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Second Compliance Report

Third Evaluation Round

Second Compliance Report on Georgia

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 68th Plenary Meeting
(Strasbourg, 15-19 June 2015)

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Georgia to implement the nine pending recommendations issued in the Third Round Evaluation Report on Georgia (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); and

   - **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 51st Plenary Meeting (23-27 May 2011) and made public on 1 July 2011, following authorisation by Georgia (Greco Eval III Rep (2010) 12E, Theme I and Theme II). The Third Round Compliance Report was adopted by GRECO at its 60th Plenary Meeting (17-21 June 2013) and made public on 5 July 2013, following authorisation by Georgia (Greco RC-III (2013) 9E).

3. As required by GRECO's Rules of Procedure, the authorities of Georgia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 2 March 2015 and served as a basis for this Second Compliance Report.

4. GRECO selected Ukraine and Norway to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Oleksiy SVIATUN, Senior Expert, Administration of the President, International Legal Issues Sector, Department of Foreign Policy and European Integration, on behalf of Ukraine (Theme I), and Mr Jens-Oscar NERGÅRD, Senior Advisor, Ministry of Local Government and Modernisation, on behalf of Norway (Theme II). They were assisted by GRECO's Secretariat in drawing up this Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO, in its Evaluation Report, addressed five recommendations to Georgia in respect of Theme I. Of those, three recommendations (i, ii and v) had been qualified as implemented satisfactorily in the Compliance Report, and recommendations iii and iv – as partly implemented. Compliance with the latter two recommendations is dealt with below.

Recommendation iii.

6. *GRECO recommended to unambiguously cover bribery of foreign arbitrators and foreign jurors, in accordance with Articles 4 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. This recommendation had been considered partly implemented in the Compliance Report. GRECO had acknowledged the criminalisation of bribery of foreign jurors and arbitrators under Article 332 of the Criminal Code (CC) on "Abuse of official authority". It had also welcomed the

signature of the Additional Protocol to the Criminal Law Convention on Corruption and encouraged the authorities to proceed as soon as possible with its ratification.

8. The authorities of Georgia now report that the ratification process was completed on 10 January 2014 and the Additional Protocol to the Criminal Law Convention on Corruption entered into force on 1 May 2014.

9. GRECO commends the authorities for finalising the accession process and concludes that the recommendation has now been fully implemented.

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

Recommendation iv.

11. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment in cases of effective regret.*

12. This recommendation had been qualified as partly implemented in the Compliance Report. GRECO had noted the nearly identical amendments to Notes under Articles 221, 339 and 339[1] CC and welcomed the increased uniformity in the operation of effective regret.[1] Yet, safeguards against its potential misuse had remained insufficient: for example, internal guidelines or clear criteria for its application had not been developed, prosecutorial discretion had not been subjected to judicial review and the preconditions for its application (such as the immediate reporting of an offence or reporting within a specific time frame) had not been set out. Since the reporting of corruption in reliance on effective regret accounted for up to 80% of passive bribery cases, the safeguards against possible misuse had to be further reinforced.

13. The authorities of Georgia now report that the elaboration of guidelines for the application of provisions on effective regret has been advocated within the Ministry of Justice, the Ministry of Internal Affairs and the Prosecutor General's Office. Furthermore, the Ministry of Justice has already prepared a draft decree on the approval of guidelines for prosecutors on the use of effective regret, which are planned for adoption in June 2015. Application of the guidelines by prosecutors will be compulsory. The intention is that they will prescribe that the decision on the release from criminal liability in cases of effective regret will not be automatic but depend in each case on assessment of all of the ensuing criteria: the offender shall report voluntarily, plead guilty and regret committing the offence; the offence must be reported immediately or in a reasonable time; the offence is to be reported before it is discovered or the offender has to believe that the offence has not been discovered; the facts reported must be sufficient to start a prosecution; the offender must reimburse the proceeds, etc. The law enforcement agency will also need to assess whether the offender is the instigator of the crime. Benefit obtained through the offence will not be returned to the bribe-giver unless this benefit is "legitimate". The draft will not provide the exact formula for applying the prosecutorial discretionary power, yet all criteria and factors that are vital for making a correct decision will need to be taken into account and analysed. Consequently, decisions will be made on a case-by-case basis, depending on the individual circumstances of each case.

[1] Thus, criminal acts were to be reported to an agency conducting criminal proceedings (as opposed to the old system where offences were to be reported to a law enforcement agency under Article 339 CC, the Prosecution Service under Article 339[1] CC, and any government authority under Article 221 CC), and it was at the discretion of the said agency to make a decision on release from criminal responsibility.

14. As concerns GRECO's proposal to subject prosecutorial decisions on the application of effective regret to judicial review, it is recalled that the criminal legislation of Georgia is based on discretionary prosecution which does not require the courts to review a prosecutor's decision to not start/discontinue prosecution.

15. GRECO welcomes the authorities' intention to adopt mandatory guidelines for prosecutors containing clear and precise criteria for the application of provisions on effective regret. Being satisfied with the safeguards against misuse of effective regret incorporated into the Ministry of Justice's draft, GRECO urges for them to be adopted as soon as possible.

16. GRECO concludes that recommendation iv has been implemented satisfactorily.

Theme II: Transparency of Party Funding

17. It is recalled that GRECO, in its Evaluation Report, addressed ten recommendations to Georgia in respect of Theme II. Of these, three recommendations (iii, v and vii) had been qualified as implemented satisfactorily in the Compliance Report, six recommendations (i, ii, iv, viii, ix, x) as partly implemented, and one recommendation (vi) as not implemented. Compliance with the pending recommendations is dealt with below.

18. It is also recalled that, in the Compliance Report, GRECO had examined the newly adopted Electoral Code (EC) and the Law on Political Unions of Citizens (LPUC), last amended in December 2011. The authorities had indicated that the December amendments to the LPUC had attracted criticism for their ambiguity, inconsistency and disproportionality and that the Government intended to substantially revise the regulations with a view to ensuring their conformity with international standards. In January 2013, the Anti-Corruption Council of Georgia designated the transparency of party funding as a priority issue.

19. The authorities now report on the entry into force, on 29 July 2013, of new amendments to the LPUC prepared by the Inter-factional Working Group on electoral issues[2] and on changes made to the EC in 2013-2014[3]. .

Recommendation i.

20. *GRECO recommended to proceed with the efforts to revise existing legislation in the area of political finance, with a view to establishing a more uniform legal framework, notably by aligning the (new) Election Code with the Law on Political Unions of Citizens (and vice versa).*

21. This recommendation had been considered partly implemented in the Compliance Report. The efforts made to align the EC more closely with the LPUC and to remedy several gaps (e.g. to harmonise rules on donations and restrictions applicable to donations and donors, and to introduce more stringent reporting and monitoring mechanisms) had been welcome developments. Yet, the revisions had not been consistent throughout and the way in which they had been introduced merited reconsideration. Firstly, the transparency of both party and election campaign financing was sought predominantly through norms included in the LPUC. GRECO had taken the view that the extension of this law, which regulates the operation of political parties, to other election subjects was questionable, particularly since the relevant provisions had been

[2] The Working Group brought together political parties, civil society and international experts.

[3] These have introduced new definitions of a "qualified election subject" and a "qualified party", clarified the rules and introduced new ones on local elections and pre-election campaigns (including relevant procedures and media coverage).

included in Chapter III LPUC entitled "Property, funds and financial monitoring of a party". Secondly, the extensive cross-referencing between the LPUC and the EC had been preserved and led to confusion, as illustrated by the provisions on persons with so-called "declared electoral goals" affiliated to political parties and standing for election.[4] Thirdly, full alignment of the two laws had not been achieved therefore discrepancies in the terminology used remained substantial.

22. The authorities of Georgia now report that Article 55 EC explicitly provides that the transparency of campaign funds of all election subjects, including election candidates, is to be regulated by the LPUC. Furthermore, an analysis of the EC and the LPUC, along the lines suggested in the present recommendation, is underway. In April 2014, an *ad hoc* Working Group[5] was formed by the Anti-Corruption Council to implement GRECO, OECD-ACN and UNCAC recommendations. In November 2014, it formulated specific proposals with a view to aligning the two legal acts. In March 2015, concrete legislative amendments were elaborated under the leadership of the State Audit Office (not provided for GRECO's scrutiny), and in May 2015, these were discussed with interested NGOs. Moreover, the new Anti-Corruption Strategy adopted by the Council in February 2015 prioritises the prevention of political corruption (listed as strategic priority No. 11), and the obligation to align the EC and the LPUC has been included also in the 2015-2016 Action Plan which is based on the Strategy. The authorities furthermore insist that cross-referencing is a common practice in Georgia which is used to regulate specific areas of law by means of general and specific legislation.

23. GRECO notes the lack of tangible progress, compared to the situation described in the Compliance Report. It urges the authorities to wrap up the revision process as soon as possible in line with the present recommendation. As for the justification for the extensive cross-referencing between the EC and the LPUC and the use of the latter law – which governs exclusively the operation of political parties - as a legal framework for regulating the finances of other election subjects, GRECO disagrees with the authorities' arguments and insists on a change of approach. The uncertainties surrounding the regulation of persons with "declared electoral goals" are dealt with below under recommendation ii.

24. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

25. *GRECO recommended (i) to establish a standardised format for the annual financial declarations to be submitted by political parties, seeing to it that financial information (on parties' income, expenditure, assets and debts) is disclosed in an appropriate amount of detail and (ii) to ensure that information contained in the annual financial declaration (including donations above a certain threshold) is made public in a way which provides for easy access by the public.*

26. It is recalled that this recommendation had been qualified as partly implemented in the Compliance Report. As concerns its first part, GRECO had welcomed the development by the State Audit Office (SAO) of a standardised format for annual party declarations which allowed for disclosure of information on party income, expenditure and assets, while debts were to be reported on a separate form. The ambiguity of legal provisions imposing financial reporting

[4] Such persons were not granted the status of "election subjects" under the EC yet they were made subject to restrictions applicable to parties under the LPUC and to independent candidates under the EC. This method of regulation created confusion, particularly as regards the reporting on the use of election funds by persons with "declared electoral goals".

[5] The Group is composed of representatives of the State Audit Office, the Central Election Commission, the Prosecutor General's Office, the Supreme Court and non-governmental organisations, such as the International Society for Fair Elections and Democracy, the Institute for Development Freedom of Information, etc.

obligations on so-called persons with "declared electoral goals" affiliated to a political party had however remained a source of concern. The definition of such persons was vague and open to interpretation, while the term "declared electoral goal" was interpreted only in light of the SAO's Financing Monitoring Methodology. Additionally, pursuant to the LPUC, persons with "declared electoral goals" were to establish a "separate fund" and were subject to restrictions and monitoring identical to election candidates yet, in cases where their expenditure was related to the electoral goals and activities of a party - but not the institutional support provided to the party - such expenditure was to be reported through the party's annual declarations. No criteria however were put in place to clearly distinguish between the two reporting channels. Similarly, it was unclear whether the information on expenditure incurred by a person with "declared electoral goals" in connection with elections - which was to be included in the annual declaration of the party - was to be merged with the overall party election expenditure or to feature separately in the statement.

27. As regards the second part of the recommendation, GRECO had noted with satisfaction that annual financial declarations of political parties covered information on any sum donated by natural persons**.** Annual declarations, including information on donations and donors, were to be made accessible on the SAO's web-site. Moreover, the information on the receipt of donations and membership fees was to be reported to the SAO within five working days, and the SAO was to ensure public access to it by publishing it on the web-site on a monthly basis. GRECO had concluded that this part of the recommendation had been properly addressed.

28. The authorities of Georgia now report on a new Article 7^1 in the LPUC which defines the concept of a "declared electoral goal" as "any factual situation when a concrete person demonstrates his/her willingness to come to power through participating in elections. The declaration shall be public and be directed towards the formation of public opinion". An electoral goal can be declared even before the start of an election campaign. In this case, in respect of persons who have declared electoral goals and who are natural persons, the restrictions established for independent election candidates by the EC and the LPUC apply, and in respect of those who are legal persons (commercial and non-commercial entities) the restrictions established for political parties apply pursuant to the SAO's decree.[6] The authorities also inform that the previously mentioned *ad hoc* Working Group under the Anti-Corruption Council has prepared amendments to the LPUC which will establish a clear obligation on all types of persons with a "declared electoral goal" to submit financial reports to the SAO and, additionally, when such persons are affiliated to a political party, oblige the respective party to declare the resources received from such persons in its financial reports on election campaigns and in the annual financial statements. Furthermore, in September 2014, changes were introduced to the aforementioned Political Funding Monitoring Methodology which now 1) provides for a detailed outline of the identification criteria, factors and principles (e.g. legality and transparency) to be taken into account when monitoring the activities of persons with "declared electoral goals"; 2) clarifies the restrictions applicable to them; and 3) gives guidance to the SAO depending on whether a commercial or non-commercial legal entity or a natural person is concerned. The latter amendments derive from the existing court practice and recommendations by international organisations and civil society. The Methodology will be further amended to denote the criteria applicable to the "affiliation" of persons with "declared electoral goals" with a political party.

29. The authorities moreover recall that, by virtue of Article $26^1(1)$ LPUC, the provisions of Chapter III thereof entitled "Property and finances of political parties" already apply *mutatis mutandis* to

[6] New decree No. 77/37 amending decree No.142/37 on approving the forms and the rules on filling in the financial declarations.

persons with "declared electoral goals". This includes notably the obligation to present financial reports (to the SAO). In addition, Article 26[1](3) LPUC obliges a person with "declared electoral goals" to set up a separate fund and subjects him/her to the EC rules, in the same way as it does independent election candidates. Thus, pursuant to Article 54(4) EC, all election subjects are to inform the SAO of the bank account to be used for election-related expenditure, while according to Article 57(3) EC, no later than one month from the announcement of the final election results they are to submit to the SAO a report on the use of campaign funds indicating the sources thereof together with an auditor's report[7].

30. GRECO recalls that the incongruous financial reporting requirements applicable to persons with a "declared electoral goal" affiliated to political parties has been the only pending issue under part (i) of the present recommendation. GRECO acknowledges that the June 2013 amendments to the LPUC have somewhat increased legal certainty around the concept of a "declared electoral goal". Still, the situation remains controversial since the law only explicitly covers natural persons with a "declared electoral goal" (see e.g. Article 26[1](3) LPUC, which imposes the obligation to establish a "special fund" only on a "physical person"), and the regulation of commercial and non-commercial legal entities is only pursued based on the SAO's decrees. Also, that the financial reporting requirements on persons with a "declared electoral goal" apply beyond the time of elections cannot be deduced from the law but, according to the authorities, only from the SAO decrees. The new legislative amendments, as well as the further refinements to be made to the Political Funding Monitoring Methodology, appear to go in the direction suggested in the Compliance Report and are likely to lead to the establishment of clear and unambiguous rules on the financial reporting by persons with a "declared electoral goal", whether natural or legal persons and whether affiliated to a political party or not. Given the persisting contradictions, GRECO is precluded from concluding that the pending part of this recommendation has been implemented satisfactorily.

31. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iv.

32. *GRECO recommended to take appropriate measures to ensure that (i) in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided at a discount, are properly identified and accounted for and (ii) membership fees are not used to circumvent the rules on donations.*

33. It is recalled that this recommendation had been considered partly implemented in the Compliance Report. With regard to its first part, the introduction of new and more uniform rules on donations to political parties whether monetary, in kind, provided in the form of other goods or services at a discount rate or without charge had been appreciated by GRECO. It had been noted that the taking out of loans to support operational party activities was prohibited and borrowing only allowed in times of elections and subject to strict rules. If granted under favourable conditions or in cases where their percentage rate differed from the ordinary market rate, such loans were to be qualified as donations and regulated accordingly. GRECO had recalled nonetheless that in paragraph 67 of the Evaluation Report concerns had been expressed over the practical valuation of in-kind donations and their inadequate reflection in the parties' financial

[7] Pursuant to SAO decree No. 77/37, amending decree No. 142/37, on approving the forms and rules on completing the financial declarations, separate instructions and obligations are established for natural and legal persons with "declared electoral goals" on reporting to the SAO.

statements. Since specific measures (e.g. guidelines) had not been developed to ensure that such donations were *"properly identified and accounted for*" in financial statements, this part of the recommendation had been deemed only partly implemented. Regarding the second part of the recommendation, GRECO had been satisfied that, by introducing an upper limit on membership fees and donations by natural persons per calendar year, opportunities to use membership fees to circumvent the rules on donations by natural persons were limited.

34. The authorities of Georgia now report on the inclusion of new Article 5[1] in Decree No. 142/37 of the General Auditor of 17 August 2012 "*On approval of the financial reporting forms and the rule for filing with the purpose of ensuring the transparency in the financing of political activities*". The article stipulates that the estimation of the amount of an in-kind donation given to a "receiver of a donation" (whether a political party or an independent election candidate) shall be based on the market value of a property or a service in accordance with International Valuation Standards (IVS). The IVS standards are directly applied in Georgia, and their Ninth Edition (IVS 2011) was translated into Georgian by the Expertise Institute for Valuation of Assets of Georgia with permission from the International Valuation Standards Council. The IVS standards are available on the official web site of the Georgian Association of Independent Accountants and Auditors. The detailed reporting instructions are part of the aforementioned Decree.

35. GRECO welcomes the amended rules on the valuation of in-kind donations. Yet, it was not provided with sufficient evidence that, besides the text of Article 5[1] cited above, Decree No. 142/37 of the General Auditor does contain clear and precise guidelines facilitating *consistent reporting* of in-kind donations by political parties and other election subjects. Also, the fact that not all non-monetary goods or services will have observable market value has to be duly reflected and clear distinction made between professional and non-professional voluntary work. In view of the foregoing, GRECO concludes that this part of the recommendation remains partly implemented.

36. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vi.

37. *GRECO recommended to take further measures to prevent the misuse of all types of administrative resources in election campaigns.*

38. This recommendation had been considered not implemented in the Compliance Report. Although reference had been made to several provisions of the new EC,[8] GRECO had recalled that similar stipulations were already part of the previous EC and, nevertheless, the misuse of administrative resources was an important area of concern at the time of the evaluation visit. Misgivings had been expressed also over the exemption of "political public officials" (the President, the Prime Minister, ministers and their deputies, other members of government and their deputies, MPs, members of the Supreme Representative bodies of Abkhazia and Adjara, Heads of governments of Abkhazia and Adjara, members of the representative bodies of local self-government, mayors) from the provision forbidding public officials of state and local self-government bodies from participating in campaigning while directly carrying out their duties. This provision was not only

[8] For example, Article 45(4)(h) EC, pursuant to which public officials of state and local self-government bodies were not allowed to participate in election campaigning, while directly carrying out their duties, and Articles 48(1) and 49 EC, which banned any person with the right to participate in election campaigning from abusing administrative resources, such as buildings, means of communication or transportation and from using budget funds, occupational status or official position in the course of an election campaign, including through engaging subordinated persons or otherwise dependent individuals.

retained in the new EC but also broadened to include governors.[9] The ban on the misuse of administrative resources also remained rather limited (not all types of financial, material, technical and human resources were covered), and supplementary guidance on the use of resources under equal access provisions had not been developed, as suggested in the Evaluation Report.

39. While the setting up of the Interagency Commission under the National Security Council as a body entrusted with monitoring and reacting to cases of misuse of administrative resources had been welcomed by GRECO, the Commission was believed to be insufficiently removed from the Government to exercise its functions in an impartial manner. Moreover, the Commission's margin of discretion (i.e. the absence of an obligation to react to all alleged violations) and the fact that it could not impose sanctions directly (only via the Central Election Commission or other administrative bodies) were seen as undermining its effectiveness and efficiency.

40. Furthermore, despite the double increase of the monetary fine to GEL 2 000/ EUR 840 in the new EC[10], it was not found to be commensurate with the gravity of the effects produced by violations entailing the misuse of administrative resources. Last but not least, the reports on alleged widespread abuses of the various types of administrative resources during the 2012 parliamentary elections[11] could not be disregarded by GRECO, therefore it had concluded that much more needed to be done in order to achieve – in law and in practice – more effective prevention and proper investigation of instances of the misuse of administrative resources and sanctioning of perpetrators.

41. The authorities of Georgia refer once again to Article 48(1) EC on the "prohibition of abuse of administrative resources during the pre-election agitation and campaign" and Article 49 EC on the "prohibition of use of budget funds, occupational status or official capacity". It is indicated that the former does not establish an exhaustive definition of the term "administrative resources" but uses a qualifier "*amongst others*" when referring to premises, means of transportation, communication, information services and other kinds of equipment. In July 2013 Article 45 (7) EC was amended to prohibit the campaigning at any event financed from state or local government budget, and qualifying such an act as an abuse of administrative resources. To ensure an effective enforcement of the aforementioned provisions, in 2013 the Central Election Commission (CEC) elaborated "Guidelines for the use of administrative resources in elections"[12], which underwent a revision in 2014. The Guidelines a) contain explanations and comments on the relevant EC provisions, b) propose the definition[13], the list and the types of administrative resources that might be misused in an election campaign, c) highlight the role of the Inter-Agency Task Force for Free and Fair Elections (IATF, see below), d) give an overview of the CEC's general practice in this area, and e) include relevant statistics. In 2012, 2013 and 2014, the CEC, the IATF and seven non-governmental organisations signed memorandums of co-operation pledging to address alleged and proven cases of misuse of administrative resources and to ensure equal and fair

[9] See in this context also the criticism expressed (and the recommendations made) by the Venice Commission: CDL-AD(2011) 043, Joint Opinion on the draft Election Code of Georgia adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th Plenary session (Venice, 16-17 December 2011), http://www.venice.coe.int/webforms/documents/?country=40&year=all.

[10] Article 88 EC on "prohibition of abuse of administrative resources or abuse of power of official capacity during pre-election agitation and campaign",

[11] OSCE/ODIHR Election Observation Mission Final Report, "Georgia: Parliamentary Elections 1 October 2012", 21 December 2012, available at http://www.osce.org/odihr/98399.

[12] This work was carried out in co-operation with the International Society for Free Elections and Democracy (ISFED), Transparency International Georgia (TI), Georgian Young Lawyers' Association and the US Agency for International Development (USAID).

[13] The Guidelines define "administrative resources" as property or resources of any other kind that is necessary to perform governmental functions, including legal (legislative and regulatory), institutional, financial, media and other.

treatment of all parties involved in the electoral process. As regards the EC provisions allowing for unlimited campaigning by high-level public officials, the authorities report that these have not been altered.

42. In 2013 the Interagency Commission[14] was detached from the National Security Council, placed under the Ministry of Justice and re-named the Inter-Agency Task Force for Free and Fair Elections (IATF)[15]. Its scope of work and membership are defined in the Statute adopted by decree of the Minister of Justice who acts as the IATF's Chair. The IATF is to support the inter-agency co-operation and dialogue between the government and parties to the electoral process, verify the information on violations by public officials of the electoral legislation reported to it, and to review media reports and the information provided by observer organisations and other stakeholders. Based on the information received and reviewed, the IATF is to adopt recommendations and proposals to relevant state bodies and to the CEC who are to react on matters falling within their competence. The IATF is to be convened by decree of its Chair before regular, pre-term, interim or second round elections and to commence its work from the moment the polling day is announced. It is to meet at least once every two weeks, and after the deadline for registering candidates expires – at least once every week. During the 2014 local elections, the IATF met every week in its expanded composition (11 state bodies, 16 political parties, the ruling coalition (6 political parties), 18 NGOs and 11 international organisations/embassies). Its hotline was operational 24/7 and it reviewed the information supplied by political parties and NGOs, monitored media reports and instantly sent notifications of (suspicions of) violations of electoral legislation to the responsible state and local self-government bodies.

43. The authorities underline that the creation, first, of the Commission and, then, of the IATF was the Government's own initiative, not propelled by the present recommendation. Bearing in mind the functions and responsibilities of the SAO and the CEC as fully operational independent state agencies, a preference was made for establishing a body capable of ensuring quick and adequate reaction to violations by adopting, after having verified pertinent signals, recommendations and proposals to responsible state bodies and the CEC. As regards the margin of discretion, reference is made to the IATF's obligation to react to violations reported to it. For example, during the 2014 local elections, information was received on 83 allegations (all of coercion[16]), which were reviewed and referred to the law enforcement bodies. 76 allegations were not confirmed and 7 were investigated and the appropriate sanctions imposed. Also, 16 recommendations were given to the CEC to act on the alleged violations. In three cases, no violation was found, and in respect of another thirteen cases, protocols of administrative offences were drawn up by the CEC and sent to court for approval. The court found violations in eight cases and five were dismissed. Moreover, since their establishment, the Commission and then the IATF have made a total of 18 recommendations to various bodies. One of them concerned the desirability of issuing instructions by ministries on how their staff is supposed to behave in times of elections. As to the fact that the Commission is not able to impose sanctions directly, it is reiterated that the IATF was established *to assist* the CEC and the SAO to ensure a more vigorous implementation of the law, *not to replace* them.

44. As regard sanctions, reference is made by the authorities to the fine established previously. It is explained that, bearing in mind the social conditions in the country, the policy is not to impose unreasonably severe fines. The aforementioned fine is already relatively high – almost half the

[14] Composed of the Minister and the Deputy Minister of Justice and the Deputy Ministers of Internal Affairs, Foreign Affairs, Finance, Defense, Regional Development and Infrastructure, Corrections and Legal Assistance, Education and Science, Health, Labour and Social Affairs.

[15] Decrees No. 17 and 40 of the Ministry of Justice adopted on August 8 2013 and 3 April 2014, respectively.

[16] Under Article 150 on "unlawful restriction of a person's freedom of action" of the Criminal Code.

monthly salary of a high-ranking official – compared to the fines established for other administrative offences (between GEL 500/EUR 204 and GEL 1 000/EUR 408).

45. GRECO appreciates the detailed explanations provided. It takes note of the exact content of Article 48 (1) EC and welcomes the inclusion of an extensive definition of the term "administrative resources" in the CEC's Guidelines. The retention of the legal provision allowing for unlimited campaigning by high-level public officials however is disappointing and remains to be tackled. Also, the implementation of the existing legal framework calls for further reinforcement: although reportedly there were fewer cases of misuse of administrative resources during the 2014 local elections, a larger number of problematic issues have arisen compared to the 2013 presidential elections.[17] Preventing misuse, particularly at local level, therefore remains one of the country's top three priorities, as confirmed by the conclusions of the multi-stakeholder conference "The 2014 local elections: lessons learned and steps ahead" held in Tbilisi on 16 September 2014.[18]

46. On the issue of supervision, GRECO remains concerned by the multiplication of responsible bodies which, in addition to the CEC, the SAO and the courts now also include the IATF. The latter essentially acts as a facilitator, issuing *non-binding recommendations* to public officials and administrative agencies and *referring* alleged violations to the responsible statutory bodies. This has led to the situation described by the OSCE/ODIHR in relation to the 2013 Presidential elections as follows: "*Overall, the majority of complaints were not filed with the bodies that had the competency to impose sanctions and ensure effective adjudication of disputes in line with international commitments and good practice*".[19] In GRECO's opinion, the question of whether such a cumbersome mechanism should be maintained ought to be given proper re-consideration as part of the deliberations of the previously mentioned *ad hoc* Working Group under the Anti-Corruption Council.

47. Turning to sanctions, GRECO reiterates its position that a fine of EUR 840 cannot be considered an effective, proportionate and dissuasive sanction for the abuse of administrative resources, particularly bearing in mind the maximum expenditure threshold of approximately EUR 12 263 900 established per election subject, including political parties[20]. It is also recalled that for certain infringements, i.e. campaigning in institutions where it is prohibited and the issuing by a person in authority of a permit to do so, or failing to ensure equal access to state resources by all election subjects, much lower fines are applied (i.e. GEL 1 000/ EUR 408). The authorities are therefore encouraged to reconsider their stance and to further strengthen the preventive dimension of sanctions with regard to this issue.

48. In conclusion, although noticeable progress has been made in fulfilling some requirements of the present recommendation, additional efforts are needed to ensure full compliance with

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[17] See e.g. "Misuse of Administrative Resources during the Electoral Processes: 2014 Municipal Elections in Georgia" (1 January – 12 June 2014) by Transparency International Georgia (http://transparency.ge/sites/default/files/post_attachments/Misuse%20of%20administrative%20resources%20during%20the%20electoral%20processes.pdf), "Observation of local elections in Georgia (15 June 2014)", CPL(27)5FINAL, 15 October 2014, The Congress of Local and Regional Authorities of the Council of Europe, Chamber of Local Authorities, 27th Session, Strasbourg, 14-16 October 2014 (https://wcd.coe.int/ViewDoc.jsp?id=2247289) and OSCE/ODIHR Election Observation Mission final Report. "Georgia. Presidential Election 27 October 2013" (http://www.osce.org/odihr/elections/110301?download=true)

[18] http://www.coe.int/t/DEMOCRACY/ELECTORAL-ASSISTANCE/news/2014/georgia1609_en.asp

[19] "Georgia. Presidential Election 27 October 2013." OSCE/ODIHR Election Observation Mission. Final Report (http://www.osce.org/odihr/elections/110301?download=true)

[20] GRECO also notes the technical error in Article $25^{1}(1^{1})$ LPUC which sets a maximum expenditure threshold for independent Majoritarian candidates at 0,2 % of Georgia GDP for the previous year, as opposed to the correct 0,1% established per party/election subject by Article $25^{1}(1)$ LPUC. The authorities indicate that this error will be corrected in the nearest future – the SAO has already prepared the relevant draft amendments to the LPUC.

Recommendation Rec(2003)4, including specifically by prohibiting the campaigning by high-level public officials.

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

Recommendation viii.

50. *GRECO recommended (i) to ensure that an independent mechanism is in place for the monitoring of the funding of political parties and election campaigns, in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) to provide this mechanism with the mandate, the authority, as well as adequate resources to effectively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.*

51. This recommendation had been qualified as partly implemented in the Compliance Report. GRECO had been pleased with legislative and operational steps to put in place an independent body entrusted with monitoring party and election campaign financing and sanctioning breaches of the law.[21] It had appreciated the fact that a single body had been given a mandate to monitor party and election campaign finances in view of the practical difficulties of separating the two. However, as regards the first part of the recommendation, GRECO had recalled, as also indicated in paragraph 74 of the Evaluation Report, that any monitoring body must "*above all, operate in an impartial manner (and also be seen to be operating in such a way*)". Even if by law the SAO was independent, the findings of the 2012 OSCE/ODIHR Election Observation Mission Report that the SAO's "*independence and impartiality was severely undermined by the political affiliations of its management*" and that "*in 40 cases examined (…), it applied these powers disproportionately against opposition parties and their donors*"[22] could not be ignored.

52. As for the second part of the recommendation, GRECO had re-confirmed, first of all, that the primary objective of rules on transparency and supervision of political finances was not only to verify the proper use of public subsidies, but more importantly, to achieve greater transparency of the financial situation of a party, irrespective of whether or not it receives public funding. From that perspective, refining Article 97 of the Constitution was considered appropriate. Secondly, GRECO had noted that, while the financial activities of political parties and persons with "declared electoral goals" were explicitly covered by the SAO's supervisory powers, oversight of other election subjects, such as independent candidates, appeared to fall only partially under its remit.[23] Also, in many respects the SAO's competences needed to be further strengthened by introducing the obligations to publish the results of its supervisory work in a timely manner, to investigate all violations according to a common methodology, and to eliminate the overlap with the CEC's mandate. Furthermore, on the basis of the information supplied, it could not be concluded that adequate resources (such as budget and staff, including experts in the field of political finances) had been allocated to the SAO's Financial Monitoring Service.

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[21] It is recalled that, at the time of the evaluation visit, the external control in respect of party funding was non-existent and in respect of election campaign financing it was fairly limited, being exercised by the Financial Monitoring Group, an *ad hoc* body lacking a precise mandate and resources, set up by the CEC.

[22] OSCE/ODIHR Election Observation Mission Final Report, "Georgia: Parliamentary Elections 1 October 2012", 21 December 2012, available at http://www.osce.org/odihr/98399.

[23] For example, Article 34[1](2)(i) LPUC stipulated that it was only in response to violations of legislation related to *party funding* that the SAO could apply sanctions prescribed by law; therefore sanctions foreseen by the LPUC in respect of election subjects other than political parties could only be imposed by the CEC.

53. The authorities of Georgia now inform with regard to the first part of the recommendation that the institutional, financial, functional and organisational independence of the SAO – which reports only to Parliament – is guaranteed by the Constitution and the Law on the State Audit Office (LSAO). Interference in the SAO's activities is forbidden by law,[24] and impartiality listed as one of its basic operational principles.[25] Moreover, the Head of Office is banned from joining a political party or conducting political activities. The current SAO's Director is not affiliated with the ruling party which came to power after the October 2012 parliamentary elections, although he was appointed by the preceding ruling party. Furthermore, the statistics provided in relation to the 2013 Presidential and the 2014 local elections show that different political parties, including the ruling party and the opposition, were sanctioned by the SAO for infringing the electoral law.

54. With regard to the second part of the recommendation, reference is made to Article 97 of the Constitution and Article 6 (2) LSAO. The former underwent amendments in 2013 and now stipulates that "the SAO shall supervise the use and expenditure of the public funds and *of other material values*[26]". According to the latter "The SAO monitors the *financial activities* of political unions of citizens. The SAO is authorised to carry out audit, sequestrate the property of natural and legal persons and political unions of citizens (including bank accounts), draw up protocols on violations and adopt appropriate resolutions." Promoting "transparency and accountability in the financing of political parties" is furthermore a strategic objective declared on the SAO's web site.

55. Pursuant to Article 34[2](11) LPUC read in conjunction with Article 84 EC on "liability of election subjects for violations of the LPUC" and Article 93 (3) EC on "legal proceedings", the SAO has been vested with the power to draw up protocols on administrative violations not only in respect of political parties and persons with "declared electoral goals" but also electoral subjects, such as election blocs, political unions within an election bloc, initiative groups of voters and candidates nominated by such groups, in conformity with the procedures set forth by the LPUC. During the 2013 Presidential elections, sanctions were imposed on 6 independent candidates for failure to submit declarations on the use of election funds and for accepting illegal donations. During the 2014 local elections, fines were imposed on 6 independent candidates for failure to submit information on the use of election funds; 147 independent candidates received a warning and legal proceedings initiated against 26 candidates were subsequently closed. As for the overlap in the mandates of the CEC and the SAO, it has been eliminated and the LPUC and the EC now clearly differentiate their respective roles: the CEC is to supervise the implementation of the electoral law in general, while the SAO is to secure transparent party and election financing, including specifically by imposing sanctions.

56. With a view to assisting the SAO to perform its supervisory functions, and to proposing recommendations on legislative amendments and other steps to improve the existing monitoring system, an Interim Advisory Commission composed of civil society representatives was established under the SAO by decree No. 70/37 of the General Auditor of 22 April 2014. The Commission operated during the election period (i.e. until September 2014) and considered cases of alleged violations of the electoral law and discrepancies in the financial reports filed by election subjects. At the end of its term, the Commission prepared amendments to the previously mentioned Political Funding Monitoring Methodology, a regulation which sets out the procedure for monitoring political finances, and contributed to the review/adoption of several SAO decrees[27].

[24] Article 3 LSAO
[25] Article 5 (3) LSAO
[26] Here and in the next sentence emphasis is made by the Georgian authorities.
[27] Specifically, No. 137/37 on regulating some issues of transparency of pre-election campaigns, No. 126/37 on regulating some issues of transparency of political party financing, No. 76/37 on regulating some issues of financing an election

57. As for resources, the SAO's budget has seen a steady increase in the past three years (GEL 10 985 000/ EUR 4 485 330 in 2013, GEL 11 000 000/ EUR 4 491 460 in 2014 and GEL 12 863 000/ EUR 5 252 150 in 2015). In April 2015, the SAO's Financial Monitoring Service was reinforced by one employee and it was felt that hiring more permanent staff was not justified: in times of elections, the Financial Monitoring Service can rely on other departments for support; otherwise, its own resources are deemed to be adequate for carrying out its legally prescribed functions. In 2014 in addition to monitoring local election finances, the Service adopted new standardised forms for the submission of financial information by election subjects, prepared a draft decree, elaborated amendments clarifying certain election-related procedures and issues and organised training events for political parties as well as other meetings and presentations. Nevertheless, amendments have been prepared to the Law on the State Budget, enabling the recruitment by the SAO of temporary staff in times of elections.

58. GRECO recalls with respect to the first part of the recommendation that, in the Compliance report, it had deemed that the SAO enjoyed an appropriate degree of independence in law but not in practice. The reports published by Georgian and international stakeholders subsequent to the 2013 Presidential and the 2014 local elections no longer question the impartial performance of the SAO's oversight duties (in contrast to the 2012 parliamentary elections) and acknowledge that it had not exhibited a differential approach in relation to the various electoral subjects.[28] GRECO accepts therefore that the situation has improved since 2013 and considers this part of the recommendation to have been implemented satisfactorily.

59. As for the second part of the recommendation, GRECO notes, first of all, that the wording of Article 97 of the Constitution is the same as analysed in paragraph 67 of the Compliance Report. In it, the Georgian authorities themselves underline the ambiguous constitutional basis for the SAO's mandate in the field of political finances and indicate that this issue deserves priority attention from the Anti-Corruption Council. From GRECO's perspective, it is questionable whether the funding, other than public subsidies, acquired by parties and other election subjects can be qualified as "other material values"; therefore further refining the text of this constitutional provision, as already suggested in the Compliance Report, would be desirable. Also, while the SAO's function is defined in the law as being aimed at ensuring oversight and promoting transparency specifically of *party* funding, highlighting an identical role to be played in relation to election campaigns – which are open to election subjects other than political parties – also merits express recognition, particularly since the SAO has been performing such a function in practice.

60. The SAO's newly acquired right to impose sanctions for violations of political funding rules not only on parties and persons with "declared electoral goals" but also on other election subjects, and the withdrawal of this competence from the CEC have been positive steps. Still, as stated under recommendation i, it would have been preferable if the LPUC and the EC were subject to a more comprehensive revision so as to avoid that the rules on the financing of election subjects other than parties are defined in the LPUC, i.e. the law dedicated exclusively to the *operation of political parties*. The authorities are therefore encouraged to carry out more substantial legislative revisions, as suggested above. GRECO also uses the opportunity to recall that, further to the May

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campaign during local self-government elections and on approving financial accounting forms and the rules on completing them.

[28] See e.g. "Assessment of Pre-Election Environment by Nongovernmental Organisation: Local Elections 2014" by International Society for Fair Elections and Democracy (ISFED), Transparency International Georgia and Georgian Young Lawyers Association (GYLA), Tbilisi, 14 June 2014 (http://transparency.ge/en/node/4377) and "Georgia. Presidential Election 27 October 2013." OSCE/ODIHR Election Observation Mission. Final Report (http://www.osce.org/odihr/elections/110301?download=true)

2012 amendments to the LPUC, only administrative courts can decide on sanctioning cases based on protocols of administrative violations filed by the SAO with the relevant city/district court.

61. The setting up of a temporary consultative commission under the SAO with a view to analysing possible infringements of the regulations on campaign financing, to issue recommendations and to ensure greater transparency may also be qualified as a welcome development. Yet, the information submitted gives the impression that, during the 2014 local elections, the SAO involved the commission in the substantial monitoring of financial statements submitted by election subjects (cf. paragraph 56). The OSCE/ODIHR report on the 2013 Presidential elections also refers to the "insufficient and formalistic" monitoring of the campaign finances.[29]

62. Last but not least, even if the SAO's budget has grown over the past three years, it has not been shown that the additional financial resources have been used specifically to reinforce the capacity of the Financial Monitoring Service and to improve the effectiveness of political finance oversight. Similarly, it has not been confirmed that the Service employs on a permanent basis a sufficient number of experts in this field, as was suggested in the Evaluation Report (which might also explain the need to solicit other stakeholders' expertise and assistance in times of elections). It is concluded that further progress needs to be made with regard to several elements of this part of the recommendation which for the time being is considered partly implemented.

63. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

64. *GRECO recommended (i) to harmonise existing provisions on sanctions in the Election Code, Law on Political Unions of Citizens and Code of Administrative Violations; (ii) to ensure that effective, proportionate and dissuasive sanctions can be imposed for all infringements of the Election Code and Law on Political Unions of Citizens and on all persons/entities on which these two laws place obligations and (iii) to clarify the procedure for initiating and imposing sanctions pursuant to the Law on Political Unions of Citizens, including appeals/judicial review, and assess whether there is a need to do so in respect of the Election Code.*

65. This recommendation had been considered partly implemented in the Compliance Report. As for its first and second parts, GRECO had noted that sanctions for the violations of the EC and the LPUC were removed from the Code of Administrative Violations (CAO) and provided directly by the respective laws. Moreover, the new legislative framework (i.e. the amended LPUC and the new EC) set up a more consistent sanctioning regime for the violation of rules on party and election campaign financing.[30] Still ambiguities persisted with respect to the definition of some violations and sanctions, and the persons/entities on whom/which sanctions and procedural measures, such as property seizure, could be imposed. As regards the requirement of proportionality, on the one hand GRECO had taken the view that fines of EUR 840 or 2 101 for the misuse of administrative resources lacked the requisite dissuasive effect, on the other hand, suspension of state subsidies was too severe a sanction for failure to present an annual financial declaration by a political party within the established timelines. Similarly, the fine of EUR 74 million imposed in 2012 on an opposition leader for an illegal donation (later halved by the Court

[29] "Georgia. Presidential Election 27 October 2013." OSCE/ODIHR Election Observation Mission. Final Report (http://www.osce.org/odihr/elections/110301?download=true), page 13.

[30] The LPUC provided for confiscation and transfer to the state budget of an illegal donation/membership fee, fines and withdrawal of the right to state funding, and the EC for written warnings and the "*random sum up of election results of votes received by the election subject*".

of Appeal) raised concerns about proportionality, as did also the cases of selective application of sanctions. As for the third part of the recommendation, GRECO had welcomed the stipulations included in the revised LPUC detailing the procedure for initiating and imposing sanctions. A similar review in relation to the EC however had not been carried out.

66. The authorities of Georgia now report, as regards the first part of the recommendation that the LPUC and the EC no longer provide for property seizure as a separate sanction but only monetary fines (in addition to the suspension of state subsidies envisaged in the LPUC). With respect to the second part of the recommendation, the sanctions to be imposed in the form of a monetary fine have been reduced significantly as the result of the 2013 amendments to the LPUC. Thus, all fines previously amounting to five to ten times the amount of a prohibited donation/membership fee have been reduced to two times the amount, while the fixed fines equal to GEL 5 000/EUR 2 101 have been reduced to GEL 1 000/ EUR 420. As for the EC, the authorities reiterate that it does not establish severe fines in view of the country's social conditions and that, compared to the fines prescribed for other administrative offences, the fine of GEL 2 000/EUR 840 established for the misuse of administrative resources is considered as being high given that it is equivalent to almost half the monthly salary of a high-ranking official. Concerning the suspension of state subsidies for failure to present an annual financial report by a political party in time, the authorities recall that this sanction is not applied automatically but after a party receives a written warning and is given five days to present the report. Since the duration of the suspension is one year only, the authorities submit that it is not a severe penalty.

67. As for the third part of the recommendation, the authorities report on two meetings held, one on 6-8 May 2015 of the aforementioned *ad hoc* Working Group and another held two weeks later between the Ministry of Justice and the SAO's Financial Monitoring Service. Having reviewed the relevant articles of the EC, both meetings concluded that the procedure for initiating and imposing sanctions, including appeals/judicial review, under the EC did not require further clarification. Article 93 EC lists the persons/institutions responsible for initiating the procedures[31] which are to be conducted in accordance with the CAO. Those institutions are to draw up protocols and send them to the first instance court which is to decide on an appropriate sanction. Chapter IV CAO sets the procedure for imposing administrative penalties, and Chapter XXII CAO explains how to lodge an appeal or an objection against a court judgment rendered in an administrative case.

68. In regard to the first and second parts of the recommendation, GRECO acknowledges that sanctions for the violation of rules on party and election campaign financing are now prescribed only by the LPUC and the EC (the former provides for confiscation and transfer to the state budget of an illegal donation/membership fee, fines and withdrawal of the right to state funding, and the latter – for monetary fines) and that this has created a more uniform and consistent sanctioning regime. Still, it would appear that certain identical infringements may be subject to different sanctions[32] whereas the sanctions cannot be imposed on all entities on which the law places obligations[33]. Furthermore, the significant decrease of the monetary fines in the revised

[31] For example, pursuant to Article 93 (1) EC, in cases of violations of Articles 79, 81, 86-92 EC, it is the CEC, persons authorised by it or the district election commissions who are to initiate procedures. Pursuant to Article 93 (1) EC, in cases of infringements of Articles 84 and 85 EC, the procedures are to be initiated by the SAO.

[32] For example, under Article 85 EC, failure to submit a report on campaign funds by a political party is punishable by a fine ranging between GEL 1 500 and 3 000/EUR 573 and 1 147, depending on whether or not a party is the recipient of state funding; under Article 34 LPUC, failure by a party to submit the annual financial report to the SAO, of which the report on campaign funds is a constituent part, leads to the withdrawal of state funding; the same infringement is also potentially liable under Article 34[2] LPUC to a fine equal to GEL 5 000/ EUR 2 101.

[33] While Article 85 EC establishes liability of a political party for failure to fulfil the obligation to submit a report on campaign funds, a liability of other election subjects for the same infringement has not been established.

LPUC and the maintenance of the rather low fines in the EC remains a source of serious concern. Bearing in mind that the maximum electoral expenditure cap for a political party/election subject has been set at approximately EUR 12 263 800 in 2014[34], GRECO is of the firm view that the aforementioned fines are clearly not proportional to the severity of the offences established by the respective laws and contradict the requirements of Rec (2003)4 even in the socio-economic context of Georgia. As for the suspension of public funding being imposed as a sanction on a political party that fails to present an annual financial report on time, the wording of Article 34 LPUC appears to be the same as analysed in the Compliance Report.[35] Therefore, it elicits the same conclusions as before, namely that it is too severe a sanction, capable of adversely affecting the operation of a party in the year in which the elections are to be held. In light of the foregoing, GRECO cannot conclude that the first and second parts of the recommendation have been implemented satisfactorily.

69. Turning to the third part of the recommendation, GRECO is pleased that the procedure for initiating and imposing sanctions under the EC has been subject to an assessment by relevant stakeholders, even though the outcome of those deliberations has been negative. It is concluded that this part of the recommendation has been implemented satisfactorily.

70. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

71. *GRECO recommended to increase the limitation period for administrative violations of party and campaign funding regulations.*

72. This recommendation had been qualified as partly implemented in the Compliance Report. GRECO had appreciated the legislative amendments introduced into the LPUC which extended the statute of limitations to six years for the administrative offences established therein. It had however regretted that the period of limitation under the EC had not been altered. GRECO had recalled that the EC established a series of important restrictions, such as a prohibition on the misuse of administrative resources and official positions in election campaigns, a prohibition on buying votes or providing funds, gifts or other material benefits to citizens and that many of these might be uncovered long after the announcement of election results.

73. The authorities of Georgia now report that the limitation period under the EC remains the same (i.e. two months, as provided for by the CAO). That being said, the previously mentioned *ad hoc* Working Group on the implementation of recommendations issued by GRECO, OECD-ACN and UNCAC, has apparently prepared proposals with a view to addressing *inter alia* this recommendation.

74. GRECO regrets the lack of concrete progress and concludes that the recommendation remains partly implemented.

75. GRECO concludes that recommendation x remains partly implemented.

[34] Pursuant to Article 25[1](1) LPUC, this threshold is calculated as not exceeding 0,1% of the country's GDP in the preceding year. See also footnote 19 above.

[35] "If a party fails to submit its financial declaration to the SAO in time, the latter shall warn the party in writing and request to remove inaccuracy within 5 days. Unless the party submits its financial declaration to the SAO within 5 days, it shall not be entitled to receive public funding indicated in Article 30 thereof for subsequent one year."

III. CONCLUSIONS

76. **In view of the conclusions contained in the Third Round Compliance Report on Georgia and in light of the analysis contained herein, GRECO concludes that Georgia has now implemented satisfactorily eight out of fifteen recommendations contained in the Third Round Evaluation Report.** In respect of Theme I, both pending recommendations have been implemented satisfactorily; with regard to Theme II, six of the seven pending recommendations remain partly implemented and one has been upgraded from not implemented to partly implemented.

77. Overall, with respect to Theme I – Incriminations, all five recommendations have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, three recommendations (iii, v and vii) have been implemented satisfactorily and seven (i, ii, iv, vi, viii, ix and x) have been partly implemented.

78. As regards the criminalisation of corruption, GRECO is pleased with the ratification by Georgia of the Additional Protocol to the Criminal Law Convention on Corruption and it urges the authorities to adopt as soon as possible guidelines on how to preclude the misuse of provisions on effective regret.

79. With respect to the transparency of political funding, the momentum generated by the compliance procedure has still not been used to launch a comprehensive legal reform aimed at aligning the Electoral Code (EC) with the Law on Political Unions of Citizens (LPUC), as was envisaged by the authorities. It would appear that the amendments introduced into the LPUC have only partly addressed the various concerns underlying GRECO's recommendations. For example, although the independence and impartiality of the State Audit Office, as the body entrusted with monitoring political finances, appears to have been attained not only in law but also in practice, the full scope of the SAO's duties has not been reflected in the pertinent legal acts and its expertise and capacity in this area call for further reinforcement. Other persisting concerns are the need for the more effective prevention of cases of misuse of administrative resources, more proactive investigation of infringements of the political funding rules, and for effective, proportionate, dissuasive and timely sanctions that are enforceable in respect of all persons/entities on which the LPUC and the EC establish obligations. In conclusion, the previously mentioned *ad hoc* Working Group entrusted with identifying responses to GRECO's recommendation is urged to identify pertinent solutions to each pending issue within the shortest possible timelines.

80. In view of the fact that seven essential recommendations concerning the transparency of party funding are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Georgia to submit additional information regarding the implementation of recommendations i, ii, iv, vi, viii, ix and x (Theme II – Transparency of party funding) by 31 March 2016 at the latest. Also, given its interest in the matter, GRECO would welcome the submission of further information on the guidelines against the misuse of effective regret, possibly under item 4 of the agenda of a future plenary meeting.

81. GRECO invites the authorities of Georgia to authorise, as soon as possible, the publication of this Second Compliance Report, to translate it into the national language and to make the translation public.