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Second Compliance Report

Third Evaluation Round

Second Compliance Report on Armenia

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 66th Plenary Meeting
(Strasbourg, 8-12 December 2014)

I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Armenia since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in the Third Round Evaluation Report on Armenia, 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 by GRECO at its 49th Plenary Meeting (3 December 2010) and made public on 11 April 2011, following the authorisation by Armenia (Greco Eval III Rep (2010) 4E, [Theme I](#) and [Theme II](#)). The subsequent [Compliance Report](#) was adopted at GRECO's 58th plenary meeting (7 December 2012) and made public on 17 December 2012 following the authorisation by Armenia.
3. As required by GRECO's Rules of Procedure, the authorities of Armenia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 13 June 2014 and served as a basis for the Second Compliance Report.
4. GRECO selected Romania and Greece to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Cornel Virgiliu CALINESCU, Head of the National Office for Crime Prevention and Asset Recovery, Ministry of Justice, on behalf of Romania and Mr Dimosthenis STINGAS, Chairman of the Court of First Instance of Serres, Presiding Judge of the District Court of Serres, on behalf of Greece. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report had addressed 8 recommendations to Armenia in respect of Theme I. In the subsequent Compliance Report, GRECO concluded that recommendations i-vi and viii had been implemented satisfactorily. Recommendation vii, which was considered partly implemented, is dealt with below.

Recommendation vii.

6. *GRECO recommended i) to analyse Articles 312 (paragraph 4), 312¹ (paragraph 4) and 200 (paragraph 5) of the Criminal Code and accordingly revise the automatic – and mandatorily total – exemption from punishment granted in cases of effective regret and, in any case, ii) to clarify the conditions under which the defence of effective regret can be invoked.*
7. GRECO recalls that in the Compliance Report, this recommendation was considered partly implemented as the legislative measures taken were not sufficient nor uniform in respect of

Articles 200 (paragraph 5), 312 (paragraph 4) and 312¹ (paragraph 4) of the Criminal Code. Furthermore, GRECO welcomed the introduction of a short time limit for invoking the defence of effective regret, as a safeguard against abuse of this instrument.

8. The authorities now report that in order to fully comply with this recommendation, the wording of Articles 200 (paragraph 5), 312 (paragraph 4) and 312¹ (paragraph 4) of the Criminal Code have been aligned through the adoption of the Law on making Amendments to the Criminal Code of the Republic of Armenia (HO-14-N), adopted by Parliament on 16 May 2014. The new legislation was submitted to GRECO.
9. GRECO has assessed the amended legislation in the light of the shortcomings listed and analysed in the Evaluation Report (paragraphs 75, 89 and 90). Thus, it notes that a number of deficiencies were highlighted by GRECO at the time, *inter alia*, that there was no general requirement that the reporting be voluntary; that no specific time frame existed within which a report had to be submitted to the law enforcement authorities; that in respect of commercial bribery the bribe giver as well as the bribe taker could enjoy the defence, even without an element of extortion etc. Following the most recent amendments, GRECO notes that all three pertinent Articles referred to in the recommendation have now been aligned; that the law allows for the defence of effective regret only in respect of active bribery; that the bribe must in all circumstances be linked to conditions of extortion; that the bribe giver is now obliged to report the offence before the law enforcement authorities have been made aware of it; and that such a report must be made not later than within three days from the commission of the crime. It follows that the Armenian authorities have analysed, revised and clarified the pertinent legal provisions in respect of the defence of effective regret, that a number of limitations have been introduced in order to avoid abuse of this instrument and that the current provisions have become uniform.
10. GRECO concludes that recommendation vii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

11. It is recalled that GRECO in its Evaluation Report had addressed 11 recommendations to Armenia in respect of Theme II. In the subsequent Compliance Report, GRECO concluded that recommendations i-vii, ix and x had been implemented satisfactorily. Recommendations viii and xi, which were considered partly implemented, are dealt with below.

Recommendation viii.

12. *GRECO recommended to ensure that an independent and integrated mechanism is in place for the monitoring of the funding of political parties and electoral campaigns, and that it is given the mandate, the authority and the financial and staff resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.*
13. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. While acknowledging that several measures had been taken by the authorities, such as the establishment of a new non-partisan composition of the Central Electoral Commission, with the possibility to impose administrative sanctions, the setting-up of the Oversight and Audit Service as a permanent body with a mandate to review both the funding of political parties and election campaigns, GRECO also noted that the measures taken did not address all deficiencies highlighted in the Evaluation Report (paragraph 71). In particular, GRECO had doubts about the

auditors' independence *vis-à-vis* the political parties and about the thoroughness of the monitoring by the Oversight and Audit Service; it called for the need to establish a fair balance between the speed and the thoroughness of the supervision of political financing.

14. The Armenian authorities now report that on 16 May 2014, the National Assembly adopted the Law on Amending the 2011 Electoral Code of the Republic of Armenia. As a result of this new law (HO-16-N), part 4 of Article 28 of the Electoral Code was supplemented with a new sentence which reads as follows: "*The supervisory competence of the auditors mentioned in this part shall not extend to the contributions of the factions having appointed them, to the calculation and expenditures thereof*".
15. Moreover, the authorities reiterate that to ensure the independence of the mechanism for the monitoring of political financing, the Central Electoral Commission Decree number 54-N, dated 11 August 2011, established the Oversight and Audit Service of the Central Electoral Commission and defined the procedures of its operation. The authorities stress that this Service has the financial and human resources necessary for effectively controlling such funding (the Head and two civil servants, and can hire up to five contract employees for a one-month period in case of necessity during elections). They also reiterate that by adding Article 223.2 to the Code of Administrative Offences the Central Electoral Commission has the power to impose sanctions while investigating cases related to administrative infringements.
16. GRECO notes that the Armenian authorities already at the time of the Compliance Report complied partly with the current recommendation as quite significant measures had been taken to ensure an adequate mechanism for the monitoring of political parties and election campaigns. Most notably, GRECO welcomed the non-partisan composition of the Central Electoral Commission and the fact that it had been provided with administrative sanctions. Moreover, the establishment of the Oversight and Audit Service as a permanent body with increased staff resources was also seen as an improvement. At the same time, GRECO was concerned about the fact that part of the work was to be carried out by auditors appointed by the political parties as they were not excluded from auditing the accounts of the party by which they had been appointed. The Electoral Code (Article 28.4) has now been changed by Law HO-16-N and reads: "*The supervisory competence of the auditors mentioned in this part shall not extend to the contributions of the factions having appointed them, to the calculation and expenditures thereof*". Consequently, the risk highlighted by GRECO in the Compliance Report has now been eliminated in the law. Against GRECO's second concern about establishing a good balance between a speedy process and thorough monitoring, the authorities have stressed that the Oversight and Audit Service has the necessary staffing as well as a possibility to hire additional staff for up to one month's time in case of need during elections. GRECO is not in a position to take a clear position as to the effectiveness of this new system as applied in practice. However, it encourages the Armenian authorities to regularly monitor the effectiveness of the system and concludes that the measures taken have established an adequate platform for monitoring political financing in Armenia in line with the intentions of the current recommendation, provided the law is implemented as foreseen by the legislation.
17. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation xi.

18. *GRECO recommended to increase the limitation period for administrative violations of the Law on Political Parties and the Electoral Code.*

19. It is recalled that the current recommendation was considered partly implemented in the Compliance Report despite the fact that measures had been taken by the Armenian authorities to extend the limitation period for imposing administrative sanctions. The extension to one year from the commission of the offence was not sufficient, in the light of GRECO's standards.
20. The authorities now refer to yet another amendment of the Code of Administrative Offences which has extended the limitation period to two years from the commission of the offence (through the adoption of the Law on making an Amendment to the Code of Administrative Offences (HO-15-N), adopted on 16 May 2014 by Parliament.
21. GRECO notes that the Armenian authorities have now increased the time limit in respect of administrative offences of the Law on Political Parties and the Election Code to two years from the commission of the offence. Such a time limit is relatively short in comparison with a number of other GRECO member States, but it is not contrary to the benchmarks established in this respect. The measure taken is thus in accordance with the aim of the recommendation.
22. GRECO concludes that recommendation xi has been implemented satisfactorily.

III. CONCLUSIONS

23. **In view of the above – and also taking into account the conclusions of the Compliance Report – GRECO concludes that Armenia has now implemented satisfactorily or dealt with in a satisfactory manner all nineteen recommendations contained in the Third Round Evaluation Report.**
24. As regards incriminations, GRECO has already commended the authorities of Armenia for the thorough efforts taken at the time of the adoption of the Compliance Report; the Criminal Code had been amended significantly in order to address most of the ambiguities highlighted in the Evaluation Report, including the criminalisation of trading in influence and the subsequent withdrawal of Armenia's reservation in respect of Article 12 of the Criminal Law Convention. GRECO also noted in the Compliance Report that a comprehensive training programme had been implemented in relation to the interpretation of some of the bribery offences. The additional steps have been assessed in the current report, namely to analyse, revise and clarify the pertinent legal provisions in respect of the defence of effective regret. In this respect, Armenia now has in place provisions that are coherent and which limit considerably the possible scope for misusing such provisions.
25. In so far as the transparency of political funding is concerned, Armenia had also in this respect already complied with a majority of the recommendations in the Compliance Report. A new Election Code had been adopted, along with amendments to the Law on Political Parties as well as to the Code of Administrative Offences. Transparency and reporting had improved as regards the financing of political parties' as well as in respect of election campaigns. Measures regarding donations to prevent circumvention of the rules on campaign financing and spending limits had been adjusted to encourage accurate accounting and common formats of reporting. Supervision had been reinforced too with the introduction of a compulsory audit for the bigger parties and the establishment of a permanent Oversight and Audit Service next to the Central Electoral Commission. The arsenal of sanctions available to the Commission had been complemented. With the adoption of the Second Compliance Report, further action has been taken aiming at strengthening the independence of the auditors involved in the monitoring. Moreover, the statute

of limitation for administrative offences relating to the Law on Political Parties and the Electoral Code has been extended to a reasonably acceptable level.

26. In view of the above, GRECO congratulates Armenia on the substantial reforms carried out to suitably address all nineteen recommendations of the Third Round Evaluation. That said, it needs to be stressed that several of the measures taken amount to the adoption of new legislation, which no doubt, need to be further scrutinised, and possibly adjusted by the authorities, in respect of their effectiveness as applied in practice.
27. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of Armenia.
28. GRECO invites the authorities of Armenia to translate the report into the national language and to make this translation public.