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Third Evaluation Round

Addendum to the Second Compliance Report on Georgia

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 74th Plenary Meeting
(Strasbourg, 28 November - 2 December 2016)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Georgia, since the adoption of the First and Second Compliance Reports, in response to the recommendations issued by GRECO in its Third Round Evaluation Report on Georgia. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption); and
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 51st Plenary Meeting (23-27 May 2011) and made public on 1 July 2011, following authorisation by Georgia (Greco Eval III Rep (2010) 12E, [Theme I](#) and [Theme II](#)). The Third Round Compliance Report was adopted by GRECO at its 60th Plenary Meeting (17-21 June 2013) and made public on 5 July 2013, following authorisation by Georgia ([Greco RC-III \(2013\) 9E](#)). The Second Compliance Report ([Greco RC-III \(2015\) 4E](#)) was adopted at GRECO's 68th Plenary Meeting (19 June 2015) and made public on 11 August 2015, following authorisation by Georgia. It is recalled that all five recommendations adopted in respect of Theme I were considered as implemented satisfactorily in the compliance procedure. The focus of this report is thus on Theme II.
3. In accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, GRECO, in its Second Compliance Report, invited the Head of the delegation of Georgia to submit additional information regarding the implementation of the seven recommendations that had been partly implemented. The information was provided on 1 August 2016 and served as a basis for the Addendum to the Second Compliance Report.
4. GRECO selected Norway to appoint a rapporteur for the compliance procedure on Theme II. The Rapporteur appointed was Mr Jens-Oscar NERGÅRD on behalf of Norway. He was assisted by GRECO's Secretariat in drawing up the Addendum to the Second Compliance Report.

II. ANALYSIS

Theme II: Transparency of Party Funding

5. It is recalled that GRECO, in its Evaluation Report, addressed ten recommendations to Georgia in respect of Theme II. The Second Compliance Report concluded that recommendations iii, v and vii had been implemented satisfactorily and recommendations i, ii, iv, vi, viii, ix and x had been partly implemented. Compliance with the pending recommendations is dealt with below.
6. It is also recalled that, in the Compliance Report, GRECO had examined the newly adopted Electoral Code (EC) and the Law on Political Unions of Citizens (LPUC), last amended in December 2011. The authorities had indicated that the December amendments to the LPUC had attracted criticism for their ambiguity, inconsistency and disproportionality and that the Government intended to substantially revise the regulations with a view to ensuring their conformity with

international standards. In the Second Compliance Report, note was taken of the entry into force, on 29 July 2013, of new amendments to the LPUC prepared by the Inter-factional Working Group on electoral issues¹ and of changes made to the EC in 2013-2014. However, GRECO concluded that the momentum generated by the compliance procedure had still not been used to launch a comprehensive legal reform aimed at aligning the EC with the LPUC, as had been envisaged by the authorities. It appeared that the amendments introduced into the LPUC had only partly addressed the various concerns underlying GRECO's recommendations.

7. The authorities now report that the State Audit Office (SAO) and the Central Election Commission (CEC) are jointly analysing the LPUC and the EC and preparing amendments to both laws which would be relevant for several outstanding recommendations. The authorities expect that the amendments will be submitted to Parliament for approval shortly, once the new Parliament and government have been formed following the parliamentary elections of October 2016.

Recommendation i.

8. *GRECO recommended to proceed with the efforts to revise existing legislation in the area of political finance, with a view to establishing a more uniform legal framework, notably by aligning the (new) Election Code with the Law on Political Unions of Citizens (and vice versa).*
9. GRECO recalls that according to the Compliance Report, the recommendation had been partly implemented. Efforts had been made to align the EC more closely with the LPUC and to remedy several gaps. That said, the revisions had not been consistent throughout; the extension of the LPUC which regulates the operation of political parties to other election subjects (in relation to transparency of election campaign financing) appeared questionable; the extensive cross-referencing between the LPUC and the EC had been preserved and led to confusion; and full alignment of the two laws had not been achieved. According to the Second Compliance Report, in April 2014, the Anti-Corruption Council had formed an *ad hoc* Working Group² to implement GRECO, OECD-ACN and UNCAC recommendations. In November 2014, the Working Group had formulated specific proposals with a view to aligning the two legal acts. Furthermore, in March 2015, concrete legislative amendments had been elaborated under the leadership of the SAO, and in May 2015, these had been discussed with interested NGOs. However, in the absence of tangible progress the recommendation remained partly implemented.
10. The authorities now refer to the on-going reforms process mentioned above (cf. paragraph 7) and report that the SAO and the CEC are jointly preparing amendments to the LPUC and the EC with the purpose of eliminating discrepancies and reasonably reducing cross-referencing between them. According to the authorities, it is planned to submit the amendments to Parliament for approval shortly.
11. GRECO notes that amendments to the LPUC and the EC, aimed at establishing a more uniform and consistent legal framework for political finance, are still under preparation. It urges the authorities to make every effort to speed up the legislative process.
12. GRECO concludes that recommendation i remains partly implemented.

¹ The Working Group brought together political parties, civil society and international experts.

² The Group was composed of representatives of the SAO, the CEC, the Prosecutor General's Office, the Supreme Court and non-governmental organisations, such as the International Society for Fair Elections and Democracy, the Institute for Development of Freedom of Information, etc.

Recommendation ii.

13. *GRECO recommended (i) to establish a standardised format for the annual financial declarations to be submitted by political parties, seeing to it that financial information (on parties' income, expenditure, assets and debts) is disclosed in an appropriate amount of detail and (ii) to ensure that information contained in the annual financial declaration (including donations above a certain threshold) is made public in a way which provides for easy access by the public.*
14. GRECO recalls that in the Compliance Report, it had been satisfied with the information provided with respect to the second part of the recommendation, namely, that annual financial declarations of political parties covered information on any sum donated by natural persons and were to be made accessible on the SAO's web-site, that the information on the receipt of donations and membership fees was to be reported to the SAO within five working days, and that the SAO was to ensure public access to it by publishing it on the web-site on a monthly basis. Regarding the first part of the recommendation, GRECO had welcomed the development by the SAO of a standardised format for annual party declarations which allowed for disclosure of information on party income, expenditure and assets, while debts were to be reported on a separate form. That said, the ambiguity of legal provisions imposing financial reporting obligations on so-called persons with "declared electoral goals" affiliated to a political party had remained a source of concern. In the Second Compliance Report, GRECO noted that the situation remained controversial since the law only explicitly covered natural persons with a "declared electoral goal", while the regulation of commercial and non-commercial legal entities was only pursued based on the SAO's decrees. Also, the fact that the financial reporting requirements on persons with a "declared electoral goal" applied beyond the time of elections was only prescribed in the SAO decrees. Given that further legislative amendments to remedy those shortcomings were still only under preparation, GRECO concluded that the first part of the recommendation remained partly implemented.
15. The authorities now report, with respect to the pending first part of the recommendation, on the preparation of legislative amendments to include in the LPUC all the regulations with regard to financial reporting requirements applicable to persons with a "declared electoral goal"; it is thus planned to move the relevant provisions of the SAO decrees to the law. According to the authorities, it is planned to submit the amendments to Parliament for adoption shortly.
16. GRECO recalls that the incongruous financial reporting requirements applicable to persons with a "declared electoral goal" affiliated to political parties was the only outstanding issue under part (i) of the recommendation. It takes note of the information provided on draft legal amendments which appear to go in the direction suggested in the First and Second Compliance Reports, by bringing together all the rules on financial reporting requirements applicable to persons with a "declared electoral goal" in the LPUC. GRECO calls upon the authorities to carry through the reform process without any further delay.
17. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iv.

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

19. GRECO recalls that in the Compliance Report, it had been satisfied – with respect to the second part of the recommendation – that by introducing an upper limit on membership fees and donations by natural persons per calendar year, opportunities to use membership fees to circumvent the rules on donations by natural persons were limited. As far as the first part of the recommendation is concerned, GRECO had welcomed the introduction of more uniform rules applicable to donations received by political parties but maintained its concerns over the process of practical valuation of in-kind donations and their inadequate reflection in the parties' financial statements. In the Second Compliance Report, GRECO acknowledged the amended rules on the valuation of in-kind donations in section 5¹ of Decree No. 142/37 of the General Auditor of 17 August 2012 “*On approval of the financial reporting forms and the rule for filing with the purpose of ensuring the transparency in the financing of political activities*”. Yet, it was not provided with sufficient evidence that Decree No. 142/37 contained clear and precise guidelines facilitating *consistent reporting* of in-kind donations by political parties and other election subjects, including in situations where non-monetary goods or services do not have observable market value and distinguishing clearly between professional and non-professional voluntary work. GRECO therefore concluded that the first part of the recommendation remained partly implemented.
20. The authorities now reiterate their position that section 5¹ of Decree No. 142/37 in conjunction with the International Valuation Standards (IVS), which are directly applied in Georgia, contain all necessary information and methodology for the valuation of in-kind donations.
21. GRECO takes note of the information provided. In the absence of any further progress achieved, GRECO concludes that recommendation iv remains partly implemented.

Recommendation vi.

22. *GRECO recommended to take further measures to prevent the misuse of all types of administrative resources in election campaigns.*
23. GRECO recalls that the recommendation had been considered partly implemented in the Second Compliance Report. Note had been taken of the detailed explanations provided, including on the exact content of article 48 (1) EC and on the inclusion of an extensive definition of the term “administrative resources” in the CEC’s Guidelines. However, GRECO remained concerned about the legal provision allowing for unlimited campaigning by high-level public officials, the multiplication of responsible bodies (i.e. the CEC, the SAO, the courts and the newly established Inter-Agency Task Force for Free and Fair Elections – IATF) and the low level of fines available in case of misuse of administrative resources (i.e. approximately EUR 840).
24. The authorities now indicate, with regard to the EC provisions concerning campaigning by high-level public officials and sanctions available in case of misuse of administrative resources, that the SAO and the CEC are jointly analysing the law and preparing legal amendments. The authorities expect that the amendments will be submitted to Parliament for approval shortly. In contrast, they do not see the need for institutional changes. In particular, they stress that the IATF had been deliberately created in order to assist the existing bodies, i.e. the CEC and the SAO, and to ensure quick and adequate reaction to violations by adopting, after having verified pertinent signals, recommendations and proposals to responsible state bodies and the CEC.

25. GRECO takes note of the information provided on the legal reforms initiated and looks forward to their accomplishment. In the absence of any tangible progress at this stage, GRECO concludes that recommendation vi remains partly implemented.

Recommendation viii.

26. *GRECO recommended (i) to ensure that an independent mechanism is in place for the monitoring of the funding of political parties and election campaigns, in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) to provide this mechanism with the mandate, the authority, as well as adequate resources to effectively supervise the funding of political parties and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.*
27. GRECO recalls that in the Compliance Report, it had acknowledged legislative and operational steps to entrust a single and independent body, the SAO, with monitoring party and election campaign financing and sanctioning breaches of the law. However, doubts remained about the SAO's independence and impartiality in practice. Moreover, GRECO identified the need to further strengthen the SAO's competences and to provide it with adequate resources, as well as to refine article 97 of the Constitution to make it clear that the SAO is competent to monitor any financing of political parties and of the campaigns of any electoral subjects, independent of whether they receive and use public funds.
28. In the Second Compliance Report, GRECO noted that the situation regarding the SAO's independence in practice had improved and it therefore concluded that the first part of the recommendation had been implemented. In contrast, the second part of the recommendation remained partly implemented. Some progress had been achieved, including by enabling the SAO to impose sanctions for violations of political funding rules not only on parties and persons with "declared electoral goals" but also on other election subjects and withdrawing this competence from the CEC, and by setting up a temporary consultative commission under the SAO with a view to analysing possible infringements of the regulations on campaign financing, to issue recommendations and to ensure greater transparency. Nevertheless, the above-mentioned concerns remained. In particular, from GRECO's perspective it was questionable whether the funding, other than public subsidies, acquired by parties and other election subjects can be qualified as "other material values"; therefore further refining the text of this constitutional provision would be desirable. Moreover, GRECO suggested more substantial legislative revisions and stressed that, further to the May 2012 amendments to the LPUC, only administrative courts can decide on sanctioning cases based on protocols of administrative violations filed by the SAO with the relevant city/district court. Finally, it had not been demonstrated that targeted measures had been taken to provide the monitoring mechanism with adequate financial and personnel resources.
29. The authorities now reiterate their position that no revision of article 97 of the Constitution is necessary and that this article in its present form, read in conjunction with other legal provisions, enables the SAO to supervise the use and expenditure not only of public funds but also of other material values.
30. GRECO regrets that no further measures have been taken to address its concerns, namely with respect to the competences and resources confided to the SAO for the supervision of party and election campaign funding.

31. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

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

33. In the Second Compliance Report, GRECO found that the third part of the recommendation had been implemented satisfactorily, by including in the LPUC new provisions detailing the procedure for initiating and imposing sanctions and by assessing the relevant articles of the EC (according to which no further clarification was required), whereas the first and second parts of the recommendation had been partly implemented. GRECO had acknowledged that a more uniform and consistent sanctioning regime had been created by regulating sanctions for the violation of party and campaign financing rules only in the LPUC and the EC. However, it remained concerned about the fact that certain identical infringements may be subject to different sanctions³ whereas the sanctions cannot be imposed on all entities on which the law places obligations.⁴ Furthermore, it took the view that the low level of monetary fines available under the LPUC and the EC was not proportional to the severity of the offences established by the respective laws whereas the suspension of public funding being imposed as a sanction on a political party that fails to present an annual financial report on time (under section 34 LPUC) was too severe a sanction, capable of adversely affecting the operation of a party in the year in which the elections are to be held.

34. The authorities now report that the SAO and the CEC are jointly analysing the law and preparing legal amendments which are to be submitted to Parliament shortly.

35. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

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

37. GRECO recalls that in the Compliance Report, the recommendation had been qualified as partly implemented. The LPUC had been amended to extend the statute of limitations to six years for the administrative offences established therein. In contrast, the period of limitation under the EC had not been altered. GRECO had recalled that the EC established a series of important restrictions, such as a prohibition on the misuse of administrative resources and official positions in election campaigns, a prohibition on buying votes or providing funds, gifts or other material benefits to citizens and that many of these might be uncovered long after the announcement of election

³ For example, under Article 85 EC, failure to submit a report on campaign funds by a political party is punishable by a fine ranging between GEL 1 500 and 3 000/EUR 573 and 1 147, depending on whether or not a party is the recipient of state funding; under Article 34 LPUC, failure by a party to submit the annual financial report to the SAO, of which the report on campaign funds is a constituent part, leads to the withdrawal of state funding; the same infringement is also potentially liable under Article 34² LPUC to a fine equal to GEL 5 000/ EUR 2 101.

⁴ While Article 85 EC establishes liability of a political party for failure to fulfil the obligation to submit a report on campaign funds, a liability of other election subjects for the same infringement has not been established.

results. At the time of the adoption of the Second Compliance Report, no further concrete progress had been achieved.

38. The authorities now report that the SAO and the CEC are jointly analysing the law and preparing legal amendments which are to be submitted to Parliament for approval shortly.
39. GRECO takes note of the information provided on the legal reforms initiated and looks forward to their accomplishment. In the absence of any tangible progress at this stage, GRECO concludes that recommendation x remains partly implemented.

III. CONCLUSIONS

40. **In view of the above, GRECO concludes that no tangible progress has been achieved by Georgia as regards the implementation of the recommendations found to be partly implemented in the Second Compliance Report.** The pending seven recommendations – out of fifteen in total – remain partly implemented.
41. Overall, with respect to Theme I – Incriminations, all five recommendations have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, three recommendations (iii, v and vii) have been implemented satisfactorily and seven (i, ii, iv, vi, viii, ix and x) have been partly implemented.
42. GRECO concludes that no tangible progress has been achieved by Georgia, since the adoption of the Second Compliance Report, as regards the implementation of the seven outstanding recommendations concerning transparency of political funding. Notwithstanding this result, GRECO notes that improvements may be forthcoming, given that the State Audit Office and the Central Election Commission are preparing amendments to the Electoral Code and the Law on Political Unions of Citizens which are to be submitted to Parliament shortly – once the new Parliament and government have been formed following the parliamentary elections of October 2016. It would appear that the amendments are aimed at addressing the concerns underlying several of GRECO's recommendations. GRECO urges the authorities to make every effort to speed up the process and to present tangible results in line with the pending recommendations. It also wishes to stress that additional measures need to be taken to respond to two important recommendations which have apparently not been included in the reform process, namely as regards the valuation of in-kind donations and the further strengthening of the supervisory mechanism in respect of party and election campaign financing, which has been entrusted to the SAO.
43. GRECO urges the authorities of Georgia to take determined and prompt action with a view to addressing the aforementioned outstanding recommendations. In accordance with Rule 31, paragraph 9 of its Rules of Procedure, it requests the Head of the delegation of Georgia to submit additional information on the implementation of recommendations i, ii, iv, vi, viii, ix and x (Theme II – Transparency of Party Funding) by 30 September 2017.
44. GRECO invites the authorities of Georgia to authorise, as soon as possible, the publication of this Addendum to the Second Compliance Report, to translate it into the national language and to make the translation public.