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Third Evaluation Round

Compliance Report on Serbia

"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 Serbia to implement the 15 recommendations issued in the Third Round Evaluation Report on Serbia (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 (27 September – 1 October 2010) and made public on 6 December 2010, following authorisation by Serbia (Greco Eval III Rep (2010) 3E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Serbian authorities submitted a Situation Report on measures taken to implement the recommendations. This report was submitted on 30 April 2012 and served, together with the additional information sent on 11 September 2012, as a basis for the Compliance Report.
4. GRECO selected Armenia and Germany to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Markus BUSCH, Head of Division, Economic, Computer, Corruption-related and Environmental Crime, Ministry of Justice, on behalf of Germany and Mr Karen GEVORGYAN, Deputy Dean of International Relations, Faculty of Law, Yerevan State University, on behalf of Armenia. 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 5 recommendations to Serbia in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendations i to v

7. *GRECO recommended to take the legislative measures necessary to ensure that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the*

functions of a public official, whether or not within the scope of the official's competence (recommendation i)

to take the necessary legislative measures in order to ensure that foreign arbitrators and jurors are explicitly covered by the bribery provisions of the Criminal Code in conformity with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (recommendation ii)

to clarify in an appropriate manner that legislation concerning bribery in the private sector covers the full range of persons who direct or work for – in any capacity – private sector entities (recommendation iii)

(i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad; (ii) to establish jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, Serbian nationals (recommendation iv)

to abolish the possibility provided by the special defence of effective regret, pursuant to Article 368 (6) of the Criminal Code, to return the bribe to the bribe-giver who has reported the offence before it is uncovered (recommendation v)

8. In their first communication to GRECO in April 2012, the authorities of Serbia submitted the text of draft amendments to the Criminal Code, as prepared by a Working Group established ad-hoc, within the Ministry of Justice, to implement the recommendations issued by GRECO in this area. The aforementioned draft amendments had been approved by the Government in early 2012 and subsequently submitted to Parliament for their adoption. In September 2012, the authorities informed GRECO that following elections in May 2012 and a change of Government, the draft had been withdrawn and a new Working Group had been established, within the new Ministry of Justice and Public Administration. This Working Group (to which the Anti-Corruption Agency is an observer) held its first session on 4 September 2012 and is scheduled to meet weekly. The Working Group is analysing the measures needed to give effect to the recommendations contained in the Third Round Evaluation Report on Theme I – Incriminations; in doing so, it is taking into consideration the amendments drafted before the elections. The Working Group has prepared a draft for public discussion on 15 October 2012 and subsequent Government approval.
9. GRECO takes note of the reported intention of the authorities to implement the recommendations issued in this area and welcomes the fact that, after the May 2012 elections, work has promptly resumed to this effect through the establishment of a new Working Group. GRECO recalls that it concluded in its evaluation report (paragraph 76) that the Criminal Code of Serbia was largely in line with the Criminal Law Convention on Corruption (ETS 173) with the exception of the few specific deficiencies identified in the report which had led to recommendations i to v. For that reason, GRECO regrets the fact that owing to elections these few deficiencies have not yet been effectively addressed. GRECO can only conclude at this stage that recommendations i to v have not been implemented.

Theme II: Transparency of Party Funding

10. It is recalled that GRECO in its evaluation report addressed 10 recommendations to Serbia in respect of Theme II. Compliance with these recommendations is dealt with below.

11. A new Law on Financing Political Activities (LFPA) was adopted on 14 June 2011; it entered into force on 22 June 2011 and was firstly tested following the “all in one” elections of 6 May 2012 (presidential, parliamentary, local and regional Vojvodina elections). The LFPA was subject to the expertise of the OSCE Office for Democratic Institutions and Human Rights and the Venice Commission in 2010 and 2011 respectively¹.
12. The authorities report that the LFPA is broader in scope than its predecessor as it has been extended to all registered political parties as well as to political actors (coalitions and groups of citizens) with representatives in the legislature.
13. By-laws have been adopted to implement the LFPA, notably, the Rules on Registering Contributions and Assets, on Annual Financial Reports and on Reports on Electoral Campaign Expenditures, which entered into force on 6 October 2011.

Recommendation i.

14. *GRECO recommended to (i) establish a fixed election campaign period; (ii) review the existing collection/expenditure ceilings, including by considering disconnecting the maximum amount which can be collected from private sources for campaigning from the total public funding granted for this purpose; (iii) extend the deadline for reporting campaign finances, beyond the current 10 days period after polling day, in order to ensure proper accounting for income and expenditure during election campaigns.*
15. The authorities of Serbia indicate that, for the purposes of the LFPA, the campaign period extends from the day of calling elections until the day of proclaiming the final election results². The total amount of private donations that can be collected from private sources is no longer connected to public funding; the LFPA establishes instead a cap on private donations per individual donor/per year. In particular, private donations are limited to 20 average monthly salaries (i.e. approximately 8,000 EUR) for individuals and 200 average monthly salaries (i.e. approximately 80,000 EUR) for legal entities³. Limits to private donations for election-related activities in an election year are doubled (regardless of the number of elections held in a given year). All donations must be recorded; donations exceeding an average monthly salary (i.e. approximately 400 EUR) must be disclosed. The deadline for reporting campaign finances has been extended to 30 days after publication of election results in order to better capture the total amount of income generated and expenditure disbursed during campaigns.
16. GRECO is pleased to note that the authorities have addressed all issues raised in recommendation i: campaign periods are fixed by law; collection/expenditure ceilings have been reviewed and the maximum threshold for permissible private donations is no longer tied to the amount that political parties receive from public funding; finally, the deadline for reporting campaign finances has been extended with a view to better ensuring proper accounting for income and expenditure during election campaigns.
17. GRECO concludes that recommendation i has been implemented satisfactorily.

¹ [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)048-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)048-e.pdf) and [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)006-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)006-e.pdf).

² The day of proclaiming the final election results is regulated by law for each type of election: general (Article 86, Law on Parliamentary Elections), regional (Article 80, Vojvodina Assembly Decision) and local elections (Article 58, Law on Local Elections).

³ The average salary as of 9 October 2012 in Serbia is 42,000 RSD (approximately 400 EUR).

Recommendation ii.

18. *GRECO recommended to fix a statutory deadline for the submission of annual financial reports of political parties to the Anti-Corruption Agency.*
19. The authorities of Serbia indicate that a deadline has been fixed in the LFPA (i.e. 15 April of each calendar year to account for the income/expenditure of the previous year) for the submission of annual financial reports, reports on donations and assets and certified auditor opinions.
20. GRECO welcomes the fact that a statutory deadline has now been set to report on routine finances; this can only assist the Anti-Corruption Agency in its oversight tasks, including by taking appropriate action in the event of delayed or non-reporting.
21. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

22. *GRECO recommended to (i) establish precise rules for the evaluation and declaration of in-kind donations (other than voluntary work by non-professionals); (ii) provide clear criteria on the use of public facilities for party activity and election campaign purposes; (iii) include in the Law on the Financing of Political Parties specific provisions on loans, in particular, by requiring their proper identification in financial reports and by subjecting them to the relevant rules/limits on private donations, whenever loan terms and conditions deviate from customary market conditions.*
23. The Serbian authorities explain that the LFPA specifies that donations from private sources include both monetary and in-kind donations; all donations – whether monetary or in-kind – must be registered and recorded in the Register of Donations which is kept by the Anti-Corruption Agency, as well as detailed by political parties in routine and campaign financial reports. The Rules on Registering Contributions and Assets, on Annual Financial Reports and on Reports on Electoral Campaign Expenditures lay out a mechanism to account for the value of in-kind donations. Likewise, there are detailed rules regarding loans. In particular, loans can only be taken from banks and other financial organisations in Serbia, in accordance with the law; it is not possible to take loans abroad. Loans given under more favourable conditions than those applicable on the market, as well as situations when loans are written-off, must be accounted for as donations.
24. With respect to the second part of the recommendation, the LFPA addresses the use of public facilities during election periods in order to prevent their abuse for the purposes of promoting a specific political party. Likewise, the Law on the Anti-Corruption Agency establishes that a public official cannot use public resources and public meetings that s/he attends for the promotion of a political party (Article 29); the violation of this general ban constitutes a misdemeanour. The Anti-Corruption Agency is responsible for ensuring that the aforementioned ban is observed and performs control functions either on its own initiative or upon individual complaints. No complaints nor irregularities concerning the abuse of public facilities were detected in the last general elections. Before the latest elections, the Anti-Corruption Agency issued guidelines and carried out training for local administrations and political parties' agents concerning the applicable rules on the use of public facilities for political purposes. It is expected that further regulations will be developed concerning the granting of services and goods by public bodies at central, regional and local levels.

25. GRECO welcomes the efforts made by the authorities to regulate different sources from income (other than monetary) which may be received by political parties, including in-kind donations and loans, in line with parts (i) and (iii) of recommendation iii. GRECO is also pleased to note the steps undertaken by the authorities to regulate the use of public facilities for party activity and election campaign purposes (part (ii) of recommendation iii), including through the rules (general ban) contained in the LFPA and the Law on the Anti-Corruption Agency, as well as the guidance issued by the Anti-Corruption Agency in this respect. GRECO also takes note of the intention of the authorities to develop the current rules through additional implementing regulation. GRECO notes that this is an area reportedly prone to abuse in Serbia where regulation is currently evolving not only in the country, but more generally in the region, including through the involvement of international organisations developing criteria and standards to differentiate what constitutes the use of public resources for political gain as opposed to the regular work of public bodies. Given the interest of the topic, the authorities of Serbia may wish to keep GRECO informed as to the additional steps taken in the country to address the challenging issue of regulating the use of public facilities during election periods in order to prevent abuse.

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

Recommendation iv.

27. *GRECO recommended to introduce a requirement that all donations above a certain threshold to, and expenditures of, political parties, be made by bank transfer.*

28. The Serbian authorities indicate that all monetary donations, regardless of their value, must be made by bank transfer (Article 18, LFPA). Only membership fees below 1,000 dinars (10 EUR) can be paid in cash (Article 8, LFPA). Furthermore, the LFPA stipulates that all financial transactions earmarked for regular party activities must be made through party bank accounts. Likewise, funds earmarked for electoral purposes must be deposited in and managed through dedicated campaign accounts. Political entities are required to present in their annual financial report all bank accounts they hold; likewise, details on dedicated campaign accounts must be displayed in the relevant electoral reports.

29. GRECO notes that rules are now in place requiring political entities to manage their money flows through bank transfers; this could prove a valuable measure to assist in reducing the occurrence of unverifiable flows of money into party coffers.

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

Recommendation v.

31. *GRECO recommended to seek ways of increasing the transparency of the accounts and activities of entities which are related, directly or indirectly to political parties, or otherwise under their control.*

32. The authorities of Serbia make reference to both the LFPA and the Law on Endowments and Foundations (LEF) which regulate the relationship that may exist between a political party and an entity related to it or under its control. In particular, although political parties may be founders of endowments or foundations, the latter cannot merely focus their scope of activity on achieving the interests of the political party at stake, i.e. foundations and endowments cannot be used to organise campaigns, collect funds or channel money to political parties. Political parties are

required to present, in their annual financial reports, financial information on the foundations or endowments they have set up. This information forms part of the financial reports of political parties which, pursuant to the LFPA rules, must be published both on the website of the Anti-Corruption Agency and that of the political party concerned. The Anti-Corruption Agency, in performing its oversight responsibilities, has the right to direct and free access to bookkeeping records and documents of endowments or foundations founded by political parties.

33. In addition, under the LEF, endowments and foundations must send their financial reports to the Serbian Business Registers Agency, a specialised agency in charge of keeping registers and financial statements of all legal entities in Serbia. Political parties are also subject to the obligation to send their financial reports, in addition to the Anti-Corruption Agency, to the Business Registers Agency. The Business Registers Agency publishes the reports received on its website (www.apr.gov.rs). In June 2012, the Anti-Corruption Agency signed a Cooperation Protocol with the Business Registers Agency by which a mutual on-line database access was enabled.
34. The authorities add that in order to minimise corruption risks in this area, the LFPA also prohibits political parties from acquiring share or stocks in a legal entity.
35. GRECO notes that provisions are in place to provide for greater transparency in the financial transactions of entities which are related, directly or indirectly to political parties, or otherwise under the control, including, *inter alia*, through the presentation, and subsequent publication, of the accounting records of related entities together with party accounts, and the powers attributed to the Anti-Corruption Agency to access bookkeeping documents of related entities. GRECO is also pleased to note the channels in place to cross-check information concerning political parties and related entities and the reported cooperation between the Anti-Corruption Agency and the Business Register Agency in the fulfilment of their respective controlling functions.
36. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

37. *GRECO recommended to provide in a consistent manner for the publication of financial reports of political parties, in particular, by spelling out clearly who is responsible for publishing the financial reports in connection with both routine activities and election campaigns and the applicable deadlines.*
38. The authorities of Serbia state that political entities are required to publish annual financial reports in their respective websites within eight days of the submission of such reports to the Anti-Corruption Agency. Likewise, the Anti-Corruption Agency, although not required by law, publishes in its website all annual financial reports received by political parties. Regarding campaign reports, these are published by the Anti-Corruption Agency following elections (30 days after final results for election are proclaimed). Political parties are to nominate “authorised persons” in charge of financial transactions, bookkeeping and reporting obligations.
39. GRECO is pleased to note that the LFPA has clarified responsibilities and deadlines concerning the publication of financial reports of political parties. It would be important to ensure that the provisions contained in law are effectively and promptly implemented in practice, including by political parties themselves which have now an unequivocal obligation under the LFPA to publish their annual reports in their websites.

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

Recommendation vii.

41. *GRECO recommended to (i) introduce clear and consistent rules on the audit requirements applicable to political parties; (ii) ensure the necessary independence of auditors who are to certify the accounts of political parties.*

42. The authorities of Serbia report that all political entities represented in Parliament (or regional/local assemblies), as well as registered political parties, are obliged to engage the services of a professional auditor to certify their accounts. The Law on Audit and Accounting contains provisions dealing with the independence of auditors and subjects the oversight performed by them to international auditing standards. The Chamber of Certified Auditors is to provide oversight of professional deontological standards and can withdraw the licence of an auditor at any time if misconduct occurs.

43. GRECO welcomes that the system in place in Serbia resorts to auditing arrangements for the verification of party accounts and that rules have been established to provide for safeguards with respect to the independence of auditors from the entity being controlled. In GRECO's view, the use of external audits could well serve to facilitate the control performed by the Anti-Corruption Agency over political accounts further down the line.

44. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

45. *GRECO recommended to (i) clarify the mandate and the powers of the Anti-Corruption Agency with regard to supervision of the funding of political parties and electoral campaigns; (ii) entrust the Anti-Corruption Agency, in an unequivocal manner, with the leading role in this respect; (iii) increase its financial and personnel resources, so that it is better equipped to ensure substantial, pro-active and swift monitoring of political finances.*

46. The authorities of Serbia underscore that the LFPA makes it clear that the Anti-Corruption Agency is entrusted with the leading role in the oversight of political financing. It prepares reporting formats, receives and publishes annual/campaign financial reports of political parties, verifies the content and accuracy of the aforementioned reports and may impose administrative sanctions when breaches occur. When performing control of party accounts, it may resort to the State Audit Institution (control of annual financial reports), or undertake itself the necessary investigative activity by requesting documents from banks, connected entities, etc. (control of campaign reports). The State Audit Institution may include party funding in its annual audit⁴, may carry out random audits or may act upon request of the Anti-Corruption Agency.

47. With regard to the last component of recommendation viii, the Anti-Corruption Agency has a dedicated Department for the Control of the Finances of Political Parties which is for a staff of 10 persons, of which 6 places have now been filled as permanent job positions. The Agency can also hire temporary election observers. In this connection, a total of 165 election observers were hired during the last elections in May 2012; their role was to independently assess the volume and the costs of electoral campaigns throughout the country.

⁴ Political parties are subject to the supervision of the State Audit Institution (SAI) in the same way as other legal entities receiving public funds.

48. GRECO appreciates that the LFPA provides greater clarity as to the leading role, and the relevant responsibilities, of the Anti-Corruption Agency in the institutional set-up to control party funding. GRECO notes that resources have been given to the Agency to perform its monitoring task. The LFPA is still recent: it was adopted in 2011 and started to be implemented in 2012; time and practice will show whether and how the Agency is able to perform its key monitoring responsibilities in this area in an adequate and effective manner.
49. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

50. *GRECO recommended to (i) review the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive; (ii) clearly define the infringements of political finance rules that can trigger the loss of public funds, as well as the exact procedure for initiating and imposing such sanctions; and (iii) ensure that donors are also held liable for breaches of the law, as appropriate.*
51. The authorities of Serbia indicate that the applicable penalties for infringements have been reviewed and the sanctioning regime consists now of a combination of criminal, misdemeanour and administrative measures, including warnings, fines (ranging from 2,000 to 20,000 EUR if the infringer is a political party, and 500 to 1,500 EUR if the penalty is imposed on a responsible person in a political entity), forfeiture of the assets illegally acquired by the party, withholding or loss of public funds and criminal liability. The different obligations established by the LFPA are coupled with sanctions in the event of infringement. The procedure for initiating and imposing sanctions is established in the LFPA; decisions can be appealed before the administrative courts. Sanctions may be imposed not only on political entities and their responsible officials, but also on donors who have infringed the law.
52. GRECO is pleased to note that the LFPA has set in place a reviewed sanctioning regime consisting of criminal, misdemeanour and administrative liability where violations of the different provisions are coupled with sanctions on political parties, their representatives and donors. This new sanctioning system, and the way in which procedures operate, requires further testing. In this connection, GRECO points at the considerations made by the Venice Commission and the OSCE (see footnote 1) regarding the potentially damaging nature of criminal sanctions if not interpreted and applied in the light of the proportionate principle, i.e. if not reserved only for the most serious violations. Likewise, the effectiveness and dissuasiveness of the new sanctioning regime are yet to be seen as enforcement experience evolves in practice.
53. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

54. *GRECO recommended to increase the limitation period for violations of the Law on the Financing of Political Parties.*
55. The authorities of Serbia report that the limitation period for violations of the LFPA has been increased (from one) to five years.
56. GRECO welcomes the action taken by the authorities to increase the limitation period for infringements of the LFPA to five years. GRECO recalls that a factor hampering the effective

application of sanctions in this area was the expiry of the relevant time limit specified in the statute of limitations.

57. GRECO concludes that recommendation x has been implemented satisfactorily.

III. CONCLUSIONS

58. **In view of the above, GRECO concludes that Serbia has implemented satisfactorily ten of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i to v have not been implemented. With respect to Theme II – Transparency of Party Funding, all recommendations have been implemented satisfactorily (recommendations i to x).
59. Concerning the criminalisation of corruption offences, amendments to the Criminal Code were drafted by the previous Government and sent to Parliament for adoption. However, following the latest elections in May 2012, the draft was withdrawn. A new Working Group has been created to deal with the recommendations issued in this area. GRECO is hopeful that the limited number of specific deficiencies identified in the Criminal Code of Serbia concerning the criminalisation of corruption will be promptly addressed.
60. Serbia deserves recognition for the holistic review carried out in the area of party funding and GRECO is pleased to note that all its recommendations have been implemented satisfactorily. With the adoption of the new Law on Financing Political Activities (LFPA), Serbia has now in place a detailed and comprehensive legal framework broadly inspired by and abiding to the principles contained in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. Implementation of the relevant legislative provisions is now being tested and the Anti-Corruption Agency has a key role to perform in this regard. Time and experience will show whether the law efficiently serves its purpose and prevents corruption and malpractice in party financing, and whether further improvements, of either a legislative or a practical implementation nature, are necessary. The authorities anticipate that further work will go ahead concerning the use of public facilities during election periods, an area identified as particularly prone to abuse in Serbia.
61. In view of the above, GRECO welcomes the important efforts made to comply with the recommendations issued in respect of Theme II – Transparency of Party Funding. GRECO hopes that the Criminal Code of Serbia undergoes amendment, as planned, in order to meet the recommendations issued in respect of Theme I – Incriminations. GRECO encourages Serbia to pursue the reforms underway in order to implement the pending recommendations within the next 18 months. GRECO invites the Head of the delegation of Serbia to submit additional information regarding the implementation of recommendations i to v (Theme I – Incriminations) by 30 April 2014 at the latest.
62. Finally, GRECO invites the authorities of Serbia 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.