



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Interim Report

Third Evaluation Round

Interim **Compliance Report** **on the Slovak Republic**

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 49th Plenary Meeting
(Strasbourg, 29 November – 3 December 2010)

I. INTRODUCTION

1. The Third Round Evaluation Report on the Slovak Republic was adopted at GRECO's 36th Plenary Meeting (15 February 2008) and made public on 14 March 2008, following authorisation by the Slovak Republic (Greco Eval III Rep (2007) 4E [Theme I](#) / [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the Slovak authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Austria and Latvia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Christian MANQUET, Head of Unit, Directorate for Penal Legislation, Federal Ministry of Justice, Austria, and Mr Alvis VILKS, Deputy Director, Corruption Prevention and Combating Bureau, Latvia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the Compliance Report, which was adopted by GRECO at its 46th Plenary Meeting (Strasbourg, 22-26 March 2010), it was concluded that the Slovak Republic had implemented satisfactorily only one of the sixteen recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO categorised the current very low level of compliance with the recommendations as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report and asked the Head of the Slovak delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations ii to vi regarding Theme I and recommendations i to x, regarding Theme II) by 30 September 2010, pursuant to paragraph 2(i) of that Rule.
4. The current Interim Compliance Report assesses the further implementation of the pending recommendations since the adoption of the Compliance Report, and performs an overall appraisal of the level of the Slovak Republic's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its evaluation report addressed 6 recommendations to the Slovak Republic in respect of Theme I. One of these – recommendation i – was assessed as satisfactorily implemented in the Compliance Report, the recommendations ii, iii and v were considered as partly implemented and recommendations iv and vi as not implemented.

Recommendations ii to vi.

6. GRECO recommended:
 - *(i) to review Sections 328 and 332, as well as 329 and 333 of the Criminal Code in order to ensure that bribery in the public sector is criminalised also in situations which do not involve a breach of duty or the "procurement of a thing of general interest", in line with the Criminal Law Convention on Corruption (ETS 173) and (ii) to consider, for the sake of clarity, criminalising bribery in the public and in the private sector in separate provisions, in conformity with the Convention (recommendation ii);*

- to ensure that i) trading in influence is criminalised in respect of all categories of domestic and foreign public officials upon whom influence is exerted, irrespective of the context of the offence, and ii) cases of alleged influence and non-exerted influence are covered by domestic law (recommendation iii);
 - to take measures to ensure that the criminal offence of bribery of foreign public officials under Slovak law is fully in line with the requirements of Art. 5 of the Criminal Law Convention on Corruption (ETS 173) (recommendation iv);
 - i) to criminalise bribery of domestic arbitrators and jurors, ensuring that the nature of their functions is fully captured, in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); ii) to extend the provisions on bribery of foreign arbitrators and jurors beyond situations involving international business transactions or employment by an international judicial institution (recommendation v);
 - to examine the need to provide more explicitly for a broader concept of members of foreign assemblies in line with Article 6 of the Criminal Law Convention on Corruption (ETS 173), or at least to provide guidance on this matter in an appropriate manner (recommendation vi).
7. The Slovak authorities do not provide information detailing the possible action taken in respect of each individual pending recommendation. Instead, they indicate that a “GRECO” Working Group was established in order to achieve progress in implementing the outstanding recommendations (this is its unique purpose). It consists of experts from all relevant ministries of the Slovak Republic (Ministry of Finance, Ministry of Interior and Ministry of Justice) and it is chaired by the Head of the Slovak delegation in GRECO. The Working Group became operational as from 21st September 2010, when it held its first meeting. On this occasion, the Chair asked the representative of the Ministry of Justice to prepare a progress report on implementing the outstanding recommendations regarding Theme I, which was submitted to the Secretariat on 23 September 2010.
 8. In this progress report, the Director General of the Legislation Service of the Ministry of Justice indicates that the Ministry will draw up, in an accelerated procedure, an amendment to the Criminal Code (Act No. 300/2005 Coll., as amended), designed to implement all the outstanding recommendations. The Ministry will prepare in consultation with the Ministry of the Interior and the General Prosecutor’s Office, the full wording of the draft Act in a manner that will enable a debate over the bill in the National Council at the beginning of 2011.
 9. GRECO takes note of the general information provided above, and considers that under these circumstances, there is no need to analyse the situation of recommendations ii to vi one by one. GRECO recalls that in the Compliance Report, the Slovak authorities had provided new information on court practice or announced a new project which allowed GRECO to consider at least certain recommendations as partly implemented. This was particularly the case of recommendation ii which aimed at broadening the incrimination of bribery of public officials: the Slovak authorities had indicated that an expert analysis was under way in respect of the concepts of “breach of duty” and “procurement of a thing of general interest” contained in the relevant sections of the Criminal Code (CC) and that the results would be reflected in the updated National Programme on the Fight Against Corruption which was under preparation and would also deal with the second part of recommendation (which invited the authorities to consider making a better distinction between public and private sector bribery). Similarly, as regards recommendation iii, GRECO considered it partly implemented given the fact that additional information on court

practice had lifted certain doubts concerning the scope of the incrimination of trading in influence but no action had been taken to criminalise trading in influence in respect of all categories of domestic and foreign public officials upon whom influence is exerted, irrespective of the context of the offence (first part of the recommendation). In respect of recommendations iv and vi, no action had been taken, whereas for recommendation v, additional explanations and information on court practice responded to some concerns, but no initiatives had been taken to extend the provisions on bribery of foreign arbitrators and jurors beyond situations involving international business transactions or employment by an international judicial institution (second part of the recommendation).

10. GRECO welcomes the establishment of the Working Group chaired by the Head of the Slovak delegation. It would appear that the need to amend legislation has now been recognised also by the Slovak authorities. GRECO notes with interest that it was decided to prepare a legislative amendment meant to address all the outstanding recommendations. However, for the time being, GRECO can only conclude that there has been no concrete progress in the implementation of recommendations ii to vi.
11. GRECO concludes that recommendations ii, iii and v remain partly implemented and that recommendations iv and vi have not been implemented.

Theme II: Transparency of Party Funding

12. It is recalled that GRECO in the evaluation report addressed 10 recommendations to the Slovak Republic in respect of Theme II. All these recommendations were considered as not implemented and are dealt with below.

Recommendations i to x.

13. GRECO recommended:
 - *to require candidates for elections to the National Council to disclose all donations they have received in relation to their political activities - including their source (at least above a certain threshold), nature and value - and details of the expenditure incurred (recommendation i);*
 - *to take measures to enhance the transparency of income and expenditure of parties and candidates at local and regional level (in particular in connection with mayoral elections) (recommendation ii);*
 - *to introduce proportionate disclosure rules for expenditure incurred by entities outside the party structure, related directly or indirectly to the party, in connection with election campaigns (recommendation iii);*
 - *(i) to ensure that the annual reports of political parties are easily accessible to the public and (ii) to establish a standardised format (accompanied by appropriate instructions, if necessary) for the campaign and annual reports to be submitted by political parties (recommendation iv);*
 - *to provide a single body with a mandate and adequate resources to supervise and investigate party funding (both from private and public sources) and election campaign finances, including those of election candidates, and to ensure that this body is in a position to exercise its functions in an independent and impartial manner (recommendation v);*

- *to review the sanctions available for violations of the rules on political funding, to ensure that these are proportionate and dissuasive (recommendation vi);*
- *to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding is independent, impartial and effective in practice (recommendation vii);*
- *to provide advice and training to political parties and election candidates on the applicable political funding regulations (recommendation viii);*
- *to establish liability of election candidates for infringements of political funding rules, in line with the rules applying to political parties (recommendation ix);*
- *to assess whether there is a need to amend the provisions of Act No 46/1999 on the Method of Election of the President with a view to enhancing the transparency of the funding of presidential candidates (to ensure that the amended provisions, if any, are in line with the requirements of Act No. 85/2005 Coll. on Political Parties and Political Movements) (recommendation x).*

14. The Slovak authorities stress that the implementation of the ten recommendations contained in the second part of the Evaluation Report is considered from a global point of view. The Policy Statement of the Government for the period of 2010 – 2014 declares, inter alia, that: “*the Government of the Slovak Republic will draw up the election code with the aim of bringing clarity, unification of terminology, and uniform wording of certain provisions of the electoral and referendum legislation in force, and it will draw up new legislation aimed at increasing the transparency of the financing of political parties and movements and of election campaigns for all types of elections in conformity with the recommendations of the Council of Europe’s Group of State against Corruption (GRECO)*”. They also emphasise that the implementation of this objective raises questions for which it is desirable to seek a prior statement on the respective positions of the relevant political forces. In order for appropriate draft legislation to be adopted as early as in the first half of the present electoral term – that is by the end of December 2011 – and to allow for the necessary political decisions and consensus to be reached sufficiently in advance, information on ways to address the GRECO recommendations have been submitted to the Minister of the Interior, in order for him to place this matter on the agenda of the session of the representatives of the parliamentary parties. The possible outcome of this session will constitute an important basis for the members of the “GRECO” Working Group referred to earlier (see paragraph 5) to commence work on the above tasks.
15. GRECO takes note of the general information provided above and considers that also in respect of the recommendations on party financing, there is no need to examine the action taken one by one. As indicated in the Compliance Report, no meaningful action had been taken in respect of any of the recommendations or the information provided did not allow to assess the pertinence of intended changes; in particular, as regards recommendation vi, it had been reported that amendments to Act No. 85/2005 Coll. were being prepared to make sanctions more proportionate and dissuasive in case of infringement to the existing party financing regulations. Recommendation viii, at least, did not require legal amendments but to provide advice and training to political parties and election candidates on the applicable political funding regulations but here to, no specific action had been taken to address this matter. It would appear that the Slovak Republic is now intending to draft an electoral code that would address all the recommendations; this is a positive project but GRECO notes that here too, the legislative

initiative is at the very early stage and the outcome remains obviously uncertain, pending the outcome of the initial consultations with the political forces. GRECO cannot conclude that there has been any meaningful progress and it wishes to recall that certain measures can be implemented without legal changes (see recommendation viii).

16. GRECO concludes that recommendations i to x have not been implemented

III. CONCLUSIONS

17. **In view of the above, GRECO concludes that no tangible progress has been achieved by the Slovak Republic as regards the implementation of the recommendations found to be not or partly implemented in the Third Round Compliance Report.** With respect to Theme I – Incriminations, recommendations ii, iii and v remain partly implemented; recommendations iv and vi have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendations i to x still have not been implemented.
18. Notwithstanding this disappointing result, GRECO notes that a working group was established to deal with the implementation of the outstanding recommendations contained in the Third Round Evaluation Report. The Slovak authorities plan to speedily prepare legislation meant to address outstanding recommendations on part I – Incriminations. Similarly, the working group intends to deal with the outstanding recommendations concerning part II – Party financing by means of appropriate provisions to be included in an electoral code to be drafted after political parties have been consulted on their respective position. However, for the time being and apart from declarations of good intention, there is no agenda or more concrete information available as to the content of the planned legislation; especially as regards Theme II – Transparency of party financing, the translation of these good intentions into concrete action remains particularly uncertain.
19. In view of the above, GRECO therefore concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
20. GRECO furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii), that the President of GRECO will send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of the Slovak Republic, drawing his attention to non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
21. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of the Slovak delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations ii to vi regarding Theme I and recommendations i to x regarding Theme II) by 30 September 2011.
22. Finally, GRECO invites the authorities of the Slovak Republic to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.