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

EVALUATION REPORT

POLAND

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EXECUTIVE SUMMARY

1. On the whole the approach in Poland to the issues addressed in the Fourth Evaluation Round is quite impressive. It would appear that the Polish authorities take the issue of corruption prevention in respect of Members of Parliament, judges and prosecutors seriously and should be commended for this. The specific reservations expressed in the present report must be read in the context of this positive overall impression. No fundamental changes are required in Poland, but there is still room for improvement to the current anti-corruption measures.

2. The pertinent provisions regarding Members of Parliament, judges and prosecutors, and certain practical arrangements are to a large extent similar and even identical in some instances, especially for judges and prosecutors (e.g. the same forms for asset declarations are used). Following the recent adoption of a collection of ethical principles for prosecutors, such a set of ethical standards is now in place for all three branches under examination, with the exception of members of the Senate. Furthermore, the various relevant laws provide for quite strict regulations on, inter alia, incompatibilities of posts and functions, accessory activities, recusal and withdrawal from isolated cases (in respect of judges and prosecutors), lobbying (in the case of Members of Parliament) and mandatory asset declarations.

3. The above-mentioned regulations provide for a reasonably solid legal framework for preventing conflicts of interest, and ultimately corruption, but they warrant further improvements in some specific areas. More importantly, it seems that there is no clear understanding among the professionals concerned surrounding what conduct is expected from them – and in particular, what is meant by conflict of interest, the latter concept not being defined by law. The ethical principles in their current form – as well as some of the pertinent legal provisions – are too general to provide clear guidance for specific situations. It is therefore strongly desirable that the existing legal and ethical standards be further developed and refined, that specific training activities on these standards be provided and that Members of Parliament, judges and prosecutors have available to them confidential counselling on possible conflicts of interest and related matters. Moreover, whilst the mechanisms established for monitoring compliance with the existing standards are highly developed, they often appear too complex – involving the participation of various authorities – to be fully effective. To conclude, the authorities of Poland are invited to pursue their efforts in preventing corruption in line with the specific recommendations included in the present report. Such further progress is also likely to contribute to further strengthening the level of trust the public have in Members of Parliament and the judiciary, which still appears to be wanting despite a positive trend noted in recent years.

I. INTRODUCTION AND METHODOLOGY

4. Poland joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in March 2000), Second (in May 2004) and Third (in December 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).

5. 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.

6. 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.

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

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2012) 1E) by Poland, 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 Poland from 16-20 April 2012. The GET was composed of Mr Yves Marie DOUBLET, Deputy Director at the National Assembly, Department of Public Procurement and Legal Affairs (France), Mr Edmond DUNGA, Head of the Office in the Anticorruption Secretariat, Regional Anti-Corruption Initiative (RAI) Secretariat in Sarajevo, BiH (Albania), Mr Raymond EMSON, Lawyer and Interim Head of Policy, Serious Fraud Office (United Kingdom) and Ms Helena LIŠUCHOVÁ, Acting Head, International Cooperation Department, Ministry of Justice (Czech Republic). The GET was supported by Mr Michael JANSSEN and Ms Liubov SAMOKHINA from GRECO's Secretariat.

9. The GET held interviews with representatives of the *Sejm* and the *Senate* (the two chambers of Parliament), including of the *Sejm* Commission for State Control, the Chancellery of the *Sejm* and the Chancellery of the *Senate*. The GET also interviewed officials of the Ministry of Justice, the Constitutional Tribunal, the Supreme Court, the Warsaw District Court, the Warsaw Circuit Court, the Warsaw Appellate Court, the *Voivodship* Administrative Court in Warsaw, the Supreme Administrative Court, the National Council of the Judiciary, the National School of Judiciary and Prosecution, the Police Headquarters, the General Prosecutor's Office, District, Circuit and Appellate

Prosecution Offices (Warsaw), the National Prosecution Council, the Central Anti-Corruption Bureau, the Ministry of Finance and Revenue Offices. Finally, the GET spoke with representatives of a non-governmental organisation (the "Stefan Batory Foundation") as well as with lobbyists.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Poland in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Poland, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Poland shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

11. In response to the recommendations issued by GRECO during its previous evaluation rounds, Poland has taken significant measures aimed at strengthening the fight against corruption. In 2002, the government adopted the Anti-corruption Strategy, which is a collection of targeted solutions and a set of actions to be undertaken by the government, the administration and various institutions most directly involved in the prevention of and the fight against corruption. The implementation of the Anti-Corruption Strategy aims at achieving four main objectives: to efficiently detect corruption offences, to implement effective mechanisms for combating corruption in public administration, to increase public awareness and to promote ethical patterns of conduct. Periodical reports on the implementation of the Strategy, are being made public on the official website of the Ministry of the Interior and Administration.¹ In 2003, the "Body for Co-ordination of the Anti-Corruption Strategy" was established with the mandate to, *inter alia*, co-ordinate and monitor actions taken by the state administration in the implementation of the Anti-Corruption Strategy, to analyse and assess the corruption phenomena in the public sector and submission of opinions and conclusions in this respect, as well as to elaborate opinions on draft legislation and other documents concerning corruption.

12. Furthermore, in 2006 the "Central Anti-Corruption Bureau" (CAB) was established by law² as a special secret service responsible for combating corruption in public and economic life, and in particular in state and local self-government institutions, as well as in combating activity against the economic interests of the state. It is a centralised office supervised by the Prime Minister, with a staff of currently 850 employees. The CAB is tasked with, *inter alia*, identifying, preventing and detecting corruption offences, exposing and counteracting breaches of the provisions of the "Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions" of 21 August 1997, and verifying the content and veracity of asset declarations or declarations about conducting economic activity by persons performing public functions. The officials of the CAB are entrusted with police procedural powers which stem from the provisions of the Code of Criminal Procedure.

13. According to international studies, currently corruption in Poland is no longer a phenomenon of a systemic nature, as it used to be in mid 1990s.³ The capability of the country to control corruption in key areas such as political processes, operation of the basic executive, judicial or legislative authorities has been assessed as "moderately good". That said, it would appear that more needs to be done to prevent nepotism and favouritism and to ensure that clear ethical rules are to be followed, and there appears to be a gap between the letter of the law and its implementation in practice.⁴ Regarding the perceived levels of corruption, a positive shift was recorded after 2005 by, *inter alia*, Transparency International's yearly corruption perception index (CPI).⁵ Observers argue that the current trend may be explained with reference to the economic impetus driven by the accession to the European Union in May 2004, the political determination to eliminate corruption, and to the success of the law enforcement authorities to uncover a number of corruption scandals after 2005. In line with the above-mentioned CPI, the levels of rule of law and the control of corruption have started to improve as per the World Bank governance indicators.⁶

¹ See <http://www.mswia.gov.pl>

² See the "Act on the Central Anti-Corruption Bureau" – Act of 9 June 2006, Dz. U. No 104, item 708, as amended.

³ See, in particular, the Executive Summary of the "National Integrity System Assessment Poland" – prepared by the "Institute of Public Affairs" and "Transparency International" – which is available under http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_poland_executive_summary

⁴ See also the "Freedom House" study "Nations in Transit 2012 – Poland" by Krzysztof Jasiewicz, which is available under <http://www.freedomhouse.org/report/nations-transit/2012/poland>

⁵ See <http://www.transparency.org>

⁶ See http://info.worldbank.org/governance/wqi/sc_country.asp

14. In terms of the focus of the Fourth Evaluation Round of GRECO, according to the special Eurobarometer on corruption issued by the European Commission,⁷ 37% of those surveyed in Poland think that corruption is widespread among national politicians – as compared to 49% according to the previous survey⁸ and as compared to 57% in the EU 27. Correspondingly, during the interviews held on site, the GET repeatedly heard that the situation had been improving, but that more needed to be done by politicians to prevent and fight corruption. Moreover, the GET notes that according to the Eurobarometer,⁹ in Poland the level of distrust in institutions such as the Parliament (68%) and political parties (76%) still appears to be quite high, even if it has been decreasing over the years.

15. In so far as the judiciary is concerned, according to the Eurobarometer on corruption, 32% of those surveyed think that corruption is widespread in this branch of power (identical with the EU average). Poland is one of the few countries directly mentioned in the Eurobarometer, where the number of those having such an opinion has decreased significantly since 2009. At the same time, the GET notes the relatively high level of distrust in the judiciary (53%) recorded by the Eurobarometer, which makes the judiciary the 4th least trusted institution in Poland out of 14 categories of institutions. According to the interlocutors met by the GET, this phenomenon stems from the weak understanding of the legal system and of the judicial process, the lack of transparency surrounding the judiciary, the hermetic disciplinary proceedings and the immunity, widely understood as rendering judges “untouchable”. That said, representatives of various authorities interviewed by the GET generally concurred that corruption within the judiciary was not a widespread phenomenon. The GET accepts that there may be only a few solitary cases of corruption involving judges; nonetheless, the issue of public trust in the judiciary must not be neglected and requires appropriate attention from the Polish authorities. A number of proposals to that effect have been included in the present report.

⁷ Special Eurobarometer 374: Corruption, February 2012.

⁸ Eurobarometer 325: Attitudes of Europeans towards Corruption, November 2009.

⁹ See http://ec.europa.eu/public_opinion/cf/step1.cfm, under “Trust in Institutions”.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

16. Poland is a parliamentary republic with a multi-party system. The current Constitution dates from 1997. The bicameral national Parliament consists of the *Sejm* (the Lower Chamber) and the *Senate* (the Upper Chamber).¹⁰ The Constitution provides for a dominant role of the *Sejm* in the legislative process, and the Council of Ministers is responsible to the Lower Chamber of Parliament only. The right to take legislative initiatives is conferred to a group of at least 15 *Sejm* deputies, *Sejm* committees (except for investigation committees), the President of the Republic, the Council of Ministers, a group of at least 100,000 citizens having the right to vote in elections to the *Sejm*, as well as the *Senate*. In principle, the *Senate* is allowed 30 days to examine a bill¹¹ adopted by the *Sejm* and to approve it without amendments, amend or reject it. The *Sejm* may reject the *Senate's* resolution on the rejection of the act, or propose amendments by an absolute majority vote.

17. Members of both chambers of Parliament are elected through direct elections. The *Sejm* is composed of 460 deputies, elected under a proportional representation system (*d'Hondt* method) in 41 voting districts (at least seven deputies per district). Mandates are divided between the political parties and election committees of voters which receive at least five percent of the national vote and registered party coalitions which receive at least eight percent; election committees of voters who are associated in a registered organisation representing ethnic minorities are exempt from this threshold. The 100 members of the *Senate* are elected under a single-member district plurality system, where one senator is elected from each constituency. Elections to both chambers of Parliament are conducted jointly, in principle every four years.

18. Articles 102 to 108 of the Constitution contain some basic rules applicable to parliamentarians (deputies and senators), *inter alia*, rules on incompatibility of posts and on inviolability. The Constitution makes it clear that parliamentarians are representatives of the nation and are not bound by instructions from the electorate. The exercise of their office is regulated in further detail by the "Act on the Exercise of the Mandate of a Deputy or Senator" (AEMDS).¹² A parliamentarian's mandate expires in the event of his/her death, loss of eligibility right or not being vested with such a right on election day, forfeiture of the mandate by a valid decision of the Tribunal of State,¹³ renouncement of the mandate, holding a post or function on election day which may not be held jointly with a parliamentarian's mandate (or accepting such a post or function during a term of office), being elected to the European Parliament during the term of office, or refusal to take the parliamentarian's oath.¹⁴

19. The internal organisation and conduct of work of the *Sejm*/the *Senate* are specified in their rules of procedure,¹⁵ namely the "Standing Orders of the Sejm" (StOS) and the "Rules and Regulations of the Senate" (RRS).¹⁶ The *Sejm* and the *Senate* are presided over by speakers called the *Marshal of the Sejm*/the *Marshal of the Senate*. Further organs of both chambers of Parliament include the Presidium, the Council of Seniors and the committees. Organisational and technical as well as consultative tasks related to the parliamentary activity are performed by the Chancellery of the *Sejm*/the

¹⁰ See articles 10(2) and 95(1) of the Constitution.

¹¹ Polish law employs the term "act".

¹² Act of 9 May 1996, Dz.U.11.7.29.

¹³ Under article 107 of the Constitution, such a decision may be taken if a parliamentarian performs any business activity involving any benefit derived from the property of the State Treasury or local government or acquires such property.

¹⁴ Articles 247 and 279 of the Election Code (Act of 5 January 2011, Dz.U.11.21.112).

¹⁵ In accordance with articles 112 and 124 of the Constitution.

¹⁶ The StOS and the RRS are legal acts adopted by resolutions of 30 July 1992 and 23 November 1990.

Chancellery of the *Senate*. The rules of procedure also regulate the so called "parliamentary responsibility" of deputies and senators for misconduct and violation of certain AEMDS provisions, which may result in the imposition of sanctions – in particular, reproach, admonition and reprimand. These sanctions have the character of publicly naming the unethical conduct of a deputy, but do not bring any other consequences (e.g. financial).

20. The Presidium of the Sejm and the Presidium of the Senate comprise the *Marshal* and *Vice-Marshals* (currently there are five and three *Vice-Marshals* respectively) who are elected by an absolute majority vote. The Presidiums adopt their resolutions by majority vote, and in the event of a parity of votes, the casting vote belongs to the *Marshal of the Sejm*/the *Marshal of the Senate*.

21. Several standing committees are relevant to the present evaluation. The "Rules and Deputies' Affairs Committee" of the *Sejm* supervises, in particular, compliance by deputies with their statutory duties, in co-operation with the Presidium. It comprises – currently 18 – deputies selected in joint voting. Its composition is based on political parity reflecting the political composition of the *Sejm*, the allocation of seats between specific parliamentary fractions being arranged at the beginning of term of office. The political affiliation of the chairperson, who is elected by the Committee, is also a result of negotiations between parliamentary fractions. The "Deputies' Ethics Committee" of the *Sejm* supervises, in particular, observance by deputies of ethical principles. It is composed of deputies representing all deputies' clubs and selected in joint voting. Candidates for Committee members are to be nominated by the chairpersons of the clubs from among "persons of unblemished reputation and high moral authority". The "Rules, Ethics and senatorial Affairs Committee" comprises – currently 7 – senators elected by the *Senate*. The political affiliation of its members is a result of negotiations. As a principle, resolutions by committees of the *Sejm* or the *Senate* are adopted by a majority vote in the presence of at least one third of the committee members, unless otherwise provided.

Transparency of the legislative process

22. Bills which have been submitted to the *Marshal of the Sejm* are available on the *Sejm* website.¹⁷ The same is true for information on the legislative process pertaining to a given bill, including its contents and proposed amendments. A bill is to be accompanied by an explanatory statement which refers to, *inter alia*, the results of prior consultations and lays out the various proposals and opinions presented, especially when there exists a statutory obligation to seek such opinions.¹⁸

23. As a rule, Sejm and Senate sittings are open. If the vital interests of the state so require, the *Sejm* or the *Senate* may, on a motion of its Presidium or of at least 30 deputies (or of at least 10 senators), resolve by an absolute majority vote taken in the presence of at least half of the statutory number of parliamentarians to hold a sitting *in camera*.¹⁹ Parliamentary voting results are announced by the *Marshal of the Sejm* and are published on the *Sejm* website immediately after voting.

24. Information on the composition of Sejm committees is available on the *Sejm* website and includes the party affiliation of each committee member. The *Sejm* website also contains information on each committee's work, in particular on bills examined and on committee meetings. When bills are examined committee meetings may be attended by professional lobbyists or authorised representatives of professional lobbying entities. Furthermore, they may be attended by representatives of professional and social organisations, committee experts and other individuals, if invited by the committee

¹⁷ <http://www.sejm.gov.pl>

¹⁸ Section 34 StOS.

¹⁹ See section 172 StOS and section 36 RRS.

Presidium or chair. Committee meetings may be attended by the staff of deputies' clubs as well as members of the press, radio and television journalists, if approved by the chair. A committee may decide to hold a meeting *in camera*. Similar rules apply to *Senate* committees.

25. The authorities indicate that each Polish citizen has access to the archive materials stored in the *Sejm* Library. The library includes audio recordings of all meetings of the *Sejm*, its committees and sub-committees. Since 2011, meetings which take place in rooms adapted for audio recordings may be followed live on the *Sejm* website.

26. The 2005 "Act on Legislative and Regulatory Lobbying"²⁰ sets forth the principle of disclosure for lobbying activity in the law-making process. For the purposes of this Act, lobbying activity is defined as any legal action designed to influence public authorities in the law-making process, and professional lobbying activity as any paid activity carried out for or on behalf of a third party with a view to ensuring that their interests are reflected in the law-making process. Professional lobbying can be carried out by an entrepreneur or by a natural person other than an entrepreneur (pursuant to a civil law contract), on the condition that such entities are entered in a register kept by the minister in charge of public administration. The register contains the following data: name, registered office and address of the entrepreneur involved in professional lobbying or first name, surname and address of a natural person other than an entrepreneur involved in professional lobbying, and – in the case of entrepreneurs involved in professional lobbying – the identification number from the register of enterprises of the National Court Register or the number from the economic activity register. The register is public and the information included in it is published in the Public Information Bulletin. The addresses of natural persons are not included.

27. Public authorities have to publish, without delay, in the Public Information Bulletin, information on professional lobbying activities aimed at them and on the declared objectives of the professional lobbying entities concerned. However, it is to be noted that this principle does not apply to individual deputies and senators since they cannot be regarded as "public bodies".

28. Section 17 of the "Act on Legislative and Regulatory Lobbying" establishes that professional lobbying activities carried out by an entity not entered into the register, must be reported, without delay, by the competent public authority to the minister in charge of public administration. The latter imposes in such cases, a fine of 3,000 to 50,000 PLN/approximately 720 to 12,000 EUR, by administrative decision.²¹ The fine may be imposed repeatedly if the professional lobbying activities are continued without registration of the entity involved.

29. The GET acknowledges the measures taken by Poland in order to increase transparency of the legislative process, including e.g. the recording of parliamentary committee meetings and the recent introduction of lobbying legislation requiring professional lobbyists to sign in a public register. At the same time, however, the GET notes that during the interviews held on site, the effectiveness of this legislation was repeatedly criticised. It was stated that around 300 professional lobbyists were registered but only about 20 of them were active in Parliament. It would appear that lobbying was mainly performed in an informal manner outside the regulated area, based on (informal) links between some parliamentarians and businesses and the influence the latter may have over legislation by their contacts with the former. In this connection, the GET was interested to learn that possible further amendments to the current regime have been subject to an ongoing public debate, including in Parliament.²² The GET encourages the

²⁰ Act of 7 July 2005, Dz.U.05.169.1414.

²¹ Section 19 of the "Act on Legislative and Regulatory Lobbying".

²² *Inter alia*, the GET was informed that during the *Sejm's* previous term of office, the Chancellery of the Prime Minister had begun drafting a new lobbying bill but no such bill had finally been presented to the *Sejm*.

authorities to engage in a reform process to enhance the transparency of lobbying activities, for example by defining lobbying more precisely and regulating more closely non-professional lobbying. Such reforms should encompass persons who might engage in providing targeted information and attempts to sway public policy on behalf of specific interests but who do so from such positions as a corporate board member, in-house lobbyist, trade union representative or representative of a charity. This should enhance the transparency of the information required to be reported by those who are lobbied.

30. That said, the focus of this evaluation is on the standards applicable to parliamentarians, not those who lobby them. In this regard, the GET has misgivings about the rule that only “public authorities” have to publish information on professional lobbying activities aimed at them and on the declared objectives of the professional lobbying entities concerned in the Public Information Bulletin, whereas individual deputies and senators are not subject to such a disclosure obligation. Similarly, professional lobbying activities carried out by an entity not entered into the register must be reported by public authorities – but not by individual deputies and senators – to the minister in charge of public administration. The existing disclosure regime can thus easily be circumvented by lobbyists directly contacting individual parliamentarians. It would appear that this shortcoming adds to the ineffectiveness of the “Act on Legislative and Regulatory Lobbying”. Bearing in mind the allegedly significant influence by private business interests on the legislative process, the GET takes the strong view that disclosure by parliamentarians of contacts with lobbyists is highly desirable, for the sake of optimum transparency.

31. Moreover, several interlocutors voiced particular concerns about the influence exercised by informal lobbyists in parliamentary sub-committee hearings which scrutinise draft legislation. According to the rules of procedure, sub-committees (as well as committees)²³ are free to invite any experts or other guests to their meetings. It would appear that in practice, it is not unusual that in such sessions “guests” – including *de facto* lobbyists such as business individuals with vested interests and links to parliamentarians – are in the majority and thus in quite a strong position to influence changes to the law. At the same time, professional registered lobbyists have no right (unless they have been invited by the sub-committee) to participate in such sub-committee sessions, contrary to committee meetings.²⁴ There is a risk that non-registered lobbyists with links to parliamentarians, are able to influence the fine details of legislation in sub-committee sessions.

32. The GET is concerned by a system which excludes registered lobbyists from sub-committee sessions, but permits access to any “guest” who may then influence the legislative process. The GET shares the concerns expressed by several practitioners met on site about the risk of private interests influencing parliamentarians and the law-making process outside the regulated area of lobbying activities and about the uncertainties surrounding the provenance of amendments to legislation as it passes through Parliament. The situation is all the more disturbing as the current legal framework governing the activities of parliamentarians does not provide for a mechanism to declare potential conflicts of interest in respect of concrete legislative proceedings. To conclude, there is an evident issue of transparency here: even if the process happens to be entirely legitimate, there is the appearance of possible undue influence. Therefore, given the preceding paragraphs, **GRECO recommends that interactions by parliamentarians with lobbyists and other third parties who seek to influence**

Moreover, on 18 May 2012 a group of deputies introduced a bill on openness and lobbying in the legislative process, which defines the obligations of public authorities in the legislative process, the lobbying rules in that process, acceptable ways of influencing the decisions of public authorities and methods of controlling lobbying activities.

²³ Cf. section 153(1) StOS and section 60(6) RRS.

²⁴ Cf. section 154(2a) StOS and section 60(2a) RRS.

the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings.

Remuneration and economic benefits

33. The current monthly salary for a parliamentarian is 9,892.30 Polish zlotys/PLN (approximately 2,374 EUR). As of 12 April 2012, 401 deputies received a full salary and 18 deputies a partial salary. At the beginning of the 8th term of the Senate, the full salary was received by 57 senators and partial salary by 8 senators. In addition, parliamentarians are eligible for functional allowances: 20% of the salary for committee chairs, 15% of the salary for committee vice chairs and 10% of the salary for standing subcommittee chairs and secretaries and members of certain committees. Total benefits may not exceed 35% of a parliamentarian's salary. The members of the Presidium (the *Marshal* and *Vice-Marshals*) are remunerated following the rules applicable to persons holding managerial positions in state administration. In accordance with the note of the president of the Central Statistical Office of 9 February 2012 on average salaries in the fourth quarter of 2011, the average gross monthly salary in Poland for that period was 3,586.75 PLN/approximately 861 EUR.

34. Moreover, deputies are entitled to the following additional benefits: parliamentary *per diem* allowance – to cover expenses incurred when on duty in Poland (a lump sum of 25% of the deputy's salary); parliamentary severance pay – on expiry of the term of office (three times a deputy's salary); death allowance; benefits paid for accidents suffered during the deputy's term of office; pension and retirement benefits – namely a one-off severance allowance amounting to three salaries in the case of retirement and one salary in the case of pension (for deputies who retire or are granted a disability pension in the course of their term of office or within 12 months following its expiry); non-repayable benefits from the Social Welfare Fund – to be granted in emergency situations; accommodation outside the deputy's permanent residence and outside of Warsaw (refund of up to 7,600 PLN/approximately 1,824 EUR per annum); free public transportation and airline tickets for domestic flights; deputy correspondence; medical care during *Sejm* sittings; right to a rental subsidy for an apartment in Warsaw, which under certain conditions as defined by the Presidium amounts to a lump sum of 2,200 PLN/approximately 528 EUR per month. Similar rules apply to senators. Information on the parliamentarians' salary and benefits is publicly accessible on the websites of the *Sejm* and the *Senate*.

35. Every deputy is entitled to a lump sum of 11,650 PLN/approximately 2,796 EUR for covering the costs of running the deputy's office.²⁵ The use of those funds is regulated in detail by the AEMDS and secondary legislation.²⁵ In addition, the Chancellery of the *Sejm* provides deputies' offices with equipment. During the term of office, a deputy is entitled to funds for renovation and additional equipment of the deputy's office amounting to PLN 9,000/approximately 2,160 EUR for newly elected deputies and PLN 4,500/approximately 1,080 EUR for re-elected deputies. In addition, the Chancellery of the *Sejm* refunds the cost of three business trips for the deputy's employees and pays an additional annual bonus, the so called "13th month bonus", severance pay on expiry of the term of office in the *Sejm* as well as jubilee bonuses to eligible personnel of the deputy's office. Similar rules apply to senators (although the *Senate* does not refund travel expenses of the senator's office staff).

Ethical principles, rules of conduct and conflicts of interest

36. Ethical principles for deputies are enshrined in the 1998 Resolution of the *Sejm* "Principles of Deputies' Ethics".²⁶ The resolution reminds deputies that by virtue of the

²⁵ See below under "Misuse of public resources".

²⁶ Resolution of the *Sejm* of 17 July 1998, M.P. 98.24.338.

oath taken in accordance with article 104(2) of the Constitution, they are to be guided in their public service by the binding legal order, generally accepted ethical principles and concern for the common good in the spirit of solidarity. This requirement is further extended by appealing to the deputies to act in a manner corresponding to the dignity of a deputy, in particular by following the principles of selflessness, openness, objectivity, upholding the good reputation of the *Sejm* and accountability. *Inter alia*, the resolution states that deputies are to be guided by public interest and not to use their function in order to gain any advantage for themselves or their next of kin or accept benefits which could influence their activity as deputies. They are to disclose connections between their personal interests and the decision-making process which they take part in. Deputies are responsible for their decisions and actions, and they are to submit themselves to applicable inquiry and scrutiny procedures. Observance by deputies of the ethical principles is supervised by the Deputies' Ethics Committee.

37. Regarding conflicts of interest, there is no general legal definition. The legal framework for the prevention of such conflicts is provided by (1) the Constitution, which sets forth some general principles such as the incompatibility of posts; (2) the AEMDS, which contains, *inter alia*, provisions on accessory activities, regular submission of asset declarations, registration of benefits in the Register of Interests and on the right to unpaid leave for the term of office and 3 months after its expiry;²⁷ (3) complementary procedural rules of the StOS/the RRS; and (4) the Principles of Deputies' Ethics as supervised by the Deputies' Ethics Committee. In case of non-compliance with the rules, a set of – mainly disciplinary and criminal – sanctions is available.

38. In the view of the GET, the Principles of Deputies' Ethics address the main ethical questions relevant to the exercise of the parliamentary mandate. At the same time, they remain rather vague and appear insufficient to properly guide deputies in the handling of concrete situations. Information gathered by the GET during the interviews clearly suggests that there is a high degree of confusion among parliamentarians surrounding what conduct is expected from them and in particular what is meant by conflict of interest. In order to be a meaningful tool in the hands of deputies, the Principles of Deputies' Ethics need to be complemented in such a way so as to provide, *inter alia*, clear guidance on the prevention of conflicts of interest, on the acceptance of gifts and other advantages, on incompatibilities, additional activities and financial interests, on misuse of information and of public resources, on the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists, and to include elaborated examples of possible conflicts of interest. This could be achieved for example, by developing a comprehensive Code of Conduct starting from the existing ethical principles, or a guide to the Principles of Deputies' Ethics.

39. Such an instrument is not meant to replace the existing legislation imposing obligations on parliamentarians, but to build on it and complement it. Given the fact that relevant legal provisions are scattered over various legal acts and some of them (e.g. on the exercise of accessory activities) remain quite vague,²⁸ it is crucial to develop a comprehensive overview of existing standards in one document and to provide further guidance for their application. At the same time, such an instrument would increase deputies' awareness about integrity issues, and demonstrate to the public that they are willing to take action to improve their integrity and that of their peers. Finally, the GET notes that according to some interlocutors, the Deputies' Ethics Committee does not always act according to objective criteria when deciding which complaints to address or when addressing conflicts of interest and ethical issues. The GET could not verify such allegations, but it believes that a more solid basis for the Committee's activities would further increase both the effectiveness of its work and its reputation.

²⁷ See section 29 AEMDS. If a parliamentarian has not exercised the right to unpaid leave, his/her employer has to release him/her from work so as to enable the performance of deputy or senatorial duties.

²⁸ See further below, under "Prohibition or restriction of certain activities".

40. Regarding senators, the GET notes that they take the same oath as deputies and are therefore bound by the same general principles of conduct under article 104(2) of the Constitution.²⁹ However, unlike the *Sejm*, the *Senate* has no document in place which could be considered a set of ethical principles. This shortcoming needs to be remedied, taking into account the above-mentioned requirements on such standards. Consequently, given the preceding paragraphs, **GRECO recommends i) that the "Principles of Deputies' Ethics" be complemented in such a way so as to provide clear guidance to *Sejm* deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); and ii) that such standards of ethics and conduct also be introduced for senators and disseminated among them.** In addition, the authorities may also wish to consider the introduction of a clear statutory definition or definitions of what circumstances would create a conflict of interest.

41. The GET furthermore notes that there are no legal restrictions on business activities performed and financial interests held by deputies and senators, except for certain prohibitions on business activities or functions in which the state or local government – or their property – are involved. In this connection, the GET is concerned that the current legal framework does not provide for a mechanism to report on potential conflicts of interest which might arise in the handling of a specific matter by Parliament. Although the Principles of Deputies' Ethics set forth the rule that *Sejm* deputies "are to disclose connections between their personal interests and the decision-making process in which they take part", it would appear that there is little awareness about this principle and no effective mechanism to ensure its implementation. This shortcoming appears particularly worrisome, as several interlocutors interviewed on site expressed concerns about conflicts of interest amongst parliamentarians when draft legislation passes through Parliament.³⁰ It was suggested that parliamentarians "very often" had a personal interest in the outcome of draft legislation and there was a lack of or insufficient mechanisms in place for revealing such conflicts. They were keen to see a new process, requiring parliamentarians to disclose at the beginning of parliamentary proceedings, their interests as well as those of their family members in the outcome of draft legislation. For instance when giving notice to an amendment, a motion or a draft, parliamentarians would have to declare any relevant interest in the debate. Consequently, **GRECO recommends both in respect of *Sejm* deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions.**

Prohibition or restriction of certain activities

Gifts

42. In principle, gifts to parliamentarians are allowed and no value thresholds are fixed. The only restriction is set by section 33(2) AEMDS, according to which deputies and senators may not accept donations which could undermine the voters' confidence in the exercise of their mandate pursuant to section 1(1). This provision states that deputies and senators are to exercise their duties for the well-being of the nation.

43. Moreover, it is to be noted that parliamentarians who accept benefits "in connection with the performance of public functions" can be held criminally liable under

²⁹ See article 108 of the Constitution.

³⁰ In this connection, the GET was informed that during the *Sejm's* previous term of office, the Chancellery of the Prime Minister had begun drafting a bill on methods of avoiding conflicts of interest, but no such bill had finally been presented to the *Sejm*.

the bribery provisions of article 228 of the Penal Code (PC).³¹ The authorities explain however, that due to the legal doctrine and jurisprudence,³² small gifts might be admissible provided that they are of a symbolic character, their value is nominal and there exists a socially accepted custom which allows such a gift in a certain situation. They furthermore indicate that in recent years, there have been no recorded incidents of bribery by parliamentarians. At present, there are criminal proceedings pending against one deputy in connection with the offence of passive bribery.

Incompatibilities

44. Pursuant to article 103 of the Constitution³³ which sets forth the principle of incompatibility of posts, the mandate of a parliamentarian may not be held jointly with the office of the President of the National Bank of Poland, the President of the Supreme Chamber of Control, the Commissioner for Citizens' Rights, the Commissioner for Children's Rights or their deputies, a member of the Council for Monetary Policy, a member of the National Council of Radio Broadcasting and Television, ambassador, or with employment in the Chancellery of the *Sejm*, Chancellery of the *Senate*, Chancellery of the President of the Republic, or with employment in government administration, with the exception of members of the Council of Ministers and secretaries of state in government administration. Moreover, no judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of state protection may exercise the mandate of parliamentarian. The principle of incompatibility under the Constitution is absolute and its violation results in the termination of a mandate.³⁴

45. Section 30(1) AEMDS further broadens the principle of incompatibility. Under this provision, parliamentarians are also forbidden to take up employment based on an employment contract in the Office of the Constitutional Tribunal, in the Supreme Audit Office, in the Office of the Human Rights Defender, in the Office of the National Broadcasting Council, in the National Election Office, in the National Labour Inspectorate, in local government bodies or as administrative personnel at courts or prosecutor's offices. The principle of incompatibility under the AEMDS is relative and its violation results in parliamentary responsibility.

46. The authorities state, that there are a number of other regulations introducing a ban on combining a parliamentary mandate with specific functions or positions. For example, a parliamentarian may not be the President of the Public Procurement Office, the Inspector General for the Protection of Personal Data or the President of the National Health Fund or his/her deputy. Moreover, absolute incompatibility applies to other functions having a political character such as the function of a Member of the European Parliament, a councillor of a local government unit or a mayor or a deputy mayor.

Accessory activities, financial interests, post-public employment

47. In principle, parliamentarians are allowed to engage in accessory activities, including economic activities, and to hold financial interests such as shares in a company, bonds, notes or other financial instruments. However, the law provides for the following limitations.

48. Under section 33 AEMDS, deputies and senators must inform the *Marshal of the Sejm*/the *Marshal of the Senate* about their intention to take up additional activities,

³¹ Under article 228 § 1 PC, passive bribery is punishable by deprivation of liberty for a term of between 6 months and 8 years. The provisions of article 228 §§ 2 to 5 PC regulate aggravated and less significant cases.

³² Supreme Court decision No. VI KZP 34/07 of 26 February 1988. – Cf. also GRECO's Third Round Evaluation Report on Poland, document Greco Eval III Rep (2008) 2E, paragraphs 16 and 63.

³³ In conjunction with article 108 of the Constitution, as far as senators are concerned.

³⁴ See articles 247, 249 and 250 of the Election Code, which contain further details in this respect.

except for activities subject to copyright and related rights (paragraph 1). They are prohibited from engaging in activities which could undermine the voters' confidence in the exercise of their mandate pursuant to section 1(1) (paragraph 2) and from invoking their mandate or using the title of a parliamentarian in relation to any additional activities or economic activity.

49. Furthermore, pursuant to article 107(1) of the Constitution,³⁵ parliamentarians are not permitted, to the extent specified by statute, to perform any business activity involving any benefit derived from the property of the State Treasury or local government or to acquire such property.

50. The main statutory regulation related to economic activity of a parliamentarian is included in section 34 AEMDS. By virtue of this section, deputies and senators may not conduct economic activity, on their own account or jointly with other persons, using the state or communal property, or manage such activity or act as a representative or proxy in conducting such activity (paragraph 1). They are forbidden to be members of management boards, supervisory boards or audit committees or to act as authorised commercial representatives of enterprises in which the state or municipal legal persons hold an interest (paragraph 2). Finally, parliamentarians are prohibited from holding more than 10% of shares in commercial companies in which the state or communal legal persons or enterprises hold a share. Shares exceeding the 10% package are to be sold by the deputy or senator before the first sitting of the *Sejm* or *Senate*. If they are not sold, they must not participate in exercising the inherent rights (voting right, right to dividend, right to assets distribution, pre-emptive right) for the period in which the mandate is exercised and for two years after its expiry (paragraph 4).

51. The GET acknowledges the above-mentioned regulations, however, it finds the threshold in section 34(4) AEMDS – according to which parliamentarians are prohibited from holding more than 10% of shares in commercial companies in which the state or communal legal persons or enterprises hold a share – relatively high. The authorities may wish to consider lowering this threshold to an appropriate level, for the sake of preventing conflicts of interest in appearance and in reality.

52. There are no regulations that would prohibit deputies or senators from being employed in certain positions or in specific sectors upon expiry of their term of office. The GET is concerned that a parliamentarian could drive legislation through Parliament with no ostensible conflict of interest at that time, but has an intention to become engaged in a related field once s/he has returned to the private sector. The authorities are therefore encouraged to consider taking appropriate measures to prevent such possible situations of conflict of interest, such as imposing a one or two-year "cooling-off" period between a parliamentarian's end of a term and new employment, if there would be a conflict if the individual concerned was still a parliamentarian.

Misuse of confidential information

53. Pursuant to section 19(1) AEMDS, parliamentarians have the right, provided it does not infringe upon the personal rights of other persons, to obtain information and materials, to enter premises where the information and materials are kept, and to inspect the activity of government administration and local government bodies, as well as of partnerships with the participation of the State Treasury, state-owned and local government-owned plants and enterprises, in compliance with the provisions on confidential information protected by law.

54. As regards access to classified information, section 7(11) StOS states that the regulations on protecting classified information are applicable and that a deputy must

³⁵ In conjunction with article 108 of the Constitution, as far as senators are concerned.

submit a written declaration on keeping secret – both during and after the expiry of his/her mandate – the classified information that s/he obtains during the exercise of his/her mandate. The conditions for access to classified information as well as the terms and conditions for processing such classified information are regulated by the 2010 “Act on Classified Information Protection”,³⁶ as well as the implementing provisions issued on its basis. In the case of information qualified by the authorised person as being “classified”, “confidential” or “secret”, deputies have right of access by right, i.e. without a security certificate or security clearance. By contrast, access to “top secret” information is subject to a background check being carried out by the Internal Security Agency, at the request of the *Marshal of the Sejm*, in order to verify whether the deputy concerned can be trusted to keep the secret. Classified information is marked as “top secret” if its unauthorised disclosure would cause an exceptionally severe damage to Poland, for example, by posing a threat to the independence, sovereignty or territorial integrity of Poland or to its internal security or constitutional order.

55. Disclosure by parliamentarians of confidential information leads to criminal liability under the provisions of chapter XXXIII of the PC “offences against the protection of information”. Under article 265 § 1 PC, “whoever discloses or, in violation of the law, uses information which is classified as ‘secret’ or ‘top secret’ shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.”³⁷ Under article 266 § 1 PC, “whoever, in violation of the law or obligation s/he has undertaken, discloses or uses information with which s/he has become acquainted with in connection with the function or work performed, or public, community, economic or scientific activity pursued, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years”.³⁸ According to the authorities, in recent years there have been no recorded incidents of misuse of classified information.

Misuse of public resources

56. The authorities state that several safeguards are in place in order to prevent misuse of public resources, in particular, the above-mentioned provisions of article 107(1) of the Constitution and section 34(1) AEMDS which prohibit parliamentarians from conducting an economic activity using state or communal property.

57. The authorities furthermore refer to the rules on the use of public funds by parliamentarians as well as their accounting obligations in this respect. As concerns benefits received by parliamentarians, in addition to their regular salary, parliamentarians have to submit, *inter alia*, invoices and receipts concerning expenses for accommodation outside their permanent residence and apartment lease to the Chancellery of the *Sejm*/the Chancellery of the *Senate*, and electronic records of such expenses must be kept.

58. Moreover, the use of public funds by parliamentarians for running their offices and for paying the salaries of their personnel is regulated in detail by the AEMDS and secondary legislation.³⁹ *Inter alia*, the rules provide that a deputy may employ the office’s personnel on his own behalf for a fixed period of time, but not longer than the duration of the mandate. In his/her activity, the deputy may be supported by assistants. A deputy sets the remuneration of his/her employees. The lump sum granted for the parliamentarian’s office may not be used in respect of liabilities resulting from contracts entered into by a deputy with his/her family member, for financing political parties,

³⁶ Act of 5 August 2010, J. of L.10.182.1228

³⁷ The provisions of article 265 §§ 2 and 3 PC regulate less significant and aggravated cases.

³⁸ Article 266 § 2 PC regulates aggravated cases.

³⁹ In particular, Order No. 8 of the *Marshal of the Sejm* of 25 September 2001 concerning the organisational and technical conditions for the creation, operations and liquidation of deputies’ offices; Order No. 5 of the *Marshal of the Sejm* of 21 September 2001 concerning the procedure for disbursing additional annual salary to the staff of deputies’ clubs and groups as well as the staff of deputies’ offices and the calculation method and disbursement of seniority awards and parliamentary severance pay on expiry of a term of office in the *Sejm*.

social organisations, foundations, for the operation of deputies' and parliamentary clubs and groups nor for charity. Deputies alone are responsible for the funds received for running their office and have to submit annual expense statements indicating amounts spent from the deputy's office budget to the Chancellery of the *Sejm*. The funds allocated for a deputy's office are also accounted for at the end of the term of office. Any expenses exceeding the office budget are to be covered by the deputy's own funds. A deputy's office may not be financed by other entities. Similar rules apply to senators.

59. Finally, as concerns the funds for renovation and additional equipment of their offices, parliamentarians may not use them to purchase an asset worth more than PLN 3,500/approximately 840 EUR. They must account for such funds by presenting original financial evidence of such expenses to the Chancellery of the *Sejm*/the Chancellery of the *Senate*. They must also account for expenses for business trips of deputies' employees, for the "13th month bonus", severance pay on expiry of the term of office and jubilee bonuses to eligible personnel, based on such documents as itemised payroll sheets documenting benefits paid to the employees.

60. The GET finds the legal framework for limiting and regulating certain activities by parliamentarians in many respects satisfactory. That said, in some areas there is still some room for improvement as noted above, for example, with respect to post-public employment. Moreover, during the interviews the GET's attention was repeatedly drawn to the lack of precision of relevant legal provisions, which were considered too vague to be understood and applied. This is particularly true for section 33(2) AEMDS – according to which deputies and senators may not take up any additional activities or accept donations "which could undermine the voters' confidence in the exercise of their mandate". It would appear that this provision has no practical relevance and is merely of a symbolic nature. The authorities may wish to consider amending this provision in order to provide for clear guidance for parliamentarians in these important matters. However, on the understanding that such guidance will at least be introduced by way of complementing the Principles of Deputies' Ethics (and including this issue in yet-to-be developed standards of ethics and conduct for senators), as recommended above, no formal recommendation is made in this respect.

Declaration of assets, income, liabilities and interests

61. Firstly, under section 35 AEMDS, parliamentarians must file declarations on their financial situation – hereafter referred to as asset declarations – to the *Marshal of the Sejm*/the *Marshal of the Senate*, on the basis of a specimen appended to the Act, within the following deadlines: (1) by the day of taking the oath as an elected deputy or senator, along with information on ceasing (the manner and date) any economic activity using State Treasury or local government property, including information on the holding of State Treasury or local government property; 2) by 30 April on an annual basis, describing the situation as of 31 December of the previous year, with a copy of the annual tax return (PIT) attached; (3) within a month from the day on which elections to the *Sejm* or *Senate* are announced. The requirement to submit asset declarations does not apply to the family members of parliamentarians. Parliamentarians are not required to submit asset declarations on an *ad hoc* basis, e.g. if they have an interest in a matter that is before the legislature or one of its committees.

62. The asset declarations must include information on the separate and joint marital property of the parliamentarian, in particular (1) cash, real estate, participation in private or commercial partnerships, stocks and shares held in commercial companies, property purchased from the State Treasury, from other state legal persons, local government entities, their associations or a communal legal person – that was sold by way of tender – as well as economic activity conducted/positions held in commercial companies; (2) income from employment or other gainful activity or occupation, stating the amounts earned from each of the above (but not the time spent on such activities); (3) movables

of a value exceeding 10,000 PLN/approximately 2,400 EUR; (4) cash liabilities of a value exceeding 10,000 PLN/approximately 2,400 EUR, including credits and loans taken, indicating the terms and conditions on which they were granted.

63. The information contained in the asset declarations is to be made public by the *Marshal of the Sejm/the Marshal of the Senate* in electronic form – in practice, on the website of the *Sejm/the Senate*. The residential address of a deputy or senator and the location of real estate owned by them is not included. Moreover, the *Marshal of the Sejm/the Marshal of the Senate* sends a copy of the asset declaration to the tax office of the parliamentarian's place of residence. Asset declarations are to be kept for 6 years.

64. Secondly, in accordance with section 35a AEMDS, "benefits" received by parliamentarians or their spouses are to be disclosed in the Register of Interests kept by the *Marshal of the Sejm/the Marshal of the Senate*. Any changes to the data included in the Register have to be reported within 30 days.

65. The Register of Interests contains information on (1) positions and occupations pursued both in the public administration and private institutions for which salary is received, and work performed for one's own account; (2) material support for public activity conducted by the reporting person; (3) donations from domestic or foreign entities which exceed 50% of the minimum salary in December of the preceding year, as specified by the Minister of Labour and Social Policy pursuant to the Labour Code – the minimum salary in this meaning amounting to currently 760 PLN/approximately 182 EUR;⁴⁰ (4) domestic or foreign travel not related to the performed public function, if its cost has not been covered by the reporting person or his/her spouse or by the institutions employing them, or by political parties, associations or foundations of which they are members; (5) other benefits obtained, whose value exceeds the amount specified under item 3 and which are not related to positions held or occupations or work performed as referred to under item 1. In addition, information about participation in the statutory bodies of foundations, commercial companies or cooperatives must be reported to the Register, whether financial benefits are received or not for such participation.

66. The Register is publicly available, and the data it contains is to be disclosed to the general public by the *Marshal of the Sejm/the Marshal of the Senate* once a year, in a separate publication. The authorities indicate that in practice, the information submitted by deputies to the Register is made public systematically on the website of the *Sejm/the Senate*.

67. The GET notes that the rules on asset declarations are rather strict – in so far as they must be filled out by parliamentarians periodically (at the beginning of the term, by 30 April on an annual basis and at the end of the term), as they include detailed information on the separate and joint marital property, and as they are available on the websites of the *Sejm* and the *Senate*. It is noteworthy that in addition to this quite demanding declaration regime, parliamentarians also have to continuously disclose benefits received in a public Register of Interests. That said, the scope of asset declarations appears to be quite narrow, since they do not include any information on close family members, in particular, spouses and dependent children (except for information on property jointly owned by the parliamentarian and his/her spouse), or other close relatives, e.g. parents (whereas the Register of Interests contains information on benefits received by spouses). The GET has some concerns, that the existing transparency regulations may be circumvented by transferring property to close family members. The GET discussed this issue at length with numerous interlocutors, some of whom – including representatives of supervisory bodies – openly admitted the imperfections of the current regime. They also informed the GET, that a widening of the

⁴⁰ In accordance with section 25 of the Act of 10 October 2002 on the Minimum Remuneration for Work (Dz. U. No. 200, item 1679, as amended).

scope of declaration forms had been subject to public and parliamentary debate for several years and received much public attention. However, there appears to be some resistance to such possible amendments, mainly for privacy and data protection reasons, which are guaranteed by articles 47 and 51 of the Constitution.⁴¹ The GET, fully aware of those constitutional principles – and of the fact that the right to respect for private and family life is also guaranteed by article 8(1) of the European Convention on Human Rights, believes that a satisfactory compromise may be found by requiring family members to register their assets, but at the same time ensuring that these are kept confidential, scrutinised by competent officials and are in no way published. In view of the above, **GRECO recommends that consideration be given to widening the scope of asset declarations by parliamentarians to include information on assets of spouses, dependent family members and, as appropriate, other close relatives (it being understood that such information would not necessarily need to be made public).**

Supervision and enforcement

Rules on the use of public funds

68. The use of parliamentarians' benefits and office budget is monitored by the Chancellery of the Sejm/the Chancellery of the Senate, on the basis of the documents to be submitted by deputies and senators, as described further above.⁴² Those documents are reviewed by the Chancellery, which also carries out field visits in order to verify the information contained in the annual expense statements regarding the office budget. The GET was informed during the interviews that the staff of the Chancellery of the *Sejm* performs around 100 field visits a year. It would appear that irregularities in the statements are rare. Failure to submit annual expense statements results in suspension of further funding.

Ethical principles

69. Observance by *Sejm* deputies of the Principles of Deputies' Ethics is monitored by the Deputies' Ethics Committee. Section 147 StOS states that, having examined a case and having found a violation of the Principles, the Committee may by means of a resolution reproach, admonish or reprimand a deputy. Resolutions made by the Committee are to be made public. They may be appealed against to the chairman of the Committee, who presents it to the Presidium of the *Sejm*. Resolutions to admonish or reprimand a deputy must be passed by an absolute majority of votes in the presence of at least half of the number of the Committee members. The authorities indicate that during the current term of office, i.e. since November 2011, the Committee has adopted 7 resolutions on the violation of the Principles of Deputies' Ethics by deputies so far (as of 26 April 2012). During the previous term of office (between 2007 and 2011), the Committee adopted 43 resolutions in this regard. The GET was informed during the interviews, that cases of possible violation of the Principles of Deputies' Ethics are brought to the attention of the Committee mainly by other deputies and occasionally by other sources such as the media.

Duties specified in sections 33 to 35 AEMDS

70. Cases of parliamentarians charged with violation of the rules specified in sections 33 to 35 AEMDS – relating to the exercise of additional activities, receipt of donations, economic activities, positions or functions, and to the submission of asset declarations –

⁴¹ In this connection, the authorities refer to a decision of the Constitutional Tribunal of 13 July 2004 (K 20/03), which stated that a requirement on local government officials to include information on close family members (beyond information on property jointly owned by the official and his/her spouse) would result in a breach of article 51 of the Constitution.

⁴² For more details, see above under "Misuse of public resources".

are to be referred by the Presidium of the *Sejm*/the Presidium of the *Senate* to the Rules and Deputies' Affairs Committee/the Rules, Ethics and Senatorial Affairs Committee for examination. Pursuant to section 131 StOS, the Rules and Deputies' Affairs Committee presents to the Presidium a report including a non-binding opinion on the case and possibly a draft resolution to reproach, admonish or reprimand the deputy concerned, or a request to discontinue proceedings in respect of the charges. In accordance with section 21 StOS, the Presidium of the *Sejm* may then by means of a resolution, which is left to its discretion, reproach, admonish or reprimand the deputy. The resolutions of the Presidium are not made public. They may be appealed against to the *Sejm*, which considers the matter by hearing a representative of the Presidium, and upon request the deputy concerned. Similar rules are provided for by section 24 RRS in respect of senators. The authorities indicate that in recent years, the Presidium of the *Sejm* and the Presidium of the *Senate* did not impose any of the above-mentioned sanctions on parliamentarians.

71. In addition to reproach, admonition and reprimand under the StOS/RRS (parliamentary responsibility), the law provides for the following sanctions in case of violation of certain rules contained in sections 33 to 35 AEMDS:

- Pursuant to article 107(2) of the Constitution, in the case of a breach of the prohibition on performing a business activity involving benefit derived from State Treasury or local government property or the acquisition of such property – as stipulated in article 107(1) of the Constitution and section 34 AEMDS – a parliamentarian is, by resolution of the *Sejm*/the *Senate* adopted on a motion of the *Marshal*, to be brought to account before the Tribunal of State – which is to adjudicate upon forfeiture of the mandate.⁴³
- Under section 34(3) AEMDS, parliamentarians must resign from specified positions or functions in enterprises in which the state or municipal legal persons hold an interest. If they do not resign, the positions or functions are lost by virtue of law after three months from the day of taking the oath.
- Under section 35(8) AEMDS, failure to submit an asset declaration results in the loss of the right to receive a salary until the declaration is submitted. In such cases, the Presidium notifies the Finance Office, which suspends salary payments.
- In accordance with section 35(9) AEMDS, providing false information or concealing the truth in asset declarations results in criminal responsibility under article 233 § 1 PC. Under this provision, "whoever in giving testimony which is to serve as evidence in court proceedings or other proceedings conducted on the basis of a law, gives false testimony or conceals the truth shall be subject to the penalty of deprivation of liberty for up to 3 years."

Asset declarations in particular

Verification of the data included in the asset declarations which is submitted by parliamentarians, is regulated in further detail by the provisions of section 35(4), (6) and (6a) AEMDS, which foresee a threefold control outlined below.

72. The data of each asset declaration are analysed by the Deputies' Ethics Committee of the *Sejm* or the Rules, Ethics and Senatorial Affairs Committee of the *Senate*, as appropriate. The committees are authorised to compare the contents of the analysed declaration with the contents of previously submitted declarations, as well as with the attached copy of the annual tax return. In cases of inaccuracies or where there is an absence of data, the Committee requests the parliamentarian to furnish the

⁴³ See section 25(1a) of the "Act on the Tribunal of State".

necessary data. Subsequently, the Committee adopts a resolution on accepting the information provided, which is submitted to the Presidium and published on the Parliament's website along with the asset declaration.

73. The *Marshal of the Sejm/the Marshal of the Senate* sends a copy of each asset declaration to the tax office of the parliamentarian's place of residence, which is also authorised to compare the contents of the analysed declaration with the contents of previously submitted declarations, as well as with the attached copy of the annual tax return. The tax office then sends a letter to the *Marshal of the Sejm/the Marshal of the Senate* with information on the results of the analyses, which is forwarded to the above committees.

74. In addition, the *Marshal of the Sejm/the Marshal of the Senate* upon written request sends a copy of the asset declaration to authorised bodies such as law enforcement agencies for verification (in practice, such bodies have access to the declarations also through the websites of the *Sejm* and the *Senate*).⁴⁴ In particular, the Central Anti-Corruption Bureau (CAB) is authorised to verify the accuracy and veracity of the asset declarations of parliamentarians (and other groups of persons performing public functions), through a multi-stage assessment:⁴⁵

- In a first step, a system assessment covering the whole group of professionals is conducted, during which the CAB performs a comparative analysis of the data provided.

- The asset declarations which cast doubt as regards their truth and reliability are then chosen for further analysis (second step). The CAB verifies in particular: information on the parliamentarian's place of employment; income distribution; membership in bodies of commercial companies, foundations and associations engaged in economic activities; carrying out of business activities, acting as an agent of or management of such activities; real scale of available resources in cash and securities; number of shares held in commercial companies; the amount of stakes in commercial companies; movable components valued at more than 10,000 PLN/approximately 2,400 EUR, including cars; commitments and liabilities over 10,000 PLN/approximately 2,400 EUR.⁴⁶

- If the foregoing analysis reveals serious irregularities, the CAB proceeds to verification of property in a larger extent (third step). The CAB may request information from banks, including financial track records; brokerage houses; investment funds; real estate registries; tax offices, including income declarations and statements confirming the purchase or sale of assets; insurance companies, where necessary; documents confirming or denying a business activity.

75. The authorities indicate that the checks of asset declarations by various authorised bodies are practically independent. If they reveal irregularities, the Presidium of the *Sejm*/the Presidium of the *Senate* may then take further action in accordance with the supervisory procedure as described further above (i.e. in co-operation with the Rules and Deputies' Affairs Committee/the Rules, Ethics and Senatorial Affairs Committee). In case of suspected criminal offences, the matter is directly referred to the competent law enforcement agencies. In this context, it is to be noted that from the day the election results are announced, until the day of expiry of their mandate, parliamentarians may

⁴⁴ In this connection, the GET was informed that the submission of certified copies may however prove necessary for evidential purposes and to avoid duplicating investigative actions. Moreover, the fields featuring addresses of real estate are shaded in declarations published on parliamentary websites, while such data may be indispensable for investigative operations.

⁴⁵ Following the procedure and principles laid down in chapter 4 of the "Act on the Central Anti-Corruption Bureau".

⁴⁶ In accordance with the provisions of the "Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions".

not be subject to criminal liability without the consent of the *Sejm* or the *Senate*.⁴⁷ Parliamentary inviolability may however be waived by means of a resolution by the *Sejm* or *Senate* (requiring the absolute majority of votes of the statutory number of deputies or senators) or if the parliamentarian consents to be brought to justice.⁴⁸

76. Statistical information submitted in May 2012 shows that, since 2008, the *Marshal of the Sejm* had forwarded copies of asset declarations made by 93 deputies to authorised bodies at their request, including 32 to the CAB, 60 to the Internal Security Agency and 2 to the regional or district public prosecutor's office. Since its establishment in 2006, the CAB performed several system assessments concerning altogether 2,520 asset declarations of parliamentarians (first step of the procedure). It carried out 140 detailed analyses (second step), and applied the full procedure to 18 declarations (third step). Notifications were filed with the prosecutor's office under article 233 PC in 8 of those cases, out of which 7 resulted in the initiation of criminal proceedings. The asset declarations concerned were incomplete and lacked information on liabilities, credit, movable property or loans. However, as it could not be proven that the parliamentarians concerned had the intention to give false information, the prosecutor's office discontinued the investigations in those cases.

Other duties

77. Pursuant to section 132 StOS, deputies who are charged with failing to perform their duties as Members of Parliament – other than those specified in sections 33 to 35 AEMDS – are to be referred by the Presidium of the *Sejm* to the Rules and Deputies' Affairs Committee for examination. The Committee itself is the competent body to adjudicate in such cases. Under section 22 StOS, it may reproach, admonish or reprimand a deputy. Similar rules apply to senators, see section 25 RRS. This mechanism is applicable, for example, in cases where a parliamentarian violates the provisions of section 30(1) AEMDS on relative incompatibility of posts or those of section 35a AEMDS on the Register of Interests.

78. The GET notes that Poland has established a comprehensive monitoring regime relating to the conduct of parliamentarians. The law regulates in detail the oversight of compliance by parliamentarians with the different rules governing conflicts of interest and related areas, and provides for a relatively broad range of disciplinary and criminal sanctions. On paper, the system certainly looks impressive. At the same time, however, the GET is concerned about the high complexity of the current regime, with the involvement of numerous bodies and with different procedures depending on the rules under examination. It may be that the mechanism of shared responsibilities in its present form is ineffective. For example, disciplinary sanctions for violations of the conflicts of interest regulations under the AEMDS – which may be imposed by the Presidium of the *Sejm*/Presidium of the *Senate* after hearing the relevant committees – are hardly ever imposed. Another example is forfeiture of the parliamentary mandate for violation of the prohibition on performing a business activity involving state property or the acquisition of such property under article 107 of the Constitution. This sanction, which is to be decided upon by the Tribunal of State following a resolution of the *Sejm*/the *Senate* adopted on a motion of the *Marshal*, is never applied in practice. The GET was concerned to hear it alleged, however, that the above prohibition is often not respected or bypassed.

79. In particular, the GET is of the view that the monitoring system with regard to asset declarations is unnecessarily complicated. Several different bodies check the contents of the declarations in separate proceedings and it would appear that no body has a clear leading role and overview of their findings. The asset declarations are to be submitted by parliamentarians to the *Marshal of the Sejm*/the *Marshal of the Senate* who

⁴⁷ Article 105(2) of the Constitution.

⁴⁸ See sections 7 and 7c AEMDS.

forward them to the different control bodies. However, the GET was informed that the *Marshal of the Sejm*/the *Marshal of the Senate* do not possess any data on the number of asset declarations effectively controlled by tax offices, on the number of controls conducted and completed by other authorised bodies such as the CAB, or on the progress of such controls or on the details of cases which are subject to proceedings. Although the GET was left with the impression that the CAB carries out substantial and proactive controls of asset declarations, it believes that the effectiveness of the monitoring mechanism would further benefit from simplifying the complicated system described above.

80. Finally, the GET notes that the Presidium of the *Sejm*/the Presidium of the *Senate* and the relevant committees, do not have any particular resources at their disposal for exercising their supervisory function, nor do they conduct any inquiries. During the interviews held on site, it was repeatedly stated that those organs are thus not in a position to carry out in-depth control of the parliamentarians' conduct. While the GET is confident that clearer standards of ethics and conduct and precise rules on conflicts of interest - as recommended above - will contribute to enhancing the monitoring mechanism as well, the structural deficiencies mentioned above will also have to be addressed in order to increase its effectiveness. Consequently, given the foregoing, **GRECO recommends that the monitoring mechanism in respect of compliance by parliamentarians with standards of ethics and conduct - including rules on conflicts of interest and related areas - be reviewed in order to increase its effectiveness, in particular by simplifying the system of various bodies involved and by providing it with the necessary financial and personnel resources.**

81. In addition, it transpired from the interviews with professionals that the control competencies of the supervisory bodies (in particular, the CAB) in respect of asset declarations warrant further perfection. It would appear that investigations may be hampered in practice by assets hidden abroad or third party involvement (such as third party accounts into which illicit funds may be deposited). The authorities may wish to consider taking appropriate measures to address these concerns.

Advice, training and awareness

82. The *Marshal of the Sejm* informs parliamentarians in writing of the requirement to submit asset declarations, and forwards to them the instructions on completing such declarations prepared by the Deputies' Ethics Committee. The authorities state that deputies may also consult legal experts employed at the Chancellery of the *Sejm* on the matter and request information and written opinions on specific cases. They furthermore indicate that newly elected deputies are informed during introductory sessions about the principles of incompatibility of a deputy mandate with other functions or positions, the types of prohibited economic activity and the obligation to submit asset declarations. Written information on those issues is also provided on that occasion. The authorities add that the situation is similar at the *Senate*. The Rules, Ethics and Senatorial Affairs Committee also provides senators with conclusions arising from an analysis of the declarations carried out by itself and by tax offices.

83. The GET notes that at the present moment, if a parliamentarian presumes that his/her interests or the interests of his/her close entourage might give rise to a conflict of interests with his/her office, s/he can consult the Chancellery of the *Sejm*/the Chancellery of the *Senate* to see what action has to be taken. Moreover, some written information on such questions is provided by the Chancellery, by the *Marshal of the Sejm*/the *Marshal of the Senate* and by relevant committees. However, there is not an independent official body which enjoys an indisputable authority in these matters. In the view of the GET, in the specific context described further above⁴⁹ - which is marked by

⁴⁹ See, in particular, paragraph 38 above.

the lack of a clear understanding and awareness of conflicts of interest – such an authority is required in order to ensure the proper implementation of (existing and yet-to-be established) ethical standards and conflict of interest regulations. Clearly, Poland must itself assess which kind of body/person could be entrusted with such a task. The GET wishes to stress however, that any such authority – e.g. a dedicated public official of the *Sejm*/the *Senate* or an external regulator – needs to enjoy an appropriate level of independence from political influence, command specific expertise in the field and be distinct from disciplinary bodies (such as the Presidium or relevant parliamentary committees, e.g. the Deputies' Ethics Committee). This would thus enable him/her to act as a confidential counsellor for deputies/senators. Moreover, the requests for consultations and the opinions expressed by the regulator would have to be confidential and only be made public by the parliamentarian concerned.

84. The GET furthermore takes the view that in addition to such confidential advice on questions of ethics and conflicts of interest, periodic training (for example, in the beginning and middle of a term of office) needs to be provided to all parliamentarians on these matters in order to raise their awareness and inform them about further developments as advocated for in this report. The information gathered by the GET clearly suggests that the existing introductory sessions for newly elected deputies are insufficient to achieve these objectives. Consequently, given the preceding paragraphs, **GRECO recommends, both in respect of *Sejm* deputies and senators, (i) the establishment of a dedicated confidential counsellor with the mandate to provide parliamentarians with advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflicts of interests.**

85. The authorities indicate that information on the principles to be adhered to and the attitudes which are expected of parliamentarians is brought to the attention of the general public via the Press Relations Bureau, the Correspondence and Information Bureau and the *Sejm* website. The GET wishes to stress that in order to support public trust in Parliament, it is crucial that the public continues to be made aware of the steps taken and the tools developed to reinforce the integrity of both *Sejm deputies* and senators, for the sake of optimum transparency and accountability. In this connection, the authorities are encouraged to systematically provide for easy access by the public of legal standards, tools for their implementation and sanctions imposed on parliamentarians in case of (significant) non-compliance with the rules – as is already the case for sanctions imposed by the Deputies' Ethics Committee.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

Categories of courts and jurisdiction levels

86. The foundations of the judicial system of Poland are laid down in the Constitution, in the chapter entitled "Courts and tribunals" (articles 173 to 197). The courts and tribunals constitute a separate power and are independent from other branches of power. They pronounce judgements in the name of Poland. Justice is administered by the Supreme Court, common, administrative and military courts.⁵⁰ Extraordinary courts or summary procedures may be established only in times of war. The judicial proceedings involve at least two instances. The tribunals, in particular the Constitutional Tribunal, do not form part of the justice system.

87. The regulation of common courts is provided for in the Constitution and in the "Law on the Common Courts' System" (LCCS) of 27 July 2001. The system comprises 321 district courts (first instance), 45 regional courts (first instance or appellate instance) and 11 courts of appeal (appellate instance). The common courts administer justice in all matters except for those statutorily reserved for other courts.⁵¹ The material, territorial and functional scope of the common courts as well as relevant proceedings are defined in the Code of Criminal Procedure (CCP), the Code of Petty Offences' (Misdemeanour) Procedure, the Code of Civil Procedure and a series of specialised acts.⁵² Pursuant to their provisions, the common courts adjudicate, *inter alia*, in civil, family, juvenile, labour, social security, commercial, bankruptcy, criminal and enforcement cases and keep mortgage and land registers.

88. The military courts are regulated by the "Law on the Military Courts' System" of 21 August 1997, and consist of circuit and garrison courts.⁵³ Within the scope provided for by the laws, the military courts administer criminal justice in respect of persons serving in the Armed Forces, civilian employees of military units and prisoners of war.⁵⁴

89. The Supreme Court administers justice by exercising supervision over the legality and uniformity of decisions adopted by the common and military courts. By allowing for a cassation of valid and final judgements delivered by second instance courts, the Supreme Court acts as an extraordinary and last instance of appeal. It also adopts resolutions clarifying specific legal issues, examines electoral petitions, including those pertaining to European Parliament elections, validates the results of national and constitutional referendums, of elections to the *Sejm*, the *Senate* and to the post of the President of the Republic. Pursuant to the "Act on the Supreme Court" of 23 November 2002, the Court comprises four Chambers: Civil, Criminal, Labour Law, Military, Social Security and Public Affairs.

90. The administrative courts are regulated by the "Law on the Administrative Courts' System" (LACS) of 25 July 2002 and consist of 14 *voivodship* administrative courts (first instance) and the Supreme Administrative Court (second instance). The administrative courts exercise control over the legality of the activities of public administration and adjudicate on disputes between bodies of local self-government, local self-governmental boards of appeal and between these bodies and government administration bodies.⁵⁵

⁵⁰ Article 175 of the Constitution.

⁵¹ Article 177 of the Constitution. This provision is complemented by section 1 § 2 LCCS, which stipulates that the common courts administer justice within the domain that goes beyond the scope of the administrative and military courts and of the Supreme Court.

⁵² For example, the "Act on Juveniles Cases' Procedure" of 26 October 1982, the "Act on the National Court Register" of 20 August 1997.

⁵³ The present report does not deal with specific regulations applicable to judges of the military courts.

⁵⁴ See e.g. sections 339 § 3, 345 §§ 3/4 and 356-363 PC; sections 654 § 1, item 1 and 647 § 1, item 3 CCP.

⁵⁵ Sections 1 and 2 LACS.

91. The Constitutional Tribunal is a judicial organ examining the conformity of statutes, normative acts, international agreements, purposes and activities of political parties with the Constitution. It also rules on complaints concerning constitutional infringements and implements other objectives as laid down in the Constitution and in the "Constitutional Tribunal Act" of 1 August 1997.

92. Two principal changes have affected the functioning of the judiciary in Poland in recent years. Firstly in 2009, following the Constitutional Tribunal's ruling, assessor judges (i.e. junior judges) appointed by the Minister of Justice, were barred from adjudicating cases on the grounds that they were executing the functions of a judge. Appointment as an assessor judge used to be a stepping stone to becoming a judge, as following three years of service, such persons were usually transferred to district courts. However, this was not an automatic transfer since junior judges – like the candidates representing other legal professions – had to undergo the selection procedure for the vacant judicial post. The situation influencing the formation of the judiciary changed after 2009 when the institution of junior judges ceased to exist. Access to judgeship is also open to and actively sought by other legal professionals (i.e. legal counsels, notaries and others).

93. Secondly, several key legal acts have been subject to revision. On 28 March 2012, a number of provisions of the Act of 18 August 2011 amending the LCCS have entered into force. The changes it had introduced concern: (1) the supervision of the administrative activities of courts; (2) the procedure for the appointment to judgeship; (3) the procedure for the appointment to the positions of president and vice-president of courts; (4) introduction of a regular assessment of a judge's work. Some provisions of this act will come into force on 1 January 2013. They concern the division of competences between a court manager and a president of a court in the sphere of court management. Moreover on 3 May 2012, the Act of 16 September 2011 amending the Code of Civil Procedure and some other acts had entered into force. To ensure that proceedings can be conducted speedily and effectively, the former now imposes an obligation on parties and participants of the proceedings to cite without delay all facts and evidence of the case. As regards criminal proceedings, a legislative process is under way to amend the Criminal Procedure Code, particularly with a view to introducing public court sittings in certain cases (e.g. sittings on discontinuance of the proceedings before the trial).

Independence of the judiciary

94. The principle of independence of judges is enshrined in the Constitution. It stipulates that, within the exercise of their office, judges are independent and subject to the Constitution and statutes alone.⁵⁶ A number of constitutional safeguards are meant to ensure the judges' independence,⁵⁷ namely appropriate working conditions and remuneration consistent with the dignity of office and scope of their duties; non-removability; the prohibition to recall or suspend judges from office or to transfer them to another court or position against their will, except when ordered by a disciplinary court or the president of court and only in the instances prescribed by the law⁵⁸; the ban on membership of a political party, trade union and on pursuing public activities incompatible with the principle of independence of courts and judges; mandatory retirement on reaching the age limit prescribed by law; judicial immunity.⁵⁹ Detailed

⁵⁶ Articles 173 and 178(1) of the Constitution. The independence of a judge implies independence both vis-à-vis the litigant parties and state authorities.

⁵⁷ See articles 178 to 181 of the Constitution.

⁵⁸ Where there has been a reorganisation of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration – article 180(5) of the Constitution.

⁵⁹ Sections 178 §§ 2/3, 180 §§ 1/2/4 and 181 LCCS.

provisions on the status of a judge and further safeguards are contained in the LCCS. Exceptions to the rule of binding judges solely by the provisions of the Constitution and of statutes are included in the procedural laws.⁶⁰ They limit the principle of jurisdictional independence of a court, within the scope stipulated by the statute, but maintain the principle of free assessment of evidence.

95. Currently, there are around 9,900 judges in Poland. According to the authorities, the number of vacancies is not significant. Between 200 and 300 persons are appointed to judgeship each year. All judges constitute a single judicial corpus. The composition of divisions and allocation of cases depend on the experience and knowledge of judges.⁶¹

Supervision over the administrative activities of courts

96. Following the most recent reform, the administrative activities of courts have been divided into two categories: (1) those ensuring adequate technical, organisational and financial conditions of the courts' work, supervised by the Minister of Justice; and (2) those ensuring proper internal functioning of the courts and linked directly to justice administration. Supervisory responsibilities over the latter have been split: internal supervision is carried out by presidents of courts, and external supervision by the Minister of Justice through its supervisory service (which may include judges seconded to the Ministry).⁶²

97. The internal supervision of administrative activities of an appellate court, as well as of regional and district courts operating on the territory of an appellate region, is pursued by the president of a court of appeal. The internal supervision of administrative activities of a regional court and of district courts, operating on the territory of the judicial circuit is carried out by the president of a regional court. The internal supervision of administrative activities of a district court is executed by its president. Supervision entails, *inter alia*, examining the efficiency of proceedings in individual cases, exercising control over the activities of court divisions' secretariats, inspecting the correctness of case allocation and ensuring the even distribution of work. Supervision may include inspections (covering the complete administrative activity of a court or a court's division) and vetting (limited to selected issues from the scope of administrative activity of a court or a court's division).⁶³ Where there have been infringements, the president of a court of appeal may issue a recommendation or reprimand in writing the president of a lower court. Such powers are also vested in the president of a regional court towards presidents/vice-presidents of a district court. Presidents of regional and appellate courts may furthermore review complaints regarding the administrative activities of courts within their jurisdiction.⁶⁴

98. The external supervision includes the analysis and assessment of the correctness and efficiency of the aforementioned internal supervision exercised by presidents of courts, as well as performing acts which are necessary in view of the infringements in the administrative activities of courts or for the performance of tasks connected with the representation of Poland before the European Court of Human Rights (e.g. pointing out to the courts the irregularities in their functioning found by the ECHR in its judgments, or asking the courts to hand over judicial decisions to be presented in an official position before the ECHR).⁶⁵ In case of substantial irregularities, the Minister of Justice may order the vetting of a court or of its division, or of the supervisory activities of a court

⁶⁰ For example, in criminal matters, in case of the reversal of a decision and referral of a case to be re-heard, legal opinions and instructions of the appellate court as regards further proceedings are binding upon the court, to which the case was referred. See articles 441 § 3 and 442 § 3 CCP; article 386 § 6 of the Code of Civil Procedure.

⁶¹ Section 22a § 1 LCCS.

⁶² Sections 8, 9 and 9a LCCS.

⁶³ Section 37b, paragraphs 1-2 LCCS.

⁶⁴ Section 41b LCCS.

⁶⁵ Section 37f LCCS.

president. In justified cases, the Minister may reprimand a president or a vice-president of a court in writing. The Minister is to develop general guidelines for the exercise of supervision over the courts.

99. The GET acknowledges the constitutional independence of the Polish judiciary vis-à-vis the executive and the legislature. Moreover, the recent amendments to the LCCS have further limited the Minister of Justice's involvement in the purely judicial functions. The GET recognises that the Minister of Justice continues to play a role, but not in any way that could be described as having an impact on judicial independence. It is of particular significance that the Minister of Justice may no longer examine or influence individual cases, as was the practice in the past. Prohibitions are also in place notably as regards political activities of a judge which may jeopardise judicial impartiality.

Consultative and decision-making bodies

100. Judicial consultative and decision-making bodies include the National Council of the Judiciary (NCJ), judges' assemblies (bodies of judicial self-government) and boards established at the various courts – all of which are involved, *inter alia*, in the appointment and promotion of judges to the next rank.

101. According to article 186(1) of the Constitution, the NCJ safeguards the independence of courts and judges. It consists of the First President of the Supreme Court, the President of the Supreme Administrative Court, the Minister of Justice, a person appointed by the President of the Republic, 15 members selected from amongst judges of the Supreme Court, common courts, administrative courts and military courts, 4 members selected by the *Sejm* from amongst its deputies and 2 members selected by the *Senate* from amongst its senators. The tenure of the NCJ members is four years, and may be renewable once. The "Act on the National Council of the Judiciary" of 12 May 2011 specifies the large range of competencies assigned to the NCJ, *inter alia*, examining candidates for the position of Supreme Court judge and for posts in common/administrative/military courts, submitting to the President of the Republic applications for the appointment of judges, adopting the collection of principles of judicial professional ethics and ensuring that these are respected. The NCJ adopts resolutions by an absolute majority, in an open vote. Resolutions on individual cases may in principle, be appealed to the Supreme Court on the ground of contradiction of the NCJ's resolution with the law.

Recruitment, career and conditions of service

Requirements for recruitment

102. Candidates for the position of judge must conform to the requirements set out in the LCCS. Thus, a person who has Polish citizenship, enjoys full civil rights, is of irreproachable character, has completed higher education in law and obtained a Master's degree in law in Poland or is a law graduate of a foreign university recognised in Poland, is capable of performing judicial services due to his/her good health, has attained 29 years of age, passed a judicial or prosecutor exam, completed a judicial apprenticeship in the National School of Judiciary and Prosecution or worked as a junior prosecutor for at least three years, may be appointed as a district court judge.⁶⁶ Additionally a judge of an administrative or military court, or a person with the title of professor or the degree of a "reader" (*doktor habilitowany*), as well as representatives of other legal professions (prosecutors, advocates, legal counsellors or notaries) and other persons specified in the LCC can be appointed as a district court judge.⁶⁷

⁶⁶ Section 61 § 1, items 1-7 LCCS.

⁶⁷ Section 61 § 2, items 1-5 LCCS

103. A district court or military garrison court judge, who has held his/her post or that of a prosecutor for at least four and six years respectively, may be appointed as a regional court judge or a court of appeal judge.⁶⁸ Additionally, like in the case of a judge of a district court, judges of administrative and military courts, representatives of other legal professions and other specified persons can apply for the post of a regional court judge and a court of appeal judge.⁶⁹ Identical rules apply to candidates for the position of administrative court judge, except that more extensive and specialised professional experience is required. In addition to meeting the criteria set out for a senior common court judge, a candidate for Supreme Court judge must have at least ten years of professional experience and demonstrate high standards of legal expertise.⁷⁰

Appointment procedure

104. Judges are appointed indefinitely by the President of the Republic at the request of the NCJ.⁷¹ The LCCS defines the appointment procedure which is similar in respect of common and administrative courts.⁷² Except for cases when a vacancy is filled by way of transfer of a judge from the same competence court, each vacancy is promptly announced in the Official Journal by the Minister of Justice.⁷³ Applications are submitted to the presidents of regional or appellate courts who instruct one or more inspecting judges, who are appointed specifically for this purpose, to assess applicants' qualifications and to suggest suitable candidates to the courts' boards.⁷⁴ The criteria for such an assessment are established by law. A candidate for the position of judge has to submit information from the National Criminal Register concerning his/her criminal record, a certificate that s/he is in sufficiently good health to serve as a judge and a lustration certificate (applicable only to persons born before 1 August 1972).

105. The courts' board forms an opinion on each candidate, and presents it to the general assembly of judges. The assembly holds votes on each candidate, and the voting results are communicated to the NCJ. The NCJ examines the candidatures and adopts a resolution in favour of a specific candidate, which is submitted to the President of the Republic. An appointment decree issued by the President is to indicate the exact place of service (the seat) of a judge.⁷⁵ The same procedure is applicable in the case of promotion of a judge to the next rank.

106. The First President of the Supreme Court and the President of the Supreme Administrative Court are appointed by the President of the Republic for a six-year term from among the candidates proposed by the respective general assemblies of judges.⁷⁶ The procedure for the appointment of judges to the Supreme Court is similar to the one described above, except that the First President of the Supreme Court proposes candidates to a competent chamber of the Supreme Court.⁷⁷ As concerns the Supreme Administrative Court, it is its general assembly that proposes suitable candidates to the NCJ.⁷⁸

107. The fifteen judges of the Constitutional Tribunal are selected by the *Sejm* from among the persons distinguished by their knowledge of the law.⁷⁹ Candidates who

⁶⁸ Sections 63 § 1 and 64 § 1 LCCS.

⁶⁹ Sections 63 § 2 and 64 § 2 LCCS.

⁷⁰ Section 22(1) items 4 and 6 of the "Act on the Supreme Court".

⁷¹ Article 179 of the Constitution and section 55 § 1 LCCS.

⁷² Pursuant to section 29 LACS, the procedure established for the appointment of judges of common courts, as provided for in the LCCS, also applies to the appointment of judges of administrative courts.

⁷³ Section 56 §§ 3/4 LCCS.

⁷⁴ Section 57a LCCS. Within seven days, the person whose application is not considered may submit a written reservation to the relevant president of the court – see section 57 § 2a LCCS.

⁷⁵ Section 55 § 3 LCCS.

⁷⁶ Articles 183(3) and 185 of the Constitution.

⁷⁷ Section 24 of the "Act on the Supreme Court".

⁷⁸ Sections 5 and 56(2) LACS.

⁷⁹ Article 194(1) of the Constitution.

comply with the requirements set out for a judge of the Supreme or the Supreme Administrative Courts are to be proposed by at least 50 deputies or by the Presidium of the *Sejm*⁸⁰ and are appointed for a non-renewable nine-year term. The President and Vice-President of the Tribunal are appointed by the President from among the candidates proposed by the Tribunal's general assembly of judges.⁸¹

108. The GET commends the substantial improvements that have been made in the procedure of selecting and appointing judges, which is now predominantly led by the judiciary. (Before March 2012, the Minister of Justice could comment on individual applicants and suggest suitable candidates directly to the NCJ.) At the same time, the GET was concerned to hear about some examples of rogue appointees.⁸² Even if the authorities state that the appointment procedure includes background checks of candidates for judges,⁸³ and that such cases as mentioned above are rare, the GET encourages the Polish authorities to continue a reflection on how to minimise the risk that immature or rogue persons are appointed to judgeship, who may potentially engage in corrupt practices, in particular by introducing proper integrity checks which would go beyond police inquiries.

Evaluation and planning of the professional development

109. Recent amendments to the LCCS have put in place a system for the assessment of work and planning of the professional development of a judge. Thus, a judge's work is now subject to evaluation from the point of view of: (1) efficiency, effectiveness and work organisation in hearing cases and performing tasks; (2) workplace culture, including personal propriety and respect for the rights of parties and participants of the proceedings; (3) the way of forming statements when passing or justifying judgements; and (4) professional development process. The nature and the level of complexity of cases, the duties and functions assigned to a judge, the workload and conditions of his/her work throughout are also taken into consideration.⁸⁴

110. The work evaluation is carried out as part of a visitation of a court division (every four years) by persons appointed to manage courts and supervise the administrative activity of courts (inspecting judges). The president of court presents the results and conclusions of an evaluation to a judge and, on that basis, prepares his/her individual professional development plan for a period of no less than four years. A judge can file written remarks which are to be duly considered, and then a final summary is prepared by a president of the superior court, and in the case of a judge of a court of appeal – by president of a different court of appeal. The evaluation criteria, the mode in which the evaluation is carried out and the guidance for elaborating a judge's professional development plan will be established by the Minister of Justice's ordinances, following opinion by the NCJ. Involvement in the drafting and the implementation of his/her professional development plan are mandatory for all judges.⁸⁵

Transfer of a judge

111. The transfer of a judge to another post may only occur upon his/her consent, except for cases where a cancellation of the post is caused by a change in the courts' organisation, family or matrimonial relations established between judges, a disciplinary penalty or a decision by a disciplinary court, if it is required, as regards the dignity of the post.⁸⁶ Decisions on relocation are issued by the Ministry of Justice and may be appealed

⁸⁰ Section 5 of the "Act on the Constitutional Tribunal".

⁸¹ Article 194(2) of the Constitution.

⁸² The two examples quoted concerned junior judges, one of whom had committed an act of theft and the other an act of hooliganism in a football stadium. Both judges were subsequently dismissed from office.

⁸³ See section 58 LCCS.

⁸⁴ Section 106a LCCS.

⁸⁵ Sections 106c and 106d LCCS.

⁸⁶ Section 75 LCCS.

to the Supreme Court. A judge may be delegated by the Minister of Justice, upon his/her consent, to perform the duties of a judge in another common or administrative court of the same or lower level or, in particularly justified cases, higher level, the Supreme Court, or to carry out administrative tasks in the Ministry of Justice/a unit subordinated to it, the NCJ, to perform actions or conduct training in the National School of Judiciary and Prosecution, or to perform duties in an international judicial, supranational or non-governmental organisation.⁸⁷ A judge of a district, regional or appellate court can also be delegated to perform the duties of a judge in the court of the same or – in certain cases – higher level, by the president of the appellate court in specified cases.⁸⁸ Identical rules apply in respect of administrative court judges.⁸⁹

Termination of service and dismissal from office

112. Termination of an active judicial service – without terminating the professional relationship – occurs as a result of a judge's retirement. According to article 180(3) of the Constitution, a judge may retire as a result of an illness or infirmity which prevents him/her from exercising the duties. Relevant procedures are further specified in the LCCS. Thus, a judge may retire at 65 years of age, unless s/he declares to the Minister of Justice the wish to continue to hold his/her post and provides an appropriate health certificate; in such a case a judge may occupy his/her post until 70 years of age.⁹⁰

113. A judge can retire at his/her request, with remuneration entitlement, at 55 years of age in the case of a woman, provided she has worked as a judge or a prosecutor for at least 25 years, and at 60 years of age in the case of a man, provided he has performed similar functions for at least 30 years. A judge can also retire on the grounds of illness, infirmity or one-year sick leave as well as due to organisational changes in the court structure or the court district's borders. In such situations a retired judge has the right to return to the post previously held or a new post at an equal level, if the reasons for his/her retirement have ceased. In such an event, the retired judge is to submit an application to the NCJ and, in cases where retirement was connected with health problems, a health certificate proving his/her ability to perform the duties of judge. Should the NCJ's decision be negative, the retired judge may appeal against it to the Supreme Court.⁹¹ With his/her consent, a judge who has retired due to changes in the structure of a court or in a judicial district's borders as well as a judge retired due to his/her age may be assigned the duties of an inspecting judge in the Ministry of Justice or a court.⁹² The authorities indicate that there are no such inspecting judges in the Ministry at present.

114. The service relationship of a judge terminates following his/her resignation or the loss of a Polish citizenship. A judge may be dismissed from office in the case of a valid disciplinary court decision on his/her dismissal or a valid judicial decision depriving him/her of civil rights or banning him/her from occupying judicial posts.⁹³

Salaries and benefits

115. In respect of judges of common and administrative courts, salaries and benefits are regulated by sections 91 and 91a LCCS. Pursuant to their provisions, the remuneration of judges holding equivalent positions depends on the seniority and functions performed. The average salary in the second quarter of the previous year

⁸⁷ Section 77 LCCS. According to section 77(2b) LCCS, a judge cannot perform his judicial function when delegated to perform administrative acts at the Ministry of Justice or other unit subordinated to or supervised by it.

⁸⁸ Section 77 § 8 and 9 LCCS.

⁸⁹ Pursuant to section 29 LACS, when not regulated by the LACS, relevant LCCS provisions apply.

⁹⁰ Section 69 LCCS.

⁹¹ Section 74 § 2 LCCS.

⁹² Section 105 LCCS.

⁹³ Section 68 LCCS.

announced by the Head of the Central Statistical Office in the Official Journal is used as a base for calculating the basic remuneration of a judge in a given year. The basic remuneration is calculated as the above base rate multiplied by a factor.⁹⁴ Judges are also entitled to functional allowances and a seniority bonus in the amount of 5% of the basic remuneration starting from the sixth year of service and increasing by 1% each year up to 20%.

116. The gross annual salary of a judge at the beginning of his/her career is approximately 80,000 PLN/19,200 EUR, while the salary of a judge of a court of appeal in the tenth (highest) rate of promotion with a maximum seniority bonus varies, depending on the function performed, between 161,400 PLN/approximately 38,736 EUR and 207,200 PLN/approximately 49,728 EUR. In respect of judges of the Supreme Court, salaries and benefits are regulated by the "Act on the Supreme Court", and their gross annual salary is approximately 240,000 PLN/57,600 EUR.

117. Benefits applicable to judges are as follows: (1) salaries are exempt from social security contributions⁹⁵; (2) housing loans are available under favourable conditions⁹⁶; (3) bonuses, ranging between 100% and 400% of a monthly salary, are granted every year to judges with at least twenty years of professional experience⁹⁷; (4) reimbursement is provided in respect of lodging and travelling expenses to those delegated to work outside their place of residence. Judges assigned to the Ministry of Justice and to the National School of Judiciary and Prosecution are entitled to benefits in accordance with the Regulation of the Minister of Justice of 18 June 2009.

118. Regarding control over the legitimate use of benefits, the authorities state that control by the public is possible pursuant to article 61(1) of the Constitution, which secures the right of citizens to obtain information on public bodies and on persons discharging public functions. The "Act on Access to Public Information" of 6 September 2001 and the "Act on Public Finances" of 27 August 2009, moreover, stipulate that any information on public affairs and on public finance management is open and available under the conditions laid down therein.

Case management and procedure

Assignment of cases

119. The assignment of cases is carried out in accordance with the principles contained in the CCP⁹⁸ (for criminal cases), the Regulation of the Minister of Justice "Rules of operation of common courts" of 23 February 2007 (for civil and certain criminal cases, i.e. in the event of accelerated proceedings in situations of *in flagrante delicto*), the Regulation of the President of the Republic "Rules for internal functioning of *voivodship* administrative courts" of 18 September 2003 (for administrative cases) and the Regulation of the Supreme Court.⁹⁹ Among those are the principles of case allocation according to the sequence of incoming cases, the (alphabetic) order of judges in a division/court, the specialisation and the scope of the duties of a judge, the even distribution of work and the immutability of the adjudicating panel. Additional principles may be agreed upon by the courts' boards. The assignment of cases is carried out by

⁹⁴ For example, a judge taking up a post in a district court shall be entitled to a basic remuneration at the first rate. A table containing rates and multipliers appears as an Annex to the LCCS.

⁹⁵ Pursuant to section 91 § 9 of the "Act on public finances" of 27 August 2009.

⁹⁶ Pursuant to section 96 of the "Act on public finances" and the Regulation of the Minister of Justice "On planning and use of financial means to meet judges' housing needs and on the conditions for its granting" of 11 April 2003.

⁹⁷ The exact percentage depends on the number of years in judicial service – see section 92(3) LCCS.

⁹⁸ Article 351 §§ 1/2 CCP.

⁹⁹ As annexed to the Resolution of the General Assembly of Judges of the Supreme Court of 1 December 2003.

heads of divisions or presidents of courts. The formation of judicial panels through appointment or lots is regulated by separate acts.¹⁰⁰

120. The 2011 amendments to the LCCS have set forth additional rules for the division of tasks in courts. Thus, for regional and district courts operating within a judicial region, a president of a court of appeal or a president of a regional court, following consultation with the respective court's board, determines, by the end of November each year, the distribution of tasks, including: (1) the assignment of judges and court referendaries to a court division and defining the scope of their duties; (2) setting out rules for the allocation of cases, unless such rules are set out elsewhere; (3) setting out rules for the substitution of judges and court referendaries, taking into account the judges' specialisation, the need to ensure, *inter alia*, the effective proceedings and the even distribution of work.¹⁰¹ There is no electronic system of assigning cases to judges. A judge who, following re-distribution of tasks, has a different set of duties may file a complaint with the court of appeal's board.¹⁰²

The principle of hearing cases without undue delay

121. Article 45(1) of the Constitution stipulates that everyone has the right to a fair and public hearing of his/her case, without undue delay by a competent, impartial and independent court. Relevant norms are also included in the CCP and the Code of Civil Procedure.¹⁰³ Furthermore, the "Act on a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings" of 17 June 2004 establishes rules and the procedure for lodging and adjudicating a party's complaint in case such a right is violated by an action or omission of a court. The Act's provisions apply respectively, if due to an action or omission of a court or a court enforcement officer, the party's right to have its case concerning execution of a court's decision carried through and completed without undue delay is violated.

122. The on-going and periodic assessment of judicial proceedings, including the examination of individual cases from the point of view of their length, is now carried out by presidents of courts, as part of the new system for courts' supervision. Until recently, additional safeguards were also provided in a Regulation of the Minister of Justice,¹⁰⁴ which allowed for an on-going and periodic assessment of the efficiency of judicial proceedings, including the examination of individual cases.¹⁰⁵ That regulation is no longer in force, it will be replaced by a new regulation currently under preparation.

The principle of public hearing

123. The principle of public hearing is proclaimed in article 45 of the Constitution. Exceptions may only be made for reasons of morality, state security, public order or protection of the private life of a party, or other important private interests. Judgements are announced publicly. Further regulation is provided in the CCP¹⁰⁶ and the Code of Civil Procedure.¹⁰⁷ In addition to the grounds listed in the Constitution, in criminal

¹⁰⁰ For example in criminal cases, the formation of panels through appointment or lots is governed by the Regulation of the Minister of Justice of 2 June 2003, and is applicable to cases when the indictment contains criminal charges liable to deprivation of liberty for 25 years or life imprisonment.

¹⁰¹ Section 22a LCCS.

¹⁰² Section 22(5) LCCS.

¹⁰³ Article 348 CCP; article 366 § 2 of the Code of Civil Procedure. The authorities report that on 3 May 2012, the Act of 16 September 2011 amending the Code of Civil Procedure and some other acts entered into force. It amended in particular Article 6 thereof, by adding a provision stipulating that parties and participants of proceedings are obliged to cite all facts and evidence of the case without delay, so that the proceedings can be conducted effectively and speedily.

¹⁰⁴ Regulation of the Minister of Justice "On the procedure for exercising control over the administrative activity of courts" of 25 October 2002.

¹⁰⁵ In accordance with sections 9 and 37 § 4 LCCS.

¹⁰⁶ Articles 355, 359, 360 §§ 1/2/3 and 364 §§ 1 /2 CCP.

¹⁰⁷ Articles 9 § 1, 148 § 1, 152, 153 §§ 1/2, 427, 470.10 and 575.1 of the Code of Civil Procedure.

proceedings, a hearing is held *in camera* if it concerns the application of precautionary measures or closure of proceedings due to the non-liability of the perpetrator (e.g. where s/he has serious mental health problems¹⁰⁸). If at least one of the accused is a minor or a witness below 15 years of age at the time of the examination, all or part of a hearing can be excluded from public.¹⁰⁹ Defamation and calumny cases are heard *in camera*, unless otherwise requested by the injured party.

124. In civil proceedings, closed hearings are foreseen for (1) matrimonial cases, unless the parties request otherwise and the court is persuaded that morality would not be threatened; (2) guardianship cases, if dictated by the minor's well-being; and (3) commercial cases involving trade or industrial secrets. Furthermore, a number of specialised acts, such as the "Law on Key Witnesses" of 25 June 1997, the "Act on Proceedings in Juvenile Cases" of 26 October 1982 and the "Act on Disclosing Information on State Security Authorities' documents for the period 1944-1990 and on their contents" of 18 October 2006, may include lists of cases withdrawn from the scope of the public hearing principle.

Ethical principles, rules of conduct and conflicts of interest

125. In addition to the Constitution, ethical principles and core values of the judicial system are enshrined in the LCCS. Sections 82 and 82(a) thereof prescribes the following conduct for a judge: acting pursuant to the oath, protecting the dignity of the judicial position, avoiding anything that could discredit the dignity of a judge or weaken trust in his/her impartiality, committing to increase professional qualifications and to participate in training and other forms of professional improvement.

126. Pursuant to the "Act on the National Council of the Judiciary", the adoption of principles regulating the professional ethics of judges and exercising control over compliance by judges with such rules lie within the NCJ's competence. Following consultations with judges of the Supreme Court, the Supreme Administrative Court and common courts, on 19 February 2003, the "Collection of Principles of Professional Ethics for Judges" (CPPEJ) was adopted – in the form of a resolution¹¹⁰ – by the NCJ and is available on its website.¹¹¹ The CPPEJ is organised in 3 chapters and 22 sections and includes, *inter alia*, the following principles/aspects: independence, impartiality in general, impartiality and conduct of judges in the exercise of judicial functions, impartiality and extra-judicial conduct, other professional activities of a judge, equality and diligence. The CPPEJ is to be followed also by retired judges.

127. As the CPPEJ cannot regulate every possible aspect of a judge's behaviour, it is supplemented via the NCJ-adopted resolutions. A resolution may also interpret individual CPPEJ provisions (three such resolutions have been adopted so far dealing with: the provision of legal advice by the retired judges, purchase of real estate and movable property at bailiff-conducted auctions by a judge's family members and interference in the procedure to enter a university concerning judges' children).

128. Regarding conflicts of interests, there is no general definition. The legal framework for the prevention and resolution of such conflicts is provided by relevant provisions of (1) the Codes of Civil and Criminal Procedure and the LACS, as regards disqualification of judges from isolated cases; (2) the LCCS, which contains, *inter alia*, rules on accessory activities and asset declarations and which imposes obligations on judges to notify a president of the superior court on becoming a party or participant in any judicial proceedings; and (3) the CPPEJ.

¹⁰⁸ Pursuant to article 359.1 CCP.

¹⁰⁹ Article 360(3) CCP.

¹¹⁰ Resolution No. 16/2003 of the National Council of the Judiciary of 19 February 2003 establishing the set of principles on professional ethics for judges.

¹¹¹ <http://www.krs.pl/>

129. The GET acknowledges the importance of the CPPEJ and of the NCJ's resolutions, whose objective is to specify the standards of integrity and conduct to be observed by judges, to help the judges meet those standards and to inform the public of the conduct they are entitled to expect from a judge. Yet, the existing ethical rules appear to be too general and do not take sufficient and coherent account of certain corruption risks, notably they do not attempt to define conflicts of interest or offer adequate solutions to resolving such conflicts. Therefore, the preventive role of the CPPEJ and of the NCJ's resolutions seems to be marginal. The GET takes the strong view that the ethical rules need to be complemented so as to provide for precise definitions and further written guidance on the concept of conflict of interest, including practical examples, and on related issues such as the acceptance of gifts and other advantages, incompatibilities and additional activities. In order to provide for a comprehensive regulatory framework on ethical questions and raise judges' awareness, **GRECO recommends that the "Collection of principles of professional ethics for judges" be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities and additional activities)**. In addition, the authorities may also wish to consider the introduction of a clear statutory definition or definitions of what circumstances would create a conflict of interest.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

130. In accordance with section 86 LCCS, a judge may not undertake additional employment, except for that of a lecturer/researcher, or take up other jobs which could interfere with the performance of his/her duties, weaken the confidence in his/her independence or prejudice the authority of the office of judge. Additional employment is to be notified to the president of court (or the Ministry of Justice, in the case of a president of court).

131. Furthermore, a judge may not be a member of a management board, supervisory board or auditing committee of a company under commercial law or a co-operative, of a foundation conducting business, hold more than 10% of shares in a company under commercial law or more than 10% of its share capital, run a business alone or jointly with other persons, exercise the functions of manager, representative or lawyer in respect of such business activities. These provisions also apply to retired judges.

Recusal and routine withdrawal

132. The grounds for a judge's removal from a case are provided in the CCP and the Code of Civil Procedure.¹¹² They include situations, *inter alia*, where a judge or his/her spouse is a party to the proceedings, or is related to any such person by blood or marriage, directly or collaterally, through adoption, custody or guardianship, where the judge has acted as a lawyer or legal adviser to one of the parties or conducted preparatory proceedings or mediation or participated in the adoption of a decision subject to appeal or issued a decision subsequently reversed or opposed.

133. Irrespective of the aforementioned grounds, the court may disqualify a judge at his/her request or following a motion by a party if there are reasonable doubts as regards the judge's impartiality. The GET was informed that judges withdraw habitually – according to certain estimates, excessively – from cases potentially constituting conflicts

¹¹² Articles 40 §§ 1/3, 41 § 1, 42 §§ 2/4 CCP; articles 48 §§ 1/3, 49, 52 §§ 1/2 of the Code of Civil Procedure. See also sections 18 to 22 of the "Act on the Procedure before Administrative Courts".

of interest. In case a judge does not report and remains involved in the proceedings, a judge may be subjected to disciplinary proceedings.

Gifts

134. There are no detailed rules on the acceptance of gifts specifically by judges. The authorities refer in this respect to the bribery provisions of article 228 PC, which criminalise the accepting of a material or personal benefit or of a promise thereof, in connection with the performance of public functions (including by judges). In addition, the authorities mention section 19 CPPEJ, according to which a judge may not accept any benefits that could give the impression of attempting to influence his/her person and is to ensure that such benefits are also not accepted by his/her close family members.

135. The judges met by the GET agreed that it was not permissible for them to accept gifts, and that it was implicit in the status of a judge to maintain an impeccable character and to be, and to be seen to be, independent. The GET wishes to stress, however, that in the absence of detailed statutory rules, this issue needs to be regulated in more detail in the framework of the further development of the CPPEJ as recommended above, in order to provide for comprehensive and clear rules on judges' behaviour, for the attention not only of judges themselves but also and notably of the general public.

Post-employment restrictions

136. There are no post-employment restrictions applicable to judges. According to some practitioners interviewed on site, it is not rare that judges leave office in order to work in the private sector, for example as lawyers or consultants, given the possibility to receive much higher salaries. The GET is concerned that in such situations judges may be exposed to conflicts of interest in view of future outside employment or may accept outside employment having taken an improper advantage of their judicial office. While it is clear that former judges must be given the possibility to continue legal practice after leaving office, the GET encourages the authorities to reflect on the necessity of introducing adequate rules/guidelines for situations where judges move to the private sector, in order to avoid conflicts of interest.

Third party contacts, confidential information

137. Communication between a judge and a third party on a specific case outside the official procedure is governed by the nearly identical provisions of the Regulations of the Minister of Justice adopted in respect of the common and administrative courts.¹¹³ Thus, meeting clients is the prerogative of the courts' presidents, while a judge may not provide legal advice and is to avoid communication with third parties, as it may compromise his/her impartiality. General information on the course of proceedings is provided to eligible persons by the court clerks, while media representatives obtain relevant information from press officers (in a regional or appellate court) or the courts' presidents.

138. Pursuant to section 17 CPPEJ, a judge is to avoid personal contacts and any economic relationships that could raise doubts as regards the impartial exercise of his/her duties, or undermine the prestige of and trust in the judicial office. A judge must furthermore ensure, with due diligence, that the above behaviour is not practiced by his/her close relatives.

139. Confidential information is treated pursuant to the "Act on Classified Information Protection", its misuse being subject to criminal liability under chapter XXXIII of the PC

¹¹³ The Regulation of 23 February 2007 "Rules for the functioning of common courts", paragraph 32(1) item 11 and paragraph 51(1); the Regulation of 18 September 2003 "Rules for internal functioning of *voivodship* administrative courts", paragraph 19(1) item 11.

"offences against the protection of information". Detailed and identical regulation is also provided in the LCCS and the LASC.¹¹⁴ Thus, prior to the commencement of his/her duties, a judge must become acquainted with the relevant confidentiality rules and make a declaration of knowledge thereof. Confidential information made known to a judge as a result of exercising his/her duties, in a way other than in an open court trial, may not be disclosed even after the termination of service. While giving evidence before a court, a judge may be exempted from the confidentiality oath by the Minister of Justice, unless disclosing the secret would prejudice the interest of the state, or a material private interest coinciding with the purpose of the administration of justice.

Declaration of assets, income, liabilities and interests

140. In accordance with sections 87-88 LCCS, judges submit annual declarations of assets using a standard form developed in pursuance of the "Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions". The content of the declarations – covering individual assets of a judge as well as joint assets of spouses – is identical to that of parliamentarians' asset declarations. In particular, the same value thresholds for movable property and liabilities to be declared – i.e. 10,000 PLN/approximately 2,423 EUR – apply.¹¹⁵ It is to be noted however, that according to the Supreme Court additional income of a judge is to be included in the declarations only if it may significantly influence the financial situation of a judge and if it is important for the assessment of his/her financial standing.¹¹⁶ From this perspective, the amount of 1,700 PLN/approximately 408 EUR incurred as income in a single calendar year was not considered to be significant, as it only represented a fraction of the judge's annual income.

141. The asset declarations are submitted by judges (1) prior to taking up office; (2) each year by 31 March (as of 31 December of the previous year); and (3) on the day of leaving office. Statements are filed with the president of a relevant court of appeal, except for statements of presidents of such courts which are filed with the NCJ. Information included in the declarations constitutes a professional secret, unless the person concerned agrees to its disclosure in writing. In well justified cases, declarations can be made public by the collecting entity without the judge's consent. According to the authorities, however, no such cases have been recorded in practice. Declarations are kept for six years by the collecting entity which is obliged to copy each statement to the tax offices competent over the judge's place of residence.

142. The GET notes that judges are subject to the same, rather strict rules on regular submission of asset declarations as parliamentarians – apart from public disclosure which is foreseen only in exceptional cases. The GET recalls its concerns¹¹⁷ about the absence of any information on the assets of close family members such as spouses, children or parents (except for information on property jointly owned by the judge and his/her spouse). Furthermore, the GET wishes to stress that highest standards of integrity are required for the profession of judges. In the specific situation in Poland, where trust in the judiciary is quite low – which was explained to the GET as being due to a number of factors, including the lack of transparency surrounding the judiciary,¹¹⁸ it would be beneficial that the existing transparency regime be further developed. In view of the above, **GRECO recommends that consideration be given to widening the scope of asset declarations by judges to include information on assets of spouses, dependent family members and, as appropriate, other close relatives.**

¹¹⁴ Section 85 LCCS; section 29 LASC.

¹¹⁵ For more details, see above under "Corruption prevention in respect of Members of Parliament".

¹¹⁶ Judgement of the Supreme Court of 22 June 2007, SNO 31/07.

¹¹⁷ Cf. above under "Corruption prevention in respect of Members of Parliament".

¹¹⁸ See above under "Context".

143. Numerous interlocutors of the GET argued that the secrecy of judges' asset declarations was necessary given the constitutional right to privacy, and as a preventive measure against potential threats emanating from the criminal world. The non-disclosure of asset declarations of judges (and prosecutors) has recently been subject to public debate. The proponents of publicity of such declarations are convinced that the lack of transparency is generally translated into the lack of trust vis-à-vis the judiciary. The GET takes the view that all the necessary steps need to be taken to ensure that the judges' (and their families') privacy is appropriately respected. That said, bearing in mind the present situation where public image levels of the judiciary are low, the authorities may wish to consider the possibility of disclosing selected data from the asset declarations of judges for the sake of optimum transparency and in order to foster public trust in the judiciary (it being understood that information on judges' family members would not necessarily need to be made public).

Supervision

Ethical principles

144. Control over compliance by judges with principles regulating the professional ethics lies with the NCJ, the Minister of Justice, the presidents and boards of appellate and regional courts. In particular, those bodies are authorised to request that the disciplinary commissioner institutes disciplinary action and to file an appeal against a judgement of a disciplinary court (they can also monitor the course of proceedings). The GET was informed that both of these powers are exercised rather often by the NCJ and result in the adoption of a number of resolutions per year. The NCJ also regularly approaches the disciplinary commissioner with requests for information on the progress of explanatory proceedings aiming to establish whether a judge has committed a particular disciplinary offence. Furthermore, the NCJ is authorised to file for a renewal of disciplinary proceedings.

145. A Permanent Board on Judges' Disciplinary Matters has been established within the NCJ, and is charged with analysing the judgements of disciplinary courts and of any information submitted to the NCJ on the disciplinary offences committed by judges, as well as providing the NCJ with conclusions on the need to request the institution of disciplinary actions and advisability of appealing against judgements, mainly on the grounds that the adjudged penalty is disproportionate to the disciplinary offence committed. According to the authorities, the majority of disciplinary proceedings instituted and analysed by the NCJ so far involved defaults in the timely performance of the judges' duties (such as late preparation of the justifications for a sentence or a culpable omission of any action that should be undertaken in a case, the latter resulting in delayed proceedings).

Additional employment and other activities

146. As indicated above, a judge is obliged to notify the president of court (or the Ministry of Justice, in the case of a president of court) of the intention of taking up an additional employment or other activity referred to in section 86 LCCS. The president of court or the Minister of Justice may issue decisions contesting such an intention if s/he considers it would interfere with the discharge of duties of a judge, weaken the trust in his/her impartiality or discredit the dignity of a judicial office. At the judge's request, such cases may be referred to the board of a competent court.

Asset declarations

147. Firstly, declarations of assets are filed with the president of a relevant court of appeal, except for declarations of presidents of such courts which are filed with the NCJ. Annually, by 30 June, the competent board of a court of appeal (or the budgetary

commission of the NCJ) analyses the declarations and presents its findings to the judges' general assembly. The competent board of the court of appeal is composed of the president of the court and five members, elected by secret ballot by the court's assembly from among its members. The board's term of office is three years, and its resolutions are passed if at least half of the members are present, by majority vote. The meetings are held no less than every three months. Since the board is charged with many tasks, only one of which is the examination of asset declarations, specific knowledge or experience in this field are not required.

148. During the on-site visit, the GET was told that the presidents of courts of appeal may receive as many as 700 asset declarations per year, and that a board consisting of 6 judges in total is entrusted with the verification of these 700 declarations. It would appear that the boards' control activities and competences in this respect are quite limited. They mainly check whether the declaration forms are correctly and completely filled in, and whether there are any discrepancies as compared to previous declarations. They may ask judges to provide further information (i.e. tax returns) and clarification if necessary, but they do not have direct access to other sources of information. In particular, the GET was told that access to the business register was not foreseen for third interested parties.

149. Within the NCJ, a permanent Fiscal Board has been established to examine the asset declarations of the eleven presidents of courts of appeal and of the two presidents of military regional courts.¹¹⁹ The Board compares declarations with those submitted in previous years and provides the NCJ with conclusions. The authorities submit that, so far, the NCJ has not found any substantial irregularities in the declarations analysed.

150. Secondly, the collecting entity (i.e. the president of the relevant court of appeal or the NCJ) submits one copy of each asset declaration to the relevant tax office for further checks. The GET was informed during the interviews that in practice, declarations are forwarded after their review by the collecting entity. Should the analysis by the tax office raise justified doubts as to the legitimacy of the source of the assets disclosed, the tax office remands the case for applicable proceedings. If a declaration discloses a possible violation of law, the tax authority is obliged to inform a prosecutor or a disciplinary commissioner thereof.

151. According to the information gathered on site, some tax offices may receive around 300 declarations per year. The tax offices compare declarations with those submitted in previous years and with annual tax returns. Additional information may be sought from sources such as notary documents and car and land registers. The GET was informed, however, that it is not possible to obtain information from banks unless formal proceedings are instituted against the person concerned, where this is justified by sufficient discrepancies among available documents. At the end of the verification process, a report is prepared on each individual asset declaration, which however remains at the tax office.

152. According to the fiscal authorities, the analysis undertaken so far has not revealed any cases which would harbour suspicion of a criminal offence. The GET was also informed that there are in general very few cases of irregularities uncovered on annual basis. Nevertheless, the following examples of most common irregularities, as far as judges are concerned, were provided to it: the data presented concerned income after taxation instead of before taxation; income declared concerned one month instead of the whole year; income was given in total, without specifying particular sources (i.e. salary, rent or pension); the data concerning real estate did not indicate how it was acquired

¹¹⁹ Pursuant to section 19, paragraphs 1 and 2b of the "Act on the National Council of the Judiciary" of 12 May 2011.

(purchase, succession, gift); information on liabilities was submitted as of the date of filling in the declaration instead of as of 31 December of the given year.

153. Thirdly, judges' asset declarations may also be checked by the CAB. However, the CAB needs a motion from the tax office or prosecuting authorities before it can investigate a judge. Thus there is no systematic review by the CAB of declarations of judges – in contrast to declarations of parliamentarians, the verification of which is explicitly provided for by section 35(6a) AEMDS (and which are easily accessible as they are in the public domain).¹²⁰

154. The GET notes that Poland has opted for a rather strict asset declaration system which is applicable not only to parliamentarians, but to a broader range of persons performing public functions, including judges. That said, the declaration system for judges might further gain in credibility, particularly amongst the general public, if the necessary verification of such declarations were to be strengthened and rendered more efficient. Following the on-site visit, the GET was left with the impression that in general, asset declarations by judges are checked superficially by the different control bodies. The boards of courts and the NCJ mainly check whether the declaration forms have been correctly filled in, and they compare them with the previous declarations. The tax offices also check declarations against annual tax returns and other available documents if necessary, in order to find possible irregularities concerning tax obligations. The CAB only intervenes upon request, i.e. if the first check by the above-mentioned bodies has given rise to suspicions of significant irregularities. Moreover, the GET is under the impression that there is no sufficiently proactive interaction and coordination among the relevant authorities, who themselves indicated to the GET that their checks are performed independently from each other, and that there is no clear common goal of preventing conflicts of interest through the use of such declarations. The GET is of the firm opinion that greater scrutiny and a more in-depth supervision – for example on a random basis in order not to overburden the competent authorities – would further reduce the risks of corruption. For that purpose, it is crucial that the different relevant authorities be given adequate resources as well as tools to act in a co-ordinated manner and to obtain relevant information – or that this task be entrusted to one leading body, preferably a body independent of the judiciary, with adequate powers and expertise.¹²¹ **GRECO therefore recommends that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.**

Enforcement measures and immunity

155. Pursuant to section 81 LCCS, if a judge commits a petty offence, s/he is subject to disciplinary liability. The general rules on misdemeanours (under the Law on Misdemeanours) do not apply. Disciplinary liability is regulated by sections 107 to 133 LCCS, which deal with misconduct in service, including a gross violation of the provisions of law and for breach of authority of the office of a judge. According to the authorities, non-compliance with regulations on conflicts of interest and related areas – such as infringement of the principle of independence, failure to provide the asset declaration, adjudicating in a case where one party has family or personal relations with a judge – may be considered as disciplinary misconduct amenable to disciplinary penalties. Violation of the ethical principles established by the CPPEJ does not per se trigger disciplinary liability but only if it constitutes a disciplinary misconduct in the meaning of the above-mentioned provisions.

¹²⁰ For more details, see above under "Corruption prevention in respect of Members of Parliament".

¹²¹ Some interlocutors met by the GET suggested that this task could, for example, be performed by the Supreme Chamber of Control. Such an arrangement would, however, require constitutional amendments.

156. Disciplinary sanctions include admonition, reprimand,¹²² dismissal from the function, transfer to another place of service, dismissal from office. The period of limitation is in principle three years from the commission of the act, unless the incident involves a criminal offence.¹²³ The authorities indicate that disciplinary cases are detected due to claims by parties to the proceedings, notifications by presidents of courts and action taken by the disciplinary commissioner and his/her deputies.

157. Cases are heard by disciplinary courts – in the lower instance, by the courts of appeal and in the higher instance, by the Supreme Court – which adjudicate in the bench of three judges. A disciplinary commissioner, who is selected by the NCJ from among the candidates proposed by the court's general assembly, acts as a prosecutor before a disciplinary court.¹²⁴ If preliminary clarifications by the disciplinary commissioner point to the existence of grounds for instituting disciplinary proceedings, s/he presents written charges to a judge. Should the misconduct include attributes of a criminal offence, the court *ex officio* considers the permission for holding the judge criminally liable, which does not interfere with the course of the disciplinary proceedings. Disciplinary courts adopt decisions by majority vote. The proceedings are generally open to the public, but according to the authorities, available data shows that they are not a subject of interest to the public; public control is exercised mostly by the media. Judgements rendered in the lower instance, as well as decisions terminating the proceedings, may be appealed, while decisions of higher instances are not subject to cassation.

158. There is no register for disciplinary measures, but the GET was advised that disciplinary sanctions are recorded by the Ministry of Justice. The number of disciplinary proceedings varies from one year to another. For example, in 2002 there were 76 cases and in 2011, 43 cases. The following statistics are available on the disciplinary proceedings concerning conflicts of interest which were instituted between 2009 and 2011. Six disciplinary proceedings are pending (these concern the following issues: family relationship with a defence lawyer, personal relationship with a bankruptcy trustee, providing an unauthorised person with access to a case file, exerting influence on a judge in order to settle a case involving a relative); in three cases the institution of proceedings was refused (these concerned: failure to notify additional employment, family relationship with the accused, personal contacts with a perpetrator); in one case the penalty of dismissal from office was imposed (for failure to inform the president of court about business activities in a cooperative and making entries in a land and mortgage register for the benefit of this cooperative), in one case the penalty of admonition was enforced (for the provision of legal advice while concluding a notary contract and requesting the notary to make an untrue declaration).

159. In so far as incomes, liabilities and profits are concerned, two proceedings are pending (these concern: failure to notify the president of court about additional employment and of being a party to a court proceeding and incurring debts from other judges, lawyers, prosecutors and not paying them off), in one case a reprimand was administered (a judge took loans in several banks and failed to re-pay them, lawsuits were filed against him and his debts were collected, the judge also failed to notify being a party to court proceedings), in one case, although disciplinary misconduct was established, a penalty was not imposed (in a case of non-submission of a tax declaration concerning civil-law actions).

160. The authorities stress that several criminal offences are relevant to situations of conflicts of interest, in particular the offences of passive bribery (article 228 PC), trading

¹²² Both the admonition and the reprimand express disapproval of a judge's conduct but the admonition is a more lenient sanction (as concerns its position in the catalogue of penalties). Both result in the postponement for three years of the awarding of the so called increased promotion rate to a judge (relating to the increase in the basis for a judge's remuneration) – see section 91a(6) LCCS.

¹²³ Section 108 LCCS.

¹²⁴ The disciplinary commissioner has a four-year mandate and is assigned to the NCJ – section 112 § 2 LCCS.

in influence (article 230 PC), acting to the detriment of a public or individual interest (article 231 PC) and disclosure of confidential information (articles 265 and 266 PC).¹²⁵ By contrast, the submission of factually incorrect asset declarations by judges is not punishable under article 233 PC – contrary to the situation of other persons performing public functions¹²⁶ (including parliamentarians)¹²⁷ – but may only give rise to disciplinary liability. The authorities explain that according to the Supreme Court, a criminal sanction for providing false information in an asset declaration, can be applied only if that is specified in an act obliging a person to submit such a declaration, which is not the case with the LCCS.

161. Pursuant to article 181 of the Constitution, judges enjoy the so called “formal immunity” from criminal prosecution. It means that they cannot be held criminally liable, detained or arrested without the consent of a competent disciplinary court, except when apprehended *in flagrante delicto* and their detention is necessary for securing the proper course of proceedings (in the latter case the consent is not required). Further regulation is provided in section 80 LCCS. Thus, the president of the court of appeal with jurisdiction over the place of the judge’s detention is notified without delay, and may order the immediate release of the judge. Within 14 days from its lodging, a request for permission to hold the judge criminally liable is examined by the competent disciplinary court. In case there are reasonable suspicions that the judge has committed the offence, the court adopts a resolution allowing prosecution, which also triggers the suspension of the judge from his/her duties *ex officio* (in case of a non-intentional offence, the suspension of the judge is optional). In the ensuing proceedings, the rules that apply to judges are identical to those that apply to other nationals. The GET was also told by some interlocutors, that the immunity of judges is negatively perceived by the public, as it allegedly renders the judges virtually untouchable. On the other hand, it was informed about 65 cases where the immunity was lifted for judges in the period between 2003 and 2011, in accordance with article 181 of the Constitution and section 80 LCCS.

162. There are no comprehensive statistical data regarding judges who committed offences under the PC. However, statistics are available as concerns decisions taken with regard to prosecutors’ motions on holding judges criminally liable. As regards corruption cases, during the years 2009-2011 in one case a request to hold a judge criminally liable was refused (statements of a single witness were deemed not reliable by the court), in two cases the institution of proceedings was refused (infringement of the principle of independence entailing a visit to a foreign country financed by a party to proceedings), one disciplinary proceeding was discontinued due to the change of legal provisions on the disciplinary liability of junior judges (assessors) who are no longer subject to disciplinary courts’ jurisdiction. This case concerned money laundering where a junior assessor was held criminally liable based on the general rules and his service was terminated as per decision of the Minister of Justice.

163. While the GET finds the system of sanctions, which are available in cases of misconduct by a judge, satisfactory overall, it has identified two specific areas of concern. Firstly, it has serious misgivings about the fact that criminal liability in this area – which is limited to bribery, disclosure of confidential information and some other general offences – does not extend to the provision of false information in judges’ asset declarations, in contrast to the situation of declarations of other persons performing public functions (including parliamentarians). Secondly, the GET has learnt that circumstances such as the prolonged illness of a judge who is a suspect in disciplinary proceedings, or difficulties in obtaining evidence, may cause substantial delays in the

¹²⁵ For more details on those offences, see also above under “Corruption prevention in respect of Members of Parliament”.

¹²⁶ In so far as they are governed by the “Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions” mentioned further above.

¹²⁷ On the basis of section 35(9) AEMDS, see above under “Corruption prevention in respect of Members of Parliament”.

process (several such examples were given to the GET). With regard to the limitation period for disciplinary proceedings, the proceedings must be initiated within three years from the time of the misconduct, and if initiated, the limitation period is five years from the time of the misconduct. The GET has misgivings about the statute of limitations in its present form, all the more as it was informed about some cases where judges brought before the disciplinary court had "played the game" in an attempt to delay matters until the limitation period expiry date was triggered. In the view of the GET, appropriate amendments to the statute of limitations – e.g. an adequate extension of the limitation period – would constitute a further deterrent to impropriety which could be potentially linked to corruption. Given the foregoing, **GRECO recommends (i) that criminal liability be introduced for the intentional provision of false information by judges in asset declarations; and (ii) that measures be taken to ensure that disciplinary cases concerning improper conduct by judges are decided before the expiry of the statute of limitations, such as adequately extending the limitation period or providing for the interruption or suspension of the period of limitation under specified circumstances.**

Advice, training and awareness

164. Pursuant to the newly introduced article 82a LCCS, a judge is obliged to continuously improve his/her professional qualifications, and to take part every year if possible, in the training courses organised by the National School of the Judiciary and Public Prosecution (NSJP) or pursue other forms of professional development. The authorities submit firstly, that training including on issues related to ethics is provided to future judges during their legal apprenticeship. Information on ethics is given in the form of lectures and case studies, with judgements of disciplinary courts presented as examples of basic ethical problems confronting judges on a daily basis (approximately eight hours in total). Secondly, since 2010 several training courses per year are provided by the NSJP to newly appointed judges, who are obliged to participate in three-month training courses.¹²⁸ These focus, *inter alia*, on the questions of ethics, personal integrity and disciplinary liability of judges (5 times 45 minutes). Thirdly, as a regular training event, annual conferences are organised for court of appeal judges. Amongst issues addressed by such conferences in 2010-2011 were practical aspects of the disciplinary liability of judges and the functioning of disciplinary courts.¹²⁹ All trainings organised by the NSJP, with the exception of legal apprenticeships and training for newly appointed judges, are optional. Judges can obtain advice regarding conduct expected of them at the aforementioned training courses and conferences, which are mainly delivered and presided by senior judges.

165. The GET notes that different training courses are provided to – mainly future and newly appointed – judges, covering among others, issues related to ethics, independence and disciplinary liability of a judge. However, it would appear that training focusing more specifically on conflicts of interest and ethical issues in a broader sense remains insufficient and merits the elaboration of a dedicated programme for judges at all levels, including the young and experienced. In order to be effective, to raise judges' awareness about ethical questions and inform them about recent developments, such training needs to be provided on a regular and continuous basis, following a practice-oriented approach and addressing in detail issues pertaining to conflicts of interest, rules governing gifts, prohibition or restriction of accessory activities, declaration of assets and private interests.

166. The GET notes that at present, judges may seek advice on ethical questions and situations of potential conflicts from senior judges or during the training activities

¹²⁸ Section 82a § 2 LCCS.

¹²⁹ For example, on 17-19 November 2010, a conference of court of appeal judges adjudicating in criminal matters was organised on the theme "Selected issues of disciplinary liability of judges, practical application of detention, resumption of proceedings *de novo* and some offences against economic turnover".

organised by the NSJP. However, in the opinion of the GET, there is a clear need in Poland for more specialised and dedicated counselling within the judiciary, in order to provide judges with confidential advice on such questions, to raise their awareness and to thus prevent risks of conflicts of interest. Clearly, Poland must itself assess how best to arrange such counselling, which could for example be provided by experienced judges in the courts of appeal. The GET wishes to stress however, that any such counsellors need to command specific expertise in the field and be distinct from disciplinary bodies and be placed outside the official hierarchy, thus enabling them to act as confidential persons. The requests for consultations and the opinions expressed by the regulator would have to be confidential and only be fed in dedicated ethics training on anonymous basis. At the same time, it needs to be ensured that such counselling contributes to a general understanding and a unified practice with regard to preventing and resolving conflicts of interest in Poland, for example by designating a co-ordinator at the national level. Given the foregoing, **GRECO recommends (i) the provision of on-going training to judges on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling within the judiciary, in order to raise judges' awareness and provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

167. The tasks, functions and operating principles of the Prosecutor's Office as well as the duties, rights and guarantees applicable to prosecutors are defined in the "Law on the Prosecution Service" of 20 June 1985 (LPS). According to this law, the prosecution service is a legally-protected authority whose objective is to safeguard the law and order, as well as to oversee the prosecution of crimes.

168. The prosecution service is a hierarchically organised structure, and is headed by the General Prosecutor. The prosecution service consists of four organisational levels, i.e. the General Prosecutor's Office, appeal prosecutor's offices (11), circuit prosecutor's offices (45 + 2 outposts) and district prosecutor's offices (356 + 6 outposts). It comprises common organisational units, military organisational units and prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation.¹³⁰ The number of posts at the prosecution service as of 1 January 2011 amounted to a total of 6,650 prosecutors and assessors (5,961 prosecutors and 689 assessors).

169. The General Prosecutor's Office, in addition to serving the General Prosecutor, implements tasks which are aimed at ensuring prosecutor's participation in proceedings before the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court. Moreover, prosecutors from the General Prosecutor's Office serve supervisory functions as an authority of a higher instance, and they act as superior official supervisors in preliminary proceedings conducted by organised crime and corruption divisions which form a part of organisational structures of appeal prosecutor's offices.

170. The main task of the appeal prosecutor's office is to ensure prosecutor's participation in appeal proceedings conducted before appeal courts and provincial administrative courts. Moreover, units of this level of hierarchy conduct and supervise preliminary proceedings in matters concerning prosecution of organised crime and corruption. The tasks entrusted to appeal prosecutor's offices also include the serving of supervisory functions as authorities of a higher instance, and acting as superior official supervisors in preliminary proceedings conducted by circuit prosecutor's offices.

171. Circuit prosecutor's offices ensure prosecutor's participation in proceedings conducted before the circuit court. At this level of hierarchy, investigations are conducted regarding serious criminal and commercial offences. Circuit prosecutor's offices serve supervisory functions as authorities of a higher instance, and they act as superior official supervisors in preliminary proceedings conducted by district prosecutor's offices.

172. The basic task of district prosecutor's offices is to conduct and supervise preliminary proceedings conducted by other authorised bodies and participation in proceedings before courts of the first instance, in particular district courts.

173. In accordance with section 8(1) LPS, prosecutors are independent in the fulfilment of their duties, as specified in respective laws, subject to the provisions of sections 8(2), 8a and 8b LPS. These provisions state in particular, that a prosecutor is obliged to follow orders, guidelines and instructions (not related to the contents of a procedural act) of his/her superior prosecutor. Moreover, a direct superior prosecutor is entitled to amend or reverse a decision of the subordinate prosecutor. Such an amendment or reversal requires a written form and is to be included in the related file.

¹³⁰ The present report does not deal with specific regulations applicable to prosecutors of military organisational units and of the Institute of National Remembrance (e.g. procedural rules concerning the selection of such prosecutors).

174. Recent reforms were undertaken to strengthen the independence of the prosecution service, in particular by separating the positions of the General Prosecutor and Minister of Justice in March 2010 (as a result of amending the LPS).¹³¹ Moreover, in September 2010, the National Prosecution Council (NPC) was established as a designated self-government organ, possessing a wide range of prerogatives, primarily entrusted with responsibility of securing and protecting prosecutorial independence. The Council is composed of the General Prosecutor, the Minister of Justice, a representative of the President of the Republic, four MPs, two senators, one elected prosecutor representing the military prosecution, one elected prosecutor representing the Institute of National Remembrance, three prosecutors elected by the prosecutors of the General Prosecutor's Office and 11 prosecutors elected by local gatherings at appellate level. The chair of the NPC is elected by its members. The LPS furthermore provides for collegiate prosecutors' bodies composed of members of various levels of prosecutors' offices, namely assemblies of prosecutors in the appellate prosecutor's offices and boards in the appellate and regional prosecutor's offices. They are authorised, *inter alia*, to give opinions on candidate prosecutors.

175. During the on-site visit, the GET's attention was drawn to the fact that the public prosecution service has in the past been subject to significant criticism, particularly with regard to its lack of independence and its supposedly politicised character (and therefore misuse by politicians). The recent reforms aimed at strengthening the independence of the prosecution service, in particular by separating the positions of the General Prosecutor and Minister of Justice and by establishing the NPC, are therefore clearly to be welcomed. Under the current regime, the General Prosecutor has to report annually to the Ministry of Justice, but the latter may not influence particular cases or bring political pressure to bear.

176. That said, during the interviews the GET was made aware of allegations that connections between prosecutors and politicians continued to pose problems, and that the legal reforms had not yet proved to be fully effective. Some practitioners said, *inter alia*, that the prosecution service and the definition of its competences are not enshrined in the Constitution, that the General Prosecutor has no competence to present legislative bills and initiatives – and is thus obliged to approach parliamentarians in order to promote such initiatives – and that the budget of the prosecution service is determined by the Ministry of Justice. Moreover, after the visit, the GET heard about Government plans to dismiss all deputies to the General Prosecutor. This has been criticised by the media as a purely political decision, but it would nevertheless appear that legal amendments concerning the procedures for the appointment and dismissal of high-ranking prosecutors are under preparation. In the view of the GET, it is crucial that all appropriate measures be taken to further strengthen the independence of the prosecution service from political influence.

Recruitment, career and conditions of service

177. The requirements applicable to candidate prosecutors, as laid down in section 14 LPS, are the following: Polish citizenship, immaculate character, university law degree, adequate health, minimum age of 26, having passed a prosecutor's or judge's examination, having worked as a trainee prosecutor or judge for at least a year (in practice, three years; references concerning the work of the trainee prosecutor, prepared after each year of the training period, are attached to the documentation based on which candidates for the position are short-listed).

178. The authorities indicate that the requirement of an "impeccable character" is not further defined and that the criteria for its assessment are discretionary and subject to

¹³¹ By virtue of the Statute of 9 October 2009 amending the LPS and some other statutes (Journal of Laws nr 178, position 1375).

individual evaluation. However, it is assumed that, apart from the requirement of having no criminal record, a person with an impeccable character should be distinguished for special ethical qualifications (honesty, impartiality, conscientiousness, responsibility and high personal culture). The evaluation of personal values of a candidate takes place on the basis of information obtained from different authorities as detailed below.

179. Prosecutors are appointed without any time limits by the General Prosecutor at the request of the NPC. A candidate for such a position has to submit information from the National Criminal Register concerning his/her criminal record, a certificate that s/he is in sufficiently good health to serve as a prosecutor and a lustration certificate (applicable only to persons born before 1 August 1972). Moreover, the General Prosecutor obtains information about candidates from the relevant commander of the provincial Police, which is submitted by the National Prosecution Council. Candidates are selected in a competition. The NPC takes a decision on applying or not applying to the General Prosecutor for appointment of a candidate for the first prosecutor's position in the form of a resolution. The resolution may not be challenged and its contents are notified to the PG.

180. Upon application, a prosecutor may be promoted by the General Prosecutor at the request of the NPC to a higher position, as announced in the Official Journal "Monitor Polski". Promotion takes place via competition. Candidates for higher-rank prosecutor's positions (prosecutor at a Circuit Prosecutor's Office, Appeal Prosecutor's office or General Prosecutor's Office) must meet additional requirements specified in section 14a LPS, in particular experience in the position of prosecutor or judge (four, six or ten years respectively).

181. Delegation of a prosecutor to another organisational unit of the prosecutor's office for a period of up to two months in a year may be ordered by the Circuit Prosecutor or the Appeal Prosecutor without the consent of the prosecutor concerned. Delegation for a period longer than two months in a year is at the sole discretion of the General Prosecutor. Delegation for a period longer than six months in a year requires the consent of the prosecutor concerned. The General Prosecutor may delegate prosecutors also to the Ministry of Justice or subordinate units, at the request of the Minister of Justice, or to fulfil duties outside the territory of Poland, according to the qualifications of the prosecutor, for a specified period of time, no longer than four years.

182. A prosecutor is to be dismissed from his/her position by law in the following cases: final and enforceable judgement of a Disciplinary Court adjudicating dismissal from the prosecution service; final and enforceable judgement of a court adjudicating a penal measure against the prosecutor of deprivation of public rights, prohibition to serve as a prosecutor, demotion or dismissal from the professional military service; loss of Polish citizenship. Moreover, a prosecutor may be dismissed by means of a decision by the General Prosecutor, which is obligatory in nature in the event that the prosecutor resigns from his/her position, or facultative in the situation in which the prosecutor – despite being punished twice by the Disciplinary Court with a reprimand, dismissal from the function or transfer to another position – is guilty of misconduct, including obvious violation of the provisions of law or the dignity of the prosecutor's office.

183. The General Prosecutor is appointed for a non-renewable six-year term by the President of the Republic, from among candidates presented by the NJC and the NPC, who must be active prosecutors or judges with at least ten years' experience as a prosecutor or judge in criminal matters.¹³² The General Prosecutor may not belong to any political party, trade union or conduct any public activity which is not consistent with the dignity of the office.¹³³

¹³² Section 10a LPS.

¹³³ Section 10b LPS.

184. The President of the Republic may dismiss the General Prosecutor if s/he resigns; becomes permanently unable to fulfil the duties of General Prosecutor as a result of illness or loss of vitality; is sentenced on the basis of a final and enforceable court judgement for committing an offence or a fiscal offence, or submits a false lustration statement – to be confirmed by a final and enforceable court judgement; or is punished, by means of a final and enforceable decision, with the disciplinary penalty of reprimand, dismissal, transfer to another position, dismissal from the prosecution service. Moreover, upon application by the Prime Minister the *Sejm* may decide – by a majority of two-thirds of the vote of a quorum of at least half of the statutory number of MPs – to dismiss the General Prosecutor if s/he acts in violation of the oath or if an annual activity report on the prosecution service by the General Prosecutor is rejected.

185. There are currently five deputies to the General Prosecutor (including the Head of the Military Prosecutor's Office and the Director of the Commission for Prosecution of Crimes Against the Polish Nation), who are appointed and dismissed by the President of the Republic upon the motion of the General Prosecutor (as regards the Head of the Military Prosecutor's Office and the Director of the above Commission, the motion is to be submitted in consultation with the Minister of Defence and the President of the Institute of National Remembrance, respectively).

186. Generally speaking, the remuneration of prosecutors is determined in the same way as the remuneration of judges – i.e. on the basis of the average salary in the second quarter of the previous year.¹³⁴ Prosecutors and judges at corresponding professional levels have identical earnings. Like judges, prosecutors are also entitled to functional allowances and to a seniority bonus. The gross annual salary of a prosecutor at the beginning of his/her career is approximately 80,000 PLN/19,200 EUR, while the gross annual salary of a prosecutor of the General Prosecutor's Office who has reached the highest rate of basic remuneration amounts to approximately 182,000 PLN/43,680 EUR.

187. Prosecutors may be granted financial aid, as a loan, to satisfy their housing needs.¹³⁵ Such financial aid may constitute up to 6% of the annual personal remuneration of prosecutors. The applicant has to document information concerning the planned or pending investment, the property itself and family situation. Information regarding the use of the granted loan is not publicly available.

Case management and procedure

188. The LPS does not contain any provisions regulating the manner of allocation of cases to individual prosecutors. High-profile cases are transferred to specific departments.

189. Under the CCP, the general period of investigation is three months, but may be extended in justified cases to one year or in particularly justified cases to a further prescribed period.¹³⁶ The general period of inquiry is two months but may be extended in justified cases to three months or in particularly justified cases to a further prescribed period.¹³⁷ Regardless of these deadlines, a party may lodge a complaint if proceedings last longer than is necessary to clarify the actual and legal circumstances relevant for the settlement of the case or longer than is necessary to settle an enforcement case or another case concerning the execution of a court judgement.¹³⁸

¹³⁴ Cf. section 61a and 62 LPS.

¹³⁵ Section 58(1) LPS.

¹³⁶ Article 310 CCP.

¹³⁷ Article 325i CCP.

¹³⁸ Cf. the Act "On a complaint against violation of the party's right to have a case examined without undue delay in judicial proceedings", mentioned under "Corruption prevention in respect of judges".

Ethical principles, rules of conduct and conflicts of interest

190. Ethical principles and core values of the prosecution service are contained in section 44(2) LPS, which states that a prosecutor is obliged to act in accordance with the prosecutor's oath and that s/he "should, while on and off duty, safeguard the dignity of the office s/he holds and avoid anything which could be detrimental to the reputation of a prosecutor or to the trust in his/her impartiality".

191. The Association of Prosecutors adopted ethical rules for prosecutors by resolution of 25 May 2002. They are not legally-binding standards, they only appeal to prosecutors to comply voluntarily with them. The authorities indicate, that while the ethical rules only apply to members of the Association, other prosecutors may also treat this set of rules as an auxiliary tool in their work.

192. Following the 2009 amendments to the LPS, the NPC is responsible for the adoption of ethical principles governing the prosecutors' profession and for ensuring that those principles are observed.¹³⁹ Thus, the NPC by resolution of 15 December 2011 appointed a commission, chaired by a prosecutor of the General Prosecutor's Office, tasked with the development of a draft collection of ethical principles. The GET was advised that the draft collection was prepared on the basis of ethical standards applicable in other jurisdictions and of relevant Council of Europe/United Nations instruments and that it was submitted to prosecution circles (*inter alia*, appeal prosecutor's offices, the Institute of National Remembrance and the Supreme Military Prosecutor's Office) for consultation. On 19 September 2012, the NPC adopted the "Collection of Ethical Principles governing the Prosecutors' Profession" (CEPP), in the form of a resolution.¹⁴⁰ The structure of the CEPP very much resembles that of the CPPEJ applicable to judges. It is organised in 4 chapters and 29 sections, and takes into account specific duties and personal limitations both in and off service. The CEPP includes, *inter alia*, the principles of honesty, dignity and honour, sense of duty, objectivism, independence, impartiality and justice. The CEPP is to be followed also by retired prosecutors and assessors entrusted with the fulfilment of prosecutor's duties.

193. Regarding conflicts of interest, there is no general definition. The legal framework for the prevention and resolution of such conflicts is provided by relevant provisions of (1) the CCP, as regards disqualification of prosecutors from isolated cases; (2) the LPS which contains, *inter alia*, rules on accessory activities and asset declarations; and (3) the CEPP.

194. The GET welcomes the recent adoption of the CEPP, which has been prepared with the involvement of different levels of the prosecution service and taking into account international standards. This move represents a significant step towards defining and promoting ethical standards for all prosecutors in Poland. It is crucial that this new tool now be disseminated to all prosecutors – and be made easily accessible to the general public. That said, the new rules remain relatively general. The GET remarks, as it already did in relation to the ethical principles for judges, that the CEPP needs to be complemented so as to take sufficient and coherent account of certain corruption risks, notably by providing for precise definitions and further written guidance on the concept of conflict of interest, including practical examples, and on related issues (such as the acceptance of gifts and other advantages, incompatibilities and additional activities), and to offer adequate solutions to resolving such conflicts. In order to provide for a comprehensive regulatory framework on ethical questions and further raise prosecutors' awareness, **GRECO recommends that the "Collection of Ethical Principles governing the Prosecutors' Profession" (i) be disseminated among all prosecutors and made easily accessible to the general public; and (ii) that they**

¹³⁹ Section 24 point 16 LPS.

¹⁴⁰ Resolution No. 468/2012 of the National Prosecution Council of 2012. The resolution is available on the website of the NPC (<http://www.krp.gov.pl/>).

be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities). The authorities may also wish to consider the introduction of a clear statutory definition or definitions of what circumstances would create a conflict of interest.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

195. A prosecutor may not undertake any other activity or money-earning occupation which would interfere with the fulfilment of the duties of a prosecutor, undermine the trust in his/her impartiality or constitute a violation of the dignity of the office.¹⁴¹ The same restrictions on additional employment for judges, apply to prosecutors as well. As such, prosecutors are only allowed in very limited instances, such as to take up a position of a lecturer/researcher, provided that such employment does not interfere with the fulfilment of a prosecutor's duties. They are also allowed to partake in business activities to the extent that they are prohibited from becoming a member of a management board, supervisory board or auditing committee of a private business entity, hold more than 10% of shares in such an entity or run a business. A prosecutor is obliged to notify his/her superior of any intention to take up additional employment, an additional occupation or a new money-earning activity.

Recusal and routine withdrawal

196. As regards the grounds for removal from a case, article 47 § 1 CCP states that the above-mentioned CCP provisions concerning judges apply to prosecutors.¹⁴² A disqualification takes place upon the prosecutor's own motion, *ex officio* or upon the motion of a party to the proceedings. A decision on disqualification of a public prosecutor (or a prosecutor conducting or supervising preliminary proceedings) is taken by his/her direct superior (or by the prosecutor supervising the proceedings).¹⁴³

Gifts

197. There are no detailed rules on the acceptance of gifts by prosecutors specifically. Nonetheless, the authorities indicate that a prosecutor may not accept any gifts from the parties, because such conduct is criminalised under the bribery provisions of article 228 PC.¹⁴⁴ In addition, the authorities mention section 19 CEPP, according to which a prosecutor may not "accept or express his/her interest in the acceptance of any benefits, if the provision or a promise of provision of the same could be interpreted as an attempt of having an influence on him/her in connection with the office s/he holds."

198. The practitioners met on-site concurred and stated it was not acceptable for them to accept gifts, as it would impair the dignity of the office. If an offer was made to a prosecutor, s/he would have to make a report in writing. Only symbolic gifts made on the occasion of visits by, in particular, international delegations might be accepted on the condition that they are recorded in the Register of Benefits held by the General Prosecutor (on the basis of a circular letter by the General Prosecutor). The GET wishes to stress, however, that in the absence of a detailed statutory regulation, this issue needs to be regulated in more detail in the framework of the further development of the CEPP as recommended above, in order to provide for comprehensive and clear rules on

¹⁴¹ Section 49 LPS. Cf. above under "Corruption prevention in respect of judges". – See also section 21 CEPP.

¹⁴² Articles 40 §§ 1 and 3, 41 § 1, 42 §§ 2 and 4 CCP, see above under "Corruption prevention in respect of judges".

¹⁴³ Article 48 § 1 CCP.

¹⁴⁴ See above under "Corruption prevention in respect of judges".

prosecutors' behaviour, for the attention not only of prosecutors themselves but also, and notably, of the general public.

Post-employment restrictions

199. There are no regulations that would prohibit prosecutors from being employed in certain posts/functions, or engaging in other paid or unpaid activities after exercising a prosecutorial function. The GET reiterates its concerns expressed on this lack of regulation with respect to judges, namely that judges – as well as prosecutors – may be exposed to conflicts of interest in view of future outside employment or may accept outside employment having taken an improper advantage of their office. While it is clear that former prosecutors must be given the possibility to continue legal practice after leaving office, the GET encourages the authorities to reflect on the necessity of introducing adequate rules/guidelines for situations where prosecutors move to the private sector, in order to avoid conflicts of interest.

Third party contacts, confidential information

200. Pursuant to section 48 LPS, a prosecutor is obliged to maintain the confidentiality of the circumstances of the matter which s/he, in connection with his/her position, gains knowledge of in the course of preliminary proceedings and outside an open court hearing. This obligation survives termination of the official relationship. A prosecutor may be released from this obligation by the General Prosecutor, if s/he submits testimony as a witness in preliminary proceedings or before the court – unless the disclosure of a secret poses a threat to the state security or another important private interest which is not in contradiction with the purpose of justice.

201. The authorities furthermore indicate that prosecutors are subject to disciplinary and penal liability if they disclose confidential information. They refer, in particular, to chapter XXXIII of the PC which defines offences against the protection of information.¹⁴⁵

Declaration of assets, income, liabilities and interests

202. Pursuant to section 49a LPS, prosecutors (including retired prosecutors) are obliged to submit regular asset declarations on the basis of the same standard forms which are also used for judges and parliamentarians (and certain other categories of persons performing public functions). As concerns the content, periodicity, storage and secrecy of the declarations, the rules described under "Corruption prevention in respect of judges" apply accordingly.

203. Asset declarations are submitted to the relevant appeal prosecutor, military circuit prosecutor, head of the District Commission or head of a District Lustration Bureau. The Chief Military Prosecutor, Director of the Main Commission, Director of the Lustration Bureau, prosecutors of the General Prosecutor's Office, prosecutors of the Supreme Military Prosecutor's Office, prosecutors of the Main Commission, prosecutors of the Lustration Bureau, appeal prosecutors, military circuit prosecutors and heads of District Commissions and heads of District Lustration Bureaus submit asset declarations to the General Prosecutor. One copy of the declaration is submitted by the collecting entity to the tax office with jurisdiction for the place of residence of the prosecutor.

204. The GET acknowledges that prosecutors are subject to the same, quite strict rules on asset declarations as judges but it recalls its concerns¹⁴⁶ about the absence of any information on the assets of close family members (except for information on property jointly owned by the prosecutor and his/her spouse). Consequently, **GRECO**

¹⁴⁵ See above under "Corruption prevention in respect of judges".

¹⁴⁶ Cf. above under "Corruption prevention in respect of judges" and "Corruption prevention in respect of Members of Parliament".

recommends that consideration be given to widening the scope of asset declarations by prosecutors to include information on assets of spouses, dependent family members and, as appropriate, other close relatives. Moreover, the GET notes that data included in prosecutors' asset declarations is secret, as is the case with judges, and it refers to its comments made with regard to judges in this respect. The authorities may wish to consider possibilities of disclosing selected data from the asset declarations of prosecutors, in order to further increase transparency and to strengthen public trust in the justice system (it being understood that information on prosecutors' family members would not necessarily need to be made public).

Supervision

Ethical principles

205. Following the 2009 amendments to the LPS, the NPC is competent for monitoring observance by prosecutors of the ethical principles governing the prosecutors' profession.¹⁴⁷ However, the law does not specify in more detail what measures the NPC may take in order to fulfill this task.

Additional employment and other activities

206. As indicated above, a prosecutor is obliged to notify his/her superior of the intention of taking up additional employment, an additional occupation or a new money-earning activity. The superior must object against such an intention if s/he comes to the conclusion that the additional employment would interfere with the fulfilment of the prosecutor's duties. Similarly, the superior must object to the taking up or continuation of any other activity which interferes with the fulfilment of the prosecutor's duties or constitutes a violation of the dignity of the office or affects trust in his/her impartiality.

Asset declarations

207. Firstly, asset declarations are submitted to the relevant superior prosecutor – in certain cases, to the General Prosecutor. The superior him/herself carries out an analysis of the data contained in such declarations by 30 June each year. In case of doubts as to the veracity of the data, s/he may compare the content of an asset declaration with that of previous declarations submitted by the prosecutor concerned. The number of declarations to be checked by an (appeal) prosecutor depends on the district size, in some cases it can be more than 600 declarations.

208. Secondly, one copy of the asset declaration is submitted by the superior prosecutor to the relevant tax office, which *ex officio* analyses the data provided and which is entitled to compare the declaration with those submitted previously and with annual tax returns. If the result of an analysis raises justified suspicions as to the legality of origin of the assets disclosed in the declaration, the tax office remands the matter for relevant proceedings. Thirdly, as for judges, asset declarations of prosecutors may also be checked by the CAB, but only upon a motion from the tax office or prosecuting authorities.

209. During the interviews, the GET was made aware of two principal concerns about the current monitoring arrangements. Firstly, as regards supervision by the NPC over compliance by prosecutors with the ethical principles, several interlocutors pointed to the legal uncertainty surrounding the NPC's concrete competences in this respect. The current LPS and Statute of the NPC do not specify what measures the NPC is entitled to take in the monitoring process. A draft legislative act had been prepared to clarify this issue, by making it clear that the NPC could decide on the impairment by a prosecutor of

¹⁴⁷ Section 24 point 16 LPS.

the dignity of the office or on his/her gross violation of the law, which would then have led to disciplinary proceedings. However, the legislative proceedings were discontinued due to parliamentary elections. In the current situation, it would appear that the important role of the NPC foreseen by law is quite limited in practice. For example, the GET heard about a case where a prosecutor applied to the NPC claiming that his independence had been breached, but the NPC was refused access to the case file necessary to clarify the situation. Moreover, it is to be noted that the NPC's decisions are not binding, in particular not on the General Prosecutor. The GET was left with the clear impression that the NPC lacks the necessary legal basis, powers and tools in order to perform its functions effectively. The recently adopted CEPP does not remedy this shortcoming either. Section 6 CEPP only provides that in case of breaches of ethical rules, it is the prosecutor him/herself who is responsible for removing the effects of the misconduct. By contrast, the role of the NPC is not addressed by the CEPP.

210. Secondly, as concerns the checks of prosecutors' asset declarations, it would appear that the situation is similar to that of judges' declarations. The GET is under the impression that in general, asset declarations of prosecutors are only being formally checked by superior prosecutors and the tax offices, the CAB only intervenes upon request and there is no sufficiently proactive interaction and coordination among relevant authorities. The GET is convinced that greater scrutiny and more in-depth supervision - for example on a random basis - would further reduce the risks of corruption, and it refers to its comments made with regard to judges in this respect. In view of the above, **GRECO recommends (i) that the competences of the National Prosecution Council for supervising compliance with ethical principles for prosecutors be clearly defined by law and that the Council be provided with adequate tools and powers for effectively performing this function; and (ii) that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of prosecutors' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.**

Enforcement measures and immunity

211. Pursuant to section 54a LPS, if a prosecutor commits a misdemeanour, s/he is subject to disciplinary liability. The general rules on misdemeanours (under the Law on Misdemeanours) do not apply. The principles of disciplinary liability are regulated in sections 66 to 89 LPS. A prosecutor bears disciplinary liability for obvious and gross violations of the provisions of law (in connection with the fulfilment of official duties), other offences committed in connection with the service (violation of general rules which are not always expressly stipulated by specific provisions of law) and violations of the dignity of the office of prosecutor (both on and off duty). Pursuant to section 27 CEPP, the ethical rules of professional conduct, as specified in the CEPP, may be relied on in disciplinary proceedings for a violation of the dignity of the prosecutor's office, regardless of the time of commitment of the act.

212. According to the authorities, cases where a prosecutor undertakes additional employment other than permitted employment or which is undertaken without the knowledge of the superior, or where a prosecutor fails to submit an asset declaration or submits incorrect information, would be considered as offences of dignity (or, possibly, as violations of the provisions of law). Similarly, an offence of dignity also takes place when a prosecutor maintains social contacts with the parties to the proceedings s/he conducts or, in general, with persons who have a criminal record or who are associated with the criminal community, as well as his/her failure to withdraw from the proceedings despite the fact that there are grounds for such withdrawal.

213. The applicable disciplinary sanctions are admonition, reprimand, dismissal from the served function, transfer to another post and expulsion from the prosecution

service.¹⁴⁸ The imposition of such a sanction – except for an admonition – entails the deprivation of the prosecutor of a chance of promotion for a period of three years and of taking part in the collegiate body of a circuit prosecutor's office or appeal prosecutor's office and in the prosecutors' assembly, in the NPC and in the disciplinary court. The authorities submit that a penalty of certain gravity is selected depending on the gravity of the offence and the circumstances of its commission, and that it is thus impossible to generalise about what a prosecutor may face in individual circumstances under discussion. The limitation period for disciplinary proceedings is in principle three years, unless the incident involves a criminal offence.¹⁴⁹

214. Cases are heard by disciplinary courts, whose members are elected by prosecutors of all levels for a four year term. There are two instances of disciplinary courts, which are acting within the General Prosecutor's Office (for prosecutors of common Prosecutor's Offices) and within the Supreme Military Prosecutor's Office (for the prosecutors of military prosecutor's offices). Disciplinary courts adjudicate in the bench of three (in the first instance) and five members (in the second instance). Disciplinary proceedings are conducted behind closed doors.¹⁵⁰ A hearing may be attended by prosecutors and assistant prosecutors carrying out the functions of prosecutor. However, a disciplinary decision may be made publicly known upon it becoming final and enforceable, pursuant to a resolution of the disciplinary court.

215. Preliminary proceedings are carried out by disciplinary commissioners (at the General Prosecutor's Office and at appeal prosecutor's offices) appointed by the General Prosecutor. If disciplinary commissioners come to the conclusion that there is a justified suspicion that a disciplinary offence has taken place, they apply to a disciplinary court with a motion to institute disciplinary proceedings. Commissioners appear as prosecutors before the disciplinary courts which conduct evidence proceedings, as well as before disciplinary courts of the second instance verifying the correctness of proceedings and justification of passed judgements. Disciplinary commissioners are bound by recommendations of their disciplinary superiors (General Prosecutor, appeal prosecutors).¹⁵¹ The authorities indicate that according to amendments to the LPS suggested by the General Prosecutor, disciplinary commissioners would be elected by collegiate bodies (prosecutors' assemblies) and granted independence. Their superiors could then only demand an institution of explanatory proceedings, having no influence on the course and manner of completion thereof. In the view of the GET, such moves are clearly to be supported.

216. According to statistical information provided by the authorities and covering the period 2008 to 2011, eight official disciplinary proceedings were conducted in the appeal prosecutor's offices. As a result, in two cases the prosecutors concerned received penalties of admonition and reprimand. Furthermore, four preliminary proceedings were conducted which ended either with a refusal to commence an inquiry or the discontinuation of proceedings as the prerequisites for committing a forbidden act were absent. According to the authorities, matters concerning a conflict of interest constitute a rather insignificant portion of proceedings conducted by disciplinary courts. At the time of the visit, there was only one such case pending before the disciplinary court concerning a prosecutor maintaining contacts with a person who appeared as a suspect in the investigation he conducted (one of three disciplinary charges concerned a violation of procedural provisions obliging the prosecutor to withdraw from the case). According to the authorities, failure to submit the asset declaration within the prescribed period of time or to provide correct data therein, were the most frequent basis for the institution of disciplinary proceedings instituted in the appeal prosecutor's offices during 2008-2011.

¹⁴⁸ Section 67 LPS.

¹⁴⁹ Section 68 LPS.

¹⁵⁰ Section 76(1) LPS.

¹⁵¹ The above rules also apply to the disciplinary commissioner of the Supreme Military Prosecutor's Office who is appointed by the Supreme Military Prosecutor and bound by his/her orders.

217. As for judges, the authorities indicate that several criminal offences are relevant to situations of conflicts of interest, such as passive bribery (article 228 PC) or disclosure of confidential information (articles 265 and 266 PC)¹⁵² – whereas providing false information or concealing the truth in asset declarations does not result in criminal responsibility.

218. Immunity of prosecutors is regulated in section 54(1) LPS. A prosecutor may not be held criminally liable or placed under temporary detention or arrested without the consent of a disciplinary court. This does not apply where a prosecutor is caught *in flagrante delicto*. The authorities indicate that the lifting of immunity may be requested by the head of the unit conducting an investigation as well as a natural person. The disciplinary court gives its consent in the event of a justified suspicion that a prosecutor has committed an offence. The disciplinary court does not conduct any evidence proceedings; it adjudicates only on the basis of the wording of the motion and the evidence attached by the applicant. A resolution on lifting immunity may be complained against by the prosecutor concerned, and a resolution refusing to grant the motion - by the applicant and the disciplinary commissioner. The appeal is considered by the disciplinary court of the second instance.

219. Statistics show that in 2011, the disciplinary courts considered 26 motions for lifting the immunity of prosecutors. In eight of those cases the immunity was lifted due to a justified suspicion that a criminal offence had been committed. In three cases – all of which were pending at the time of the visit – charges were pressed for passive bribery under article 228 PC. By contrast, there were no criminal cases concerning disclosure of confidential information under articles 265 and 266 PC.

220. The GET notes that the current system of sanctions available in case of misconduct by a prosecutor is similar to that applying to judges and it therefore refers to its comments made in this respect. In particular, the GET reiterates its misgivings about the fact that criminal liability does not extend to the provision of false information in asset declarations of prosecutors (and judges),¹⁵³ and it is again concerned about the statute of limitations in its present form – namely the relatively short period of limitation provided for disciplinary proceedings, which is three years from the occurrence of the incident (if disciplinary proceedings were initiated within three years, the period of limitation for the conduct of proceedings and execution of the penalty is five years from the commission of the act). The GET was advised that this gives rise to problems in practice, as cases are sometimes not disclosed during the above period and do not result in disciplinary action (one practitioner stated there were about 10 such cases over the past five years in his remit). Given the foregoing, **GRECO recommends (i) that criminal liability be introduced for the intentional provision of false information by prosecutors in asset declarations; and (ii) that measures be taken to ensure that disciplinary cases concerning improper conduct by prosecutors are decided before the expiry of the statute of limitations, such as adequately extending the limitation period or providing for the interruption or suspension of the period of limitation under specified circumstances.**

¹⁵² For more details, see also above under “Corruption prevention in respect of Members of Parliament”.

¹⁵³ In contrast to the situation of declarations of other persons performing public functions (including parliamentarians).

Advice, training and awareness

221. The National School of Judiciary and Prosecution (NSJP) is responsible for providing training and professional development to judges, prosecutors, court assessors and assistant prosecutors (assessors). The authorities indicate that training on issues connected with ethics, proper conduct, prevention of corruption and conflict of interests and related matters is included in the process of professional practice. The curriculum of the NSJP foresees obligatory training for candidates in the area of "Ethics of prosecutor's work" in two training sessions, on "the meaning of ethics in prosecutor's work" and the prerequisites of official responsibility and disciplinary liability of a prosecutor (6 times 45 minutes in total). By contrast, no classes on these issues have so far been conducted as part of a professional development programme for prosecutors in office. The prosecution service does not have at its disposal any tutorials, guides or other training materials in this regard.

222. The authorities indicate that prosecutors can obtain advice as to the principles governing conflicts of interest, prohibitions or limitations concerning the conduct of a certain type of activity and asset declarations from their superiors. They assume that the NPC, which is to safeguard the independence of prosecutors, might also express its opinion or adopt a resolution regarding the settlement of conflicts of interest, refraining from certain activities or asset declarations, as long as such issues are connected with the prosecutor's independence. However, in reality, the NPC has not dealt with any such issues to date.

223. The GET notices similar deficiencies in the area of training and advice for prosecutors on questions of ethics and conduct as it already did in relation to judges, and it refers to its comments made in these respects. In particular, there is currently no dedicated training programme focussing more specifically on conflicts of interest and ethical issues in a broader sense for prosecutors. This shortcoming needs to be remedied, especially in the light of the recently adopted ethical principles and of possible further regulations advocated for in this report. Moreover, in the GET's view there is a clear need for putting in place proper counselling, in order to raise prosecutors' awareness, provide for confidential advice and develop a general understanding of and a unified practice with regard to preventing and resolving conflicts of interest. Such counselling could for example, be provided by dedicated prosecutors (or judges) at appeal prosecutor's offices – co-ordinated by a prosecutor at the level of the General Prosecutor's Office in order to allow for coherent solutions and responses at national level. The GET wishes to stress – as it did in relation to judges – that any such counsellors need to command specific expertise in the field, be distinct from disciplinary bodies and be placed outside the official hierarchy, thus enabling them to act as confidential persons. Given the foregoing, **GRECO recommends (i) the provision of on-going training to all prosecutors on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling in prosecutors' offices, in order to raise prosecutors' awareness and to provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.**

VI. RECOMMENDATIONS AND FOLLOW-UP

224. In view of the findings of the present report, GRECO addresses the following recommendations to Poland:

Regarding members of parliament

- i. that interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings (paragraph 32);**
- ii. i) that the “Principles of Deputies’ Ethics” be complemented in such a way so as to provide clear guidance to *Sejm* deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); and ii) that such standards of ethics and conduct also be introduced for senators and disseminated among them (paragraph 40);**
- iii. both in respect of *Sejm* deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions (paragraph 41);**
- iv. that consideration be given to widening the scope of asset declarations by parliamentarians to include information on assets of spouses, dependent family members and, as appropriate, other close relatives (it being understood that such information would not necessarily need to be made public) (paragraph 67);**
- v. that the monitoring mechanism in respect of compliance by parliamentarians with standards of ethics and conduct - including rules on conflicts of interest and related areas - be reviewed in order to increase its effectiveness, in particular by simplifying the system of various bodies involved and by providing it with the necessary financial and personnel resources (paragraph 80);**
- vi. both in respect of *Sejm* deputies and senators, (i) the establishment of a dedicated confidential counsellor with the mandate to provide parliamentarians with advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflicts of interests (paragraph 84);**

Regarding judges

- vii. that the “Collection of principles of professional ethics for judges” be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities and additional activities) (paragraph 129);**

- viii. **that consideration be given to widening the scope of asset declarations by judges to include information on assets of spouses, dependent family members and, as appropriate, other close relatives (paragraph 142);**
- ix. **that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies (paragraph 154);**
- x. **(i) that criminal liability be introduced for the intentional provision of false information by judges in asset declarations; and (ii) that measures be taken to ensure that disciplinary cases concerning improper conduct by judges are decided before the expiry of the statute of limitations, such as adequately extending the limitation period or providing for the interruption or suspension of the period of limitation under specified circumstances (paragraph 163);**
- xi. **(i) the provision of on-going training to judges on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling within the judiciary, in order to raise judges' awareness and provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions (paragraph 166);**

Regarding prosecutors

- xii. **that the "Collection of Ethical Principles governing the Prosecutors' Profession" (i) be disseminated among all prosecutors and made easily accessible to the general public; and (ii) that they be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities) (paragraph 194);**
- xiii. **that consideration be given to widening the scope of asset declarations by prosecutors to include information on assets of spouses, dependent family members and, as appropriate, other close relatives (paragraph 204);**
- xiv. **(i) that the competences of the National Prosecution Council for supervising compliance with ethical principles for prosecutors be clearly defined by law and that the Council be provided with adequate tools and powers for effectively performing this function; and (ii) that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of prosecutors' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies (paragraph 210);**
- xv. **(i) that criminal liability be introduced for the intentional provision of false information by prosecutors in asset declarations; and (ii) that measures be taken to ensure that disciplinary cases concerning improper conduct by prosecutors are decided before the expiry of the statute of limitations, such as adequately extending the limitation period or**

providing for the interruption or suspension of the period of limitation under specified circumstances (paragraph 220);

- xvi. **(i) the provision of on-going training to all prosecutors on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling in prosecutors' offices, in order to raise prosecutors' awareness and to provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions** (paragraph 223).

225. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Poland 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.

226. GRECO invites the authorities of Poland 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.
