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Third Evaluation Round

Compliance Report on the Slovak Republic

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

"Transparency of Party Funding"

Adopted by GRECO
at its 46th Plenary Meeting
(Strasbourg, 22-26 March 2010)

I. INTRODUCTION

1. The present Compliance Report assesses the measures taken by the authorities of the Slovak Republic to implement the 16 recommendations issued in the Third Round Evaluation Report on the Slovak Republic (see paragraph 2), covering 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 36th Plenary Meeting (15 February 2008) and made public on 14 March 2008, following authorisation by the Slovak Republic (Greco Eval III Rep (2007) 4E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Slovak Republic authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 31 August 2009. Additional information was submitted on 21 January and 16 February 2010. They served as a basis for the present Compliance Report.
4. GRECO selected Austria and Latvia to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were M. Christian Manquet, on behalf of Austria, and M. Alvis Vilks on behalf of Latvia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The compliance report assesses the implementation of each individual recommendation contained in the evaluation report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further situation report to be submitted by the authorities within a given deadline after the adoption of the present compliance report (see paragraph 72).

II. ANALYSIS

Theme I: Incriminations

6. It was recalled that GRECO in its evaluation report addressed 6 recommendations to the Slovak Republic in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to introduce the concept of "offering" (of an undue advantage) in Section 332 of the Criminal Code.*
8. The Slovak authorities report that draft legislation was submitted to the Government by the end of March 2008. After an interruption of the discussions until the outcome of proceedings pending

before the Constitutional Court (hereinafter “the Court”)¹, the draft was examined again and finally adopted by Parliament as Law no. 576/2009 Coll., which entered into force on 1 January 2010. The new wording of Section 332 paragraph 1 (which incriminates active bribery in breach of duties) as well of Section 336 paragraph 2 (which criminalises active trading in influence) of the Criminal Code now contain the elements “promising”, “offering” and “giving”².

9. GRECO notes with satisfaction that Slovakia’s incrimination of active bribery as well as of active trading in influence now explicitly includes the element of offering (of an undue advantage or bribe).
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended (i) to review sections 328 and 332, as well as 329 and 333 of the Criminal Code in order to ensure that bribery in the public sector is criminalised also in situations which do not involve a breach of duty or the “procurement of a thing of general interest”, in line with the Criminal Law Convention on Corruption (ETS 173) and (ii) to consider, for the sake of clarity, criminalising bribery in the public and in the private sector in separate provisions, in conformity with the Convention.*
12. The Slovak authorities report that an expert analysis is currently under way in respect of the concepts of “breach of duty” and “procurement of a thing of general interest” contained in the relevant sections of the Criminal Code (CC). The results will be reflected in the updated National Programme on the Fight Against Corruption, which is under preparation. The draft Programme also deals with the second part of recommendation ii³. For the time being, the authorities recall the definition of the concept of “procurement of a thing of general interest” contained in Section 131 paragraph 1 CC, already provided in the Evaluation Report (“a thing of general interest shall

¹ These proceedings concerned the constitutionality of the Act on Establishment of the Special Court and the Special Prosecutor’s Office (Law No. 458/2003 Coll. as amended). On 20 May 2009, the Constitutional Court decided that article 1(1)1 of the above-mentioned law, as well as the pertinent provisions of the Code of Criminal Procedure and the Act on Judges and Lay Judges, were in violation of Articles 1(1), 141(1), 141a(4)(b), 144(1) in conjunction with Articles 12(1) and 148(1)(2) of the Constitution and with Article 11(1) of the UN Convention against Corruption. On 16 July 2009, the Special Court was abolished and replaced on 17 July 2009, by the (new) Specialised Criminal Court, according to Law no. 291/2009 Coll. on the Specialised Criminal Court. The new Specialised Criminal Court will be competent to deal, *inter alia*, with corruption and money laundering cases.

² **Section 332** (Active bribery in breach of duties)

“(1) Any person, who either directly or through an intermediary, gives or promises a bribe to another person to make that person act or refrain from acting and thus breach his/her duties resulting from his/her employment, profession, position or function, or gives or promises a bribe for the same reason to a third party either directly or through an intermediary, shall be punished by imprisonment for a term of up to three years.

(...)

Section 336 CC

(...)

(2) Any person, who either directly or through an intermediary, gives or promises a bribe to another person in order to make that person use his/her influence on the exercise of duties by persons referred to in Sections 332 and 333 or for having used that influence, or gives, offers or promises a bribe to a third party for the same reason, shall be punished by imprisonment for a term of up to two years.

³ The relevant element of the draft Programme is based on the wording of recommendation ii. : “to review the provisions of sections 328, 332, 329 and 333 of the Criminal Code in order to ensure that corruption in the public sector is also criminalised in cases that do not involve a breach of duties and do not relate to “procurement of a thing of general interest” in order to comply with the Criminal Law Convention on Corruption (ETS 173) and to consider, for the sake of clarity, criminalising corruption in the public and private sector in separate provisions in conformity with the Criminal Law Convention on Corruption“.

mean an interest that transcends the framework of individual rights and interests of individuals, and is important for society”). According to the Supreme Court commentaries to section 131 CC the concept is defined as a) an interest that transcends the framework of individual rights; b) at the same time, such interest is important from the view of interests of the society. It does not concern only a thing that belongs to the domain of public authority. Such interest may relate to different interests of social life, for example economy, educational system, culture, health service, housing, providing of services, etc. A general interest is a proper function of society in these domains in compliance with legal regulations.” Besides, the commentary relating to Section 329 CC provides that the “Object of this crime is [the protection of] an interest to proper, impartial and legal procurement of things of general interest. (...) The procurement of a thing of general interest is an activity that relates to the performance of duties concerning things of general interest, which means not only the decision making process of public authority bodies but also other activities addressing the interests of citizens and legal persons in the area of material, social, cultural and other needs. This includes all duties related to the proper and impartial performance of which society as a whole or a certain social group has an interest. It is not just an activity of citizens which would only be a demonstration of their personal rights.”

13. The Slovak authorities provided in their additional comments an overview of case law showing that the expression “procurement of a thing of general interest” includes for instance the preparation of basic documents for a decision or contract in the public or private sector (decision R 1/1978), decisions concerning a medical treatment (R 13/1990), bank employee decisions concerning the swifter approval of loans (case no. 2T/123/2001), a decision relating to the adoption of children (case no. 5T 94/2002), decisions of a football referee (various cases including case no. BB – 4T 34/2009), acts of tax inspectors and experts including the leaking out of documents (case no. 1T 45/02), acts of inspectors of the labour security office or housing office who make false or incomplete statements (case no. 1T 121/2003), the performance (or non-performance) of his/her duties by a police officer (case no. 29T205/2005). As a consequence, the Slovak authorities take the view that the concept in question is interpreted very broadly and covers all possible acts.
14. GRECO takes note of the information provided above, which indicates that consideration is being given to the implementation of this recommendation. It recalls that the Slovak criminal law provisions incriminate separately: a) active and passive bribery – involving any category of persons – in case of breach of duties under Sections 332 and 328 CC; b) active and passive bribery – involving any category of persons but with aggravating circumstances where the bribe-taker is an official – in connection with the procurement of a thing of general interest under Sections 333 and 329. In the Evaluation Report, it was unclear whether this approach was consistent enough to avoid that certain bribery offences would not be captured by either of the incriminations. In this context, GRECO welcomes the above overview of court practice, which was not available at the time of the on-site visit. It would appear that the concept of “procurement of a thing of general interest” under Sections 329 and 333 CC is very broad indeed and that these two sections, as a consequence, have the potential to cover all bribery offences whether or not the bribe-taker is a public official, and whether or not the act involves a breach of duty as, for instance, cases no. 1T 121/2003 and no. 29T205/2005 suggest. Therefore, it would appear that GRECO’s initial concerns related to possible loopholes have found an answer.
15. However, if one accepts the above explanations and the universal application of Sections 329 and 333 CC, the issue of consistency of the provisions remains and GRECO would welcome additional clarification as to the legal criteria used to determine which provisions are applicable in a given case; moreover, bribery involving a breach of duties under Sections 328 and 332 CC

carry different penalties, including specific ones where bribery involves a public official. GRECO thus believes that there is a clear need to await the final results of the analysis announced by the Slovak authorities, and to see the implications for the updated National Programme on the Fight Against Corruption.

16. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

17. *GRECO recommended to ensure that i) trading in influence is criminalised in respect of all categories of domestic and foreign public officials upon whom influence is exerted, irrespective of the context of the offence, and ii) cases of alleged influence and non-exerted influence are covered by domestic law.*
18. The authorities of Slovakia do not provide information as regards the implementation of part i) of the recommendation. As for part ii), they refer in their additional comments to three court cases/decisions and provide a summary of the courts' reasoning: a) in decision R 16/1981, the Supreme Court considered that a criminal offence is completed already if the perpetrator asks or accepts a bribe in return for the fact that by his/her influence, s/he will impact on the exercise of public official powers. It is not required that s/he has effectively interceded with the public official. The fact that the public official (whose authority is the target of the bribery offence) is not informed of the bribe is irrelevant for the offender's guilt. If the perpetrator really influences the exercising of public authority, this constitutes an aggravated circumstance under the general provisions of the Criminal Code (section 37 paragraph e) because of the increased danger for society; b) in decision R 32/1987 (in combination with decision R 16/1981 above), the court stressed that if the offender who asks or accepts a bribe, only pretends to influence the exercise of public authority and has in reality no intent to do so, s/he does not commit a trading in influence offence under section 162 par. 1 CC [currently section 336 par. 1 CC], but the offence of fraud under section 250 CC [currently section 221 CC], respectively an attempt of fraud; c) more recently, in case no. 2To/39/2007, the Regional court in Nitra decided that a lawyer committed a trading in influence offence as a result of requesting repeatedly a bribe from his detained client and eventually accepting such a bribe from the latter's father in exchange for the settlement, with unidentified judges, of a release of the client.
19. In the light of the above case-law, the Slovak authorities take the view that cases of alleged influence and non-exerted influence are covered by domestic law, as required by the recommendation.
20. GRECO takes note of the information provided and welcomes the information on court practice not available at the time of the evaluation. According to court decisions of 1981 and 2007, it would appear that trading in influence does constitute an offence even where the influence is not exerted (leaving aside acts which qualify for the offence of fraud when the offender had no real intent or capacity to exert any influence). Besides, , where the influence was exerted and it had an effective impact on the decision-making of the official who is the target of the influence, this would constitute an aggravated circumstance and a clear indication, *a contrario*, that the offence covers also those situations where the influence is exerted but does not lead to the intended result. In the light of the above clarification and case law provided, it would appear that part ii) of the present recommendation has lost its pertinence. That said, no action has been taken to respond to part i) of this recommendation.

21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended to take measures to ensure that the criminal offence of bribery of foreign public officials under Slovak law is fully in line with the requirements of Art. 5 of the Criminal Law Convention on Corruption (ETS 173).*
23. It would appear that no action has been taken to respond to this recommendation.
24. GRECO can only conclude that recommendation iv has not been implemented.

Recommendation v.

25. *GRECO recommended i) to criminalise bribery of domestic arbitrators and jurors, ensuring that the nature of their functions is fully captured, in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); ii) to extend the provisions on bribery of foreign arbitrators and jurors beyond situations involving international business transactions or employment by an international judicial institution.*
26. No specific action has been taken to respond to this recommendation but as regards the first part of it, the Slovak authorities stress that, as indicated in the developments and new information pertaining to the implementation of recommendation ii (paragraphs 12 and following), the provisions on active and passive bribery of Sections 328, 329, 332 and 333 of the Criminal Code (CC) cover bribery acts in relation to any category of persons including, but not limited to, public officials or private sector employees. They stress that a) the expression “breach of duties” used in Sections 328 and 332 of the Criminal Code - CC) is not limited to employment relationships but covers also contractual and any form of general duties laid upon a person accomplishing a public, civil, commercial or other function, and b) the words “in connection with the procurement of a thing of general interest” used in sections 329 and 333 CC are to be interpreted broadly. For instance, in a case no. 4T 34/2007, the District Court of Zvolen convicted for active bribery a person who tried to bribe the witness of a car accident in exchange for a testimony in his favour. Although to date there have been no cases of bribery involving arbitrators or jurors (Slovakia has no jury system), the Slovak authorities take the view that the above provisions are broad enough to capture the nature of the functions of domestic arbitrators and jurors.
27. GRECO accepts the explanations provided by the Slovak authorities, which are to some extent confirmed in court practice. As for the criminalisation of bribery of foreign arbitrators and jurors (second part of the recommendation), the issue remains to be addressed by the country.
28. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

29. *GRECO recommended to examine the need to provide more explicitly for a broader concept of members of foreign assemblies in line with Article 6 of the Criminal Law Convention on Corruption (ETS 173), or at least to provide guidance on this matter in an appropriate manner.*
30. It would appear that no action has been taken to respond to this recommendation.

31. GRECO can only conclude that recommendation vi has not been implemented.

Theme II: Transparency of Party Funding

32. It was recalled that GRECO in its evaluation report addressed 10 recommendations to the Slovak Republic in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendations i and ix.

33. *GRECO recommended to require candidates for elections to the National Council to disclose all donations they have received in relation to their political activities - including their source (at least above a certain threshold), nature and value – and details of the expenditure incurred. (recommendation i)*
34. *GRECO recommended to establish liability of election candidates for infringements of political funding rules, in line with the rules applying to political parties. (recommendation ix)*
35. The Slovak authorities report that, as candidates cannot stand for election to the National Council of the Slovak Republic individually, they have to be nominated by, and be included on party lists. Thus, the interim and the final party campaign report have to indicate the expenditure incurred by any possible candidates. The Slovak authorities further state that under section 21 of the Political Parties and Political Movements Act (Act 85/2005), a political party is required to submit an interim report on campaign expenditures covering the period running from the day of announcement of elections until 30 days before the elections are held. Such reports must be submitted to the Ministry of Finance 21 days – at the latest – before the election day. The final report (covering the whole period until the elections) has to be submitted within 30 days after the elections. The Ministry of Finance publishes both reports on its website: the interim report is to be published on the website within 7 days of the day of its receipt, until the final report is published. The latter has to remain on the website for a period of 6 months.
36. GRECO takes note of the information provided by the Slovak authorities, which was already contained in the Evaluation Report. GRECO recalls the concerns expressed in the Report and the situation in practice of candidates for elections to the National Council⁴; it regrets that nothing has apparently been done to require those candidates to disclose all donations they have received in relation to their political activities, and to establish liability of election candidates for infringements of political funding rules.
37. GRECO concludes that recommendations i and ix have not been implemented.

⁴ As indicated in paragraph 86 (in connection with recommendation i.): “First of all, neither Act No. 85/2005 nor any other regulation deals with the financing of individual candidates for elections. Although all candidates for a seat in the National Council have to be placed on a party list, they can conduct a campaign for a parliamentary seat separate from the party on whose list they appear. The fact that donations can be given directly to an individual candidate or a member of parliament without being reported, is a significant lacuna in the present system. From the interviews the GET conducted, it became clear that political parties consider donations to candidates and candidates’ expenses not to be related to the finances of the party and therefore not falling under the provisions of Act No. 85/2005 on transparency of party funding. The GET was informed that after the 2006 National Council elections two parties reported not to have had any campaign expenditure, arguing that candidates had spent their own money.”

Paragraph 98 added that “under the current system, candidates other than presidential candidates cannot be held liable for infringements of political funding rules”.

Recommendation ii.

38. *GRECO recommended to take measures to enhance the transparency of income and expenditure of parties and candidates at local and regional level (in particular in connection with mayoral elections).*
39. The Slovak authorities reiterate that, under section 6, paragraph 5, g) of Act No. 85/2005, local and regional branches are not legal entities. Thus, their income and expenditure have to be reflected in the central party's accounts and have to be included in the annual party reports. They further indicate that the current definition of the status of the party's branches has been incorporated in the act in order to limit their independent financial conduct and to promote transparency of party funding. Finally, the Slovak authorities stress that, in a case where a political party supports candidates at local and regional level (the election of a mayor is direct), such support is regarded as a form of political advertisement-related expenditure, which should be declared in a party's accounts and included in the annual party reports.
40. GRECO takes note of the information provided. GRECO already noted in the Third Evaluation Round Report (paragraph 87) that in practice, local and regional branches of the party would use and administer their own funds independently, that not all information on income and expenditure in the context of – in particular – local elections would be disclosed by the parties and that there had been various irregularities in funding practices at regional and local level, including as regards elections for mayor. GRECO wishes to stress that, to date, no concrete measures to increase further the transparency in practice (e.g. additional guidance to parties, clarifying the level of detail in which local and regional funding is to be disclosed) have been taken.
41. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

42. *GRECO recommended to introduce proportionate disclosure rules for expenditure incurred by entities outside the party structure, related directly or indirectly to the party, in connection with election campaigns.*
43. The Slovak authorities state that the Slovak legislation contains strict rules for the disclosure of expenditures related to the political parties' activities. The respective Acts (Act No 213/1997 Coll. on non governmental organisations – organisations providing general interest services; Act No 34/2002 Coll. on foundations, and Act No 147/1997 Coll. on non investment found) explicitly stipulate that these organisations are prohibited from funding political parties, political movements and individual candidates. Besides, pursuant to section 24 of Act 85/2005, political parties are prohibited from receiving any financial or in-kind donations from associations of citizens, foundations, non profit organisations (NGOs) providing public service, investment funds, associations of legal persons, associations of municipalities and organisations with an international element.
44. GRECO takes note of the information provided. It recalls that according to the Evaluation Report (paragraph 88) political parties are not required to provide (financial) information as regards entities related directly or indirectly to them or which are otherwise under their control, if they have a separate legal personality from the party (business companies constitute an exception). The involvement of NGOs and political youth organisations in presidential election campaigns

were cited as examples of problematic areas in practice. However, it appears that the Slovak authorities have not adopted any measure that would implement this recommendation.

45. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

46. *GRECO recommended (i) to ensure that the annual reports of political parties are easily accessible to the public and (ii) to establish a standardised format (accompanied by appropriate instructions, if necessary) for the campaign and annual reports to be submitted by political parties.*
47. The Slovak authorities recall that the reports concerning election campaigns are published on the Ministry of Finance website under the section “Volby 2006 správy politických strán” (last election). The processing of the annual reports is regulated by Act No. 85/2005 Coll., as amended, and by Act No. 431/2002 Coll. on accounting, as amended. On 3 December 2008, Act No.85/2005 Coll. was amended by Act No.568/2008 Coll., which introduced significant restrictions in respect of political parties and donors (political party can receive a donation (gift) not exceeding 5000 EUR only from one donor and once a year). The list of donors is to be published on the party’s website quarterly.
48. GRECO takes note of the information provided. As regards the first part of the recommendation, it was noted in the Evaluation Report that annual reports and reports on election campaign finances published on the website of the National Council are very hard to find since they are categorised by a number and not by a title/name. Besides, the Slovak authorities confirm themselves that campaign financing reports are not available on-line anymore after six months (see paragraph 35 above). No initiatives are reported which would improve the situation, at least as regards annual reports of the parties, which are the subject of this recommendation. As regards the second part of the recommendation, it would appear that a standardised format for the campaign and annual reports of political parties has not been adopted either.
49. GRECO concludes that recommendation iv has not been implemented.

Recommendation v.

50. *GRECO recommended to provide a single body with a mandate and adequate resources to supervise and investigate party funding (both from private and public sources) and election campaign finances, including those of election candidates, and to ensure that this body is in a position to exercise its functions in an independent and impartial manner.*
51. The Slovak authorities stress that the financial control of the political parties, including the expenditures for the election campaigns, is carried out by the Ministry of Finance. If necessary (in case of suspicion) it is possible to contact the competent control authorities, ensuring impartial and independent control.
52. GRECO notes the information supplied and recalls that the Evaluation Report (paragraph 92) provided a different picture of the supervisory arrangements, which involved multiple institutions, none of which had a clear supervisory function in practice. In fact, the Committee on Finance, Budget and Currency of the National Council appeared to be the main entity entrusted with such supervisory tasks. However, by its own admission, the supervision this Committee exercises is

rather formalistic: it relies on the statements of the auditors (but does not have access to the initial full audit report) and only checks whether none of the donations reported by parties in their annual reports stem from apparent prohibited sources (e.g. state bodies or foreign entities). Furthermore, the Ministry of Finance is entrusted with supervising parties' compliance with the obligation to provide an interim and final report of their election campaign finances. This supervision is also of a formalistic nature: the Ministry of Finance only verifies whether all the information parties are legally required to submit is included. No initiatives are reported by the Slovak authorities that would remedy this situation and contribute to implement recommendation v.

53. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

54. *GRECO recommended to review the sanctions available for violations of the rules on political funding, to ensure that these are proportionate and dissuasive.*
55. The Slovak authorities recall that in accordance with Act No. 85/2005 Coll., the Ministry of Finance can already impose sanctions on political parties (fines of up to 3 319 € or double the value of a gift or service provided free of charge to a party). Nevertheless, in order to comply with this recommendation, amendments to Act No. 85/2005 Coll. have been prepared.
56. GRECO welcomes the fact that some consideration has reportedly been given to the introduction of new legal measures aimed at implementing this recommendation. However, more detailed information was not provided as to their purpose, content and stage of adoption. Therefore, GRECO is not in a position to conclude that any meaningful initiatives have been taken in respect of this recommendation.
57. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

58. *GRECO recommended to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding is independent, impartial and effective in practice.*
59. The Slovak authorities take the view that, since the information on all political parties violating the rules is published on the website of the National Council of the Slovak Republic and since the Ministry of Finance can impose an administrative fine on a party, the independence and impartiality of the mechanism of sanctions is ensured.
60. GRECO takes note of the information provided and regrets the absence of any new development in relation with the underlying reasons that had led to this recommendation. As indicated in the Evaluation Report (paragraph 96), no sanctions have ever been imposed for infringements of party funding rules, other than for non-submission of financial reports, and during the on-site visit, it was acknowledged that the level of compliance with the old law and Act No. 85/2005, made the effectiveness of the sanctioning mechanism questionable. It was also observed that the lack of enforcement may be related to ineffective supervision and the lack of investigative capacity on the part of supervisory entities. Finally, doubts were expressed in the report as to whether the Ministry of Finance is sufficiently independent to impose the sanctions at its disposal. GRECO can only deduce that no particular measures have been taken to examine the performance of the

existing sanction mechanism and to ensure that it is independent, impartial and effective in practice as required by this recommendation.

61. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

62. *GRECO recommended to provide advice and training to political parties and election candidates on the applicable political funding regulations.*
63. The authorities of the Slovak Republic state that according to Act No. 211/2000 Coll. on Free Access to Information, every person is entitled to request and obtain information from the Ministry of Finance concerning party funding.
64. GRECO regrets that no additional efforts have been made at all to provide advice and training to parties and candidates for elections whereas – as demonstrated by the experience of other countries – these can be useful measures to facilitate the understanding of rules and ultimately, to increase the level of compliance with the regulations.
65. GRECO can only assess that recommendation viii has not been implemented.

Recommendation x.

66. *GRECO recommended to assess whether there is a need to amend the provisions of Act No 46/1999 on the Method of Election of the President with a view to enhancing the transparency of the funding of presidential candidates (to ensure that the amended provisions, if any, are in line with the requirements of Act No. 85/2005 Coll. on Political Parties and Political Movements).*
67. The authorities recall the pertinent legal provisions governing the election of the President of the Slovak Republic (e.g. sections 16, 19, 20 of Act No. 46/1999 Coll. on the Method of Election of the President of the Slovak Republic)⁵. They also stress that since the last presidential elections in 2008 did not reveal any suspicion of wrongdoings in respect of the funding of candidates

⁵ The election of the President of the Slovak Republic is direct, i.e. he/she shall be elected by citizens of the Slovak Republic who are 18 years old on the election day and who are in the territory of the Slovak Republic on the election day.

Pursuant to section 16 of the Act No. 46/1999 Coll. on the Method of Election of the President of the Slovak Republic, a candidate for the presidential office may spend no more than 132 775 € in total, including value added tax, for his/her promotion during the election campaign. This amount shall include the amounts paid by third persons as well as services provided free of charge for which a standard price shall be calculated.

Pursuant to section 19 of the above-mentioned Act, a candidate for the presidential office is obliged to keep records of all donations and their donors and to notify the Ministry of Finance in writing on the total amount of funds obtained for his/her campaign and on the total amounts of money paid in this context. In the written notification, in a case in which the donor is a natural person and the value of the donation exceeds 331 €, he/she shall state the name, surname, permanent residence and the value of a donation or a performance for free of each donor, and, in a case in which the donor is a legal entity and the value of the donation exceeds 3 319 €, he/she shall state the name, registered office and value of a donation or a performance for free of each donor. The notification shall be submitted no later than 30 days from the election day.

When it is established that a candidate for the presidential office exceeded the maximum permissible amount, the Ministry of Finance shall impose a fine to a candidate for the presidential office to the amount of ten times the amount by which he/she has exceeded the maximum permissible amount. In case of failing to fulfil the notification obligation pursuant to section 20 of above-mentioned Act, the Ministry of Finance of the Slovak Republic shall impose a fine of up to 66 387 €.

running for presidential elections, it would seem that there is no particularly urgent need to amend the above-mentioned Act.

68. GRECO takes note of the position of the authorities of the Slovak Republic. It recalls that in the Evaluation report (paragraph 99), it was found that in comparison to Act No. 85/2005, the provisions on transparency of funding in Act No. 46/1999 on the Method of Election of the President are quite basic. As the disclosure requirements are only applicable to expenditure related to *publicity* campaigns for which there is an expenditure ceiling of €120,000, it would appear that presidential candidates can easily circumvent the transparency requirements placed upon them. Besides, the information gathered by the evaluation team at the time clearly suggested that the applicable expenditure ceiling would encourage underreporting of income and expenditure on advertising in practice. Against this background, one should bear in mind that – as indicated in the report – the control activity in the area of political financing has been mostly formalistic and ineffective until now and the oversight by civil society and other organisations is significantly hampered by the absence of any mechanism by which irregularities found by external stakeholders can be followed up. Consequently, the fact that there have been no suspicions of wrongdoing raised during the 2008 presidential elections is not a sufficiently convincing argument. It is thus difficult to consider that the need for additional regulations on the financing of presidential election campaigns has been subject to an adequate assessment, as required by recommendation x.
69. GRECO concludes that recommendation x has not been implemented.

III. CONCLUSIONS

70. **In view of the above, GRECO concludes that the Slovak Republic has implemented satisfactorily only one of the sixteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation i has been implemented satisfactorily and recommendations ii, iii and v have been partly implemented; recommendations iv and vi have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendations i to x have not been implemented.
71. As regards incriminations, Slovakia has managed to incriminate the “offering” of an undue advantage / bribe in respect of active bribery and active trading in influence, which is a welcome improvement. Some clarification was also provided as regards court practice in respect of bribery offences (in respect of which an expert review is under way) and trading in influence. However, for the time being, it does not allow drawing firm conclusions. GRECO regrets that insufficient or no consideration at all has been given to several of the other improvements recommended in the Evaluation Report, even though it would appear that the incrimination of bribery of arbitrators and jurors is partly ensured through the existing provisions. Insofar as transparency of party funding is concerned, the overall picture is even more disappointing: no discernible progress has been made in respect of any of the recommendations. It was stressed by the authorities that amendments to Act No. 85/2005 Coll. were under preparation to provide for more effective, proportionate and dissuasive sanctions in case of non compliance with the party financing regulations; however, more concrete information was not made available about the intended amendments. It should also be stressed that much of the information submitted by the Slovak authorities consisted in a re-statement of elements already contained in the Evaluation Report. There is therefore little evidence that the concerns raised in the said report have been given any thorough consideration.

72. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Slovak delegation to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations ii to vi regarding Theme I and recommendations i to x regarding Theme II) as soon as possible, however – at the latest – by 30 September 2010, pursuant to paragraph 2(i) of that Rule.
73. Finally, GRECO invites the authorities of the Slovak Republic to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.