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Second Compliance Report

Third Evaluation Round

Second Compliance Report on Azerbaijan

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
at its 65th Plenary Meeting
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I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of Azerbaijan since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Azerbaijan. It is recalled that the Third Evaluation Round covers two distinct themes, namely:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

2. The Third Round Evaluation Report was adopted at GRECO's 48th Plenary Meeting (1 October 2010) and made public on 18 November 2010, following the authorisation by Azerbaijan (Greco Eval III Rep (2010) 2E, Theme I and Theme II). The subsequent Compliance Report was adopted at GRECO's 57th Plenary Meeting (19 October 2012) and was made public on 8 January 2013, following authorisation by Azerbaijan (Greco RC-III (2012) 12E).

3. As required by GRECO's Rules of Procedure, the authorities of Azerbaijan submitted their Second Situation Report with additional information regarding the actions taken to implement those recommendations that were partly implemented or not implemented according to the Compliance Report. This report was received on 1st of May 2014 and served as a basis for the present Second Compliance Report.

4. GRECO selected Liechtenstein and Spain to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mr Patrick RITTER on behalf of Liechtenstein, and Mr Rafael VAILLO RAMOS, on behalf of Spain. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO addressed 9 recommendations to Azerbaijan in respect of Theme I in its Evaluation Report. In the subsequent Compliance Report, GRECO concluded that recommendations i, ii, iv, v, vi, viii and ix had been implemented satisfactorily and that recommendations iii and vii had been partly implemented. Compliance with those recommendations is dealt with below.

Recommendation iii.

6. *GRECO recommended to criminalise active and passive bribery of domestic and foreign jurors and arbitrators in accordance with Articles 2, 3, 4, 5 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible.*

7. GRECO recalls that this recommendation was considered as partly implemented in the First Compliance report since Protocol ETS 191 was signed on 8 October 2012 and its ratification – in October 2012 – was under consideration by the Cabinet of Ministers. Moreover, the note to Section 308 of the Penal Code (PC) was amended so as to refer to "arbiters of foreign and national arbitration courts, foreign and national jurors" for the purposes of defining the scope of applicability of the bribery provisions. These amendments address adequately jurors but GRECO found that the concept of "arbiters of foreign and national arbitration courts" is not broad enough to cover any (domestic and foreign) arbitrators in the meaning of Article 1, paragraph 2 of ETS 191, including those acting on the basis of an arbitration agreement between private persons outside an arbitration court.

8. The authorities now report that the Protocol ETS 191 was ratified on February 1, 2013 by law N 548-IVQ of the Republic of Azerbaijan. The ratification became effective on 3 April 2013 and the Protocol entered into force in respect of Azerbaijan on 1 August 2013[1]. The authorities point out that no further measures have been taken since arbitration is not used in practice and thus not provided for in national legislation. Disputes between parties are, as a rule, taken to court and the growing number of civil cases is an illustration thereof[2]. The definition of "arbitration" is only used in the Law on International Arbitrage of the Republic of Azerbaijan, which applies to international commercial arbitration, provided that interstate agreements, to which the country is a party, are complied with[3]. They explain that articles 2 and 7 of this Law provide for broad definitions of "arbitration" and "arbitration agreement"[4] and that as a result arbitration is to be understood by reference to permanent arbitration offices or arbitration courts as well private persons outside the context of an arbitration court.

9. GRECO welcomes the ratification by Azerbaijan of Protocol ETS 191, effective as of April 2013. It takes note of the explanations provided concerning arbitration under the national legislation. It accepts that the situation of domestic arbitrators does not raise further concerns since arbitration in Azerbaijan is only possible in commercial matters under the Law on International Arbitrage of the Republic of Azerbaijan. As for foreign arbitrators, i.e. those who would provide such services under the law of another country, GRECO still believes that the criminalisation of bribery involving such persons is not fully in compliance with Protocol ETS 191. Other countries may indeed provide for arbitration possibilities along definitions other than those of the Law on International Arbitrage of the Republic of Azerbaijan, with the involvement or not of a court and possibly also in non-commercial matters. GRECO recalls that ETS 191[5] is not limited to commercial arbitrators.

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[1] Link to the state of signatures and ratification of ETS 191 (Treaty Office of the Council of Europe)

[2] According to statistics of the Ministry of Justice, there has been a six-fold increase of civil law cases since 2000.

[3] The text of the Law and other information are available on the website of the Azerbaijan Arbitration and Mediation Centre: http://arbitr.az/eng/viewpage.php?page_id=3

[4] "Article 2. Main Concepts
The main concepts used in this Law shall have the following meanings:
a) "arbitration" - any arbitration whether or not it is conducted by the permanent arbitration office.
According to Article 7 of the same Law "Arbitration agreement" is an agreement between parties on the submission to Arbitration, of a part or the whole of disputes that may arise between the parties in respect of any concrete legal relationship, whether such agreement is of legal or other nature. An arbitration agreement may be concluded via an arbitration clause in a contract or as a separate agreement.
(…)"
"Article 7. The Concept and Form of an Arbitration Agreement
1. "Arbitration Agreement" - an agreement between parties on the submission to arbitration, of a part or the whole of disputes that may arise between the parties in respect of any concrete legal relationship, whether such agreement is of legal or other nature. An arbitration agreement may be concluded via an arbitration clause in a contract or as a separate agreement.
(…)"

[5] The Protocol is not limited to arbitration in commercial matters; as stated in paragraph 12 of the Explanatory Report to ETS 191 "(…) it should be pointed out, that the scope of this Protocol is not limited to commercial arbitration. Consequently, the

Therefore, the above Law is of limited relevance. In conclusion, it would be preferable to spell out clearly that Section 308 PC refers to arbitrators who perform their functions under the law of Azerbaijan or of another country.

10. GRECO concludes that recommendation iii remains partly implemented.

Recommendation vii.

11. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities.*

12. GRECO recalls that this recommendation was categorised as partly implemented in the First Compliance Report. The practice with regard to the special defence provision contained in the note to Section 312 of the Penal Code (PC) had been analysed but no subsequent decision had been taken concerning any amendments. The authorities had indicated that since the legal powers of the Anti-Corruption Directorate under the General Prosecutor (ACD) had been increased recently, the criminal law response relied to a lesser extent on the "effective regret" mechanism to detect corruption-related offences. There was thus greater flexibility to address this recommendation.

13. The authorities now indicate that the the provisions on effective regret contained in the note to Section 312 PC remained under scrutiny. As a result, effective regret was applied in a limited number of cases, compared to previous years. In 2012, no prosecutions took place under this Section and in 2013 the ACD charged 3 persons in 2 criminal cases for active bribery. In the first 9 months of 2014, the ACD filed charges against 3 persons (3 cases). All cases were triggered by information on abuse of powers, processed by criminal intelligence officers. The authorities reiterate that the growing investigative capacity deriving from increased applicability of special investigative means now allows to plan and implement covert operations and to rely less on information and evidence supplied by the bribe-givers. Moreover, the ACD handled 16 cases where 41 officials were charged for passive bribery. The number of indictments – 8 cases – based on substantiated requests for a bribe grew twofold in 2013 compared to 2012. In half of these cases, the actual bribe was not paid. In the 8 remaining cases where the bribes were actually taken, although the payments occurred in large numbers their individual value was low. The decisions not to prosecute the bribe-givers were based not only on (the note pertaining to) Section 312 PC, but also on the general provisions of Section 14 PC whereby criminal acts shall not be prosecuted where their insignificance does not represent a public danger[6]. In their latest comments, the authorities point out that as a result of the above study and other input from international organisations and the United States, legislation on plea-bargaining was prepared and it is currently examined by the competent parliamentary committee. In this context, the ACD has proposed as part of the reform package that the note to Section 312 PC and thus the mechanism of effective regret in itself be abolished.

14. GRECO takes note of the information provided. The practice regarding the effective regret mechanism as laid down in Section 312 PC and its note was kept under review, but again, the precise circumstances in which effective regret – as such – is applied do not appear to have been examined. Nor have amendments been made or even considered subsequently. GRECO recalls

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concept of "arbitration agreement" should be understood in a broad way in order to reflect the reality and variety of civil, commercial and other relations, and not be limited to the formal expression of commitments based on reciprocal obligations."

[6] http://www.legislationline.org/documents/section/criminal-codes

that the bribe-giver in Azerbaijan is not prosecutable provided s/he reports the offence before it is discovered or before s/he learns that the offence has already been discovered. GRECO reiterates the misgivings about the automatic nature of the defence and the impossibility for review of the actual situation and motives of the bribe-giver by a court. *In principle, very serious cases of active corruption could go totally unpunished by reference to this defence, and it could be misused by the bribe-giver as a means of exerting pressure on the bribe-taker to obtain further advantages* (Evaluation Report, paragraph 61). In their most recent comments, the authorities point out that proposals have been made to abolish the effective regret mechanism as a whole. Should Azerbaijan follow this proposal, this recommendation would obviously loose its pertinence. For the time being, these are mere proposals and GRECO can only maintain its earlier conclusion.

15. GRECO concludes that recommendation vii remains partly implemented.

16. GRECO is further concerned by the application of Section 14 PC to active bribery offences, even in cases of repeated payments of bribes. There appears to be excessive lenience towards bribe-givers: not only do they enjoy exemption from liability in case of extortion and of effective regret (both under Section 312 PC), but their conduct falls also easily under the definition of negligible offences for the purposes of criminal lawsuits. This is likely to convey a wrong message to the public and the Evaluation Report had already regarded the overall low level of prosecutions and convictions for corruption-related acts in Azerbaijan as an anomaly.

Theme II: Transparency of Party Funding

17. It is recalled that GRECO in its Evaluation Report addressed 8 recommendations to Azerbaijan in respect of Theme II. The Compliance Report concluded that recommendations ii, iii, iv and v have been partly implemented and recommendations i, vi, vii and viii have not been implemented. Compliance with all these recommendations is dealt with below.

18. It should be borne in mind that Azerbaijan has amended the party financing provisions of the Law on Political Parties (LPP) with legislation of 20 April 2012 (effective as of 13 May 2012) which had been prepared with input from the Venice Commission[7]. These had been taken into account in the First Compliance Report. The authorities of Azerbaijan now report that a series of new amendments to the LPP have been prepared and draft legislation was submitted to the parliament in spring 2014. The draft was reviewed by the competent committee and the first reading by Parliament was expected to take place in October. At the time of discussion of the present report, the authorities informed GRECO that the parliament had finally adopted the draft on 30 September; it now needs to be promulgated within 56 days by the President to become final and enter into force.

Recommendation i.

19. *GRECO recommended to extend the financial and accounting reference period applicable to election campaigns so that financial reports on election funds reflect more closely the resources and expenditure devoted to these campaigns.*

20. GRECO recalls that this recommendation was considered as not implemented. The authorities had taken the view that the arrangements already described in the Evaluation Report were satisfactory and no action had thus been taken.

[7] See http://www.venice.coe.int/docs/2011/CDL-AD(2011)046-e.pdf. – It is to be noted that the draft law was further amended following the Venice Commission's comments.

21. The authorities, in the new information submitted, reiterate that the situation in place is satisfactory, including as regards the financial reference period of 50 to 30 days before election day, and that that there have been no complaints from either side in the context of elections after the amendments of 18 June 2010 to the Election Code (EC) which introduced the above reference period. The authorities also refer to the amendments which have been prepared and the intended transfer / centralisation of the supervisory responsibility for party and election campaign financing to the Central Election Commission (CEC) – see paragraph 18 above and recommendation vii hereinafter. With the intended reform, the CEC would be given the power to request from the political parties any additional information on their financial activity. The authorities take the view that by increasing the monitoring and detecting capabilities as well as the scope of control of the CEC, the reform would reduce the risks of circumvention of the reference period with regard to party candidates.

22. GRECO takes note of the information above. It could indeed well be that the intended consolidation of political financing supervision in the hands of the CEC will contribute to limit certain problems identified in the Evaluation Report with regard to the excessively formalistic approach taken with regard to the financial reference period for election campaigns[8]. But it is doubtful that in the absence of further plans or measures, the reform of the supervision will automatically solve the above problems. The implicit benefits of the intended supervision reform for the present recommendation, especially at the present moment, remain hypothetical and impossible to assess for the purposes of the present recommendation. Moreover, even if the reform were to be carried out as intended, it would not address the issues identified where candidates are not presented and supported by political parties. In conclusion, no tangible action has been taken by the authorities to address the present recommendation, even partly.

23. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

24. *GRECO recommended to clearly define and regulate donations, membership fees and other permitted funding sources in the Law on Political Parties and to align its financing provisions with the transparency standards set by the Electoral Code.*

25. GRECO recalls that the present recommendation was considered partly implemented. The 2012 reform mentioned in paragraph 18 included amendments to sections 17 and 19 LPP relating to the financing of the activities of political parties and to donations, whether financial or in kind (the latter must be accounted for at their market value). But no action was taken on such issues as defining and regulating membership fees and other permitted funding sources – e.g. "proceeds from property", "proceeds from activities, circulation of press outlets and articles and other similar lucrative activity" and "other proceeds" in the meaning of section 18 LPP. Nor had Azerbaijan

[8] As mentioned in paragraph 84 of the Third Round Evaluation Report: " (…) under current rules, the initial financial report is to be submitted together with the required documents for registration with the election commission 50 to 30 days before election day,(…) providing financial information for the two day period prior to the date of the report. In other words, financial activities before this period are not covered by the regulations, as was confirmed during the discussions. Parties and (future) candidates are therefore not required to record income received and expenditure incurred before this period, even if they are *de facto* related to their election campaign. For example, donations received by a party before the financial reference period may be transferred into the election fund (as part of its own funds, within certain limits (…)), without being subject to transparency regulations such as, for example, the prohibition on receiving anonymous donations, donations from the State or from foreign persons. Likewise, such financial transactions are in principle not subject to any supervision by the election commissions, as such supervision is based on the financial reports submitted to them. The GET finds the above-mentioned reporting period extremely short and is concerned about the potential risk of circumvention of the transparency provisions.

reported new measures to align the financing provisions of the LPP with the transparency standards set by the EC (except for requiring monetary donations to political parties to be made through the banking system). In this respect, it is recalled that the Evaluation Report (paragraph 86 referred to the obligatory use of the banking system for contributions to political parties as well as the establishment of donation ceilings and expenditure limits).

26. The authorities of Azerbaijan report that the draft amendments to the LPP (see paragraph 18), compared to the situation resulting from the amendments passed in 2012, foresee to regulate membership fees through the following article:

> *Article 18-1. Membership fees*
>
> *18-1.1. Membership is a regularly paid resource in the form of money paid by party members according to the statute of the party. Payments which exceed the defined membership fee shall be considered as a donation.*

27. According to the authorities, other income sources mentioned in article 18 LPP are regulated in general by other legal acts, including civil and tax legislation.

28. Finally, as regards the recommended harmonisation, the authorities indicate that it is already mandatory in the existing legislation to make donations and State budget transfers via the banking system. Other intended amendments foresee to include an article into the LPP with ceilings on donations: *" 19.7. The amount of donations given by a person to one or several parties in a year shall not exceed ten thousand manats (9 850 Euro)*". These amendments thus aim to align the financing provisions of the LPP on those of the Election Code (EC) in the areas specifically mentioned in the Evaluation Report (introduction of donations to be made via banks and of caps on donations). The authorities confirm that as regards harmonisation of the LPP and EC concerning other items such as expenditure limits, which were also mentioned as a particular example in the Evaluation Report, the current wording of the draft which has been prepared does not address these matters.

29. GRECO takes note of the above information on the intended additional amendments to the party financing provisions of the LPP. As regards the first half of the recommendation, and in addition to the improvements already noted in the First Compliance Report, only membership fees are clearly being addressed. As for the necessary definitions and legal clarification needed on the various sources of income of political parties, GRECO cannot rely on the mere indication that these are already regulated in the legislation other than the LPP (including civil and tax legislation). As for the harmonisation of rules contained in the LPP and the EC, additional efforts are noted as regards ceilings on donations and donations to be made through the banking system. But further inconsistencies pointed out in the Evaluation Report do not appear to have been addressed by the amendments prepared (but not yet in force), in particular regarding expenditure limits. Azerbaijan needs to take more determined action to address the various underlying concerns of the present recommendation.

30. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

31. *GRECO recommended (i) to ensure that political parties keep proper books and accounts, following a uniform format and accompanied by adequate source documents; and (ii) to find appropriate ways to support political parties in complying with these transparency regulations.*

32. GRECO recalls that in the First Compliance Report, this recommendation has been considered as partly implemented. Azerbaijan introduced in 2012 under Section 21 LPP a requirement for political parties to carry out their accounting activity and to draw up financial statements in accordance with the Law On Accounting and its new sections 13.3 and 14.6, i.e. on the basis of simplified accounting guidelines. These guidelines (format of financial statements and procedure for submission) still needed to be defined for the first part of the recommendation to be fully implemented. Regarding the second part of the recommendation, GRECO considered that it had not been addressed and it was seriously concerned about the measures reported – i.e. the fact that the introduction of State funding for political parties benefits the ruling party[9]. It stressed that "the recommendation was obviously aimed at providing adequate resources to the administratively weak, understaffed and underfinanced parties – to assist them to comply with stricter transparency rules". GRECO urged the authorities to take the measures necessary to ensure that the political parties which do not meet the requirements under section 17-1 LPP (e.g. new parties) receive adequate support in complying with the applicable transparency regulations.

33. The authorities of Azerbaijan now report, on the first part of the recommendation, that following a Presidential initiative[10] the Cabinet of Ministers adopted on 16 November 2012 a decision N263 on the "Form, Content and Rules for submission of financial reports by political parties" (a copy of which has been made available to the Rapporteurs and Secretariat). The document was posted on the website of the Ministry of Finance. As for the second part of the recommendation, the authorities provide an update on the amount of public aid from the State budget allocated to the parties in 2013 and 2014 (2.5 million manats or 2.350 000 Euro). The Ministry of Finance has distributed the amount among the beneficiary parties, on a quarterly basis, through transfers to the respective bank accounts. With the purpose of eliminating certain difficulties, the Ministry of Finance held on 13-14 February 2013 special practical training events for representatives of Political Parties (chief accountants and persons involved in financial reporting). Information on, and invitations to these events were communicated via the media and on the internet page of the above Ministry. Besides, the employees of the competent departments regularly answered (by phone or otherwise) requests from party officials concerning financial reporting-related matters. Currently, political parties can submit their financial reports electronically via the above Ministry's website. This Ministry regularly announced and informed the political parties via the media and its official webpage on periods and modalities for submitting financial reports.

34. GRECO notes with satisfaction that the first part of the recommendation has now been fully addressed, with the adoption of a format for the annual reporting of political parties. As regards the second part of the recommendation, GRECO appreciates the efforts made by the Ministry of Finance to provide information and guidance including through training, as well as the possibilities for submitting financial data electronically. It considers that these measures address the underlying concerns of the second part of the recommendation, although material forms of support have not been provided more broadly, as indicated in paragraph 32 above.

[9] GRECO noted that "[it] only benefits parties having gained at least 3 percent of valid votes in the last parliamentary elections or having gained seats in Parliament (section 17-1 LPP)" and that "in the last parliamentary elections of 2010 only one party gained more than 3 percent and the opposition parties only gained altogether five out of 125 seats"

[10] Presidential Decree of 8 May 2012 on the Application of the Law on Amendments to the Law on Political Parties

35. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

36. *GRECO recommended (i) to require that party accounts be disclosed in a way which provides for easy and timely access by the public; and (ii) to find appropriate ways to support political parties in complying with these transparency regulations.*

37. GRECO recalls that this recommendation had been found partly implemented. Following the 2012 reform, political parties are required to publish annual financial statements in the mass media but GRECO had reservations about the absence of "timely" disclosure and "easey access" – it pointed to the merits of simultaneous publication of the various party reports by an independent supervisory body, possibly on the Internet. As for the second element of the recommendation, the authorities had referred to section 17-1 LPP introduced in 2012, on State funding of political parties but GRECO referred to its comments under recommendation iii as concerns the need for adequate support to all parties in complying with the transparency regulations (see paragraphs 33 et seq. above).

38. The authorities of Azerbaijan point out that according to article 21.5 of the LPP and article 14.6 of the "Law on Accounting" political parties are required to publish complete annual financial statements in the mass media along with an auditor's opinion by the first of 1 April for the past year of exercise. The concept of media is understood broadly and it includes periodic print publications, TV-Radio programs, and programs of a newsreel, information agencies and the internet. Article 247-1 of the Code of Administrative Violations provides for liability for breaching the requirements of accounting law including not publication of financial reports. In addition, the current wording of the planned amendments to the Law on Political Parties (see paragraph 18) provide that the "Annual financial statements of political parties are published on the webpage of the Central Election Commission (CEC)".

39. GRECO takes note with interest of the proposal to publish in future all the reports on the website of the Central Electoral Commission (CEC). An earlier version of the amendments mentioned to the rapporteurs and Secretariat required that the on-line publication takes place within one month following their submission. The revised wording mentioned above contains no such reference anymore to a time limit and it remains unclear whether other equivalent arrangements are foreseen to ensure that public access is timely. Azerbaijan needs to pursue its efforts to complete the implementation of the first part of the recommendation ("easy and timely access by the public"). The implementation of the second part of the recommendation would thus need to be re-examined in that context.

40. GRECO concludes that for the time being, recommendation iv remains partly implemented.

Recommendation v.

41. *GRECO recommended (i) to ensure, as appropriate, independent auditing of the books and accounts of political parties; and (ii) to find appropriate ways to support political parties in complying with such a requirement.*

42. GRECO recalls that this recommendations was categorised as partly implemented since the 2012 legal reform had introduced the mandatory auditing of party accounts by independent external professionals, but the absence of adequate support to all parties (as already mentioned with

reference to recommendation iii.) to help cover the additional costs of such audits did not allow to consider the second part of the recommendation as implemented.

43. The authorities of Azerbaijan referred in their first submission to the fact that the proposed amendments to the LPP (see paragraph 18) provided in their first version for the possibility to receive specific support to cover expenses incurred by the political parties when having their financial reports audited. In their latest submission, the authorities indicate that this proposal was not retained by the current wording of the text.

44. GRECO takes note of the above and it regrets that the initial draft proposals aimed at introducing public support specifically to cover audit costs have not been retained and no further measures are reported or announced concerning the second part of the recommendation. GRECO urges Azerbaijan to ensure the full implementation of the present recommendation.

45. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

46. *GRECO recommended (i) to ensure more substantial and pro-active monitoring of the financial reports on election funds of political parties and election candidates, including a material verification of the information submitted as well as investigation of financing irregularities; and (ii) to strengthen the independence of the election commissions in relation to the supervision of election campaign financing.*

47. GRECO recalls that this recommendation was considered as not implemented in the First Compliance Report. No concrete measures had been undertaken in order to address the concerns underlying the first part of the recommendation, apart from regular training for supervisory and audit services which had already started before the adoption of the Evaluation Report and was, so far, not specifically focussed on the monitoring of the financial reports on election funds of political parties and election candidates. No measures had been taken either to address the second part of the recommendation relating to the independence of the election commissions.

48. The authorities now indicate that the Central Election Commission (CEC) organised two specialised training courses on electoral laws for members of constituency and precinct election commissions (29 July – 4 August in Baku for chairmen of constituency election commissions and 5-7 August in the regions for the members of constituency and precinct election commission). More than 6000 election officials were involved. The topics of "Financing of political parties", "Control, registration and monitoring of financial resources of the election funds" were included into the program of the trainings. The concerns raised in the Evaluation Report on the need for pro-active and in depth monitoring of campaign funding, monitoring of election funding and increasing transparency in the process were specifically discussed and covered.

49. For the 2013 Presidential elections, the CEC established in accordance with the law a working group to review the financial documentation – amount and source of the candidates' income, property and assets. The composition of the working group included specialists with special expertise and knowledge also from Ministries of Finance and Taxes, Chamber of Audit, State Committee on Property Issues. The process of controlling of submitted information was open and took place with participation of civil society and international observers (the working group answered questions and addressed concerns of civil society on this occasion).

50. In addition, the intended amendments to the LPP (see paragraph 18 and recommendation vii below) attribute the party financing supervision to the CEC, which will thus be receiving the financial reports from the political parties. As indicated under recommendation vii, the supervision of party financing and election campaign financing would thus be consolidated in the hands of the CEC. If the proposed reform becomes effective, the CEC will have to create a new structural division and to staff it with financial specialists. These future arrangements and such a permanent staff will in principle increase the capabilities of CEC also to detect any irregularities in election funding process and enable CEC involve its own experts into Working Groups for monitoring of election funding in future.

51. GRECO welcomes the efforts made in Azerbaijan to progressively improve the public supervision of the financing of election campaigns, with the use of working groups and the involvement of specialists and civil society in this work (this was the case at least for the presidential election in 2013). It would appear that for the time being, one can still not speak of a fully-fledged monitoring as intended by the recommendation. In GRECO's view, the proposals to consolidate the supervision of political financing as a whole under the responsibility of the CEC, with appropriate staff and expertise, are of even greater importance. This constitutes a step in the right direction, provided the CEC is given the appropriate powers and means to supervise effectively both party and election campaign financing, as well as guarantees of operational independence. It is essential also that particular issues connected with the various election commissions are equally addressed and/or their role clarified, and that both areas of supervision are construed in a consistent manner. GRECO will thus need to perform a more detailed analysis of the role and means of the CEC once the process is more advanced.

52. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

53. *GRECO recommended to establish independent and substantial monitoring of the general financing of political parties, well-coordinated with the monitoring of election campaign funding.*

54. GRECO recalls that this recommendation was categorised as not implemented. The Law on Amendments to the Law on Political Parties (LPP) introduced on 20 April 2012 a new section 21.2 which – in combination with a Presidential Decree of 8 May 2012 on the Implementation of the Law on Amendments to the Law on Political Parties designated the Ministry of Finance as the "relevant body of executive power" to receive the financial statements of political parties. GRECO pointed to the absence of a clear mandate to perform substantial monitoring of the general financing of political parties in the LPP, to the need to ensure sufficient financial resources and specialised staff entrusted with pro-active and substantial monitoring – well co-ordinated with the monitoring of election campaign funding, to the need for adequate control powers including the mandate to impose sanctions. Above all, GRECO considered that the Ministry of Finance, as part of the Government, does not enjoy the appropriate level of independence.

55. The authorities provide a description of the arrangements currently in place in which the use of the allocated state financial resources is supervised by three different bodies. The first one is the Ministry of Finance, which reportedly has the capacity and all necessary resources to carry out substantial monitoring of political parties. The Ministry is the body which currently receives the financial statements from the political parties. The second body involved in supervision is the Chamber of Accounts: it retains responsibility in this area given its general mandate to inspect

and control the use of public resources allocated from the State Budget. The Chamber is an independent institution which reports to the Parliament. Its monitoring does not cover all political parties, though. The third body is the Central Election Commission (CEC): in accordance with the Election Code, it allocates the funds for the preparation and organisation of elections and it controls their spending through its supervisory and audit services. Its responsibility is limited to the election campaign funding.

56. The intended amendments to the Law on Political Parties mentioned earlier (see paragraph 18 and recommendation vi above) foresee to reassign the supervision over the financing of political parties and of election campaigns exclusively to the CEC. If the amendments become effective, it is thus the CEC which will be receiving in future the financial statements. The authorities anticipate that the new centralised competence of the CEC will facilitate overall coordination and will also make the monitoring of campaign financing (including all income and expenditure) more effective since the CEC will have information on the general state of the parties' financial activities. In addition, the CEC will have the power to request from political parties any additional information and documentation on their financial activities. The planned amendment concerned reads as follow: "*21.5 Based on a request from the Central Election Commission of the Azerbaijan Republic, political parties shall submit additional information and documents concerning their financial activities*."

57. GRECO takes note of the intended changes which appear to be a step in the right direction, provided the various underlying considerations which had led to this recommendation and the subsequent comments from the First Compliance Report are reflected in the present amendments. Due to the current stage of the reform together with the unavailability of further details on the intended future supervision by the Central Election Commission (CEC), GRECO can only conclude at this stage that the present recommendation has been addressed to some extent.

58. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

59. *GRECO recommended to clearly define infringements of existing and yet-to-be-established regulations on transparency of election campaign funding as well as general party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available.*

60. GRECO recalls that this recommendation was considered as not implemented. The system of sanctions in place at the time of the on-site visit was rudimentary[11]. The penalties available were left at the discretion of the Ministry of Justice and none had reportedly ever been applied. In the First Compliance Report, the authorities reported that amendments passed in the beginning of 2012 introduced a general reference in Section 22 LPP to the applicability of sanctions under the relevant law in case of breaches (without further precision). It was also planned to incorporate the

[11] Both the EC (for election campaign financing) and the LPP (for party financing) referred to the applicability of administrative, civil, financial or criminal sanctions as provided for in legislation, in case of violations, but these had never been spelled out clearly. The Code of Administrative Violations contained a catch-all offence for violations in the area of party and campaign financing, which attracts fines of approximately 9 to 18 EUR for natural persons (18 to 27 EUR in specified cases), approximately 36 to 54 EUR for officials and approximately 135 to 225 EUR for legal persons. The LPP foresees also the possibility of warnings by the Ministry of Justice (for violations of the LPP including party funding and transparency regulations) as well as the liquidation of a party by a court decision upon the initiative of the Ministry of Justice in case of repeated violations.

obligation of political parties to prepare financial statements in the Law on Accounting (sections 13.3 and 14.4-1), the infringement of which would then be punishable by a fine under the Code of Administrative Violations - CAV (article 247-1). These early proposals failed to address several parts of the recommendation, which called for clear definitions of infringements of the different transparency (not only accounting) regulations, both in the area of election campaign funding and general party funding, and for the introduction of a broader range of effective, proportionate and dissuasive sanctions.

61. The authorities of Azerbaijan now report that the new article 247-1 CAV on violations of accounting rules, which was in the drafting stage at the time of the First Compliance Report, was finally adopted in 2012. The President has instructed the Cabinet of Ministers to further regulate the liability for violations of the LPP. As a result a Law of 11 December 2012 (N494-IVQD) included a new section 49-4 in the Code of Administrative Violations – CAV defined the liability for breaching the provisions of the LPP and receiving funds prohibited by the LPP. Another law of 15 February 2013 (N563-IVQD) added sections 247-4 and 247-5 dealing with the omission of including information on donations (amount, identity) in the reports submitted to the competent authority (Ministry of Finance), as well as making and receiving donations in cash insofar as political parties are concerned.

Code of Administrative Violations – CAV

Sections 49-4. Violation of legislation on political parties

49-4.1. Violation of legislation on political parties, i.e.:
49-4.1.1. interference of political party with the activity of a state body or official;
49-4.1.2. acceptance of funds proscribed by the Political Parties Act, including donations;
49-4.1.3. establishment and operation of foreign political parties, as well as their affiliations and organisations in the territory of the Republic of Azerbaijan;
49-4.1.4. proclamation, on behalf of, or operation, as well as illegal arrangement of or participation in operation of a banned political party

Shall be subject to a fine in the amount of 750 manats (690 Euro) for natural persons, 1,500 (1400 Euro) to 3,000 manats (2780 Euro) for officials and 8,000 (7500 Euro) to 15,000 manats (14000 Euro) for legal persons.

49-4.2. Repeated commission of the infringements provided by Section 49-4.1, resulting in administrative liability, shall be subject to fine in the amount of 1,500 (1400 Euro) to 3,000 (2780 Euro) manats for physical persons, 3,000 (2780 Euro) to 6,000 (5550 Euro) manats for officials and 15,000 (14000 Euro) to 30,000 (28000 Euro) manats for legal persons.

Article 247-1. Violation of accounting rules

Violation of rules, established by the legislation, on preparation, submission and publication of financial reports and consolidated financial reports or reports or information due to insurance supervisory bodies; and on storage of the accounting deeds, as well as failure to reflect data and indicators in reports and other forms prescribed by the legislation completely and correctly shall be subject to a fine up to 400 (360 Euro) manats for officials and 500 (450 Euro) to 2,000 (1800 Euro) manats for legal persons.

Article 247-4. Failure to include information on donations in the financial reports

Failure to include information on the amount and persons providing donations into the financial reports due to the competent executive authority by a political party, a non-governmental organisation, including an affiliate of a foreign non-governmental organisation shall be subject to a fine in the amount of 1,500 (1400 Euro) to 3,000 (2800 Euro) manats for officials and 5,000 (4600 Euro) to 8,000 (7500 Euro) manats for legal persons.

Article 247-5. making or accepting donations in cash

247-5.1. Submission of donations in cash to political party, non-governmental organization, including affiliation of the foreign non-governmental organization shall be subject to fine in the amount of 250 (230 Euro) to 500 (460 Euro) manats for physical persons, 750 (700 Euro) to 1,500 (1400 Euro) manats for officials and 3,500 (3250 Euro) to 7,000 (6400 Euro) manats for legal persons.

247-5.2. Acceptance of donations in cash by political party, non-governmental organization, including affiliation of the foreign non-governmental organization shall be subject to fine in the amount up to 2,000 (1855 Euro) manats for officials and 7,000 (6500 Euro) to 10,000 (9300 Euro) manats for legal persons.

Note: The provisions of this Section shall not apply to donations in cash in the amount up to 200 (185 Euro) manats made to non-governmental organizations, operating in the territory of the Republic of Azerbaijan, that operate primarily for humanitarian purposes according to their charters."

62. GRECO takes note of the above changes made in 2012 and 2013, which show clearly that some improvements have taken place in respect of sanctions for violations of the rules concerning party financing under the LPP. However, nothing has been done to improve the regime of sanctions applicable in case of violations of the requirements concerning election campaign financing and GRECO can only encourage Azerbaijan to pursue its efforts to fully implement the present recommendation. In that context, some of the recently introduced new sanctions could be reviewed again (for instance account offences attract very low sanctions whereas in many countries this constitutes a criminal offence).

63. GRECO concludes that recommendation viii has been partly implemented.

III. CONCLUSIONS

64. **In view of the conclusions contained in the Third Round Compliance Report on Azerbaijan and in light of the above, GRECO concludes that to date, Azerbaijan has implemented satisfactorily or dealt with in a satisfactory manner eight of the seventeen recommendations contained in the Third Round Evaluation Report.** Eight further recommendations remain partly implemented and two recommendations remain not implemented.

65. More specifically, with respect to Theme I – Incriminations, recommendations i, ii, iv, v, vi, vii and ix have been implemented satisfactorily, and recommendations ii and vii remain partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation iii has now been implemented satisfactorily. Recommendations ii, iv, v, vi, vii and viii have been partly implemented, and recommendation i has not been implemented. Overall, the progress made since the adoption of the First Compliance Report of October 2012 has been very limited, with only one additional recommendation which is now categorised as implemented satisfactorily and three additional recommendations which are now categorised as partly implemented.

66. In so far as Theme I (Incriminations) is concerned, Azerbaijan has ratified in February 2013 the Protocol to the Criminal Law Convention on Corruption (ETS 191). Yet GRECO considers that bribery involving an arbitrator performing his/her functions under the law on arbitration of another country needs to be criminalised unequivocally in all the relevant circumstances, even in non-commercial matters and where the dispute is not handled by an arbitration court. GRECO also regrets that no further consideration was given to review the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery who report the matter before

the act has come to the attention of the authorities. GRECO invites again the authorities to step up their efforts in this respect and it notes with interest that proposals have been made to abolishing the mechanism of effective regret as a whole.

67. Also in relation to Theme II (transparency of party funding), Azerbaijan has achieved only little tangible progress. There are improvements as regards the system of sanctions in case of violations of party financing rules since a more detailed set of rules was introduced at the end of 2012 and in 2013. No similar improvements have occurred in connection with the financing of election campaigns. GRECO notes with interest that Azerbaijan is preparing an important reform of supervision in the area of political financing. The purpose is to consolidate the functions under the lead responsibility of the central Election Commission. Draft legislation was recently adopted by Parliament and requires subsequent promulgation by the President. GRECO encourages the country to ensure the reform will guarantee an appropriate level of independence as required by Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. Moreover, GRECO remains concerned that State funding for political parties still does not benefit a greater number of political parties. GRECO wishes to stress once again that several recommendations calling for stricter transparency rules were issued under the condition that smaller parties – which appear to be administratively weak, understaffed and underfinanced – are provided with adequate resources necessary to comply with such rules. This concern needs to be addressed as a matter of absolute priority.

68. Finally, GRECO wishes once again to recall the concerns expressed in the Evaluation Report with regard to the overall political situation marked by the lack of a truly pluralistic landscape and of competitive election campaigning. Against this background and as pointed out in the Evaluation Report (paragraph 82), GRECO had confined itself to issuing some basic recommendations which appeared essential and necessary for the establishment of a coherent system of transparency and which might pave the way for further necessary adjustments and improvements at a later stage. In conclusion, Azerbaijan needs to vigorously continue the current reform process in order to further strengthen transparency of political financing and to foster the role of political parties as a fundamental element of the democratic system and as an essential tool of expression of the political will of citizens.

69. In view of the fact that only one of the eight recommendations concerning party financing has so far been fully implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Azerbaijan to submit additional information, namely regarding the implementation of recommendations ii and vii (Theme I – Incriminations) and of recommendations i, ii and iv to viii (Theme II – Transparency of Party Funding), by 31 July 2015 at the latest.

70. Finally, GRECO invites the authorities of Azerbaijan to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.