interests they are elected to represent. The GET heard various and sometimes conflicting answers to this question which needs to be clarified as a matter of priority. Secondly, parliamentarians and lobbyists are not subject to the same rules as regards the frequency of reporting: lobbyists have to report about contacts on a yearly basis, whereas MPs are required to report three days after a contact has occurred. In the GET's view, comparison of reports would be facilitated if their frequency was harmonised.

73. Last, and most importantly, current enforcement arrangements are clearly insufficient. According to the information collected by the GET, 59 lobbyists are registered, of which only about 20 are currently active. Even though the IPCA specifies that lobbying activities may only be performed by registered lobbyists, there seem to be between 100 and 300 non-registered, but active, lobbyists. To date, not a single foreign lobbyist has been registered, although the law does apply to them as soon as they engage in actions meant to influence the decision-making of public bodies. Explanations given to the GET included a lack of awareness and incentives for lobbyists to register and a negative perception associated with the fact that lobbying is regulated in a law that is mostly devoted to the prevention of corruption. In addition, the CPC, which is in charge of enforcing the rules on lobbying, has very limited resources for this purpose, with only one inspector currently dealing with these matters. In view of the above, **GRECO recommends that the implementation of the rules on contacts with lobbyists by members of the National Assembly and of the National Council be subject to a thorough assessment, with a view to improving them where necessary.**

Misuse of confidential information

74. MPs have access, in connection with the discharge of their functions, to classified information (article 3 of the Classified Information Act). They must protect data of confidential nature (article 18 of the Deputies Act). Access to files and materials containing personal data is only allowed for the MPs to whom such data refer to. Access to third parties is possible following permission by the President of the National Assembly and the MP to whom such data refer to.

75. MPs are personally liable for mishandling of classified information, pursuant to provisions of the Ordinance on Handling Classified Information. There are no administrative rules in place for abuse of information; however, criminal liability applies in this context (article 260 of the Criminal Code on disclosure of classified information).

Misuse of public resources

76. There are no particular rules in place concerning the misuse of public resources by MPs/members of the National Council. In addition to political responsibility, criminal law provisions are applicable, as appropriate.

Declaration of assets, income, liabilities and interests

77. A system of asset declarations was introduced in Slovenia in the early 1990's. When the CPC was established, it centralised receipt of declarations for officials of the executive, legislative and judicial branches of government, as well as for officials of local self-government – about 5,000 officials overall. The system was paper-based, which made supervision of the declarations difficult.

78. In 2010, the new IPCA (articles 41 to 46) extended the range of officials required to submit asset declarations to approximately 10,000, introduced some changes in the content of declarations and introduced sanctions for failing to submit a declaration and false declarations. An online declaration system was also introduced and all officials were

required to re-submit their declarations in the new system, a process which was finalised in February 2012.

79. MPs must file an asset declaration with the CPC, via an electronic form which is available at the Commission's website, no later than one month after taking or ceasing to hold the office or post. Members of the National Council are not required to file asset declarations.

80. Data on assets must include the following:

- personal information, such as name, address, tax ID number;
- information on current work and work performed immediately before taking office, as well as information on any other office held or activities performed;
- information on ownership or stakes, shares, management rights in a company, private institute or any other private activity with description of the activity, and a designation of the registered name or the name of the organisation;
- information on stakes, shares, and rights that the entities referred to in the preceding bullet point have in another company, institute or private activity with the designation of the registered name or the name of the organisation, (hereinafter: indirect ownership);
- information on taxable income under the law governing personal income tax that is not exempt from personal income tax;
- information on immovable property with all the land register information on land plots;
- monetary asset deposits in banks, savings banks and savings and loan undertakings, the total value of which in an individual account exceeds 10,000 EUR;
- the total value of cash if it exceeds 10,000 EUR;
- types and values of securities if, at the time of the declaration of assets, their total value exceeds 10,000 EUR;
- debts, obligations or assumed guarantees and loans given, the value of which exceeds 10,000 EUR;
- movable property, the value of which exceeds 10,000 EUR; and
- any other information in relation to assets that the reporting person wishes to provide.

81. The asset declaration does not include details on business contracts with State authorities; offers of remunerated or non-remunerated activities (including employment, consultancies, sponsorship, remunerated offices – e.g. directorship and other appointments, etc.) and agreements for such activities (e.g. information on who an MP is employed with and how much s/he is being paid); any other interest or relationship that may or does create a conflict of interest, including those of a non-pecuniary nature. There is no rule that requires declarations to be made on an ad hoc basis if an MP has an interest in a matter that is before the legislature or one of its committees.

82. Data on the income and assets of MPs, obtained during the period of holding office and within one year of termination of the mandate, is made publicly available on the website of the CPC. All information referred to above is publicly available, with the exception of information on taxable income. In order to protect the privacy of the person concerned, address and location details are not published, and information on assets and liabilities only includes the total value of each kind of asset/liability referred to above. Changes in assets will be published yearly as from 2013.

83. Changes in assets – if exceeding 10,000 EUR from one reporting year to another, as well as changes in activity or ownership in a private entity, must be communicated to the CPC. A standard form is provided on the website of the Commission to this effect; it includes the possibility to state the reason for the increase in assets.

84. The GET welcomes the introduction of the online asset declaration system, which in its view will greatly facilitate publication and supervision over the declarations (supervision will be dealt with in more detail below). Another positive effect of the online system is twofold; it has increased the compliance with the obligation to submit a declaration – nearly all officials concerned have reportedly submitted their declarations – and the quality of the information submitted has been improved. The information required is adequate overall, even if some improvements could be introduced into the system, such as a differentiation between officials whose position or working environment entails greater corruption risks and others. The GET was informed that the CPC intends to propose a change in the law to this end and to further enhance enforceability of the system and it views this initiative positively.

Supervision and enforcement

85. The key authority in charge of the supervision of the rules relating to conflicts of interest, gifts and declarations of assets, income, liability and interests is the CPC.

Conflicts of interest

86. If there is a possibility that a conflict of interest has arisen, the CPC starts a procedure to establish the existence of the conflict of interest and its consequences (article 39 IPCA). This procedure can be initiated – either ex officio, following a report or a request for opinion by the authority where the official works – in the two years that follow the performance of the official act.

87. If the existence of an actual conflict of interest is established, the CPC informs the competent authorities and sets a deadline for them to report back on the measures taken. There has been no case of implementations of these provisions of the IPCA since their adoption in 2010. It was indicated to the GET that, as far as members of the National Council are concerned, competent authorities would include law enforcement authorities and the Secretary of the National Council. It was unclear who the competent authorities would be in the case of members of the National Assembly.

Gifts

88. The CPC is in charge of monitoring compliance with the provisions of the IPCA regarding gifts (articles 30-33 IPCA) received by members of the National Assembly and the National Council. If it establishes that a parliamentarian has accepted gifts that have affected or may have affected the objective and impartial discharge of his/her duties, it has to seize the gifts and inform immediately law enforcement authorities and, if necessary, other competent authorities, namely the National Assembly or the National Council.

Declarations of assets, income, liability and interests

89. Given the great number of officials that are subject to the obligation to declare their assets and its staff and the budgetary and staff constraints highlighted earlier in this report, the CPC carries out supervision by combining random checks and the selection of a different group of target officials each year, which are checked more thoroughly.

90. The Commission can cross-check at any time, including through contacts with other competent authorities (e.g. tax officials and relevant registers), the accuracy and veracity of the data submitted by MPs in their asset declarations. If inconsistencies are found, further evidence may be required from the MP. Such clarifications were required in 48 cases in 2010 and 36 cases in 2011-2012, which concerned 3 and 23 MPs, respectively.

91. If an MP fails to submit his/her asset declaration, the CPC provides him/her with a deadline for submission (15-30 days). If the deadline expires and the MP concerned has not submitted the form, his/her salary compensation will be reduced by 10% of his/her basic salary each month after the expiry of the deadline, but to no less than the minimum salary level. Such a case has not occurred yet.

92. If there is a disproportionate increase in the assets of the MP, the CPC may start an investigation into the reasons for such an increase. If there is a reasonable risk that the assets may dissipate, the Commission may contact the State Prosecutor's Office or the competent authority in the field of money laundering and tax evasion, so that temporary measures are taken to secure the money and assets. The CPC must be kept informed on the action taken thereafter by the relevant law enforcement authorities. This procedure has not yet been applied, as no case of serious irregularity has come to light so far. The GET was informed that the CPC is currently carrying out an in-depth financial investigation regarding a number of high officials in the executive and the legislative powers.

93. Family members are not required to file an asset declaration, except if required to do so by the CPC, if there are reasonable grounds to believe that the MP may have transferred his/her assets or income to family members in order to avoid control. Family members include spouses, children, adopted children, parents, adoptive parents, brothers, sisters, or any other persons living with an individual in the same household or in a common-law partnership. Such a case has not occurred yet, because of the relatively high suspicion threshold that is required to request information on family members.

94. The CPC keeps records on those officials who are subject to the duty to declare their assets, as well as of cases involving a disproportionate increase in assets.

95. Supervision over asset declarations only began in earnest after the introduction of the online declaration system, so it is still premature to assess its efficiency. The GET is of the opinion that the CPC possesses a number of tools, such as an electronic database containing data of good quality and it has the possibility to perform cross-checks electronically with data held by other administrative bodies, which should enable it to perform a meaningful supervision. As mentioned above, the Commission intends to propose amendments to the IPCA in order to enhance its possibilities for action. These proposals are likely to include a better legal basis for checking the assets of an official's family members and his/her assets held abroad. They would, in the GET's view, be beneficial to the efficiency of supervision.

Sanctions and immunity

96. Sanctions are foreseen for failure to comply with the provisions on gifts, incompatibilities, conflicts of interest and asset declarations contained in the IPCA. In particular, a fine of between 400 and 1,200 EUR applies, *inter alia*, for:

- failure to submit information or submission of false data concerning assets;
- failure to submit lobbying records or failure to refuse contact with a lobbyist who is not registered or contact where a conflict of interest would arise;
- failure to furnish details on the entities in which the MP or a family member has a relationship;
- accepting a gift (other than a permissible gift) or any other benefit in connection with the discharge of duties;
- failure to enter details of the accepted gift and its value on the list of gifts kept by the National Assembly/National Council;
- within two years of the termination of the mandate, acting as representative of a private entity which enters into contract with the former employer, i.e. National Assembly/National Council.

97. These fines are imposed directly by the CPC. According to the information gathered by the GET, four MPs were fined in 2012 for violation of the provisions of the law regarding lobbying.

98. Failure to submit asset declarations within the reminder and deadline provided by the CPC is punished with a reduction of 10% in salary each month after the expiry of the deadline. Likewise, disproportionate increases in assets, which are not adequately justified, could lead to the adoption of precautionary measures (e.g. temporary measures to freeze/seize and secure assets). However, there are at present no consequences for MPs in case the supervision of asset declarations reveals serious irregularities. In the case of public officials, article 45 IPCA does enable the CPC to alert the body in which the official is employed, in order for that body to initiate sanctions entailing possible termination of office. This provision is not applicable to MPs, who are elected officials.

99. The relevant provisions of the Criminal Code (e.g. on bribery, fraud, abuse of office, disclosure of classified information, embezzlement, etc.) apply, as necessary.

100. The GET is of the opinion that, with the exception of the gap highlighted above as regards possible illegal enrichment revealed by asset declarations, sanctions for violations of the IPCA by MPs and members of the National Council appear adequate on paper, and the fact that they may be imposed directly by the CPC, an external and independent authority, is a guarantee for a flexible and effective system. In the absence of standards of conduct however, it is understandable that there are no sanctions for ethical misconduct. The GET wishes to stress, as it did in the section on ethical principles and rules of conduct, that establishing a credible mechanism of supervision, coupled with a robust sanctioning regime, is an essential part of an integrity system and is instrumental in increasing the integrity of parliamentarians and improving their public image.

101. MPs and members of the National Council cannot be held criminally liable for any opinion expressed or a vote cast at the sitting of the National Assembly or its working bodies.

102. In addition, an MP or a member of the National Council cannot be held in detention nor can criminal proceedings be commenced against him/her, without the approval of the National Assembly, or the National Council – as appropriate, unless s/he has been caught *in flagrante delicto* as regards an offence for which a sanction of at least 5 years' imprisonment is foreseen. Immunity is usually granted at the request of the MP/member of the National Council. However even if a member of the National Assembly or National Council has been caught *in flagrante delicto* and the sanction for this offence is at least 5 years' imprisonment, or even if s/he has not claimed immunity, the National Council or National Assembly can grant immunity to the member of parliament in question. Immunity expires when the terms of office of the persons entitled to it are over. According to the information gathered by the GET, during the current legislature of the National Assembly, which started in 2011, one MP has been subject to criminal indictment for a corruption-related offence. Immunity was not requested, nor granted to him. During the previous legislature (2008-2011), there were 16 cases of MPs involved in criminal proceedings – about one quarter of which concerned corruption-related offences. Only one MP requested immunity – which was not granted by the National Assembly. In another case, an MP was convicted and lost his mandate after imprisonment for a corruption/extortion case. As to members of the National Council, immunity was granted twice, out of 12 cases since 2004.

Advice, training and awareness

103. The Secretary General of the National Assembly, who is responsible for notifying MPs about applicable rules, distributes at the start of every legislature a handbook with information concerning their conduct, work and status. It contains all relevant provisions of the IPCA and other legal texts as regards incompatibility of offices, conflicts of interest, lobbying, the handling of classified information, etc. The CPC also distributes information material, publishes its opinions and answers questions from MPs on their concrete obligations and the conduct to adopt in practical cases. In May 2012, it organised for the first time, in cooperation with the President of the Parliament, a 4-hour information session for MPs on their obligations under the IPCA. The GET was informed that the Commission intends to organise such sessions on a yearly basis and it welcomes this initiative.

104. As regards the members of the National Council, it appears that awareness measures are scarce. The only activities reported to the GET were a few consultation meetings held with the CPC on the new provisions of the IPCA regarding lobbying, in the context of uncertainties in the way these provisions apply to the members of the National Council (see paragraph 72).

105. In spite of the existing awareness measures, it is obvious to the GET, from the interviews conducted during the on-site visit, that the knowledge MPs may have of their duties remains mostly theoretical. Even when they are aware of being confronted with a case of potential conflict of interest for instance, they are unsure of what action to take. In many cases, they do not even realise that a potential conflict of interest is at stake. The Commission for Public Office and Elections of the National Assembly can, according to the authorities, provide additional guidance to individual MPs concerning incompatibility and conflicts of interest rules. It was however apparent to the GET, that it takes no proactive action in this respect and defers all questions regarding the application of provisions of the IPCA to the CPC. MPs, as well as members of the National Council, need to be provided with more practical information and targeted training, especially on the newer aspects of the IPCA, such as conflicts and interest and lobbying rules. To this end, it would be useful if the theoretical information contained in the handbook given to MPs at the beginning of their term of office, was complemented with explanatory comments and/or concrete examples. Authoritative resource persons or bodies, are also required to provide confidential advice to MPs and members of the National Council on the practical implications of their legal duties. In order to be able to carry out this task in an appropriate and efficient manner, these persons/bodies need to have sufficient expertise and to enjoy an appropriate degree of independence from political influence. Even if the CPC, being the key authority in charge of overseeing the implementation of the IPCA, has definitely a role to play in providing such advice and training to parliamentarians, it is up to the Parliament itself to take the lead responsibility in this area. **GRECO therefore recommends, both in respect of MPs and members of the National Council, (i) the establishment of a dedicated counsellor, with the mandate to provide parliamentarians with guidance and advice on the practical implications of their legal duties in specific situations and (ii) the provision of specific and periodic information and training on ethics and integrity.**

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

106. The courts of first instance in Slovenia are the 44 local courts (*okrajna sodišča*) and the 11 district courts (*okrožna sodišča*), which have general competence over civil and criminal cases. The general courts of second instance are the four high courts (*višja sodišča*), while the Supreme Court (*Vrhovno sodišče*) generally decides on extraordinary legal remedies and is the court of third instance in some cases.

107. The local courts have jurisdiction of first instance over civil cases, such as non-contentious matters, enforcement and insurance claims and various litigation matters, notably disputes over property rights, where the value of the disputed property does not exceed 20,000 EUR, as well as disputes relating to trespass, lease and tenancy relations. District courts have first instance jurisdiction over forced settlements, bankruptcy and liquidation, intellectual property rights, family law matters, commercial disputes and over litigation matters such as property rights where the value of the disputed property exceeds 20,000 EUR. As regards criminal cases, local courts are competent to hear in first instance cases involving offences carrying as principal penalty a fine or a prison term of up to three years – these cases are heard by a judge sitting alone. District courts have jurisdiction over offences which attract penalties higher than 3 years imprisonment. Since 2009, local courts have become departments of district courts.

108. Next to these general courts, there are five other courts of first instance – four labour courts (*delovna sodišča*) and one social court (*socialno sodišče*) – that are competent to deal with individual and collective labour and social cases. Appeals against their decisions are heard by the high labour and social court (*višje delovno in socialno sodišče*), while the Supreme Court is also the last instance court for these cases. Finally, there is one administrative court in Ljubljana, which has the position of a high court and deals with litigation concerning administrative decisions taken by the executive power.

109. In addition, Slovenia has a Constitutional Court, which is competent to examine the compatibility of legislation with the Constitution and with international law, as well as alleged breaches of fundamental rights and freedoms. It is composed of nine members, elected among legal experts by the National Assembly, upon the proposal of the President of the Republic, for a non-renewable term of office of nine years. Judges of the constitutional court elect their president from among them, for a term of three years (articles 163 and 165 of the Constitution).

110. Some courts sit in panels involving both professional judges and lay judges. This is the case of district courts, for criminal cases carrying a penalty of more than three years imprisonment. Cases of criminal offences punishable by three to 15 years imprisonment, are heard by panels of three judges – one professional presiding judge, assisted by two lay judges – and cases of criminal offences carrying more than 15 years imprisonment are heard by panels of five judges, two professional and three lay judges. Lay judges also sit in labour and social courts, where panels consist of one professional and two lay judges.

111. The Judicial Council is the entity responsible for the appointment and promotion of judges. It is composed of 11 members, five of which are elected by the National Assembly on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their ranks. The elected members of the Council elect a president among them (article 131 of the Constitution).

Recruitment, career and conditions of service

Professional judges

112. The status of judges is governed by articles 125 to 134 of the Constitution and by the Judicial Service Act (hereafter JSA). Judges are elected by the National Assembly on the proposal of the Judicial Council and their office is permanent until retirement, no later than upon reaching 70 years of age. They have the status of public officials but, according to article 125 of the Constitution, they are independent in the performance of the judicial function and are bound only by the Constitutions and laws. Judges are not specialised in one legal field by training, but operate according to the internal organisation of the court in which they sit.

113. The general conditions⁵ for applying to a position of judge are set out in article 8 of the JSA. The number of years of work experience of candidates determine to what level of court they can apply to. As regards the propriety of candidates, article 8 JSA specifies that *"persons for whom it can justifiably be concluded on the basis of their work, action and behaviour to date that they will not perform judicial office with expertise, honesty and conscientiousness or that as judges they will not safeguard the reputation of the judiciary or the impartiality and independence of judging, and persons convicted of a criminal offence providing grounds for the dismissal of a judge shall be deemed personally unsuited to holding judicial office"*.

114. In addition to these general conditions, the past work, including the judicial performance, of the candidates is also assessed, both for initial appointment and for promotion, according to nine criteria set out in article 29 JSA, namely the specialist knowledge, working abilities (number and complexity of solved cases), ability to solve legal questions (percentage of appeals dismissed/granted), work on judicial backlogs, maintenance of the reputation of the judge and of the court, communication skills, additional work (such as tutorship, teaching, publications), relationship with co-workers and leadership abilities (only for judges who already hold leading positions). For candidates who have not held a judicial position previously, these criteria are applied as regards their past work experience.

115. These criteria are assessed several times during the procedure of appointment and promotion of judges, which the GET discussed at length during the visit. Vacant positions are advertised by the Ministry of Justice, upon receiving the necessary information from the president of the court where a position is vacant. The Ministry of Justice checks that the applications are complete and fulfil the necessary formal conditions, and sends them to the president of the court, who assesses the candidates. In the context of promotion, a work performance assessment, carried out by the relevant personnel council⁶, also forms part of the candidate's file. Each of the criteria of article 29 JSA must be assessed, and the president of the court has to issue a reasoned opinion on the adequacy of each candidate. S/he may also – and often does – propose the candidate which s/he deems most suitable for the position. The Judicial Council then selects the candidate to the position and, if this candidate has never been elected to judicial office, it proposes his/her election to the National Assembly. The Judicial Council is not bound by the opinion of the president of the court and can request additional information, and even proceed to interviews of the candidates. However, in practice, the opinion of the president of the court is decisive. Court presidents are appointed by the Judicial Council.

⁵ A person may apply to the post of judge if he/she is a Slovenian citizen and has an active command of the Slovenian language, is at least 30 years old, has the professional capacity and is of good general health, has acquired the professional title of lawyer with a university degree in Slovenia or an equivalent foreign degree, has passed the state examination in law and has a suitable disposition for performing a judicial office.

⁶ Personnel Councils are bodies established at higher courts, which are in charge of the evaluation of the work performance of judges of lower courts. Their members are elected by judges from among their peers.

116. Some of the interlocutors with whom the GET spoke with during the visit, expressed dissatisfaction at the lack of uniformity and predictability of this procedure and the GET agrees that it could be improved. The same criteria are assessed differently by different courts and given a different weight. In some cases, the opinions of the president of the courts are considered not to be critical and detailed enough. In this connection, it is the GET's view that the fact that the procedure of selection and promotion of judges is decentralised, adds an element of vulnerability to the system: each candidate applies to a specific position and in a country like Slovenia, with a relatively small judicial community, there are chances that s/he may know the president of that court, who will assess his/her candidacy. This creates risks of an at least perceived lack of objectivity in the selection of candidates. Another relevant element is that the Judicial Council functions mainly on the basis of written documents, due to a lack of capacity and resources. Interviews are conducted only for positions of court presidents. The GET thinks that giving an enhanced role to the Judicial Council in providing a more uniform, transparent and predictable interpretation of the criteria for the selection and promotion of judges would represent a safeguard against possible perceptions that local, undue influence might be a determining factor in the recruitment and career of judges. Consequently, **GRECO recommends that the criteria of selection and evaluation of judges set out in the Judicial Service Act be further developed, by any appropriate instrument, including an act of the Judicial Council, with the aim of enhancing their uniformity, predictability and transparency.**

117. Another issue that was discussed during the on-site visit was the role of the National Assembly in the election of judges. The initial election within judicial service does not raise particular issues, since a single candidate is proposed for election to a post and in practice, the National Assembly elects this candidate. Its role therefore is mostly of a symbolic nature. However, the National Assembly also elects the judges and the President of the Supreme Court. The GET heard that recent elections to such positions, in particular the two latest elections to the post of President of the Supreme Court, have been the occasion of heated political debates in Parliament, which were widely reported in the press. In one case, the candidate was apparently subjected to a smear campaign. These events have fuelled the perception existing in Slovenia that judges are vulnerable to political influence. Bearing in mind that in Slovenia, judges may be members of political parties, the manner in which the National Assembly has undertaken the election of higher judges in recent cases could well be seen as problematic in relation to the judges' necessary independence and integrity.

118. In this connection, the GET recalls that, although Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities accepts that it is possible for the legislative power to take decisions on the selection and career of judges, it gives preference to an independent and professional body, whose recommendations other powers should follow. Appointments based on political considerations are clearly not considered admissible. The Magna Carta of Judges adds that "*decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence.*" **GRECO therefore recommends that the Slovenian authorities consider revisiting the procedure of appointment of judges to the Supreme Court, in order to minimise the possibilities of political influence.**

119. Judges may not be transferred to another court without their prior written consent, except upon a decision of the Judicial Council in cases of a change in the organisation or workload of courts (article 66 JSA). They may however be temporarily assigned, without their consent, to work full-time or part-time for another court, for a maximum period of two years, if necessary in view of the courts' workload. Such temporary assignments are decided by the President of the Supreme Court, and the assigned judge may appeal this decision to the Judicial Council (article 67 JSA).

120. Judges may be dismissed from office prior to retirement only by a decision of the National Assembly, upon a proposal by the Judicial Council, if they cease to fulfil all the formal conditions for being a judge (see footnote 5), if their employment can no longer be guaranteed following a judicial reorganisation, if they accept an office or function that is incompatible with judicial office, if their work assessment reveals that they are no longer suited for judicial office or as a result of a disciplinary sanction (articles 77 and 78 JSA).

Lay judges

121. As mentioned above, there are lay judges in district courts, when they are dealing with criminal cases, as well as in labour and social courts. According to Chapter 7 of the Courts Act, district court lay judges are appointed and dismissed by the presidents of the high courts, each for the district courts under his/her jurisdiction, for a renewable term of five years. Candidates⁷ may be proposed by the representative bodies of the municipalities and by representatives of commercial or not-for-profit entities within the district court's jurisdiction. Political parties may not propose candidates directly.

122. The performance of lay judges is assessed by the president of the district court in which they serve and this assessment is appended to their file if they wish to stand for another term of office.

123. According to the Labour and Social Courts Act, lay judges of labour and social courts are elected by the National Assembly for a renewable term of five years. Lay judges of labour and social courts are appointed by the National Assembly into a pool of 1476 judges. Candidates to labour courts are proposed in equal numbers by representatives of trade unions and professional organisations of employers; candidates to the social courts are proposed in equal numbers by representatives of insured persons and insurance companies.

124. During the on-site visit, no problematic issues were highlighted with regard to lay judges. Except when mentioned specifically, their situation and the regulations applicable to them do not call for comments by the GET.

Conditions of service

125. The issue of judges' salaries has given rise to controversy in Slovenia over the past few years. Judges' salaries are set out by the JSA, in accordance with the Public Sector Salary System Act. Changes to the legislation were proposed, which were challenged by judges before the Constitutional Court, mainly for reasons of alleged disproportionality between judges' salaries and salaries of officials in other branches of power. The Constitutional Court ruled in favour of the judges, stating that the government had not given convincing reasons for this disproportionality, which therefore breached the principle of separation of powers⁸. The government then introduced some changes, which were again challenged, this time by the Administrative Court, before the Constitutional Court. The Constitutional Court declared them unconstitutional, repeating that judges should be treated in a manner comparable to officials of the two other branches of power⁹.

126. As a result, judges' salaries were aligned with those of comparable officials in the legislative and executive powers in 2009, according to a new version of the Public Sector Salary System Act. However, due to the current economic situation, the new scale system has not yet been introduced and a transitional system is in place. According to

⁷ Candidates for a position of lay judge, be it at a district, labour or social court, must be Slovenian citizens, with an active command of the Slovene language, at least 30 years of age, must be personally suitable for exercising judicial power and must not have been convicted for a criminal offence prosecuted *ex officio*.

⁸ Decisions U-I-60/06, U-I-214/06 and U-I-228/06.

⁹ Decision U-I-159/08.

this system, the gross monthly salary of judges for the year 2011 ranges from 2,486 EUR for a local court judge at the beginning of his/her career to 4,304 EUR for a judge of the Supreme Court. The average gross salary of a judge in 2011 was 3,145 EUR. Judges do not enjoy any additional benefits.

Case management and procedure

127. One of the changes brought by the 2010 amendments of the Courts Act is the creation of the position of court director within district and high courts, whose role is to manage courts more efficiently and discharge the president of the court. Court directors are public officials – not judges – who are selected by the president of the court and appointed for a renewable term of five years by the Ministry of Justice. They are in charge of the material, technical and financial management of the court, including public procurement procedures and staff matters, under the authority of the president of the court. The latter remains solely competent for all matters relating to the exercise of judicial office. Although this change is recent and it is therefore too early to fully assess all its consequences, the GET believes that it may have a positive effect on court management. Provided court presidents use the opportunity of this redefinition of their role to tackle issues such as ethics and integrity of judges and communication policy, it may also positively affect these issues and even improve judges' public image.

128. The Courts Act provides the general principle of case assignment, whereby cases are assigned to individual judges, depending on the legal field to which they have been assigned to work in the court, according to the daily succession of filed initial procedural acts, taking into account the alphabetical order of initial letters of the judges' surname. This principle applies to all courts, including the Supreme Court (article 15, Courts Act). The Court Rules¹⁰ further specify the detailed application of this principle, for instance when several procedural acts are filed on the same day or when the judges' respective workloads or the urgency of a given case are to be taken into account.

129. Exclusion of a judge or a lay judge from a case is decided upon by the president of the court, at the request of the judge him/herself or of the parties to the case. The grounds for exclusion, which aim at avoiding conflicts of interest or other circumstances in which the judge's impartiality may be doubtful, are specified in the Civil Procedure Act and the Criminal Procedure Act.

130. Safeguards are in place to ensure that cases are tried without undue delay and according to the relevant procedural requirements. According to article 71 of the Courts Act, it is the duty of the president of the court to regularly monitor the functioning of the court. If s/he has reason to believe that the right of a party to trial without undue delay has been or could be breached, or that the rules on decision on a case or other procedural rules have been or could be breached, s/he can require a written report from the judge in charge of the case, or inspect the file him/herself. In case of irregularities, s/he may take several measures, such as a written warning to the judge, decide that the case is to be tried as a matter of priority or set a time-limit for the execution of the relevant procedural acts, as well as other measures in accordance with the Courts Act, the JSA and the Act on the protection of the right to trial without undue delay. In order to expedite proceedings in a case, the parties may also file a supervisory appeal or, if this appeal is rejected by the court, a motion for a deadline before the higher court. If either of these is granted, the parties may also file a claim for just satisfaction.

131. Court hearings and the pronouncing of judgments are public, except in cases provided for by law (article 24 of the Constitution). According to the Civil Procedure Act, the judge may exclude the public in the interest of official, business or personal secrets,

¹⁰ Court Rules, adopted in 1995 and last amended in 2011, are a special by-law designed to implement the right to judicial protection established in the Constitution and to set out the detailed modalities of implementation of the Courts Act. It deals in particular with the internal organisation of courts, case assignments, contacts with the parties and court management issues.

public order or moral considerations. Similar grounds are foreseen in the Criminal Procedure Act.

132. The Supreme Court of Slovenia is in charge of the computerisation of the judicial system and has been introducing new technologies in courts, among others to implement the rules on case assignments and on publicity. Court registers in Slovenia are entirely computerised and publicly available. About 95% of cases are registered and allocated electronically. Annual work schedules of all courts are published on the Slovenian judiciary website. This is, in the GET's view, a positive feature of the system, as it guarantees that no one can tamper with the rules on random case assignments to judges. The GET was informed that computerisation had visibly increased public trust in the case allocation system, as complaints from parties on violation of the rules in that regard have almost completely ceased.

133. As regards publicity of hearings, the GET was informed that audio recording devices have recently been installed in all courtrooms in Slovenia. Video-conference equipment is also available in the district courts, which may be used by the local courts as needed. The courts appear to make use of these technologies to various extents, but those who have started to use them reported positive effects on the length of debates and the discipline in implementing procedural rules. The GET takes the view, that these measures which overall enhance the transparency of the courts' operation, may contribute to preventing many kinds of "silent abuse", such as undue influences and pressures that may otherwise occur – or be perceived to occur – behind closed doors. The GET believes that such examples are illustrative of the role that new technologies may play a role in the prevention of corruption of judges and in strengthening public confidence in the justice system.

Ethical principles and rules of conduct

134. The Constitution of Slovenia establishes core values that apply to judicial proceedings (articles 21 to 31), such as the equal protection of rights, the right to legal remedies or the presumption of innocence. It also contains principles which address the judiciary and judges more directly (articles 125 to 134). These articles pertain to the independence of judges (article 125), the permanence of judicial office (article 129), the election of judges (article 130), as well as the termination and dismissal of judicial office (article 132), incompatibilities (article 133) and the immunity of judges (article 134).

135. The Courts Act and the Judicial Service Act both address the independence and impartiality of judges, e.g. by laying down that judges must always act in such a way so as to safeguard the impartiality and independence of their office and the reputation of the judicial service (article 2 JSA). The JSA also contains provisions on incompatibilities (articles 41 to 43) and a prohibition from accepting gifts (article 39).

136. A more specific set of aspirational professional and personal rules of conduct is contained in the Code of Judicial Ethics, which was first adopted by the Slovenian Association of Judges on 10 October 1972 and was renewed and amended, with the addition of a commentary, in 2001. It contains nine principles, on independence, impartiality, training, commitment, compatibility, incompatibility, discretion, attitude and reputation. The Code does not include any provisions concerning its monitoring and is not meant to be used directly as a basis for disciplinary action or enforcing a judge's liability. It was confirmed to the GET that the provisions of the Code were never used, directly or indirectly, during disciplinary proceedings against judges. However, disregard for its provisions may also constitute a breach of duty or irregular performance of judicial service under the Judicial Service Act (article 81 JSA) and give rise to sanctions (see below). In the view of the judges met by the GET during the on-site visit, the Code of Judicial Ethics is a well-known, balanced and sufficiently detailed document.

137. The GET agrees that the Code of Judicial Ethics is a valuable document. However, it wishes to highlight that it only applies directly to the members of the Association of Judges and only half, approximately, of the judges in Slovenia are members of the Association. Even if most of its principles are included in the JSA, the GET takes the view that legal duties and standards of professional conduct, such as those contained in a code of ethics, are not interchangeable. As already highlighted in relation to MPs, both are necessary and fulfil different purposes. While legal duties represent basic rules which all judges must follow and the inobservance of which may give rise to disciplinary proceedings, professional standards are developed by the judges themselves, and are – or should be – constantly evolving. They “*represent best practices, which all judges should aim to develop and towards which all judges should aspire*”¹¹. . In light of the foregoing, **GRECO recommends that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which would cover in scope all judges.** This set of standards could be inspired by the Code of Judicial Ethics.

138. Courts, like all other public institutions in Slovenia, had to draw up Integrity Plans and submit them to the CPC by 5 June 2012. Integrity Plans are foreseen in articles 47-50 of the IPCA and are meant to serve as a tool to identify, monitor and manage each institution’s specific corruption risks¹². These plans were drafted in co-operation with the CPC, which offered advice and training to the persons concerned. The plans, however, were meant to be prepared by each institution itself, through a discussion and reflection process involving all employees, so as to develop their awareness of corruption risks and to reach consensus on how best to manage them. Plans are kept in a register held within each institution, which lists the risks, measures, timelines and responsible persons. They are meant to be updated regularly.

139. The Commission is in the process of analysing the plans, and intends to use them in the long run to better educate and supervise public institutions. According to the information received by the GET, all courts, except one, had submitted their Integrity Plan to the Commission at the time of the visit. All judges met by the GET highlighted the educational value of the process of preparing the Integrity Plans, explaining that it had given them an opportunity to gather and take an active part in discussions around integrity and corruption issues affecting them. The GET wishes to underline that Integrity Plans, when prepared and used according to the spirit of the law as described above, can be an excellent tool in raising awareness, identifying and managing corruption risks, not only within each institution, but also within different sectors. It encourages all relevant actors, namely court presidents, the Judicial Council and the CPC, to take them into account in assessing common corruption risks and better directing and co-ordinating prevention policies.

Conflicts of interest

140. As explained in the section on members of parliament, a general definition of conflicts of interest is contained in the IPCA (see paragraph 47). However, as this law has a subsidiary character, it does not apply to judges, who are subject to special laws which contain more specific provisions. Conflicts of interest are mainly addressed via rules on incompatibilities and prohibition from certain activities, which are contained in the JSA, the Code of Judicial Ethics, as well as the IPCA and via rules on exclusion of a judge from an individual case, as provided for by the Civil Procedure Act and the Criminal

¹¹ Opinion No.3(2002) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality.

¹² Integrity plans share a common design but their content is individualised. Corruption risks are divided among three categories, depending on whether they derive from the institution’s legal framework, its work processes or its employees. Courts, therefore, usually share the same risks derived from the first two categories, but each court may have different risks falling in the third category, depending on the expertise and personal history of its employees.

Procedure Act. As a result, while the judges met by the GET during the visit were well acquainted with these specific provisions, they were not aware of conflicts of interest as a global issue, which affected not only their action in court, but extended also to choices and decisions made outside the court and in their personal life. The GET is convinced that judges need to be provided with more guidance, in particular as regards conflicts of interest which could arise from their activities and conduct outside the court and that in order to ensure compliance such guidance needs to be accompanied by a credible supervision and enforcement mechanism. Such a mechanism and guidance could be developed by reference to the definition and provisions regarding conflicts of interest contained in the IPCA. The CPC could usefully provide its expertise in these matters to the judiciary. Ensuring communication of this policy and its results would also likely help improve the public image of the judiciary. **GRECO therefore recommends (i) that the Judicial Council, in cooperation with other relevant institutions, including the Commission for the Prevention of Corruption, develops guidelines on conflicts of interest for judges with respect to conduct expected of them outside the court; (ii) and that these guidelines be accompanied with clear rules of enforcement and sanction and be made public.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

141. The principle of incompatibility of judicial office with other functions in state bodies, local self-government bodies and political parties is set in article 133 of the Constitution and further specified in the JSA and the Code of Judicial Ethics.

142. The JSA states the incompatibility of judicial office with the activity as a lawyer, a notary, or any commercial or other profit-making activity. A judge may not be or act as a manager or a board member of a commercial company. More generally, s/he may not accept any work or employment that would obstruct the performance of his/her duties, that would be in conflict with the reputation of his/her office or convey the impression that s/he is not impartial. The only exemption allowed is for teaching, scientific, publishing and research work, in so far as it does not obstruct the performance of the judicial service and is not formalised in an employment relationship. It is subject to the authorisation of the judge's hierarchical superior, either the president of the court, or for court presidents, the president of the courts immediate superior. In case the judge's superior thinks that acceptance of such work may fall under the provisions on incompatibilities, s/he may bring the matter to the Judicial Council, which may prohibit the judge from accepting it (articles 41 to 43 JSA). This declaration of accessory activities forms part of the judge's personal file, which is confidential and kept at the office of his/her hierarchical superior.

143. The Code of Judicial Ethics furthermore contains the principles of incompatibility, according to which *"a judge shall balance his private or public, paid or unpaid ("pro bono") extra-judicial activities in such a way that it does not come into conflict with his professional duties or with the reputation and dignity of the profession of judges"*, and linked thereto, the principle of compatibility, which explains the admissible exceptions, in the interest of the contribution of judges, as qualified lawyers, to the strengthening of legal security.

144. Although, as explained above, most provisions of the IPCA do not apply to judges, article 35 on restrictions to business activities is directly applicable in the absence of more specific provisions contained in other texts. According to this article, public sector entities committed to public procurement procedures – such as courts – may not order goods or services from entities in which the official or one of his/her family members is a manager, legal representative or has more than 5% participation in the management or capital.

145. According to the information gathered during the on-site visit, the provisions on incompatibility applicable to judges – which are rather strict compared to those applicable to other professionals – appear to be well known and respected in practice.

Recusal and routine withdrawal

146. The Civil Procedure Act (articles 70-75) and the Criminal Procedure Act (articles 39-44) both contain a set of grounds according to which judges, lay judges and jurors must be excluded from trying a particular case. These grounds all aim at avoiding that a judge works on a case s/he has particular links to, either by being a victim or a party to the case, having worked on it before a lower court or during the investigation phase, being related by family or business relations to the parties or their representatives or if any other circumstances render his/her impartiality doubtful. The motion of withdrawal is initiated by the judge him/herself or the parties and is decided upon by the president of the court. Appeal against the decision of the president of the court is possible.

147. Withdrawal is also referred to in the commentary of the principle of impartiality¹³ of the Code of Judicial Ethics, which explains that the Code does not enumerate circumstances for withdrawal exhaustively, since a judge's impartiality is primarily subject to his/her own self-restraint and avoidance of any conflicts of interest, both as regards his/her own interests and that of the persons with whom s/he lives.

148. Like the rules on incompatibilities, the provisions on recusal/routine withdrawal appear to be widely known and regularly used by the judges. Some interlocutors pointed out that, until recently, motions for withdrawal were sometimes abusively invoked by parties in order to delay judicial procedures. This problem was solved by the introduction in the law of a requirement for the party requesting the exclusion of a judge to motivate this request. The GET was not made aware of any other problem in this connection.

Gifts

149. The JSA contains a specific prohibition on judges and members of their family and household, from accepting any gifts, whatever their value (article 39 JSA). As the JSA does not envisage the situation in which a gift is given to a court as an institution instead of to an individual judge, in such a case, the provisions of articles 30-34 of the IPCA apply, which allow the acceptance of gifts up to 75 EUR. Lists of gifts exceeding 25 EUR are kept within each court and forwarded annually to the CPC, which compiles them in a catalogue and publishes them on its website. Small gifts corresponding to a social custom, such as Christmas gifts, also fall under these rules. In practice, parties to a case sometimes offer small gifts to judges, which are strictly rejected by them or, depending on the circumstances, filed with an official note.

150. The Code of Judicial Ethics also refers to gifts by indicating that the acceptance of gifts, by a judge or those close to him, from a party to proceedings, his representative, or any other person who could become a party to proceedings, or if the gift is given in any kind of connection with the performance of judicial service, contravenes to the principle of incompatibility. These provisions also appear well respected in practice.

Post-employment restrictions

151. The JSA does not contain any restriction on employment or the exercise of activities after the end of the judicial office, nor is there any reference to it in the Code of Judicial Ethics. The IPCA however contains a temporary prohibition from operation after the termination of office, according to which judges may not act as representative of a

¹³ "A judge shall perform the judicial function impartially and shall not in this allow his judgment to be subject to his inclinations, prejudices or previous convictions, political, economic or other interests, his personal knowledge of disputed facts, public demands or criticisms or other circumstances that could affect his decision in a specific case or that could encourage the appearance of such improper influence".

business entity that has established or is about to establish business contact with their former court, during two years after the end of their office. The court, for its part, may not engage in business with any entity in which one of its former judges has a participation of 5% or more. Such situations have to be reported to the CPC (article 36 IPCA).

152. The GET notes that during the on-site visit, several interlocutors highlighted a growing tendency for judges to leave their office in order to work for private law firms, where they potentially end up representing clients in front of their former court. The current rules do not prohibit this practice. According to the information provided to the GET, an earlier attempt to introduce a temporary prohibition for such former members of the judiciary from working as lawyers in cases brought to the jurisdiction of their former colleagues in the same court was rejected. This situation is in the GET's view, unsatisfactory, as it opens clear possibilities for conflicts of interest through inside information and former professional connections and acquaintances. It also gives the appearance of a lack of objectivity and may feed the negative perception of judges highlighted earlier in this report. **In order to avoid conflicts of interest, GRECO recommends that clear rules/guidelines be introduced for situations where judges move to the private sector.**

Third party contacts, confidential information

153. Contacts of judges with parties, their representatives and third parties are regulated by the Court Rules, according to which judges are not allowed to communicate about a case with third parties. In general the Court Rules specify that judges are allowed to communicate on a case with parties and other participants in a procedure only during the trial, at hearings or by invitation (articles 16 and 71, Court Rules). The underlying principle is that of confidentiality of all information to which the public does not have access, stated in article 38 of the JSA. Contravention to the rules on confidentiality and contacts with parties and other persons may constitute a breach of judicial duties or an irregular performance of judicial service and entail a disciplinary sanction (article 81 JSA).

154. The Code of Judicial Ethics also contains the principle of discretion, which proclaims that *"a judge shall respect the principle of professional confidentiality in relation to personal, business and all other data, which has come to his knowledge while performing his function"*.

Declaration of assets, income, liabilities and interests

155. Professional judges have been subject to a duty to report their assets since 1992, under a succession of different laws. The current declaration system is regulated in the IPCA (articles 41 to 46), which came into force in 2010 and applies to all public officials. The elements of this system described under the section on MPs (see paragraphs 77-84) apply accordingly to judges. The GET was informed that all judges had filled in their asset declarations in electronic form.

Supervision and enforcement

156. Supervision over the rules applicable to judges is mainly divided between the presidents of courts and the Judicial Council, while the CPC is competent to supervise compliance with the rules on assets declarations under the IPCA. The elements of the latter supervision regime described and assessed in relation to MPs (see paragraphs 89-95) apply accordingly to judges. The verification of the information submitted by judges in their asset declarations is included in the CPC's activity plan for 2012.

157. Court presidents are in charge of managing and supervising the functioning of their court (article 7 of the Courts Act). Since the creation of the position of court

director (see paragraph 127), their main responsibility in this field lies with all matters relating to the exercise of judicial office. This includes supervision of the judges' work,¹⁴ as well as of the rules on incompatibilities, accessory activities, recusals, gifts and confidentiality. Compliance of the rules by court presidents themselves is overseen by the president of the court immediately superior.

158. As to the Judicial Council, although its main attributions are related to the recruitment, career and dismissal of judges, as described in the relevant section of this report, it is also competent to supervise the presidents of the courts in their performance in court management. As such, it ensures for instance that rules on case assignment have been observed. The Judicial Council is also competent to decide on matters relating to incompatibilities and on appeals by judges who believe that their independence has been violated, as well as on complaints by citizens against judges (article 28 JSA). Finally, the Judicial Council plays a role in disciplinary proceedings against judges, which will be described in more detail below.

159. It is apparent from this description of the respective roles of the main actors involved in the supervision of judges that integrity and prevention of corruption do not occupy a very prominent place in the current supervisory arrangements, even though some integrity elements are assessed by court presidents and/or the Judicial Council. Several of the GET's interlocutors emphasised that corruption risks affecting judges were insufficiently prevented and managed. The general approach taken by the Judicial Council is to consider that it does not have the competence and the means to supervise judges from the perspective of the prevention of corruption and that this task belongs to the CPC and to the presidents of courts. Indeed, the GET learned during the visit that the members of the Judicial Council exercise their duties on an honorary basis and for a limited period of time; moreover, they have few staff at their disposal to assist them in their tasks.

160. The GET takes the view that this lack of focus on integrity and the prevention of corruption could be one of the factors explaining the negative image of the judiciary. It is not sufficient that judges act professionally and with integrity, they must make this more apparent to the public. The analysis and use of the integrity plans prepared by the courts will certainly provide the governing bodies of the judiciary and the Commission for the Prevention of Corruption with useful tools to place an increased focus on judges' integrity. It is not the role of the Commission, however, to replace the presidents of the courts and especially the Judicial Council, which clearly have the main responsibility regarding the supervision of judges, including in connection with integrity and conduct¹⁵. It is thus of critical importance that they have appropriate human and financial resources in order to exercise this role in a constructive manner. **GRECO therefore recommends (i) that a policy for detecting and managing the risks and vulnerabilities of corruption in the judiciary be developed and made public and (ii) that the Judicial Council be given the core responsibility and the resources to manage this policy and cooperate with other relevant institutions, including the Commission for the Prevention of Corruption, in its oversight and implementation.**

161. Disciplinary sanctions and proceedings are regulated exclusively by the JSA. Article 81 enumerates acts which constitute a breach of judicial duties or which amount to irregular performance of judicial service, among which:

¹⁴ Assessment of the judges' performance of judicial service is however carried out by the personnel councils, either on a regular basis every three years, or upon request of the Judicial Council, the president of the court, the president of a superior court or the judge him/herself (article 31 JSA).

¹⁵ In this connection, Opinion No.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society states that Judicial Councils have a role to play in disciplinary and ethical matters, the protection of the image of judges and responsibility towards the public.

- commission of a criminal offence while holding judicial office;
- revelation of official secrets and other confidential information;
- breach of the case roster or priority handling of cases;
- performance of functions or activities incompatible with judicial office;
- failure to notify the president of the court of the acceptance of work incompatible with judicial office;
- failure to report grounds for exclusion of a case or continuation of work on such a case;
- action or behaviour that conflicts with the judge's impartiality or that damages the reputation of the judicial profession;
- acceptance of gifts or other benefits in connection with judicial service;
- failure to submit information on financial circumstances or late submission thereof;
- dealings with parties, the representatives thereof and other persons that conflict with the provisions of the court rules.

162. Such breach of duties or irregular performance of service can lead to the following disciplinary sanctions (articles 82 and 83 JSA):

- written warning, for minor breaches and if no disciplinary sanction has yet been pronounced against the judge;
- suspension of promotion for up to three years;
- wage reduction of up to 20% for a period of up to one year;
- transfer to another court of the same level or the level immediately below, for a period between six months and three years. This sanction may not be pronounced against a judge of the Supreme Court;
- termination of judicial office, for a serious breach of discipline which renders the judge no longer suited to hold judicial office. The performance of incompatible activities in particular may lead to this sanction.

163. The initiative to introduce disciplinary proceedings may be put forward by the president of the court where the judge performs judicial service, the president of the immediately superior court, the Judicial Council or the Minister of Justice. However, the formal proposal for disciplinary sanctioning has to be lodged and presented by the disciplinary prosecutor, who is a judge of the Supreme Court. Cases are decided upon by the Disciplinary Court of First Instance and the Disciplinary Court of Second Instance.

164. The Disciplinary Court of First Instance is composed of eight judges: two judges of the Supreme Court, two high court judges, two district judges and two local judges. It rules on an individual case in a panel of three judges, one of which must have a status equal to that of the judge against whom disciplinary proceedings are being brought. The panel is selected by the President of the Disciplinary Court (article 86 JSA).

165. The Disciplinary Court of Second Instance consists of five judges of the Supreme Court, and rules on appeals against resolutions by the Disciplinary Court of First Instance. It sits in a panel consisting of the President of the Court and two judges, selected by the former (article 87 JSA).

166. Both bodies are appointed and dismissed by the plenary session of the Supreme Court, at the proposal of the Judicial Council, for a renewable period of two years (article 89 JSA). They are independent in the performance of their competences. Their seat is at the Supreme Court, which provides the budget for their operation (article 89.a JSA). As regards procedure, the provisions of the criminal procedure code that apply to fast-track proceedings before local courts apply *mutatis mutandis* to disciplinary proceedings. These proceedings are not public. The president of the court may designate one of its judges to carry out investigations on a case. Decisions are taken by majority. Final resolutions of disciplinary sanctions are sent to the president of the court where the sanctioned judge operates, to the Minister of Justice and to the Judicial Council, which are responsible for the execution of disciplinary sanctions (article 83 JSA).

167. Disciplinary proceedings are subject to a statute of limitation of two years, which is interrupted by any procedural action or the commission of another breach of duty by the judge. Irrespective of this provision, disciplinary proceedings may be introduced against a judge who is finally convicted for a criminal offence, within three months of the judgment becoming final. The absolute statute of limitation is four years. The execution of disciplinary sanctions is subject to a statute of limitation of six months after the final disciplinary resolution.

168. Article 132 of the Constitution sets out that if a judge is found guilty by a final judgment of deliberately committing a criminal offence through the abuse of judicial office, s/he is dismissed by the National Assembly. The JSA provides that in such a case, the final judgment is sent by the court to the Judicial Council, which is obliged to notify immediately the National Assembly.

169. In other cases in which a judge is convicted of a criminal offence, the JSA differentiates cases in which the judge receives a sentence of imprisonment of more than six months and lesser sentences. In the former case, the Judicial Council must propose to the National Assembly the dismissal of the judge. The National Assembly then has the possibility to accept or refuse dismissal. In the latter case, the Judicial Council merely notifies the National Assembly of the judgment and may propose the judge's dismissal, if it deems that the criminal offence committed renders him/her personally unsuited to hold judicial office (article 78 JSA).

170. A judge suspected of committing a criminal offence carrying a penalty of more than two years imprisonment, may be suspended by a decision of the President of the Supreme Court.

171. The fact that criminal or misdemeanour proceedings are engaged against a judge does not exclude the initiation of a disciplinary procedure for the same facts.

172. Suspension must be pronounced in case of the suspicion of the commission of a criminal offence through abuse of judicial office (article 95 JSA). Decisions of suspension are subject to appeal by the suspended judge to the Judicial Council. If the Judicial Council decides in favour of the judge, the President of the Supreme Court may appeal to the National Assembly (article 96 JSA).

173. Judges enjoy immunity for opinions expressed during decision-making in court. If a judge is suspected of committing a criminal offence in the performance of judicial office, s/he may not be detained or subject to criminal proceedings without the consent of the National Assembly (article 134 of the Constitution).

Statistics

174. According to the data submitted by the Disciplinary Court, none of the disciplinary proceedings against judges in the years 2008 to 2011 concerned conflicts of interest or declarations of assets, income, liabilities and interest. The disciplinary proceedings that took place were for the following motives:

2008 (three cases):

- one for action or behaviour on the part of the judge that conflicts with the judge's impartiality or that damages the reputation of the judicial profession (Article 81/2 – point 14 of the Judicial Service Act): after the investigation, the disciplinary prosecutor dropped the charges;
- one for breach of the case roster or priority handling of cases defined by law or the court rules (Article 81/2 – point 9 of the Judicial Service Act): the judge was acquitted;

- one for failure to achieve the expected work results for more than three months consecutively without justifiable grounds (Article 81/2 – point 8 of the Judicial Service Act): the judge retired during the procedure and the disciplinary prosecutor consequently stopped the proceedings.

2009 (one case):

- unconscientious, late, inappropriate or negligent performance of judicial service, for breach of the case roster or priority handling of cases defined by law or the court rules and for action or behaviour on the part of the judge that conflicts with the judge's impartiality or that damages the reputation of the judicial profession (Article 81/2 – points 3, 9 and 14 of the Judicial Service Act): the judge was found liable and sentenced to a decrease of salary by 20% for a period of six months;

2010 (one case):

- unconscientious, late, inappropriate or negligent performance of judicial service (Article 81/2 – point 3 of the Judicial Service Act): after the investigation, the disciplinary prosecutor dropped the charges;

2011 (nine cases):

- one for commission of an act that has the statutory definition of a criminal offence while holding judicial office (Article 81/2 – point 1 of the Judicial Service Act): the investigation is on-going;
- six for unconscientious, late, inappropriate or negligent performance of judicial service (Article 81/2 – point 3 of the Judicial Service Act): in one case, the investigation is on-going; in one case, the procedure was stopped; in one case, the judge was found not guilty; in two cases, the judges were found guilty and were disqualified from promotion for one year; in one case, the judge was found guilty and sentenced to a salary decrease of 5% for a period of two years. An appeal has been filed;
- one for breach of the case roster or priority handling of cases defined by law or the court rules (Article 81/2 – point 9 of the Judicial Service Act): the investigation is on-going;
- one for action or behaviour on the part of the judge that conflicts with the judge's impartiality or that damages the reputation of the judicial profession (Article 81/2 – point 14 of the Judicial Service Act): the judge was found guilty and received a written warning.

Advice, training and awareness

175. The Judicial Training Centre, established within the Ministry of Justice, organises training events for judges and prosecutors. In-service training is not compulsory for judges, even if it is encouraged by the Code of Judicial Ethics, which mentions training as one of its nine principles. Subjects are requested by the judges and prosecutors, and the annual training programme and curricula are adopted by Judicial Training Centre's expert council, which includes experts from the Supreme Court and the Supreme State Prosecutor's Office. Ethics, expected conduct, conflicts of interest and corruption are among the subjects taught. Public relations and public speaking courses are also available to court presidents and directors. However, some of the GET's interlocutors were of the opinion that more could be done in this area. The GET agrees that providing appropriate specific training to those in charge of contacts with the public is instrumental in improving the image of the judiciary in the public. It encourages therefore the Slovenian authorities to ensure that sufficient training opportunities are available to them.

176. The GET was informed during the onsite visit that the Judicial Training Centre does not have its own budget and its programmes have suffered from a budgetary decrease of 35% between 2008 and 2010, as a result of the economic crisis. The means

available for training are all the more reduced, as the Judicial Training Centre is also responsible for organising state exams for legal professions, namely judges, prosecutors, notaries, bankruptcy officers and certified interpreters, representing more than 550 candidates per year. For these purposes, the Centre has a total staff of 14 persons, with only 5 working full time on training activities.

177. Turning more specifically to awareness about integrity issues, the Association of Judges has set up a Council for Judicial Ethics, which gives guidance and answers questions of the judges when they are confronted with situations that might conflict with judicial standards. Concrete cases of violations of the provisions of the Code of Judicial Ethics are also discussed within the Association, as the GET was informed. Notwithstanding this commendable action, the GET wishes to recall that not all judges are members of the association and not all of them have therefore access to the Council for Judicial Ethics. The GET is of the clear view that more needs to be done to raise awareness and provide guidance to all judges on integrity issues. Several of the GET's interlocutors highlighted a gap between the duties set out by the laws and the way these duties are understood in everyday life and practice. The need for more training and guidance in concrete situations was expressed.

178. To this end, the Judicial Training Centre and the Association of Judges need to continue, and if possible enhance, their action with regard to standards of judicial conduct. The CPC also has a clear role in raising awareness on integrity issues, keeping in mind that the IPCA was recently amended and that it introduced several new concepts and mechanisms, such as online assets declarations. However, in the GET's view, the Judicial Council, as a body representing the whole judiciary, is clearly better placed to take on a leading role in developing awareness and guidance regarding questions of ethics and integrity¹⁶. Such a role for the Judicial Council could complement the one called for above in overseeing the risks of corruption in the judiciary and, provided the public is made aware of the steps taken in this area, could help improve public confidence in the judiciary. This of course implies, as already highlighted, that the Judicial Council is given adequate competences and means to this end. In view of the above, **GRECO recommends that all judges are provided appropriate training and counselling services on ethics and integrity, in particular by giving a leading role to the Judicial Council in this respect.**

¹⁶ See in this connection Opinion No. 10 of the CCJE which, when highlighting the role of Councils for the Judiciary in ethical matters, recalls "*the need to provide judges with a collection of principles of professional ethics, which should be conceived as a working tool in judicial training and the everyday practice*". This collection "*should not amount to a code*", but "*should contain a synthesis of [...] good practices, with examples and comments*". The CCJE also considers that Councils for the Judiciary "*could advise judges on matters of professional ethics with which they are likely to be faced throughout their career*".

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

179. In first instance, there are 12 district state prosecutor's offices (hereafter SPO), one of them being a specialised SPO. This office, established in Ljubljana, is competent for prosecuting serious economic and organised crime, as well as offences related to corruption, terrorism and trafficking of human beings, over the whole territory of Slovenia. The 11 other district SPOs are established near the 11 district courts. There are no SPOs near the local courts. In the four cities where there are high courts, the SPOs have special appeal departments that deal with cases of second instance. Finally, at State level, the Supreme State Prosecutor's Office of the Republic of Slovenia is headed by the State Prosecutor General.

180. The main legal text applicable to the prosecution service is the State Prosecutor's Office Act (hereafter SPOA), which was adopted in 2011. The State Prosecutorial Council (SPC) is responsible for the selection, assessment, promotion and mobility of prosecutors, as well as for the performance assessment and efficiency of the prosecution service as a whole (article 18 SPOA). It is composed of nine members: four members are elected by state prosecutors of each level among their peers, four members are legal experts elected by the National Assembly on the proposal of the President of the Republic and one is appointed by the Minister of the Interior among the heads of the district SPOs. Their term of office is six years and they may not be consecutively re-elected or reappointed after its expiry.

181. According to the SPOA, the public prosecution service in Slovenia is an independent and autonomous body. No one, neither the members of the legislative or the executive power and not even their own hierarchical superiors, is allowed to give prosecutors any instructions on the handling of an individual case. The executive power however retains some competences as regards the organisation, supervision and general management of human resources. Until recently, this competence was exercised by the Ministry of Justice. During the on-site visit, the GET was informed that following the latest general elections and a change of government, responsibility over the prosecution service was taken over as from 1 April 2012 by the Ministry of the Interior. This transfer was extensively discussed during the visit, without any convincing explanations of the necessity or the reasons for their transfer emerging from these discussions. On the contrary, the vast majority of the GET's interlocutors expressed concern at this transfer of responsibilities which is currently subject to an appeal before the Constitutional Court.

182. The GET recalls that, although Recommendation Rec(2000) 19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system allows for a plurality of models with regard to the degree of independence of the prosecution service vis-à-vis other state organs, there is a widespread tendency, within the member states of the Council of Europe, to move towards a more independent prosecution service, rather than one subordinated or linked to the executive¹⁷. Even in those states where the prosecution service is linked to the executive, it is generally to the Ministry of Justice rather than the Ministry of the Interior. It was confirmed to the GET that, in Slovenia as well, there was no tradition of having the prosecutors subordinated to the Ministry of the Interior and that the legal status of prosecutors brought them closer to the members of the judiciary. The GET is concerned that, in the specific situation of Slovenia, where the level of public confidence in the SPOs is very low, the transfer of responsibility over them from the Ministry of Justice to the Ministry of the Interior may further deteriorate the public image of the prosecution service and increase the fear of citizens that prosecutors are vulnerable to improper influence. In this context, the appearance of intervention in the conduct of cases can be as damaging as

¹⁷ Venice Commission Report on European Standards as regards the independence of the judicial system, Part II - the Prosecution Service adopted on 17-18 December 2010.

real interference. The GET also wishes to emphasise that the consequences of this transfer for the organisation and management of the prosecution service were unknown at the time of the visit. The relevant legal texts, in particular the SPOA, had to be updated to reflect this situation. After the on-site visit, the GET was informed that the Ministry of the Interior discussed with the prosecution service potential changes to the status of the Special SPO, which were perceived as limiting its independence. This discussion did not result in any proposed changes by the Ministry, which is a welcome news. However, it illustrates the concerns raised by the transfer of responsibilities over the prosecution service. The GET recalls in this context the key guarantees contained in paragraphs 11 and 13 of Rec(2000) 19, which aim at ensuring that the government exercises its powers over the prosecution service without unjustified interference and in a transparent way. **GRECO therefore recommends that the Slovenian authorities ensure that the Ministry of the Interior exercises its authority over the prosecution service in such a way as not to undermine prosecutors' integrity and create risks of improper influence.**

Recruitment, career and conditions of service

183. Prosecutors are appointed for an indefinite period of time by the government on the proposal of the Minister of the Interior, which is made after obtaining the opinion of the Head of the SPO and the SPC. The heads of the district SPOs and the specialised state prosecution office are appointed by the SPC upon the opinion of the State Prosecutor General, for a six-year renewable mandate. The State Prosecutor General is appointed by the government, upon the proposal of the SPC, for a renewable period of six years.

184. The general conditions¹⁸ for applying to the post of prosecutor at the beginning of his/her career – that is a district state prosecutor – which are set out in the SPOA, are the same as those for the post of judge. Additional conditions of work experience and length of service apply for appointment to higher ranks within the profession (articles 23 to 27 SPOA).

185. Promotion of prosecutors within the same wage grade, to the position of councillor, to the title of district state prosecutor and to that of high state prosecutor are decided upon by the SPC, upon the proposal of the prosecutor him/herself or of the head of his/her office. It is the government which decides upon promotion to the title of Supreme State Prosecutor, upon the proposal of the SPC. In all cases, the decision is made on the basis of an assessment of the prosecutor's performance and expertise (article 37 SPOA).

186. The assessment of the work of a candidate for recruitment or promotion is performed by the SPC, using similar criteria to those applying to judges (specialist knowledge, working abilities, ability to solve legal questions, work on judicial backlogs, maintenance of the reputation, communication skills, additional work, relationship with co-workers and, for those already holding leading positions, leadership abilities). The SPC is currently in the process of adopting quality performance criteria for the assessment of prosecutors' work, as prescribed by article 103 SPOA.

187. It is apparent from the above description that the procedure for recruitment and promotion of prosecutors is broadly similar to that of judges. The role of the SPC in the procedure is however stronger, compared to the role of the State Judicial Council with regard to judges. Applications to posts of prosecutors are decentralised – a prosecutor applies directly to a vacant post within a SPO and his/her candidacy is first assessed by the Head of that SPO. Candidacies are then further assessed by the SPC, which must

¹⁸ A person may apply to the post of prosecutor if he/she is a Slovenian citizen and has an active command of the Slovenian language, is at least 30 years old, has contractual capacity and is of good general health, has acquired a law degree in Slovenia or an equivalent foreign degree, has passed the state examination in law and is personally suited to carry out prosecutorial functions.

invite all candidates for an interview. It then ranks the candidates, providing reasons for this ranking. The SPC directly decides on promotion, except for the post of Supreme State Prosecutor. For this post, as well as for initial appointments into the prosecution service, the SPC sends its recommendations to the Ministry of the Interior, which then proposes candidates to the government, which is responsible for appointments (articles 34 and 37 SPOA). If the Ministry of the Interior disagrees with a proposal put forward by the SPC, it may ask the SPC for reconsideration, explaining the reasons for its disagreement. If after having reconsidered the case, the SPC adopts a proposal – whether to confirm its initial proposal or to put forward another candidate – by a two-third majority, this proposal is binding on the Ministry.

188. The GET wishes to stress, as it did in relation to the recruitment and promotion of judges, that a decentralised application process creates risks of a perceived lack of objectivity in candidates' selection. However, in the case of prosecutors, it is of the opinion that the decisive role of the SPC in the assessment and choice of candidates offers potential guarantees for a uniform, objective and transparent recruitment and promotion of prosecutors. Much will depend of course of the practice which the SPC, having only recently been entrusted with this reinforced role, will develop.

189. Prosecutors may not be transferred to another SPO without their prior written consent, except upon a decision of the SPC in exceptional cases of a change in the organisation or workload of prosecutors' offices (article 60 SPOA). They may however be temporarily assigned, without their consent, to work full-time or part-time for another office, for a maximum period of two years, if it is necessary in view of the offices' workload. Such temporary transfers are decided upon by the State Prosecutor General, on the proposal of the head of the office where the prosecutor is to be temporarily transferred (article 61 SPOA).

190. Prosecutors may be dismissed from office prior to retirement – which occurs at the age of 70 at the latest – only by a decision of the government, upon a proposal of the Minister of Interior if they cease to fulfil all the formal conditions for being a prosecutor (see footnote 18), if their employment can no longer be guaranteed following a reorganisation, if they accept an office or function that is incompatible with the office of prosecutor, if it results from their work assessment that they are no longer suited for prosecutorial office, in case of committing a criminal offence in the performance of their duties or as a result of a disciplinary sanction.

191. Prosecutors' gross annual salaries range from 34,858 EUR at the beginning of their career to 54,765 EUR for a public prosecutor of the Supreme Court. The corresponding net annual salaries are 19,901 EUR and 29,367 EUR¹⁹ respectively. Prosecutors do not enjoy any additional benefits.

Case management and procedure

192. According to article 144 of the SPOA, cases are assigned to state prosecutors manually, following the order of their arrival to the SPO, and taking into account the organisation of work and specialisation within the office, as well as concerns for an even workload. The concrete rules of case allocation are determined in the new State Prosecutorial Rules, which were adopted on 25 January 2012.

193. Article 44 of the Criminal Procedure Act states that the provisions referring to the request for exclusion of judges and lay judges apply *mutatis mutandis* to public prosecutors (see below under conflicts of interest). The exclusion of a prosecutor from a case is decided upon by the head of the SPO or, if the motion concerns the head of the office him/herself, by the head of the office above it.

¹⁹ 2011 figures.

194. Although prosecutors are independent and not subject to instructions in the handling of individual cases, the head of the SPO may, in order to ensure the efficiency of operation and the unification of criminal procedure, require to be kept informed of cases s/he deems important (article 169 SPAO). Prosecutors dealing with such cases have to present drafts of their decisions to the head of the office, who may propose amendments to the decision in case s/he deems it incorrect or unclear. The head of the office may also, by a written and motivated decision, take over a case, in case s/he disagrees with the prosecutor's decision, if s/he suspects a serious irregularity or unlawful action on the case, misfeasance, undue delay, inappropriate or otherwise negligent handling of the case, or for any other reason, notably in connection with a possible disciplinary offence. A copy of this decision is sent to the SPC. The prosecutor from whom the case is taken may appeal to the SPC (article 172 SPAO). The GET did not come across any problematic practices in this regard. However, although such measures may be useful for ensuring a uniform criminal policy within the prosecution service, their use needs to be closely monitored in order to avoid any potential improper influence in the way that a particular case is solved.

195. Article 168 SPOA establishes an obligation for the SPG to issue general instructions on criminal policy, to define "conditions, criteria and special circumstances affecting the decisions of state prosecutors", as regards several aspects of their work. Nevertheless, several of the GET's interlocutors criticised the lack of guidance and the absence of a common policy, affecting in particular three areas, namely minor criminal offences, case dismissals and the new procedure for plea bargaining. Even though criminal prosecution in Slovenia is mainly based on the principle of legality, a certain degree of discretionary prosecution exists in relation with minor criminal offences (e.g. theft of an object of small value), where the prosecutor may dismiss the case. The criteria for defining minor criminal acts are not defined by law, but are determined on a case by case basis. Several interlocutors criticised the absence of a common policy on how to use discretion in those cases. Another area where more guidance was felt necessary, relates to the procedure of plea bargaining, which was introduced in Slovenia by amendments to the Code of Criminal Procedure, which entered into force on 15 May 2012. This new procedure allows defendants pleading guilty of an offence to get a reduced sentence. At the time of the on-site visit, no criteria or guidance had been given to prosecutors on how to manage plea bargaining. The prosecutors met by the GET were aware that they will come under strong public scrutiny concerning their decisions in such procedures and that citizens might fear that some of them are the result of corrupt practices. Finally, some of the GET's interlocutors took issue with a general lack of transparency of prosecution, not only as regards minor offences, but regarding all decisions to discontinue prosecution in a given case. Such decisions allegedly sometimes lack reasoning and thus are not understood by the public, which fears that they may have been taken in exchange for bribes. This gives the prosecution service the image of a closed and non-transparent body, which negatively affects the perception of its efficiency and generally reinforces its negative public image, which was already highlighted. After the visit, the GET was informed that a prosecution policy was adopted and published on 27 June 2012 and that instructions, notably on deferral of criminal prosecution, on plea bargaining and on disproportionality between an offence of minor relevance and the consequences of criminal prosecution, were planned to be issued in October and November 2012. The GET welcomes this information, which indicates that the State Prosecutor General is taking steps to address the lack of guidance highlighted above. The GET takes the view that these efforts need to be pursued and even intensified, in order to build the confidence of the citizens in the prosecution service, and convince them that prosecutors' decisions are taken on the basis of the merits of the case, using known, transparent and common criteria. **GRECO therefore recommends that the State Prosecutor General further develops general instructions on prosecution policy, in particular with regard to the use of discretion, the procedure of plea bargaining and case dismissals, ensures that these instructions are made public and monitors their implementation.**

Ethical principles and rules of conduct

196. The basic duties of prosecutors are set out in articles 38 to 42 SPOA, namely duties to safeguard the reputation of the prosecution service, to carry out their duties in a timely manner, to notify their hierarchy of any crime or event of public importance that is of relevance for the prosecution service, to protect secret and confidential information and a prohibition from accepting gifts.

197. A Code of Ethics for Public Prosecutors was adopted in 2009 by the Slovenian Association of Public Prosecutors. It contains a set of general principles of professional conduct, such as obligations of independence, impartiality, professional commitment, a duty to inform the authorities of any improper influence and a provision on prevention of conflicts of interest. The Code specifies that infringements of its provisions, may at the initiative of a member of the association, give rise to a procedure to assess a prosecutor's moral responsibility before the ethical tribunal of the association. According to the information provided to the GET, at the time of the visit, this procedure had been initiated on only two occasions, but had not been followed up by the ethical tribunal: in one case, the prosecutor whose moral responsibility was challenged had left the prosecution service and in the other case, he was not a member of the Association of Public Prosecutors and therefore not subject to its procedures. This case highlights one of the deficiencies of the Code of Ethics, namely that its provisions do not apply to all prosecutors. On the contrary, the GET was informed that less than half of all prosecutors are members of the association and that this number was decreasing steadily. Several prosecutors met during the on-site visit felt that the current Code of Ethics and the attached procedure before the ethical tribunal of the Association were not very useful. They expressed the need for more detailed guidance on how to react in concrete situations. The GET indeed notes that the Code of Ethics for public prosecutors is a short statement of principles, with no explanations, comments or practical examples. It may form a basis for a more detailed document containing standards of conduct for prosecutors, but current ethical rules clearly need to be further developed, possibly with the participation of the SPC as a representative body for all prosecutors²⁰. Consequently, **GRECO recommends that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, is made applicable to all prosecutors.**

198. Finally, like all other public institutions in Slovenia, the Supreme State Prosecutor's Office and the district SPOs have been under the duty to prepare, by 5 June 2012, Integrity Plans, in accordance with the requirements of the IPCA and to submit them to the CPC. As explained above in relation to courts (see paragraphs 138-139), these plans aim at identifying risks of corruption in the respective offices and proposing measures to improve integrity. The GET already underlined, in relation to courts, the educational value of Integrity Plans, provided such plans are prepared in accordance with the spirit of the law, involving all staff of the institution. However, at the time of the on-site visit, the GET was informed that only one Integrity Plan had been prepared so far, by the district SPO of Krško, in the framework of a pilot project. The other Integrity Plans were in preparation, in order to be submitted by the deadline²¹, but the GET heard conflicting opinions about the preparation process. While some prosecutors explained that integrity issues and corruption risks had been discussed among colleagues within their office, others reported more negative experiences, stating that they had not been properly informed about the aim of these plans and were unsure about how to draw them up. The GET was informed that the CPC had organised more than 100 targeted training events in 2011 for public institutions on Integrity Plans, and it has no reason to

²⁰ See in this connection principle 35 of Recommendation Rec (2000) 19, which require states to ensure that "in carrying out their duties, public prosecutors are bound by "codes of conduct"". The explanatory memorandum to the Recommendation further explains that such codes should not be a formal, static document, but rather a "reasonably flexible set of prescriptions concerning the approach to be adopted by public prosecutors, clearly aimed at delimiting what is and is not acceptable in their professional conduct".

²¹ After the visit, the GET was informed that all Integrity Plans had been submitted to the CPC by the deadline.

believe that public prosecutors received less information about them than other public institutions. This highlights that, in order to deploy their full potential, Integrity Plans need to be properly managed by the institutions in charge of their preparation, from the moment they are announced until after they are adopted, implemented and updated. It encourages therefore the relevant actors, namely the heads of SPOs, the Supreme State Prosecutor's Office and the SPC, in connection with the CPC, to keep the implementation and update of Integrity Plans under review, in order to ensure that they play their full role in raising awareness about integrity, assessing specific corruption risks and directing prevention policies.

Conflicts of interest

199. As explained in the section relating to MPs (see paragraph 47), a general definition of conflicts of interest is contained in article 4, paragraph 9 of the IPCA. However, as is the case with judges, this provision does not apply to public prosecutors, who are subject to their own specific laws, namely the SPOA and the JSA. The rules applicable to them as regards incompatibilities and prohibition from certain activities are largely similar to those applicable to judges and will be described in more detail below. Beyond a general knowledge of these specific provisions among the prosecutors met during the on-site visit, the GET noted, as it did in respect of judges, a marked lack of awareness about the issue of conflicts of interest and its relevance for everyday choices and decisions of prosecutors, both within and outside their functions. The GET therefore takes the view that prosecutors, like judges, need to be provided with more guidance on possible conflicts of interest arising in particular from their conduct outside their office. Such guidance could be inspired from the general definition of conflicts of interest contained in the IPCA. In order to ensure compliance, guidelines have to be accompanied by a credible mechanism of supervision and sanction, which could also be drawn from the rules of the IPCA. Lastly, the GET is of the opinion that ensuring the communication of these guidelines to the public could help improve the image of the prosecution service. **GRECO recommends (i) that the Prosecutorial Council, in cooperation with other relevant institutions, including the Commission for the Prevention of Corruption, develops guidelines on conflicts of interest for prosecutors with respect to conduct expected of them outside their office and (ii) that these guidelines be accompanied with clear rules of enforcement and sanction and be made public.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

200. The principle of incompatibility of the office of state prosecutor with functions in other state bodies, local self-government bodies and political parties, as well as with other offices and activities provided by law, is established in the Constitution (article 136).

201. Article 47 SPOA adds that a prosecutor may not perform an activity, accept employment or work which, according to the provisions of the Constitution and the law, may not be performed or accepted by a judge. Hence, it derives from the relevant provisions of the JSA (articles 37-43) that activity as a lawyer, a notary or any commercial or other profit-making activities are therefore incompatible with the function of state prosecutor. A prosecutor may not act as a manager or board member of a commercial company and more generally, s/he may not accept any work or employment that would obstruct the performance of his/her duties or convey the impression that s/he is not impartial. As for judges, the only allowed exception is for teaching, scientific, publishing and research work, in so far as it does not obstruct the performance of the prosecutor's duties and is not formalised in an employment relationship. Acceptance of such work is subject to the authorisation of the SPC, which is competent to decide on incompatibilities with the functions of state prosecutors (article 47 SPOA). As is the case

with judges, article 35 IPCA on restrictions to business activities is directly applicable to prosecutors in the absence of other more specific provisions. According to this article, public sector entities committed to public procurement procedures – such as SPOs – may not order goods or services from entities in which the official or one of his/her family members is a manager, legal representative or has more than 5% participation in the management or capital.

202. The Code of Ethics for Public Prosecutors also proclaims that “*a state prosecutor shall maintain and protect his independence and the independence of the public prosecutor’s office in accordance with the Constitution and the law and shall not allow any encroachment that could threaten the independent performance of his function*”. However, s/he may participate in activities that contribute to improving the legal system, provided this does not raise doubts about his/her impartiality. The GET was informed during the on-site visit that provisions on incompatibilities are well-known by prosecutors and generally respected.

Recusal and routine withdrawal

203. According to article 44 of the Criminal Procedure Act, the provisions referring to the exclusion of judges and jurors from a case (articles 39-44 of the Criminal Procedure Act) also apply, *mutatis mutandis*, to state prosecutors. As explained above in relation to judges, these provisions aim at avoiding that a prosecutor works on a case s/he has particular links to, either by being a victim or a party to the case, having worked on it before a lower court or during the investigation phase, being related by family or business relations to the parties or their representatives or if any other circumstances render his/her impartiality doubtful. The motion of exclusion is initiated by the prosecutor him/herself or the parties and is decided upon by his/her hierarchical superior, namely the head of the SPO or, if the motion concerns the head of a SPO, by the head of the office who is the immediate superior.

204. The Code of Ethics for Public Prosecutors also contains indirect references to the exclusion of prosecutors from a given case, namely by stating that a prosecutor must not allow his/her judgment to be subject to his/her political, economic or other interests, or by his/her personal knowledge of disputed facts.

Gifts

205. Prosecutors are subject to the same general prohibition as judges from accepting gifts, whatever their value (article 42 SPOA). This prohibition also applies to the members of their family and household. According to the information received by the GET, this prohibition appears well respected in practice. The authorities indicated that there is no social custom to exchange small gifts between citizens and public officials, such as prosecutors. Also, similarly to courts, SPOs are subject to the IPCA’s provisions (articles 30-34) when they receive a gift as an institution, as the SPOA does not envisage such a situation specifically. Hence, gifts of a value of up to 75EUR may be accepted by a prosecutor’s office. Lists of gifts exceeding 25EUR are kept within each office and are forwarded annually to the CPC, which publishes them on its website. The Code of Ethics for Public Prosecutors does not refer specifically to gifts.

Post-employment restrictions

206. The SPOA does not contain any restriction on employment or the exercise of activities after the end of the prosecutorial office. Article 36 of the IPCA does however apply to prosecutors, like judges, thanks to the subsidiary character of this law. According to this article, prosecutors may not act as representatives of a business entity that has established or is about to establish business contact with their former office, during two years after the end of their functions. The office, for its part, may not engage

in business with any entity in which one of its former prosecutors has a participation of 5% or more. Such situations have to be reported to the CPC.

207. As the GET already highlighted with respect to judges, there is a growing tendency for prosecutors to leave the judiciary and to take up opportunities in the private sector, where they potentially end up representing clients vis à vis their former colleagues. The absence of rules regulating this practice leaves room for clear potential conflicts of interests, through inside information and informal networks involving former professional connections and acquaintances and feeds perceptions of a lack of objectivity of prosecutors. **In order to avoid conflicts of interest, GRECO therefore recommends that clear rules/guidelines be introduced for situations where prosecutors move to the private sector.**

Third party contacts, confidential information

208. Article 41 of the SPOA lists the protection of secret and confidential information among the duties of state prosecutors. This duty applies even after a prosecutor has left his/her office. The State Prosecutorial Rules also contain a provision (article 205) on the protection of confidentiality and contacts with third parties. The disclosure of official secrets and other confidential information defined by law or the Rules constitutes a disciplinary violation.

209. The Code of Ethics for Public Prosecutors also contains the principle of confidentiality that applies to prosecutors with regard to personal, business and all other data that may come to their knowledge in the performance of their function.

Declaration of assets, income, liabilities and interests

210. As other public officials, public prosecutors are under a duty to report their assets to the CPC. The current declaration system regulated in articles 41 to 46 of the IPCA, and which has been described under the section on MPs (see paragraphs 77-84), applies accordingly to prosecutors. The GET was informed that declarations of assets had duly been submitted by prosecutors, using the new electronic format, to the Commission.

Supervision and enforcement

211. Supervision over the rules applicable to prosecutors is mainly divided between the heads of prosecutor's offices, the State Prosecutor General, the SPC and the Minister of the Interior.

212. The CPC, for its part, is competent to supervise compliance with the rules on assets declarations. The elements of this supervision regime described in relation to MPs (see paragraphs 89-95) apply accordingly to prosecutors.

213. Head of SPOs are in charge of managing and supervising the functioning of their office (article 12 SPOA) and have administrative and supervisory competences (article 110 SPOA). This includes supervision over the administrative rules relating to the prosecutors' work, including rules on case management, recusal, confidentiality and gifts. They may be assisted in their administrative duties by directors, who are public officials appointed for one or several district SPOs by the Minister of the Interior, on the proposal of the head of one of these district SPOs.

214. The State Prosecutor General supervises the work of district SPOs, as regards their administrative role (article 154 SPOA). It also supervises the conduct of prosecution through general, partial or individual review of SPOs or prosecutors (article 173 SPOA). This includes supervision over the rules on case management and procedure. A general inspection of the work of all district SPOs has to be carried out at least every three years. Partial review may occur to evaluate the performance of a particular district SPO, to

analyse prosecution regarding particular types of cases or to assess the implementation of laws or other regulations. Finally, individual inspection of the work of a prosecutor may occur for instance in the framework of a supervisory appeal. Such an appeal may be introduced by the parties to a case if they believe the prosecutor has not handled a case with the necessary diligence.

215. The SPC's main attributions are related to the recruitment, career and assessment of the prosecutors' service. It decides on matters relating to incompatibilities and accessory activities, adopts quality criteria for the prosecution service as a whole and the work of prosecutors and has a role in disciplinary proceedings against prosecutors, which will be described in more detail below (article 102 SPOA).

216. Finally, the Ministry of the Interior is the supreme authority in charge of administrative supervision over the prosecution service (article 160 SPOA). This supervision is normally exercised through the State Prosecutor General and heads of district SPOs, as described above. However, it may also perform supervision directly, in which case the head of the inspected SPO may ask two members of the SPC to be present.

217. The GET remarks, as it already did in relation to judges, that little attention is given to integrity and the prevention of corruption in the current supervisory arrangements concerning prosecutors. Even though some integrity elements are assessed by heads of SPOs and/or the SPC, this is done in an incidental manner rather than as part of a focused policy of prevention and management of corruption risks. The GET believes that the public image of prosecutors could be improved if more focus was given to their supervision regarding integrity and conduct and if this focus was made apparent to the public. As highlighted above, the content and results of the Integrity Plans prepared by the SPOs will be instrumental in defining a sound policy of prevention and management of corruption risks. The CPC will of course have to play an advisory role in this process, but the initiatives and main responsibilities lie within the prosecution service supervisory authorities themselves, especially the SPG and the SPC. **GRECO therefore recommends (i) that a policy for detecting and managing the risks and vulnerabilities of corruption in the prosecution service be developed and made public and (ii) that the State Prosecutor General and/or the State Prosecutorial Council be given the core responsibility and resources to manage this policy and cooperate with other relevant institutions, including the Commission for the Prevention of Corruption, in its oversight and implementation.**

218. Disciplinary sanctions and proceedings for prosecutors are contained in the SPOA. Article 80 lists the acts that constitute disciplinary violations, among which:

- disclosure of official secrets and other confidential information;
- breach of the case roster or priority handling of cases;
- performance of functions or activities incompatible with a public prosecutor's office;
- failure to report grounds for exclusion of a case or continuation of work on such a case;
- action or behaviour that conflicts with the prosecutor's impartiality or that damages the reputation of the prosecutor's profession;
- acceptance of gifts or other benefits in connection with prosecutorial service;
- failure to submit information on financial circumstances or late submission thereof;
- dealings with parties, the representatives thereof and other persons that conflict with the provisions of the law or state prosecutorial rules.

219. Disciplinary sanctions may entail the following: (article 81 SPOA):

- written warning;
- suspension of promotion;

- transfer to another prosecutor's office;
- dismissal, in case the prosecutor is convicted of a criminal offence committed through the abuse of his/her function, or of a criminal offence carrying a sentence of more than six months imprisonment.

220. The initiative to introduce disciplinary proceedings may be put forward by the head of the SPO where the prosecutor performs his/her service, the SPG, the SPC or the Minister of the Interior. The proceedings are conducted by the disciplinary prosecutor or his/her deputy, who are supreme state prosecutors, appointed by the SPC on the proposal of the SPG. Cases are decided upon by the Disciplinary Court of First Instance and the Disciplinary Court of Second Instance. If the initiative to introduce proceedings has been introduced by the head of a SPO, the disciplinary prosecutor may decide not to pursue the proceedings, in which case the initiator of the procedure may appeal to the Disciplinary Court of First instance. If the initiative to introduce proceedings is taken by the SPG, the SPC or the Minister of the Interior, the disciplinary prosecutor has to pursue the case (article 92 SPOA).

221. The Disciplinary Court of First Instance is composed of nine members: six state prosecutors and three judges from the Disciplinary Court of First Instance for judges (article 87 SPOA).

222. The Disciplinary Court of Second Instance has six members: four members from the Disciplinary Court of Second Instance for judges and two supreme state prosecutors (article 88 SPOA).

223. Both bodies are appointed and dismissed by the SPC. Their seat is at the Supreme State Prosecutor's Office, which provides the budget and material conditions for their functioning. They are independent in the performance of their competences. The same procedure applicable to disciplinary proceedings against judges applies *mutatis mutandis* to disciplinary proceedings against prosecutors – namely provisions of the criminal procedure code that apply to fast-track proceedings before local courts. These proceedings are not public. Decisions are taken by majority.

224. Disciplinary proceedings are subject to a statute of limitation of two years, which is interrupted by any procedural action or the commission of another disciplinary violation by the prosecutor. Irrespective of this provision, disciplinary proceedings may be introduced against a prosecutor who is finally convicted for a criminal offence, within three months of the judgment becoming final. The absolute statute of limitation is four years. The execution of disciplinary sanctions is subject to a statute of limitation of six months after the final disciplinary resolution (article 83 SPOA).

225. The fact that criminal or misdemeanour proceedings are engaged against a prosecutor does not exclude the initiation of a disciplinary procedure for the same facts.

226. There are no special immunities applicable to prosecutors. However, they may not be held liable for opinions expressed when performing their official duties (article 8 SPOA).

Statistics

227. The following statistics were provided regarding disciplinary proceedings against prosecutors for the years 2008-2012:

- 2008: two disciplinary proceedings were initiated, but both were withdrawn. In the first case, the prosecutor subject of the proceedings had left the prosecution service. In the second case, it was established that the prosecutor subject of the proceedings had been discharged from his position of Deputy Head of Office and had started receiving a lower salary.

- 2009: two disciplinary proceedings were initiated but both were suspended. In the first case, the disciplinary prosecutor withdrew her motion due to the severe illness of the accused prosecutor, who later retired. In the second case, the disciplinary court suspended the proceedings due to the retirement of the accused prosecutor.
- 2010: one procedure was initiated but it was later withdrawn, because of the lack of a legal basis for establishing disciplinary responsibility of the accused prosecutor, who later retired.
- 2011: no proceedings were initiated.
- 2012: one procedure was initiated and is still pending.

Advice, training and awareness

228. As mentioned above, in-service training seminars on ethics, expected conduct, conflicts of interest and corruption are offered to prosecutors, as well as judges, by the Judicial Training Centre, which until recently operated under the Ministry of Justice. The modalities of this training and the constraints affecting the Judicial Training Centre were already described in relation to judges (see paragraphs 175-176). An additional problem may however affect the role of the Judicial Training Centre with regard to the training of prosecutors. Further to the transfer of responsibilities for the prosecution service to the Ministry of the Interior, the GET was informed that the Judicial Training Centre would continue to provide training to the prosecutors. The representatives of the Ministry of Justice within the expert council of the Centre would be replaced by representatives of the Ministry of the Interior. However, the Ministry of the Interior would not provide a contribution to the budget of the Centre and the GET was not informed whether the Ministry of Justice would maintain its financial contribution at its previous level. In this context, the GET underlines that it is necessary that the Judicial Training Centre is provided with sufficient resources to perform its functions adequately. It has already highlighted in the section relating to judges that the Judicial Training Centre had suffered budgetary cuts because of the economic crisis. It stresses that the organisational change should not affect negatively the training of prosecutors and the financial resources devoted thereto.

229. The Office of the State Prosecutor General also offers some training to prosecutors, among which yearly educational prosecutorial days and conferences on specific topics of criminal law and criminology.

230. Turning to training and awareness about integrity issues, the GET was informed that prosecutors may ask advice from the Office of the State Prosecutor General, the SPC, the Association of State Prosecutors and the CPC in case of an ethical dilemma or doubts about a possible conflict of interest. Several prosecutors however, including some occupying managerial positions within SPOs, were of the opinion that these arrangements were insufficient and they often felt left in the dark about what action to take in concrete situations. They expressed a need for more advice and guidance. The GET agrees that the counselling services currently available to prosecutors could be strengthened. It recalls the limitation of the Association of State Prosecutors, of which less than half of prosecutors are members. The CPC certainly has a valuable role to play in developing guidance for prosecutors in matters of ethics and integrity. However, due to the nature of the prosecutorial activity and the specific regulations applicable to prosecutors, the GET is of the opinion that the Supreme State Prosecutor's Office or the SPC are better placed to take on a leading role in developing awareness and guidance on ethics and integrity of prosecutors. In view of the above, **GRECO recommends that appropriate training and counselling services on ethics and integrity be made available to all prosecutors.**

Other issues

231. An issue that has been constantly highlighted to the GET during the visit has been the poor communication of prosecutors with the public. Although a few communication courses are available at the Judicial Training Centre, a majority of prosecutors are not trained to communicate with the media and civil society and are unsure about what information they can disclose to the public on concrete cases. There is only one spokesperson at present at the State Prosecutor General's Office, none at the lower level SPOs. There is no communication strategy and no indication that any guidance is provided to prosecutors on what, when and how to communicate about their activity. As a result, and as already highlighted above, the public and the media often do not understand the reasons underlying decisions taken by prosecutors in some cases, especially as regards case dismissals. This poor communication gives the prosecution service the image of a closed and non-transparent body, and observers agree that this perception is one of the main explanations for the negative public image of prosecutors. The GET recognises that confidentiality of information is a crucial element of criminal procedure, which plays an important role in protecting the efficiency of criminal investigation and the rights of the persons under investigation. Yet, it needs to be balanced with the requirements of transparency, which are critical to build citizens' confidence in law enforcement and the justice system. Inability to explain decisions taken by prosecutors and their grounds feeds a perception that these decisions are the result of corrupt dealings. The GET also recognises that relations with the media can be tricky for untrained professionals. Consequently, **GRECO recommends (i) that a public communication strategy be adopted and (ii) that relevant training be provided as appropriate.**

VI. CORRUPTION PREVENTION IN RESPECT OF ALL CATEGORIES UNDER REVIEW – THE ROLE OF THE COMMISSION FOR THE PREVENTION OF CORRUPTION

232. Throughout this report, the central role of the CPC has been highlighted. It is obvious to the GET that the position, powers and recognised expertise of the CPC are among the strongest assets of the system of prevention of corruption, as well as in the promotion of integrity of parliamentarians, judges and prosecutors in Slovenia. Unfortunately, the CPC's ability to act is hampered by financial and staff constraints, which have become all the more pressing since the extension of its mandate and powers under the new IPCA. The new tasks and powers it has been provided with as regards lobbying, conflicts of interest and asset declarations have not been accompanied by the necessary increase in staff and budgetary resources. The CPC currently functions with a staff of 40 persons whereas its mandate extends over approximately 10,000 officials as regards assets declarations and 3000 public institutions as regards integrity plans. For example in order to maintain and enforce the new online asset declaration system for these 10,000 officials, as was described earlier in this report, the CPC has a budget of only 44,000 EUR and one person working full time on the monitoring of declarations. Another example of the CPC's budgetary constraints arises with the new regulation of lobbying, also introduced by the IPCA. The CPC has only one person, and no additional financial resources, to maintain the new register of lobbyists and to enforce the rules in this area. The latest information indicates that, although it is already suffering from insufficient staff and budgetary resources, the CPC has been and could continue to be negatively impacted by budgetary cuts in the public sector due to the economic crisis. The GET is of the strong opinion that these budgetary and staff constraints are severely detrimental to the action of the CPC in the prevention of corruption in relation to MPs, judges and prosecutors. Addressing this problem is therefore essential to the implementation of other recommendations formulated in this report. **In order to ensure that the Commission for the Prevention of Corruption is adequately equipped to perform its tasks with respect to MPs, judges and prosecutors effectively, GRECO recommends that its financial and personnel resources in the areas of asset declarations, lobbying and conflicts of interest be increased as a matter of priority.**

VII. RECOMMENDATIONS AND FOLLOW-UP

233. In view of the findings of the present report, GRECO addresses the following recommendations to Slovenia:

Regarding members of Parliament

- i. (i) that a code/standards of conduct for members of the National Assembly and the National Council is/are adopted (including guidance on e.g. conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties, including lobbyists, preservation of reputation) and (ii) that, in order to make these standards work, a credible mechanism of supervision and sanction be elaborated (paragraph 44);**
- ii. that the implementation of the rules on contacts with lobbyists by members of the National Assembly and of the National Council be subject to a thorough assessment, with a view to improving them where necessary (paragraph 73);**
- iii. both in respect of MPs and members of the National Council, (i) the establishment of a dedicated counsellor, with the mandate to provide parliamentarians with guidance and advice on the practical implications of their legal duties in specific situations and (ii) the provision of specific and periodic information and training on ethics and integrity (paragraph 105);**

Regarding judges

- iv. that the criteria of selection and evaluation of judges set out in the Judicial Service Act be further developed, by any appropriate instrument, including an act of the Judicial Council, with the aim of enhancing their uniformity, predictability and transparency (paragraph 116);**
- v. that the Slovenian authorities consider revisiting the procedure of appointment of judges to the Supreme Court, in order to minimise the possibilities of political influence (paragraph 118);**
- vi. that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which would cover in scope all judges (paragraph 137);**
- vii. (i) that the Judicial Council, in cooperation with other relevant institutions, including the Commission for the Prevention of Corruption, develops guidelines on conflicts of interest for judges with respect to conduct expected of them outside the court; (ii) and that these guidelines be accompanied with clear rules of enforcement and sanction and be made public (paragraph 140);**
- viii. in order to avoid conflicts of interest, that clear rules/guidelines be introduced for situations where judges move to the private sector (paragraph 152);**
- ix. (i) that a policy for detecting and managing the risks and vulnerabilities of corruption in the judiciary be developed and made public and (ii) that the Judicial Council be given the core responsibility and the resources to manage this policy and cooperate**

with other relevant institutions, including the Commission for the Prevention of Corruption, in its oversight and implementation (paragraph 160);

- x. that all judges are provided appropriate training and counselling services on ethics and integrity, in particular by giving a leading role to the Judicial Council in this respect (paragraph 178);**

Regarding prosecutors

- xi. that the Slovenian authorities ensure that the Ministry of the Interior exercises its authority over the prosecution service in such a way as not to undermine prosecutors' integrity and create risks of improper influence (paragraph 182);**
- xii. that the State Prosecutor General further develops general instructions on prosecution policy, in particular with regard to the use of discretion, the procedure of plea bargaining and case dismissals, ensures that these instructions are made public and monitors their implementation (paragraph 195);**
- xiii. that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, is made applicable to all prosecutors (paragraph 197);**
- xiv. (i) that the Prosecutorial Council, in cooperation with other relevant institutions, including the Commission for the Prevention of Corruption, develops guidelines on conflicts of interest for prosecutors with respect to conduct expected of them outside their office and (ii) that these guidelines be accompanied with clear rules of enforcement and sanction and be made public (paragraph 199);**
- xv. in order to avoid conflicts of interest, that clear rules/guidelines be introduced for situations where prosecutors move to the private sector (paragraph 207);**
- xvi. (i) that a policy for detecting and managing the risks and vulnerabilities of corruption in the prosecution service be developed and made public and (ii) that the State Prosecutor General and/or the State Prosecutorial Council be given the core responsibility and resources to manage this policy and cooperate with other relevant institutions, including the Commission for the Prevention of Corruption, in its oversight and implementation (paragraph 217);**
- xvii. that appropriate training and counselling services on ethics and integrity be made available to all prosecutors (paragraph 230);**
- xviii. (i) that a public communication strategy be adopted and (ii) that relevant training be provided as appropriate (paragraph 231);**

Regarding all categories under review

- xix. in order to ensure that the Commission for the Prevention of Corruption is adequately equipped to perform its tasks with respect to MPs, judges and prosecutors effectively, that its financial and personnel resources in the areas of asset declarations, lobbying and conflicts of interest be increased as a matter of priority (paragraph 232).**

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

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

About GRECO

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

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

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