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Third Evaluation Round

Compliance Report on Azerbaijan

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 57th Plenary Meeting
(Strasbourg, 15-19 October 2012)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Azerbaijan to implement the 17 recommendations issued in the Third Round Evaluation Report on Azerbaijan (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption);
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 48th Plenary Meeting (1 October 2010) and made public on 18 November 2010, following the authorisation by Azerbaijan (Greco Eval III Rep (2010) 2E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, Azerbaijan authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 16 May 2012 and served as a basis for the Compliance Report.
4. GRECO selected Liechtenstein and Spain to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Peter C. MATT, Diplomatic Officer, Office for Foreign Affairs (Liechtenstein) and Mr Rafael VAILLO RAMOS, Technical Adviser, D.G. for International Cooperation, Ministry of Justice (Spain). They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its Evaluation Report addressed nine recommendations to Azerbaijan in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The authorities of Azerbaijan report that in order to implement GRECO's recommendations, the Penal Code (PC) was amended by the Law of 24 June 2011, which entered into force on 2 August 2011. The amendments include, in particular, the definition of the possible perpetrators of corruption offences ("officials") in the note to section 308 PC, the definition of the offences of passive and active bribery and trading in influence in sections 311, 312 and 312-1 PC as well as jurisdictional rules in section 12 PC.

Recommendation i.

8. GRECO recommended to take the legislative measures necessary to ensure that bribery of all categories of public officials (in the meaning of the Criminal Law Convention on Corruption, ETS 173) at central and local level is criminalised, including all civil servants covered by the legislation on civil service as well as public employees without managerial or organisational functions.
9. The authorities indicate that the Law of 24 June 2011 introduced a new version of the “note” to section 308 PC, which defines the possible perpetrators of corruption offences (“officials”) as follows and which has – according to the authorities – the same legal force as other parts of the PC.

Note to section 308 PC

Officials in sections of the present Chapter shall be the following persons:

1. *Representatives of the State authorities, including persons elected or appointed to public institutions as provided by the Constitution and statutes of the Republic of Azerbaijan, as well as persons representing public and self-governing institutions on the basis of special powers, military personnel of officers, warrant officers and ensigns, as well as civil servants (including special categories of civil service);*
2. *persons whose candidacy to elected posts in State institutions has been registered according to statutory rules;*
3. *managers and employees of State and municipal establishments, enterprises or organisations, and other commercial and non-commercial organisations;*
4. *persons carrying out organisational-administrative or managerial-administrative functions in State and municipal establishments, enterprises or organisations, and other commercial and non-commercial organisations, on the basis of special authority;*
5. *persons engaged in commercial activity without incurring legal person identity;*
6. *officials of public institutions of foreign States, members of elected institutions of foreign countries, officials and other servants of international organisations, members of the international parliamentary assemblies;*
7. *judges and other officials of international courts, arbiters of foreign and national arbitration courts, foreign and national jurors.*

10. The authorities stress that following the amendments, the note to section 308 PC explicitly covers, *inter alia*, any civil servants – including “special categories of civil service” – (under item 1) and employees of State and municipal establishments, enterprises or organisations (under item 3), in addition to persons carrying out organisational-administrative or managerial-administrative functions in State and municipal establishments, enterprises or organisations (under item 4).
11. GRECO takes note of the information provided, according to which the amended definition of “officials” as possible perpetrators of corruption offences has been broadened to cover any civil servants and public employees. The main concern underlying the recommendation related to the restrictive element of “organisational-administrative or managerial-administrative functions” – which under the new law is no longer an indispensable condition for being considered an official – has thus been addressed.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

13. *GRECO recommended (i) to criminalise active bribery of foreign public officials, in accordance with Article 5 of the Criminal Law Convention on Corruption (ETS 173); (ii) to consider criminalising passive bribery of foreign public officials as well as active and passive bribery of members of foreign public assemblies, in accordance with Articles 5 and 6 of the Convention, and therefore withdrawing or not renewing the reservations relating to these Articles of the Convention; (iii) to criminalise bribery of all judges and officials of international courts unambiguously, in accordance with Article 11 of the Convention; and (iv) to consider taking the legislative measures necessary to ensure that bribery of all officials of international organisations and members of international parliamentary assemblies is criminalised, in accordance with Articles 9 and 10 of the Convention, and therefore withdrawing or not renewing the reservations relating to these Articles of the Convention.*
14. The authorities state that, following the reform, bribery of foreign and international officials is criminalised more broadly than before, as the note to section 308 PC in its amended form covers foreign public officials (under item 6 which refers to “officials of public institutions of foreign States”), members of foreign public assemblies (under item 6 which refers to “members of elected institutions of foreign countries”), judges and officials of international courts (under item 7 which refers to “judges and other officials of international courts”) as well as any officials of international organisations and members of international parliamentary assemblies (under item 6 which refers to “officials and other servants of international organisations, members of the international parliamentary assemblies”), see paragraph 9 above. The authorities explain that the term “other servants of international organisations” (item 6) is to be understood as any employees employed on a contractual or non-contractual basis, whose actions are imputable to the organisation.
15. The authorities add that the Cabinet of Ministers, on the initiative of the Commission for Combating Corruption and after having sought the opinion of relevant ministries, submitted to Parliament a draft law aimed at withdrawing all the reservations made by Azerbaijan to the Criminal Law Convention on Corruption (hereafter: the Convention). The bill was adopted by Parliament on 1 October 2012 and entered into force on 17 October 2012.
16. GRECO notes that the criminalisation of bribery has been extended to explicitly capture officials and “members of elected institutions” of foreign States, any “officials and other servants of international organisations, judges and officials of international courts and members of international parliamentary assemblies”, thus also including categories of persons in respect of whom Azerbaijan had entered reservations to the Convention. Moreover, GRECO notes that the withdrawal of the reservations to Articles 5, 6, 9 and 10 of the Convention has not only been subject to scrutiny, as required by the recommendation, but has already been effected.
17. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

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

19. The authorities again refer to the amended version of the note to section 308 PC, which includes “arbiters of foreign and national arbitration courts, foreign and national jurors” in the scope of application of the bribery provisions (under item 7), see paragraph 9 above. According to the authorities, the amendments were intended to cover any (domestic and foreign) arbitrators in the meaning of Article 1, paragraph 2 of the Additional Protocol to the Criminal Law Convention on Corruption.
20. The authorities add that the Cabinet of Ministers, on the initiative of the Commission for Combating Corruption, submitted to the ministries concerned an official letter to receive their opinions on the feasibility of ratification of the Additional Protocol to the Criminal Law Convention on Corruption. The Cabinet of Ministers received favourable opinions from the relevant ministries and State bodies, and a presidential decree giving competence to the Prosecutor General to sign the Additional Protocol was adopted. On 8 October 2012, the Protocol was signed by the Prosecutor General.
21. GRECO notes that active and passive bribery of domestic and foreign jurors and of “arbiters of foreign and national arbitration courts” has been criminalised. GRECO is not convinced, however, that the latter concept is broad enough to cover any (domestic and foreign) arbitrators in the meaning of Article 1, paragraph 2 of the Additional Protocol to the Criminal Law Convention on Corruption, including those acting on the basis of an arbitration agreement between private persons outside an arbitration court. Finally, GRECO is pleased that the Additional Protocol has been signed, and it invites the authorities to carry through their plans to ratify the Protocol as soon as possible, as required by the recommendation.
22. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

23. *GRECO recommended to introduce the concepts of “offering” and “promising” an advantage and “accepting an offer or a promise” in the provisions on active and passive bribery.*
24. The authorities report that the 2011 amendments introduced the concepts of “offering” and “promising” an advantage in the provisions on active bribery (section 312 PC) and the concept of “accepting an offer or a promise” in the provisions on passive bribery (section 311 PC). The amended provisions read as follows.

Section 311 PC: Receiving a Bribe (Passive Bribery)

*(1) Receiving a bribe – i.e. request or receipt or acceptance of an offer or promise by an official, directly or indirectly, personally or through the intermediary of third persons, of any material or other values, privileges or advantages for him/herself or third persons, for any act (inaction), as well as general patronage or indifference, in the exercise of his/her official functions – shall be punished by 4 to 8 years’ imprisonment with deprivation of the right to hold certain positions or to engage in certain activities for a period of up to 3 years and confiscation of property.
(...)*

Section 312 PC: Giving a Bribe (Active Bribery)

(1) Giving a bribe – i.e. offering, promising or giving any material or other values, privileges or advantages, directly or indirectly, personally or through the intermediary of third persons, to an official for him/herself or third persons to act or refrain from acting in the exercise of his/her official functions – shall be punished by a fine of 1,000 to 2,000 Manat¹ or 2 to 5 years' imprisonment and confiscation of property.

(...)

25. GRECO takes note of the information provided and concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

26. *GRECO recommended (i) to consider including specific provisions on bribery in the private sector in the Penal Code; and (ii) to ensure that legislation concerning bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for, in any capacity, any private sector entity as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
27. As concerns the first part of the recommendation, the authorities report that the question of introducing specific provisions on bribery in the private sector in the PC has been reviewed. The Anti-Corruption Department of the General Prosecutor's Office submitted a report to the Commission for Combating Corruption based on case law on the prosecution of corruption in the private sector and concluding that the current legislation is sufficient to criminalise corruption in the private sector. The report took into account various factors, *inter alia*, the number of criminal cases, prosecuted and adjudicated persons in the private and public sectors, the consequences of provisional measures taken by investigative and prosecutorial bodies as well as compensatory measures ordered by court, and the perception of these results by the victims.
28. In relation to the second part of the recommendation, the authorities refer to the note to section 308 PC which has been amended to include "managers and employees of (...) and other commercial and non-commercial organisations" (under item 3), "persons carrying out organisational-administrative or managerial-administrative functions in (...) and other commercial and non-commercial organisations, on the basis of special authority" (under item 4) as well as "persons engaged in commercial activity without incurring legal person identity" (under item 5). Bribery of all these categories of persons acting in the private sector is therefore criminalised under the general bribery provisions of sections 311 and 312 PC.
29. GRECO takes note of the information provided which indicates that the introduction of specific provisions on bribery in the public sector has been considered, as required by the first part of the recommendation, but it regrets that it has been decided not to take any action in this respect, despite the serious misgivings expressed in the Evaluation Report. GRECO therefore encourages the authorities to keep the question of introducing separate and clearly identifiable provisions designed specifically to cover private sector bribery on the agenda. As regards the second part of the recommendation, GRECO is satisfied with the information according to which the 2011 reform has defined the scope of possible perpetrators of bribery offences acting in the private sector

¹ Approximately 1,000 to 2,000 EUR. – Exchange rate as of 1 October 2012.

broadly, including notably any employees of commercial and non-commercial organisations – without making it an indispensable condition that they perform “organisational-administrative or managerial-administrative functions” – and individuals engaged in commercial activity.

30. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

31. *GRECO recommended to consider withdrawing or not renewing the reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173) and aligning the incrimination of trading in influence of section 312-1 of the Penal Code with the standards of this Article of the Convention, in particular with regard to the categories of persons targeted, the different forms of corrupt behaviour as well as the coverage of indirect commission of the offence and of instances involving third party beneficiaries.*
32. The authorities report that by virtue of the legal reform of 2011, the provisions of section 312-1 PC on trading in influence were amended to explicitly cover (1) the offer and the promise of an advantage as well as the acceptance of an offer or promise; (2) the indirect commission of the offence, through the intermediary of third persons; and (3) instances involving third party beneficiaries (“for him/herself or third persons”). Moreover, as the definition of an “official” has been broadened in the note to section 308 PC (see paragraph 9 above), the provisions on trading in influence – which refer to this concept – now capture instances where the influence is targeted at any domestic public officials or at foreign or international officials. The amended version of section 312-1 PC reads as follows.

Section 312-1 PC: Influencing the decision of an official (Trading in influence)

(1) Requesting or receiving, or accepting the offer or promise of any material or other values, privileges or advantages by any person for him/herself or third persons, directly or indirectly, personally or through the intermediary of third persons, with the purpose of exerting an improper influence over the decision-making of an official using his/her real or assumed possibilities of influence shall be punished by a fine of 3,000 to 5,000 Manat or 3 to 7 years’ imprisonment and confiscation of property.

(2) Giving, offering, or promising to any person any material or other values, privileges or advantages, for him/herself or third persons directly or indirectly, personally or through the intermediary of third persons, with the purpose of exerting an improper influence over the decision-making of an official using his/her real or assumed possibilities of influence shall be punished by a fine of 1,000 to 2,000 Manat or 2 to 5 years’ imprisonment and confiscation of property.

33. As concerns the reservation made by Azerbaijan in respect of Article 12 of the Convention, the authorities reiterate that on 1 October 2012, Parliament adopted a draft law aimed at withdrawing all the reservations to the Convention made by Azerbaijan, which entered into force on 17 October 2012.
34. GRECO takes note of the information provided, which indicates that – beyond the requirements of the recommendation – the reservation made by Azerbaijan to Article 12 of the Convention has already been withdrawn and that legal amendments aimed at aligning the national legislation to the standards of this Article have already been adopted.

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

Recommendation vii.

36. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities.*
37. The authorities state that the use in practice of the special defence provided by the note to section 312 PC, in the Prosecutor's Office and in the Anti-Corruption Department of the General Prosecutor's Office in particular, has been examined repeatedly, most recently in May-July 2012 in the context of the UNCAC Implementation Review. The analysis reveals, *inter alia*, that out of 11 criminal cases initiated against 16 persons for passive bribery in 2011, in seven cases criminal prosecution for active bribery was refused on grounds of coercion by the public official (bribe-taker). The authorities stress that the decision to apply the defence provision can be contested. In 2011, in several cases the bribe-takers launched such complaints at different stages of proceedings (before and during the trial), but the investigators, supervising prosecutors and finally the courts confirmed that there had been coercion by the bribe-takers and that the decisions to apply the defence provision contained in the note to section 312 PC were therefore well-founded.
38. The authorities add that the main cause substantiating the exemption from prosecution under the note to section 312 PC was the clandestine nature of bribery. They indicate that in the meantime, the capacity of the Anti-Corruption Department to detect corruption crimes has increased, since it has been granted wider powers to use special investigative measures by the Detective-Search Activity (Amendment) Act of 18 March 2011. Now that the Department does not rely so heavily on the voluntary information of parties to bribery, it is more flexible to consider this recommendation.
39. GRECO takes note of the information provided, according to which the use of the special defence provision contained in the note to section 312 PC in practice has recently been examined by the Anti-Corruption Department of the General Prosecutor's Office, as recommended. GRECO understands that the prosecutor's decision to apply the defence provision can be contested and that in such cases, the question of whether its conditions were fulfilled are subject to review. However, GRECO recalls its misgivings about the automatic – and mandatorily total – nature of this defence expressed in the Evaluation Report. If the conditions of the defence are fulfilled, the bribe-giver is in any case completely released from criminal liability, independently from the concrete circumstances of the case. GRECO urges the authorities to continue their reflections in this matter and to revise the automatic – and mandatorily total – nature of this defence, as recommended.
40. GRECO concludes that recommendation vii has been partly implemented.

Recommendations viii and ix.

41. *GRECO recommended to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad (recommendation viii).*
42. *GRECO recommended to establish jurisdiction over acts of corruption committed abroad by non-citizens, but involving officials of international organisations, members of international*

parliamentary assemblies, judges or officials of international courts who are, at the same time, citizens of Azerbaijan (recommendation ix).

43. The authorities report that by way of the 2011 amendments, new paragraphs 1-1 and 2-1 were inserted into section 12 PC. Paragraph 1-1 establishes nationality jurisdiction over corruption offences and “other offences against service” committed abroad, without requiring dual criminality; the authorities specify that this provision also captures trading in influence offences, which are criminalised under the relevant chapter 33 of the PC.² Paragraph 2-1 establishes jurisdiction over such offences if they were committed by foreigners but with the participation of nationals who are at the same time officials of international organisations, members of international public assemblies or international courts or judges of international courts. The new provisions read as follows.

Section 12 PC: Implementation of the criminal law concerning the persons who have committed a crime outside the borders of the Republic of Azerbaijan

(...)

(1-1) Citizens of the Republic of Azerbaijan and persons residing on the territory of the Republic of Azerbaijan without citizenship, who have committed an offence of corruption or other offence against service outside the borders of the Republic of Azerbaijan, shall be criminally liable according to the present Code, if these persons have not been convicted in the foreign State.

(2-1) Foreigners and persons without citizenship who have committed an offence of corruption or offence against service – with the participation of a citizen of Azerbaijan who holds the post of official in an international organisation, of a member of an international public assembly or an international court or of a judge of an international court – outside the borders of the Republic of Azerbaijan, shall be criminally liable according to the present Code, if these persons were not convicted in a foreign State.

(...)

44. GRECO welcomes the information provided and concludes that recommendations viii and ix have been implemented satisfactorily.

Theme II: Transparency of Party Funding

45. It is recalled that GRECO in its Evaluation Report addressed eight recommendations to Azerbaijan in respect of Theme II. Compliance with these recommendations is dealt with below.
46. The authorities of Azerbaijan report that in order to implement GRECO’s recommendations, the party financing provisions of the Law on Political Parties (LPP) were amended by the “Law on Amendments to the Law on Political Parties” of 20 April 2012, which entered into force on 13 May 2012. Before being sent to Parliament, the draft amendments had been submitted to the Council of Europe’s Venice Commission which issued comments on the draft law.³

² Chapter 33 of the PC: “Crimes against the State, interests of public service and institutions of local government service, and also in other commercial and non-commercial organisations”.

³ See [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)046-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)046-e.pdf). – It is to be noted that the draft law has been further amended after the Venice Commission had submitted its comments.

Recommendation i.

47. *GRECO recommended to extend the financial and accounting reference period applicable to election campaigns so that financial reports on election funds reflect more closely the resources and expenditure devoted to these campaigns.*
48. The authorities state that from the point of view of the Central Election Commission (CEC), the existing legal framework is already in accordance with the standards required by the recommendation. They recall that under the pertinent provisions of the Election Code (EC), in order to be registered as nominated, candidates and political parties are to submit the initial financial report (including information on funds spent for organising the collection of signatures) to the relevant constituency election commission 50 to 30 days before election day. The authorities furthermore recall that at least 55 days before election day, the CEC in agreement with the National Bank has to define the record keeping of the opening and use of special bank accounts, rules for reporting and rules for collection and expenditure of election funds. Finally, the special election account to form an election fund must be opened in the relevant bank, determined by the CEC, at least 24 hours prior to the collection of voters' signatures necessary for the registration of a candidate.
49. GRECO takes note of the information provided with regard to the existing legal framework concerning the financial and accounting reference period applicable to election campaigns. However, GRECO wishes to recall that in the Evaluation Report, it had considered that this period – namely, the initial financial report is to be submitted by election candidates and political parties 50 to 30 days before election day – is extremely short, bears the potential risk of circumvention of the transparency provisions and therefore needs to be revisited. No discernible action has been taken by the authorities to address this concern.
50. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

51. *GRECO recommended to clearly define and regulate donations, membership fees and other permitted funding sources in the Law on Political Parties and to align its financing provisions with the transparency standards set by the Electoral Code.*
52. The authorities report that the above-mentioned 2012 reform included amendments to sections 17 and 19 LPP relating to the financing of the activities of political parties and to donations. The amended provisions read as follows.

Section 17 LPP: Financing of the activities of political parties

17.1. Activities of political parties shall be financed through the allocation of funds from the State budget and other funds in accordance with this law.

17.2. Financing of political parties by the following persons and entities, including obtainment of donations therefrom shall be prohibited:

17.2.1. State bodies and other State entities, except for the cases referred to in section 17.1 of this law;

17.2.2. municipal bodies and their subordinate entities;

17.2.3. foreign States and foreign legal persons;

- 17.2.4. *foreigners and stateless persons;*
- 17.2.5. *persons under age of 18;*
- 17.2.6. *persons who fail to indicate their surname, name, patronymic, series, number, date of issue of identity card;*
- 17.2.7. *military units;*
- 17.2.8. *public associations and foundations, religious entities;*
- 17.2.9. *legal persons.*

Section 19 LPP: Donations

- 19.1. *Political parties shall be entitled to accept donations.*
- 19.2. *Political parties shall not give, offer or promise directly or indirectly any material or other values, privileges or advantages to the donator himself/herself or any other person in exchange granted or promised donation.*
- 19.3. *Persons granting donations to political party may not demand or accept, directly or indirectly, material or other boons, any privilege or advantage, give consent to such proposal or promise in lieu of donation granted and to be granted.*
- 19.4. *Donated monetary funds shall be accepted in the form of transfer to the bank account of political party.*
- 19.5. *Value of donations submitted in kind shall be defined by the market value.*
- 19.6. *Amount of donations accepted by political parties and information about persons granting donations revealed by the relevant body of executive power shall be inserted into financial statement.*

53. GRECO takes note of the information provided with regard to the recent amendments to the party financing provisions of the LPP. In particular, donations to political parties have been regulated more closely in section 19 LPP, which makes it clear that monetary donations must be made via transfer to the bank account of a political party and that donations in kind are also covered by the law and must be accounted for at their market value. That said, GRECO recalls that the recommendation also aimed at defining and regulating membership fees and other permitted funding sources – e.g. “proceeds from property”, “proceeds from activities, circulation of press outlets and articles and other similar lucrative activity” and “other proceeds” in the meaning of section 18 LPP. Moreover, the recommendation called for aligning the financing provisions of the LPP with the transparency standards set by the EC. It would appear that no measures have been taken in these respects, except for requiring monetary donations to political parties to be made through the banking system.

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

Recommendation iii.

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

56. With regard to the first part of the recommendation, the authorities report that section 21 LPP on financial statements has been amended and now reads as follows.

Section 21 LPP: Financial statement

21.1 Political parties shall carry out accounting activity and draw up financial statements in accordance with the Law of the Republic of Azerbaijan "On Accounting".

21.2. Political parties shall submit an annual financial statement to the relevant body of executive power not later than 1 April of each year.

21.3. The number of members of political party paying membership dues shall be indicated in the financial statement.

21.4. The form, content and procedure of submission of financial statements of political parties shall be defined by the relevant body of executive power (Cabinet of Ministers).

21.5. Political parties shall publish annual financial statements in the mass media along with an auditor's opinion.

The authorities add that under the Presidential Decree of 8 May 2012 on the Implementation of the Law on Amendments to the Law on Political Parties, the Cabinet of Ministers has to define the form, content and procedure of submission of financial statements of political parties, within a period of three months. The authorities expect that the Cabinet of Ministers will soon adopt a document to perform this task.

57. As concerns the second part of the recommendation, the authorities refer to the fact that the 2012 amendments introduced section 17-1 into the LPP which provides for State funding of political parties having gained at least 3 percent of valid votes in the last parliamentary elections or having gained seats in Parliament. According to the authorities, this provision will first be implemented by including such State funding in the State budget for 2013, which is to be adopted in October/November 2012.

Section 17-1 LPP: Allocation of funds for political parties from the State budget

17-1.1. Funds shall be allocated annually from the State budget in order to finance the activities of political parties. Those funds shall be indicated as a separate line in the State budget.

17-1.2. 10 percent of funds allocated from the State budget shall be divided, proportionally to number of earned votes, between political parties, nominated candidatures to the last elections of the Milli Majlis of the Republic of Azerbaijan which gained at least 3 percent of valid votes, but which are not represented in the Milli Majlis of the Republic of Azerbaijan. 40 percent of funds shall be equally divided between those political parties represented in the Milli Majlis of the Republic of Azerbaijan and 50 percent shall be divided proportionally to the number of elected deputies.

17-1.3. Where political parties participated in the last elections of the Milli Majlis of the Republic of Azerbaijan within a coalition of political parties, funds allocated from the State budget shall be transmitted to each party separately as provided in section 17-1.2 of this law.

17-1.4. Funds allocated from the State budget under section 17-1.1 of this law shall be transferred by the relevant body of executive power to the bank account of the political party in equal parts on quarterly basis, taking into account the requirements of sections 17-1.2 and 17-1.3 of this law.

17-1.5. Where political parties refuse to accept funds allocated from the State budget, those funds shall be returned to the State budget.

17-1.6. Those political parties failing to submit financial statements under the Law of the Republic of Azerbaijan "On Accounting" shall not be provided with funds from the State budget on the next year.

58. GRECO takes note of the information provided, according to which section 21 LPP on financial statements has been amended so as to require political parties to draw up financial statements in accordance with the accounting legislation and to submit such statements annually on 1 April at the latest (first part of the recommendation). As the form, content and procedure of submission of financial statements of political parties are yet to be defined by the Cabinet of Ministers, this part of the recommendation cannot be regarded as fully implemented. Regarding the second part of the recommendation, GRECO is seriously concerned that the measures reported – namely the introduction of State funding for political parties – only benefits parties having gained at least 3 percent of valid votes in the last parliamentary elections or having gained seats in Parliament (section 17-1 LPP). Bearing in mind that in the last parliamentary elections of 2010 only one party gained more than 3 percent and the opposition parties only gained altogether five out of 125 seats, the new funding regime mainly benefits the ruling party. By contrast, the recommendation was obviously aimed at providing adequate resources to the administratively weak, understaffed and underfinanced parties – so as to ensure that they have at their disposal the necessary financial means to comply with stricter transparency rules. Therefore, it cannot be concluded that this part of the recommendation has been properly addressed. GRECO therefore urges the authorities to take the measures necessary to ensure that the political parties which do not meet the above-mentioned requirements under section 17-1 LPP (e.g. new parties) receive adequate support in complying with the applicable transparency regulations.

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

Recommendation iv.

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

61. In relation to the first part of the recommendation, the authorities refer to section 21.5 of the LPP in its amended form (see under recommendation iii), according to which political parties are obliged to publish annual financial statements in the mass media along with an auditor's opinion. They specify that the complete financial statements are to be disclosed and not only a summary.

62. As concerns the second part of the recommendation, the authorities again refer to the new section 17-1 LPP on State funding of political parties.

63. GRECO notes that following the 2012 reform, political parties are required to publish annual financial statements in the mass media. That said, GRECO regrets that no measures have been taken to ensure “timely” disclosure, as recommended. In addition, GRECO wishes to recall that according to the Evaluation Report simultaneous publication of the various party reports by an independent supervisory body, possibly on the Internet, would be an additional asset for ensuring optimum transparency, and it encourages the authorities to pursue the current reform process in that direction. Finally, GRECO refers to its comments under recommendation iii as concerns the need for adequate support to all parties in complying with the transparency regulations.

64. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

65. *GRECO recommended (i) to ensure, as appropriate, independent auditing of the books and accounts of political parties; and (ii) to find appropriate ways to support political parties in complying with such a requirement.*
66. As concerns the first part of the recommendation, the authorities reiterate that under the amended section 21.1 LPP, political parties must carry out accounting activity and draw up financial statements in accordance with the accounting legislation. Moreover, the amended section 21.5 LPP makes it clear that the financial statements must be accompanied by an auditor's opinion. The authorities submit that the latter is defined by the Law on Audit Services, which requires auditing by independent external professionals.
67. With respect to the second part of the recommendation the authorities again refer to the new section 17-1 LPP on State funding of political parties.
68. GRECO takes note of the information provided with regard to the 2012 legal reform, according to which auditing of party accounts has been made obligatory. As concerns the need for adequate support to all parties in complying with the transparency regulations, GRECO refers to its comments under recommendation iii.
69. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

70. *GRECO recommended (i) to ensure more substantial and pro-active monitoring of the financial reports on election funds of political parties and election candidates, including a material verification of the information submitted as well as investigation of financing irregularities; and (ii) to strengthen the independence of the election commissions in relation to the supervision of election campaign financing.*
71. The authorities recall the competences and tasks of the election commissions. Notably, the CEC regulates the preparation of elections, division of State funding among election commissions and use of these funds, transfer, expenditure and registering of the funds to the election funds, opening of special election accounts, sources and amount of incomes and property of the candidates by different rules and regulations. In order to implement the control over the financing of the election campaigns, supervisory and audit services are established in the CEC and constituency election commissions. Their activity is regulated by special statutes, according to which those services are to, *inter alia*, audit financial reports of parties, candidates and lower election commissions; obtain relevant information from them and from the executive authorities, municipalities, organisations and citizens; prepare documents on financial violations that occurred in the financing of elections; bring suspected violations that occurred in the financing of elections to the attention of the relevant election commission; involve experts for conducting investigations and preparing expert considerations. Finally, the authorities report that since 2007, the CEC has regularly organised training activities for members of supervisory and audit services, which dealt with their various tasks and competencies, including in respect of election funds. Such training has been intensified since 2010, in particular, two training sessions were organised in August and September 2010 in which altogether 345 experts participated. Further training programmes for members of the supervisory and audit services aimed at increasing their professionalism in detecting violations of financing and transparency rules are under preparation.

72. GRECO takes note of the information. It would appear that no concrete measures have been undertaken in order to address the concerns underlying the first part of the recommendation, apart from regular training for supervisory and audit services which had already started before the adoption of the Evaluation Report and was, so far, not specifically focussed on the monitoring of the financial reports on election funds of political parties and election candidates. Moreover, nothing has been done in order to address the second part of the recommendation relating to the independence of the election commissions. GRECO wishes to stress that this recommendation is of prime importance and urges the authorities to step up their efforts in order to ensure more substantial and independent monitoring of election campaign funding.
73. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

74. *GRECO recommended to establish independent and substantial monitoring of the general financing of political parties, well-coordinated with the monitoring of election campaign funding.*
75. The authorities refer to the new section 21.2 LPP, according to which political parties are to submit their annual financial statements to the “relevant body of executive power”; in this connection, they also refer to the new section 17-1.4 LPP relating to the distribution of State funds by the same body to the parties. They explain that in accordance with the Presidential Decree of 8 May 2012 on the Implementation of the Law on Amendments to the Law on Political Parties, the “relevant body of executive power” referred to in the above LPP provisions is the Ministry of Finance.
76. GRECO takes note of the information provided, which indicates that following the 2012 reform financial statements of political parties are to be submitted to the Ministry of Finance. On paper, this appears to be a step forward in comparison to the situation at the time of the adoption of the Evaluation Report, when financial statements were not submitted to any monitoring body at all. However, GRECO regrets that no clear mandate to perform substantial monitoring of the general financing of political parties has been introduced in the LPP, which would be in line with the recommendation and its underlying concerns. GRECO recalls the requirements on such monitoring set out in the Evaluation Report, including the provision of sufficient financial resources and specialised staff entrusted with pro-active and substantial monitoring – well coordinated with the monitoring of election campaign funding, investigative powers and the mandate to impose sanctions. Moreover, GRECO cannot see that the Ministry of Finance, as part of the Government, enjoys the appropriate level of independence required by the recommendation and by Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns relating to the provision of “independent monitoring in respect of the funding of political parties and electoral campaigns”.⁴
77. GRECO concludes that recommendation vii has not been implemented.

⁴ For GRECO's previous pronouncements on this matter see “Political funding: Thematic Review of GRECO's Third Evaluation Round” by Mr Yves-Marie Doublet, Council of Europe 2012, paragraphs 95 - 97.

Recommendation viii.

78. *GRECO recommended to clearly define infringements of existing and yet-to-be-established regulations on transparency of election campaign funding as well as general party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available.*
79. The authorities report that the 2012 amendments introduced section 22 into the LPP which reads as follows.

Section 22 LPP: Liability for breach of the law

Persons breaching requirements of this law shall be called to liability under the legislation of the Republic of Azerbaijan.

- The authorities add that the Presidential Decree of 8 May 2012 on the Implementation of the Law on Amendments to the Law on Political Parties assigned the Cabinet of Ministers to submit within three months draft legislation determining the measures of liability for violations of the LPP. They state that such draft legislation has been prepared and is expected to be submitted to Parliament in autumn 2012.
80. The draft law foresees that new sections 13.3 and 14.4-1 be introduced in the Law on Accounting, according to which political parties are to prepare financial reports – according to simplified accounting guidelines – the form, content and procedure of submission of which are to be defined by the Ministry of Finance. Under the existing section 16 of this law, “the guilty persons” bear responsibility for infringements of the regulations on the preparation and submission of financial statements “in accordance with the legislation”. Pursuant to article 247-1 of the Code on Administrative Offences, violation by an accounting subject of regulations on preparation and submission of financial statements – including the requirement to present correct information and to keep registration documents provided by law – is punishable by a fine of 300 to 400 Manat for officials, and 1,500 to 2,000 Manat for legal persons.
81. GRECO takes note of the information provided, according to which it is planned to incorporate the obligation of political parties to prepare financial statements in the Law on Accounting, the infringement of which would then be punishable by a fine under the Code of Administrative Offences. GRECO wishes to stress, however, that such draft legislation – which has not even been submitted to Parliament yet – fails to address several parts of the recommendation, which called for clear definitions of infringements of the different transparency (not only accounting) regulations, both in the area of election campaign funding and general party funding, and for the introduction of a broader range of effective, proportionate and dissuasive sanctions. Given the very limited progress achieved so far, GRECO cannot conclude that the recommendation has even been partly implemented.
82. GRECO concludes that recommendation viii has not been implemented.

III. CONCLUSIONS

83. **In view of the above, GRECO concludes that Azerbaijan has implemented satisfactorily seven of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii, iv, v, vi, viii and ix have been implemented satisfactorily and recommendations iii and vii have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii, iv and v have been partly implemented and recommendations i, vi, vii and viii have not been implemented.
84. In so far as Theme I (Incriminations) is concerned, Azerbaijan has dealt with some fundamental lacunae in its criminal legislation. New legislation is already in place to broaden the scope of application of the bribery provisions with regard to domestic public officials, foreign and international officials and persons acting in the private sector. The provisions on bribery and trading in influence have been amended, *inter alia*, to explicitly criminalise the offer and the promise of an advantage as well as the acceptance of an offer or promise. Moreover, the jurisdictional rules applicable to corruption offences have been aligned with the standards of the Criminal Law Convention on Corruption (ETS 173). Finally, GRECO very much welcomes the withdrawal of the numerous reservations made by Azerbaijan to the Convention as well as the signing of the Additional Protocol thereto, which still needs to be ratified. GRECO regrets, however, that no substantial progress has yet been achieved as regards the automatic exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities before the act has come to the attention of the authorities. GRECO invites the authorities to step up their efforts in this respect.
85. In relation to Theme II (transparency of party funding), GRECO notes that the party financing provisions of the Law on Political Parties have recently been amended to provide for, *inter alia*, more precise rules on donations to political parties, on accounting, auditing and disclosure requirements. However, GRECO regrets that the amendments adopted respond only to part of the recommendations issued to Azerbaijan. Several areas of prime importance – concerning both general party funding and election campaign funding – such as the implementation of more substantial and independent monitoring and of a comprehensive regime of sanctions, have not yet been sufficiently addressed. In this connection, GRECO is concerned that the monitoring of general party funding has been assigned to the Ministry of Finance, which does not guarantee an appropriate level of independence as required by Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. Moreover, GRECO is seriously concerned that State funding for political parties has been introduced only for the benefit of parties having gained at least 3 percent of valid votes in the last parliamentary elections or having gained seats in Parliament – given the specific political context of Azerbaijan where only one party gained more than 3 percent in the last parliamentary elections of 2010 and the opposition parties only gained altogether five out of 125 seats. GRECO wishes to stress that several recommendations calling for stricter transparency rules were made under the condition that smaller parties – which appear to be administratively weak, understaffed and underfinanced – are provided with adequate resources necessary to comply with such rules. This concern needs to be addressed as a matter of absolute priority.
86. Finally, GRECO wishes to recall the concerns expressed in the Evaluation Report with regard to the overall political situation marked by the lack of a truly pluralistic landscape and of competitive election campaigning. Against this background, *GRECO had confined itself to issuing some basic recommendations which appeared essential and necessary for the establishment of a coherent system of transparency and which might pave the way for further necessary adjustments and*

improvements at a later stage. To conclude, GRECO urges the authorities to vigorously continue the current reform process in order to further strengthen transparency of political financing and to foster the role of political parties as a fundamental element of the democratic system and as an essential tool of expression of the political will of citizens.

87. In the light of what has been stated in paragraphs 81 to 84, GRECO notes that with the modifications made in relation to incriminations, Azerbaijan has achieved an acceptable level of compliance with the recommendations in that respect. Rather limited steps have been taken to meet the concerns raised in respect of Theme II – Transparency of Party Funding; much more clearly needs to be done in this area. GRECO invites the Head of the delegation of Azerbaijan to submit additional information regarding the implementation of recommendations iii and vii (Theme I – Incriminations) and recommendations i – viii (Theme II – Transparency of Party Funding) by 30 April 2014 at the latest.
88. Finally, GRECO invites the authorities of Azerbaijan to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.