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Ad hoc Report on SLOVENIA (Rule 34)

Adopted by GRECO
at its 84th Plenary Meeting
(Strasbourg, 2- 6 December 2019)

I. INTRODUCTION

1. During its 83rd Plenary Meeting (17-21 June 2019), GRECO was alerted by the Head of the Slovenian delegation about possible political interference by the legislative branch in respect of public officials, prosecutors and judges in Slovenia. This information was based on a letter, dated 17 June 2019, from the Head of the Criminal Law Department of the State Prosecutor General's Office, to the Head of the Slovenian delegation to GRECO, on an *"inadmissible political interference on the political responsibility of public officials who participated in the prosecution and trial of a politician for corruption offences"*.
2. The issue at stake was that the National Council of Slovenia had requested the National Assembly (Parliament) to establish a parliamentary inquiry regarding judicial proceedings against a politician (a member of the National Council and former mayor of a Slovenian city). He, together with other persons, had been investigated and prosecuted for corruption offences in a number of cases, some of which had been adjudicated while other were pending. The parliamentary inquiry requested was aimed at investigating possible politically motivated decisions of the public officials, prosecutors and judges involved in the criminal justice process in respect of the politician.
3. Against this background GRECO decided at its 83rd Plenary Meeting (21 June 2019) to apply Rule 34 of its Rules of Procedure in respect of Slovenia. This Rule provides for an *ad hoc* procedure which can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe. In its decision, GRECO recalled that corruption prevention in respect of members of parliament, judges and prosecutors was the topic of its Fourth Evaluation Round.
4. GRECO requested the Slovenian authorities to submit by 30 June 2019 additional information concerning this issue. This Information, and subsequently provided information, provide the basis for the current report, drawn up by Ms Monika Olsson (Sweden) and Mr David Meyer (United Kingdom), assisted by the GRECO Secretariat.

II. CONTEXT AND BACKGROUND INFORMATION¹

5. The individual concerned, a member of the National Council of Slovenia and former mayor of a Slovenian city, was charged with corruption offenses, together with other persons. The first proceeding was initiated in 2013 and he has been prosecuted in eleven cases. At this stage, none of the proceedings have resulted in a final conviction. Eight proceedings have been closed, withdrawn or quashed. Three proceedings are still pending. It is noted that if a member of the National Council is criminally convicted with a sentence of 6 months or more the member would lose the seat in the Council.

¹ As established by the documents provided to the GRECO Secretariat.

6. At its 19th session of 12 June 2019, the National Council requested the National Assembly of Slovenia to order a parliamentary enquiry² “to establish the political responsibility of public-service holders to participate in the preparation and execution of prosecution against the former Mayor of the municipality of Maribor and member of the National Council of the Republic of Slovenia, (...) and other persons, with the suspicion that the proceedings against [them] severely infringed (...) the provisions of the [European Convention of Human Rights (ECHR)], the Constitution of the Republic of Slovenia, the Criminal Procedure Act, the Criminal Code and the National Council Act”, as well as “conclusions of the alleged management of certain records of the police”. The National Council submitted that the persons concerned had been subject to politically motivated criminal prosecutions and violations of their fundamental rights by the prosecutors, police and judges involved in the criminal proceedings against them. They referred to a number of serious alleged dysfunctions in various procedures³.
7. On 12 July 2019 the National Assembly discussed proposals for an Act ordering the parliamentary enquiry. As per Rules of procedure of the National Assembly (para. 2 of Article 4) there was no vote. The Commission for Public Office and Elections was requested to prepare a proposal in respect of membership of the Parliamentary Inquiry Commission. Some of the parliamentary groups expressed themselves in favour of the parliamentary inquiry. Other parliamentary groups expressed views against the inquiry, highlighting *inter alia* the principle of separation of powers⁴.
8. In letters of 28 June 2019, the President of the National Assembly⁵ and the Minister of Justice,⁶ both justified the setting up of the parliamentary enquiry commission, referring to the Constitution which provides for such a measure and to the Rules of the Assembly which provides, according to their opinion, a mandatory duty for the Assembly to set up such an inquiry commission when so requested by the National Council.
9. On 9 July 2019, in response to this parliamentary procedure, the Commission for the Prevention of Corruption in Slovenia initiated proceeding related to violations of ethics and

² According to the Parliamentary Inquiries Act, parliamentary inquiries are conducted in order to determine and assess factual situations which can serve the National Assembly as a basis for determining political accountability of public office holders, for amending legislation, in particular area and for other decisions that fall within the scope of the competence of the Assembly. The investigations are conducted under procedures close to judicial proceedings, including search and presentation of evidences, hearings with witnesses and expert witnesses; witnesses can be forced to appear to hearings if they do not want to do so, and they are criminally responsible for their statements. The parliamentary inquiry commission may decide to ask for the court files of pending cases and its request is mandatory for the court. The investigations are to result in a report to be presented to the National Assembly. Practice has shown that such reports may include individual decisions.

³ Letter dated 12 June 2019 of the President of the National Council to the President of the National Assembly.

⁴ See footnote 2 above.

⁵ Letter dated 28 June 2019 of the President of the national Assembly to the Commission for the prevention of corruption.

⁶ Letter dated 28 June 2019 by the Minister of Justice to the Commission for the prevention of corruption.

integrity rules of the public sector as regards the National Council and some National councillors, as well as a proceeding relating to the allegations of violations of the rules on conflicts of interest⁷.

10. On 12th September 2019 the State Prosecutor General filed a request for constitutional review and a constitutional complaint with regard to the National Assembly's Order as well as the Parliamentary Inquiry Act. The main emphasis of the request was on the unlawfulness of such intervention done by the legislative branch with regard to the judicial branch⁸. In the request, the State Prosecutor General underlined that the decision adopted by the National Council to request the National Assembly to investigate and establish the political responsibility of prosecutors was *"constitutionally inadmissible and is an unlawful interference in the constitutional and legal framework of the judicial authorities, in particular political responsibility of state prosecutors and judges"*⁹. According to his analysis, state prosecutors cannot be questioned through a parliamentary enquiry on issues that have already been the subject of judicial decisions. It is recalled that the independence and autonomy of the prosecution service constitutes an indispensable corollary to the independence of the judiciary. This position was supported by the Slovenian Association of Public Prosecutors.¹⁰

11. The opponents to the parliamentary inquiry also state that the inquiry puts pressures on the prosecution services, the police, and possibly judges, both as regards the issues at stake, as three criminal cases concerning, inter alia, the mayor are still pending, but also principally for future possible cases concerning corruption of politicians.

12. The position of the State Prosecutor General has also been notified to the Venice Commission and the Consultative Council of European Prosecutors (CCPE) of the Council of Europe and to the International Association of Prosecutors. No reactions from these bodies are known to GRECO at this point.

13. On 12 November 2019 the Constitutional Court issued a temporary decision¹¹ by which it put on hold the implementation of the Parliamentary Inquiry Act¹² and of the Rules on parliamentary inquiry¹³. A similar decision was adopted on 24 October 2019 by the Constitution Court as regards judges¹⁴. The Court highlighted that the act ordering the

⁷ Letter dated 16 July 2019 of the Head of the Slovenian delegation to GRECO.

⁸ Information dated 15 October 2019 by the Head of the Slovenian delegation to GRECO.

⁹ Letter dated 17 June 2019 of the Supreme State Prosecutor to the Head of the Slovenian delegation to GRECO.

¹⁰ Letter from the Slovenian Association of Public Prosecutors to the President of the National Assembly, dated 11 June 2019.

¹¹ <https://www.us-rs.si/odlocitve/zacasna-zadrzanja/zadrzanje-izvrsevanja-zakona-o-parlamentarni-preiskavi-uradni-list-rs-st-6393-in-poslovnika-o-parlam-14032/>

¹² Official Gazette, no. 63/93.

¹³ Official Gazette, no. 63/93 and 33/03.

¹⁴ <http://pisrs.si/Pis.web/pregledPredpisa?id=SKLU291>

parliamentary inquiry impedes the constitutional principle of independence of the judiciary and, therefore, any activities to be taken against prosecutors or judges in order to establish their political accountability were put on hold until a final decision by the Constitutional Court is reached.

III. CONSIDERATIONS BY GRECO

14. GRECO cannot intervene in individual cases. Nor can it challenge the sovereign power of the National Assembly of Slovenia or examine the constitutionality or the lawfulness of the procedures and decisions leading to the opening of the parliamentary Inquiry. It notes that constitutional proceedings are under way. For these reasons GRECO is unable to comment upon the legality or legitimacy of either the original prosecutions for corruption or the Parliamentary Inquiry that was triggered as a result of these.
15. GRECO's consideration is therefore limited to the question of whether the use of a parliamentary inquiry is evidence that the judiciary and/or other elements of the justice system is subject to, or open to, political interference. GRECO does, however, have a remit to consider issues relating to judicial and prosecutorial independence. These are critical to the fight against corruption and formed a prominent part of GRECO's Fourth Evaluation Round. In this regard GRECO takes note of the allegations that the parliamentary inquiry appears to concern proceedings initiated and still pending before the judicial authorities. This raises questions in relation to the separation of powers between the various branches of the state that would be pertinent to GRECO's fourth evaluation round.
16. GRECO understands that the setting up of a parliamentary enquiry commission can function as a form of parliamentary control over issues of public importance. It also understands that the Assembly is obliged to establish such enquiries, if requested by the National Council.
17. That said, it cannot be ruled out that a parliamentary inquiry like the current one, if directed towards the investigatory authorities, prosecution service and the judiciary in ongoing individual cases, may potentially interfere with the separation of powers and respect for judicial independence. Consideration must be given to the risk of a chilling effect on judicial independence in the pending proceedings, as well as in future similar proceedings, and the potential impact on criminal investigations and proceedings relating to corruption against influential or politically connected persons.

IV. CONCLUSIONS

In light of the above:

18. GRECO strongly reaffirms that the independence of the judiciary is a cornerstone of the rule of law and that all branches of a democratic state need to respect this principle. Complaints against judicial rulings are as a principle to be dealt with through appeal within the judiciary itself and not through interventions by the other branches of state power.

19. GRECO notes that the Constitutional Court has put on hold the implementation of the parliamentary inquiry. Currently, no final decision has been rendered by the Constitutional Court, and some of the judicial proceedings complained of appear to be still pending. The final outcome of these proceedings may be pertinent to any conclusions that GRECO may wish to draw with respect to the sufficiency of Slovenia's Anti-Corruption and integrity frameworks.
20. In view of the above it would be premature for GRECO to draw firm conclusions at this stage. Further information is required to assess fully whether recent developments may amount to, or result from, a breach of the standards expected in GRECO's fourth round. GRECO therefore reserves its judgment at the current time and will monitor the evolution of the situation closely.
21. GRECO invites the authorities of Slovenia to submit a report on further developments of the specific situation no later than 1 March 2020.
22. GRECO invites the authorities of Slovenia to authorise, at their earliest convenience, the publication of this report, and to make a translation available of it into the national language available to the public.