



IRENE CHARALAMBIDES
Chair of the Standing Committee on Human Rights
and Equal Opportunities for Men and Women

Member of the House of Representatives
of the Republic of Cyprus
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17 January 2024

Mr Jeroen Blomsma,
Head of Sector Anti-Corruption
DG HOME,
Brussels.

Dear Mr Blomsma,

I would like to bring to your attention a matter that pertains to the rule of law in Cyprus.

The Fourth Round Evaluation Report on Cyprus was adopted at GRECO's 72nd Plenary Meeting (1 July 2016) and made public on 27 July 2016.

GRECO addressed 16 recommendations to Cyprus in its Evaluation Report. **There were four recommendations in respect of prosecutors.**

Recommendation xiii.

GRECO recommended that reform considerations concerning the Law Office of the Republic include means to strengthen the independence of the prosecutorial functions and the capacity of the individual law officers and prosecutors to conduct their duties in a more autonomous way, guided by the safeguards necessary under the rule of law.

Recommendation xiv.

GRECO recommended i) that criteria for the distribution of criminal cases among prosecuting staff be introduced; and ii) that decisions and instructions, such as to re-allocate cases within the Law Office or to discontinue criminal cases be justified in writing.

Recommendation xv.

GRECO recommended that a code of ethics be established for the particular functions of prosecutorial staff, offering adequate guidance on conflicts of interest and other integrity

related matters as appropriate (e.g. gifts, recusal, third party contacts, handling of confidential information) and ii) that it be made accessible to the public.

Recommendation xvi.

GRECO recommended that induction and in-service training programmes, specialised towards the needs of prosecutorial staff in respect of ethics, prevention of corruption etc. be developed by the prosecution service as a complement to the general training applicable to all public officials in Cyprus.

According to the **Compliance Report** that was adopted by GRECO at its 80th Plenary Meeting (22 June 2018) and made public on 6 September 2018, recommendation xiii had not been implemented, recommendation xiv had been partly implemented and recommendations xv and xvi had been implemented satisfactorily.

According to the Second Compliance Report that was adopted by GRECO at its 86th Plenary Meeting (29 October 2020) and made public on 17 November 2020, recommendation xiii remained not implemented.

Regarding recommendation xiv, GRECO considered it as partly implemented. With regard to the first part of the recommendation, GRECO was satisfied that the distribution of cases followed a clear procedure but maintained that it would be beneficial to lay down criteria as to what cases need to depart from the normal allocation system. As to the second part of the recommendation, GRECO welcomed the fact that reasons behind decisions to discontinue criminal cases are put down in writing and stated orally before the competent court.

In practice, from cases of discontinuance of criminal prosecutions that came to light, it is evident that what the Cypriot authorities stated to GRECO is not true. On the contrary, criminal cases before the courts are withdrawn without any explanation. As it was publicized, the Deputy Attorney General suspended a criminal case pending before the court, involving a former client of his, without providing any reasoning to the court. In another instance, the accused persons requested their acquittal through an interim decision, citing that too many years had passed since the commission of the offenses. The court rejected the request, emphasizing that "the interest of justice requires the continuation and not the termination of the present case." Instead of respecting the court's decision, three months later, the Deputy Attorney General himself suspended the case.

Concerning recommendation xiii that was still not implemented, in the Second Addendum to the Second Compliance Report adopted by GRECO at its 95th Plenary Meeting (1 December 2023) and made public on 9 January 2024, it is noted that the authorities of Cyprus now state that, since the publication of the Addendum to the Second Compliance Report, the bill that was prepared by the Law Office of the Republic regarding

its independence, which also covers the independence and autonomy of prosecutors, had been approved by the Council of Ministers on 22 February 2023 and had been submitted to Parliament on 20 April 2023.

In the Report, GRECO welcomes the draft law. The draft Law introduces a separation between Legal Officers and Staff - all working for the Legal Service, headed by the Attorney General. The Legal Officers are made up of Attorneys of the Republic, Officers of the Unit Combating Money Laundering (MOKAS) and Public Prosecutors – they represent and are under the instructions of the Attorney General and Deputy Attorney General. The Staff include (1) the General Manager of the Legal Service, who has the status of Controlling Officer and acts in accordance with the relevant legislative framework of the Public Service that governs his/her obligations and responsibilities; and (2) the Head of Financial Management, who serves under a service plan in accordance with the needs of the Legal Service. The draft also introduces a Prosecution Council, which has the authority, inter alia, over the appointment, promotion, transfer, secondment and dismissal of Legal Officers and Staff.

The above mean that instead of having a separation between the dual role of the Attorney General (advisory role and prosecutorial role), there will be a separation between the Legal Officers (legal counsels and public prosecutors) on the one hand, and managerial staff on the other hand.

Instead of noting that this is unacceptable, GRECO encourages the authorities to deal with the planned reform of the Law Office of the Republic without delay and concludes that recommendation xiii is partly implemented.

The European Commission, in its 2023 Rule of Law Report for Cyprus, adopts a completely different approach and the following are included:

“The draft law on the reform of the Law Office, which has been tabled in Parliament, does not provide a clearer distinction between its advisory and prosecutorial role. The Prosecution Service is part of the Law Office of the Republic, headed by the Attorney General.

There is no clear separation between staff entrusted with advisory tasks and those carrying out prosecutorial tasks. In 2016, GRECO expressed the view that being an integrated part of the Law Office, **the prosecution service may be seen to operate in an environment that is not fully free from potential or real risk of improper influence.** Following approval by the Government in February 2023, a draft law was submitted to the relevant parliamentary committee in April 2023 for discussion. The proposed law focuses on two main points: (i) the salary alignment of law officers with the salary scales of judicial officers and (ii) the establishment of a prosecutorial council to decide on recruitment, promotions, dismissals, and

disciplinary action against law officers. The draft law also includes the creation of the position of General Director of the Law Office, who will act as controlling officer for financial control purposes.

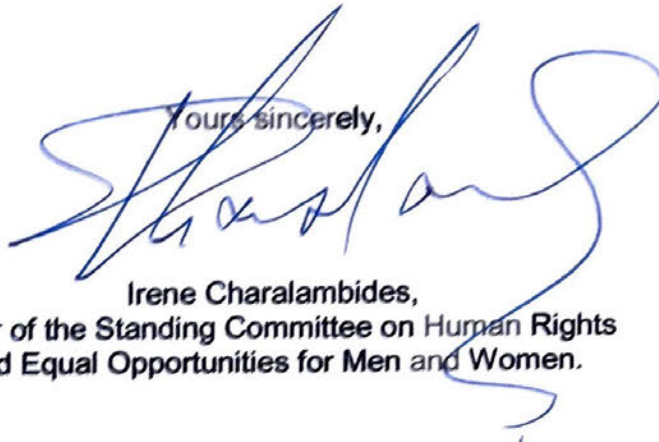
According to the Law Office, there are no plans to make a clearer distinction between the prosecution and the advisory role of the Office, as the need for such reform has not been either expressly pointed out nor implied by GRECO. The Bar association expressed the view that the establishment of an independent Director of the Public Prosecution Service is desirable. **Stakeholders also referred with scepticism to the dual role of the Law Office and referred to public commitments made by the President of the Republic to reflect on the separation of the advisory role and the prosecutorial function.**

The absence of a possibility of review of the decision of the Attorney General not to prosecute or to discontinue proceedings raises concerns. According to data in the 2022 EU Justice Scoreboard, Cyprus is the only Member State where no form of review of such decisions, neither judicial nor hierarchical, is provided³⁷. The Constitution provides that the Attorney General has the power, exercisable at his or her discretion in the public interest, to institute, conduct, take over and continue or discontinue any criminal proceedings. The Rules on Criminal Procedure further provide that the Attorney General may register a stay of prosecution at any stage prior to the delivery of a judgment, resulting in the termination of the proceedings. According to the Supreme Court, the decisions of the Attorney General cannot be reviewed and do not need to be reasoned. The Government considers that the exclusive power of the Attorney General to initiate, conduct, or discontinue criminal proceedings is balanced by the latter's practice to provide reasons for his decisions, unless he is prevented from doing so for reasons of public interest or the protection of other persons' rights.

According to European standards, the absence of remedies against decisions of public prosecutors not to prosecute results in a high risk of non-accountability. Stakeholders also emphasised the need to establish adequate checks and balances against unlimited prosecutorial discretion"

We very much agree with the stance that the European Commission adopts in its rule of law report and urge you to review the information I provide you hereto in the coming rule of law cycle. In case you have any further inquiries about these issues I would be very glad to discuss them further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Irene Charalambides', with a large, stylized flourish extending from the end of the signature.

Irene Charalambides,
Chair of the Standing Committee on Human Rights
and Equal Opportunities for Men and Women.