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Third Evaluation Round

Second Compliance Report on Albania

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 60th Plenary Meeting
(Strasbourg, 17-21 June 2013)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of Albania since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Albania. 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 42nd Plenary Meeting (15 May 2009) and made public on 17 September 2009, following authorisation by Albania (Greco Eval III Rep (2008) 7E [Theme I](#) / [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 50th Plenary Meeting (1 April 2011) and was made public on 19 April 2011, following authorisation by Albania ([Greco RC-III \(2011\) 3E](#)).
3. As required by GRECO's Rules of Procedure, the Albanian authorities 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 2 December 2012 and served as a basis for the Second Compliance Report.
4. GRECO selected Armenia and Slovenia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Ms Anna MARGARYAN on behalf of Armenia and Ms Vita HABJAN on behalf of Slovenia. 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 5 recommendations to Albania in respect of Theme I in its Evaluation Report. In the subsequent Compliance Report, GRECO concluded that recommendation iv had been implemented satisfactorily. The remaining recommendations (recommendations i, ii, iii and v), which were considered partly implemented as draft legislation addressing the issues concerned by these recommendations was underway, are dealt with below.
6. The authorities of Albania report that the draft law "*On some changes and amendments of the Law No. 7895 dated 27.01.1995 on the Criminal Code of RoA*" (No. 23/2012), which aimed at bringing national legislation into compliance with GRECO's recommendations and had been

taken into account in the Compliance Report, has in the meantime been adopted by Parliament without any changes and came into force on 16 March 2012.¹

Recommendation i.

7. *GRECO recommended to take the legislative measures necessary to ensure that active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, as well as judges and officials of international courts, are explicitly criminalised in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).*
8. GRECO recalls that in the Compliance Report, the recommendation was considered partly implemented as draft amendments to the Criminal Code (CC) aimed at expressly criminalising active and passive bribery of foreign and international officials, had been presented to Parliament for consideration, but had not yet been adopted.
9. The authorities now report that the above-mentioned amendments have been adopted and entered into force on 16 March 2012. Law No. 23/2012 introduced into the CC new articles criminalising active and passive bribery of foreign public officials, members of foreign public assemblies, employees of public international organisations, members of international public assemblies (articles 244/a and 259/a CC), as well as active and passive bribery of judges and officials of international courts (articles 319/a and 319/d CC). The new provisions read as follows:

Article 244/a CC: Active corruption of foreign public officials/employees

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons, to a foreign public official, employee of a public international organisation, member of a foreign public assembly, or member of an international parliamentary assembly to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from six months to three years and with a fine of from three hundred thousand to three million lek.

Article 259/a CC: Passive corruption of foreign public officials/ employees

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such a promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit, by a foreign public employee, employee of a public international organisation, member of a foreign public assembly, or member of an international parliamentary assembly to perform or not to perform an action related to his/her duty or function is punishable with imprisonment of from two to eight years and a fine from five hundred thousand to three million lek.

Article 319/a CC: Active corruption of a judge or official of international courts

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons, to a judge or official of international courts, to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from one year to four years and a fine of from four hundred thousand to two million lek.

¹¹ Cf. Law No. 23/2012 of 1 March 2012, Official Journal No. 26, dated 1 March 2012, page 1299. The web link of the Albanian version of the law is: <http://80.78.70.231/pls/kuv/f?p=201:Liqj:23/2012:01.03.2012>.

Article 319/d CC: Passive corruption of a judge or official of international courts

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such a promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit by a judge or official of an international court to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from three to ten years and by a fine from eight hundred thousand to four million lek.

The authorities explain that the term “employee of a public international organisation” used in articles 244/a and 259/a CC, also covers officials and employees of international bodies and supranational organisations.

10. GRECO is pleased that the intended amendments to the CC, which expressly criminalise active and passive bribery of foreign and international officials in accordance with the requirements of Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption, have entered into force and concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended to take the necessary legislative measures in order to ensure that foreign jurors as well as domestic and foreign arbitrators are explicitly covered by the bribery provisions of the Criminal Code in conformity with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*
12. GRECO recalls that according to the Compliance Report, the draft amendments to the CC included the new offences of bribery of domestic and foreign arbitrators and of members of foreign juries.² However, as the draft had not yet been adopted, the recommendation was considered as only partly implemented.
13. The authorities now indicate that the above amendments have been adopted and have entered into force. The new offences of active (article 319/b CC) and passive (article 319/dh CC) bribery of domestic and foreign arbitrators, as well as active (article 319/c CC) and passive (article 319/e CC) bribery of members of foreign juries read as follows:

Article 319/b CC: Active corruption of a domestic and foreign arbitrator

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons to a domestic or foreign arbitrator to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from one year to four years and by a fine of from four hundred thousand to two million lek.

Article 319/c CC: Active corruption of a member of a foreign jury

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons to a member of a foreign jury to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from one year to four years and by a fine of from four hundred thousand to two million lek.

² The recommendation did not extend to *domestic jurors*, as the Albanian judicial system does not provide for the participation of jurors or lay judges in court proceedings.

Article 319/dh CC: Passive corruption of a domestic and foreign arbitrator

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or acceptance of an offer or promise arising from the irregular benefit, by a domestic or foreign arbitrator to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from three to ten years and by a fine of from eight hundred thousand to four million lek.

Article 319/e CC: Passive corruption of a member of a foreign jury

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit by a member of a foreign jury to perform or not to perform an action related to his/her duty or function is punishable by imprisonment of from three to ten years by a fine of from eight hundred thousand to four million lek.

14. GRECO appreciates that the new provisions of the CC, which criminalise bribery of domestic and foreign arbitrators and of members of foreign juries in conformity with Articles 2, 3, 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption, have now entered into force and concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended to increase the maximum penalties for bribery offences in the private sector.*
16. GRECO recalls that according to the Compliance Report, draft amendments to articles 164/a and 164/b CC foresaw an increase in the maximum penalties for bribery offences in the private sector from two to three years' imprisonment for active bribery and from three to five years for passive bribery. This would also result with an extension of the limitation period to five and ten years for active and passive bribery in the private sector, respectively. As the amendments had not yet been adopted, the recommendation was considered only partly implemented.
17. The authorities now report that the above amendments to articles 164/a and 164/b CC have been adopted and have entered into force.
18. GRECO is pleased that the amendments to articles 164/a and 164/b CC, according to which the maximum penalties for bribery offences in the private sector have been increased from two to three years' imprisonment (active bribery) and from three to five years (passive bribery), have entered into force and concludes that recommendation iii has been implemented satisfactorily.

Recommendation v.

19. *GRECO recommended to ensure jurisdiction over all offences of public and private sector bribery and trading in influence committed abroad (i) by Albanian nationals, Albanian public officials or members of Albanian public assemblies; or (ii) involving Albanian public officials, members of Albanian public assemblies or officials of international organisations, members of international parliamentary assemblies or judges/officials of international courts with Albanian citizenship.*

20. GRECO recalls that the recommendation was considered partly implemented. According to the Compliance Report, the draft amendments to the CC addressed at least some of the concerns underlying the recommendation – *inter alia*, following the increase in the maximum sanction applicable to private sector bribery (see above under recommendation iii), this offence would no longer be qualified as a contravention but as a crime and thus allow for the application of article 6 CC, which establishes jurisdiction of Albanian courts over crimes committed abroad by Albanian citizens – but those amendments had not yet been adopted.
21. The authorities now further explain the amendments to the CC relevant to the scope of the jurisdictional rules, which have in the meantime been adopted and have come into force. Firstly, following the increase in the maximum sanctions applicable to active bribery in the private sector (article 164/a CC) and to active trading in influence (article 245/1 CC) from two to three years' imprisonment, all the offences of bribery and trading in influence now constitute crimes and are thus covered by article 6 CC, which establishes that the Albanian courts will have jurisdiction over crimes committed abroad by Albanian citizens³, and article 7 CC which establishes the jurisdiction of Albanian courts over specified crimes committed abroad by foreign citizens and involving Albanian nationals. Secondly, the list of criminal offences in article 7 CC has been extended to include trading in influence offences, see paragraph 2i) of this article: "bribery crimes in the public and private sectors as well as trading in influence".
22. GRECO takes note of the information provided with respect to the amendments to the CC, following which all the offences of bribery and trading in influence are covered by article 6 CC, which establishes the jurisdiction of Albanian courts over crimes committed abroad by Albanian citizens (as required by the first part of the recommendation), and by article 7 CC, which establishes the jurisdiction of Albanian courts over specified crimes, including all corruption-related crimes, committed abroad by foreign citizens and involving Albanian nationals (as required by the second part of the recommendation). GRECO takes the view that the amendments respond positively to the main concerns underlying the recommendation and concludes that recommendation v has been implemented satisfactorily.

Theme II: Transparency of Party Funding

23. It is recalled that GRECO in its Evaluation Report addressed 7 recommendations to Albania in respect of Theme II. The Compliance Report concluded that recommendations i, ii, iii, v and vi had been implemented satisfactorily and recommendation vii had been dealt with in a satisfactory manner. Recommendation iv was considered partly implemented; compliance with this recommendation is dealt with below.

Recommendation iv.

24. *GRECO recommended (i) to require that annual accounts of political parties provide detailed information on income (including a specification of each donation received and, in case of donations over a certain value, the identification of donors, as well as the indication of donations in kind, accounted for at their commercial value), expenditure, debts and assets and that they include – as appropriate – the accounts of entities related, directly or indirectly, to political parties or otherwise under their control; (ii) to introduce a standardised format and independent auditing of those party accounts by certified experts; and (iii) to ensure that those accounts are made easily accessible to the public, within timeframes specified by law.*

³ The authorities add that under Albanian law, all public employees and also members of domestic public assemblies must be Albanian citizens and are therefore covered by the above-mentioned jurisdictional rules..

25. GRECO recalls that the recommendation was considered partly implemented in the Compliance Report. Regarding the first part of the recommendation, GRECO was satisfied with the information provided, according to which the amendments to Law No. 8580 on political parties which had been adopted on 10 February 2011, introduced a clear obligation upon political parties to submit detailed information on their annual resources and expenses. In relation to the second part of the recommendation, GRECO noted that the amendments to Law No. 8580 established an external audit procedure by certified auditors and the drafting of a standardised format for audit reports, as required; however, this format had not yet been introduced. As far as the third part of the recommendation is concerned, the amendments to Law No. 8580 introduced an obligation on the Central Electoral Commission (CEC) to publish the political parties' annual and audit reports, as required; however, GRECO identified a remaining gap in the legal framework, namely that the law does not specify a timeframe within which political parties have to submit their yearly reports to the CEC (which predetermines the timeframe for the publication of such reports by the CEC).
26. With respect to the second part of the recommendation, the authorities now report that by decision No. 3 of 18 January 2012 "On standardised format and nomination of audits on the monitoring of party funding", the CEC adopted three standardised templates/guidelines, namely 1) Guidelines for reporting by Independent Auditors on the Annual Financial Reports of Political Parties and on the Election Campaign Finances of Political Parties/Electoral Subjects; 2) Outline template No. 2 for Annual Financial Reporting by a Political Party; and 3) Outline template No. 3 for Financial Reporting by a Political Party on the Financing of and Spending on its Election Campaign.⁴
27. In relation to the third part of the recommendation, the authorities indicate that pursuant to article 23, paragraph 3 of the Law on political parties, the annual financial report of a political party is to be submitted by the person responsible for political party finances or the person designated by the political party statute, within the deadline set by the CEC. By decision No. 14 of 23 November 2012 which amended decision No. 3 of 18 January 2012 "On standardised format and nomination of audits on the monitoring of party funding", the CEC introduced a deadline for the submission of financial reports. According to template No. 2 for Annual Financial Reporting by a Political Party, "political parties shall submit financial reports to the Central Election Commission by the 31st March each year". The authorities add that in accordance with article 23, paragraph 3 of the Law on political parties, the failure to submit the financial report within the established timeframe or the submission of reports which fail to comply with the standardised template approved by the CEC, is punishable by a fine ranging from 50,000 to 100,000 lek (about 350 to 700 EUR).
28. GRECO welcomes the introduction of templates for financial reports to be submitted by political parties and of guidelines for the auditing of such reports by independent auditors (as required by the second part of the recommendation). Also included is a timeframe within which political parties have to submit their yearly reports to the CEC that predetermines the timeframe for the publication of such reports by the CEC. GRECO notes that failure to submit the financial report within the timeframe set by the CEC gives rise to a – relatively low – fine. Nevertheless, GRECO takes the view that a clear timeframe – established by law – would be preferable concerning the submission by parties of their yearly reports to the CEC; the authorities may wish to reconsider this issue in the interests of legal certainty and transparency.
29. GRECO concludes that recommendation iv has been implemented satisfactorily.

⁴ The web link of the Albanian version of the CEC decisions is:
http://www.cec.org.al/index.php?option=com_content&view=article&id=300%3Avendim-2012&catid=36%3Avendime-2001&Itemid=309&lang=sq

III. CONCLUSIONS

30. **In view of the conclusions contained in the Third Round Compliance Report on Albania and in light of the above, GRECO concludes that Albania has now implemented satisfactorily or dealt with in a satisfactory manner all the twelve recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii, iii and v have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, recommendation iv has been implemented satisfactorily.
31. As regards incriminations, GRECO is pleased that the substantial reform process, already noted in the Compliance Report, has been completed by Albania. Significant amendments to the Criminal Code, which meet the concerns of all the recommendations issued in the Evaluation Report, have now been implemented. The legal reform includes such important issues as criminalisation of bribery of foreign and international officials, jurors and arbitrators, increase in the level of sanctions available for bribery in the private sector and trading in influence, as well as jurisdiction over bribery and trading in influence offences committed abroad.
32. Insofar as transparency of party funding is concerned, GRECO acknowledges the additional measures taken with a view to further implementing the legal amendments already assessed in the Compliance Report, namely the introduction of templates for financial reports to be submitted by political parties – within a specified timeframe – to the Central Electoral Commission and the establishment of guidelines for the auditing of such reports by independent auditors. GRECO congratulates the Albanian authorities on these reforms, which suitably address all of GRECO's recommendations. GRECO hopes that the new framework for transparency in political financing will prove its efficiency in practice.
33. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of Albania.
34. GRECO invites the authorities of Albania to translate the report into the national language and to make this translation public.