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FOURTH EVALUATION ROUND

Corruption prevention in respect of
members of parliament, judges and prosecutors

SECOND COMPLIANCE REPORT

AZERBAIJAN

Adopted by GRECO at its 82nd Plenary Meeting
(Strasbourg, 18-22 March 2019)

I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Azerbaijan to implement the recommendations issued in the Fourth Round Evaluation Report on Azerbaijan (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Azerbaijan was adopted at GRECO's 65th Plenary Meeting (10 October 2014) and made public on 2 April 2015, following authorisation by Azerbaijan ([Greco Eval IV Rep \(2014\) 2E](#)).
3. The Compliance Report was adopted by GRECO at its 74th Plenary Meeting (2 December 2016) and made public on 17 March 2017, following authorisation by Azerbaijan ([GrecoRC4\(2016\)11](#)). As required by GRECO's Rules of Procedure, the authorities of Azerbaijan submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 5 November and 19 December 2018 and served, together with information submitted subsequently, as a basis for the Second Compliance Report.
4. GRECO selected Finland and Georgia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Jouko HUHTAMÄKI on behalf of Finland and Ms Pelagia MAKHAURI on behalf of Georgia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

II. ANALYSIS

5. In its Evaluation Report, GRECO addressed 21 recommendations to Azerbaijan. In the Compliance Report, GRECO concluded that recommendations vii, viii, x, xi, xiii, xv, xvi, xvii, xviii, xix and xxi had been implemented satisfactorily. Recommendations i, ii, v and vi had been partly implemented and recommendations iii, iv, ix, xii, xiv and xx had not been implemented. Compliance with the ten pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that public consultations be systematically held on bills, including those emanating from executive bodies and subject to an accelerated adoption procedure within the parliament.*
7. It is recalled that this recommendation was partly implemented in the Compliance Report. The Public Participation Act, enacted in 2014, before the adoption of the Evaluation Report, provides for carrying out public hearings and consultations on draft laws submitted to Parliament. In the Compliance Report, GRECO took note of the information that draft laws were published and increasingly discussed in committees with the involvement of civil society representatives. GRECO also took note of the setting-up of the "Government - civil society dialogue platform". The new measures to support public consultations on draft legislation were planned in the amended Internal Regulations for Parliament and in the National Action Plan on Open Government for 2016-2018.
8. The authorities now reiterate that all draft laws are published promptly on the webpage of Parliament. Moreover, they add that all proposals and suggestions from interested parties are collected through various channels, including the Parliament's website, and are submitted for discussion in the respective committees. The authorities underline that there have been no draft laws subject to accelerated

procedure in Parliament since the autumn session 2016. The authorities specify that 443 public discussions were held and that 1350 draft laws were discussed during the autumn session of 2016.

9. The authorities also report that the "Government - civil society dialogue Platform", to which Parliament is party since 2016, now has its Statute and Strategic Action Plan (2017-2020), expanded membership (52 members, including 39 NGO representatives) and a branch focusing on implementation of anti-corruption initiatives in the regions¹. The Platform organised 158 events during 18 months and conducted public consultations on many draft laws². The authorities also report that, pursuant to the National Action Plan on Open Government, public councils have been created and their members elected in 27 State bodies³. Public councils actively participate in discussions on draft laws.
10. Finally, the authorities report that the amended Internal Regulations of Parliament provide for detailed rules on holding public hearings. These amendments stipulate in particular that all participants to public discussions should be notified five days before the date of public councils (three days in case of accelerated procedure).
11. GRECO takes note of the positive information provided by the authorities, indicating that all draft laws are made public on the webpage of Parliament and that there have been no accelerated procedures since 2016, that 443 public discussions were held during the autumn session 2016 (1350 bills discussed). GRECO also notes the amended Internal Regulations of Parliament which provide for advance notifications to participants before public hearings are to be held. GRECO welcomes these developments and concludes that the measures taken and the results referred to are in line with the purpose of this recommendation.
12. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

13. *GRECO recommended that i) in furtherance of the conflicts of interest rules in the Constitution, the Law on Combatting Corruption, the Status of Deputy Law and the Rules of Procedure Law, standards (a code) of conduct for members of parliament (covering, in particular, conflicts of interest and regulation of contacts with third parties) be adopted and enforced and made easily accessible to the public; and ii) training, guidance and counselling be provided to MPs on legal conduct, parliamentary ethics, conflicts of interest, accessory activities, gifts and other advantages, corruption prevention and boosting of reputation.*
14. It is recalled that this recommendation was partly implemented in the Compliance Report. A draft Code of Conduct for MPs had been elaborated and submitted to Parliament. The authorities referred also to constitutional amendments, introduced following a referendum in 2016, providing for the loss of a parliamentary mandate in

¹ The Platform established a local-level platform with the participation of 4 members of the local NGOs, 6 government agencies, 5 local municipalities and 8 community development councils.

² Including the following: "On the Chamber of Accounts", "On Access to the information", "On New draft law regulating external public financial control", "On the strategic road-map on Prospects of National Economy of the Republic of Azerbaijan", "On Evaluation results of participation of civil society institutions in the discussions of the draft of the state budget in the National Parliament", "On annual report on execution of the state budget and public presentation of relevant opinion of the Chamber of Accounts of the Republic of Azerbaijan", "On Informing the public about the financial control measures taken by the Chamber of Accounts at the financial control objects", "On Strengthening the Role of Civil Society in Ensuring Socio-Economic Rights of Sensitive Population Groups", "On improvement of irrigation water supply facilities in the regions", "Transparency and Accountability in the Performance of Customs Authorities".

³ It is considered that this line of the National Action Plan on OGP (4.2.1 Organizing, strengthening the activity of public councils and ensuring their sustainability) has been implemented at 80.71%.

case of a "serious violation" of the code (amended article 89). GRECO pointed to the excessively broad language of the draft Code and in particular to the insufficient regulation of conflicts of interest, contacts with third parties and supervisory mechanisms. GRECO was looking to examine in greater detail the exact responsibilities of the Disciplinary Commission, in particular as regards training, guidance and counselling to MPs.

15. In respect of part (i) of the recommendation, the authorities now report that the Law on Rules of Ethical Conduct of Deputies was finalised, following an analysis of international best practices and a Council of Europe expert support, and finally adopted on 30 June 2017. Amendments to this law regarding gifts, conflicts of interests and contact with third parties were adopted on 27 November 2018 and entered into force on 18 December 2018. The law regulates the issues of conflicts of interest, incompatibilities, contacts with third parties, gifts, oversight, training and guidance. In particular, it contains a definition of a conflict of interest, requires the reporting of conflicts of interest situations or resolution of them. It also requires from MPs to report meetings with third parties in the framework of law-making activities. Gifts exceeding 55 manats (29 Euros) are prohibited.
16. As regards part (ii) of the recommendation the authorities report that the Disciplinary Commission ensures supervision, provides guidance and deals with training and awareness-raising on various integrity matters, incl. conflicts of interests, incompatibilities, gifts etc. Guidelines on Conduct of MPs detailing and explaining the relevant legal obligations and providing examples, have been elaborated with the support of Council of Europe experts. The Disciplinary Commission shared the Guidelines with MPs and approved them. Finally, the authorities indicate that training activities regarding amendments to the Rules of Ethical Conduct and the Internal Regulations of Parliament took place in October 2018. The authorities reported also on a workshop on the prevention of conflicts of interest for MPs (November 2018) and a series of training courses for MPs in the framework of Committee meetings of Parliament (December 2018).
17. Concerning the first part of the recommendation, GRECO welcomes the adoption of the Law on Rules of Ethical Conduct of Deputies and recent amendments to this law. These legal texts have been published. GRECO notes that the text of the Law on Rules of Ethical Conduct of Deputies has been specified, in particular with regard to conflicts of interest, gifts and contacts with third parties. Furthermore, the enforcement of the Code is connected to Articles 45 and 46 of the Rules of Procedure of Parliament, which in turn provide for sanctions (e.g. warning, prohibition to speak, expulsion from the plenary, reprimand and deprivation of mandate). This part of the recommendation has therefore formally been complied with.
18. When it comes to the second part of the recommendation, GRECO appreciates that the Guidelines on Conduct of MPs, which were elaborated on the basis of Council of Europe expertise, have been approved by the Disciplinary Commission and distributed to MPs. These Guidelines reiterate the relevant legal provisions and provide interpretation, explanations and practical examples. This is a positive development. GRECO also notes that training and awareness-raising activities have been carried out and an action plan for the implementation of the Law on Rules of Ethical Conduct of Deputies has been adopted. Also this part of the recommendation has been complied with.
19. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

20. *GRECO recommended that accessory activities of MPs be subject to effective supervision and enforcement.*
21. GRECO recalls that this recommendation was not implemented in the Compliance Report. It was noted that accessory activities rules applied to MPs. In particular, the Constitution (Article 85 II) imposes a ban on taking up a position in the executive or judiciary, as well as engaging in other paid activity, with the exception of academic, pedagogic or creative work. The draft Code of Conduct essentially repeated the constitutional provisions and left the advisory and supervisory roles to the Disciplinary Commission. The draft amendments to the Law on Internal Regulation of the Parliament provided for sanctions, ranging from disciplinary measures to deprivation of a mandate. GRECO considered that the applicable procedures in case of violation of incompatibility restrictions lacked clarity and the draft Code of Conduct at the time was insufficient to ensure effective supervision and enforcement.
22. The authorities now report that the Law on Rules of Ethical Conduct of Deputies imposes a ban on “business, commercial or other paid activity (except scientific, teaching and creative activities)” (Article 5). As mentioned above, the sanctions for the violations of rules of ethical conduct are listed in the Law on Internal Regulation of Parliament⁴.
23. The authorities explain that an MP may lose his/her mandate if s/he is “unable to perform his/her duties and in other cases prescribed by law”, including for “assuming a position in a state body, becoming a religious official, engaging in entrepreneurial, commercial or other paid activity, with the exception of scientific, pedagogical and creative activity” (Article 89.4 of the Constitution). In such situations, the Disciplinary Commission conducts an investigation and issues an opinion to the Milli Majlis, which is to adopt a decision on this matter. A decision on deprivation of a parliamentary mandate can be challenged in the Appellate and Supreme Courts.
24. Finally, the authorities indicate that the newly developed Guidelines on Conduct of MPs provide explanations about functional conflicts of interests and recall the prohibition of holding of most external positions/functions, and in particular any business, commercial or other paid activity. The authorities also report that the issue of accessory activities was covered in the training sessions held on 3-7 December 2018.
25. GRECO notes that the Law on Rules of Ethical Conduct of Deputies essentially repeat the relevant constitutional provisions imposing a strict ban on any paid activities (except scientific, pedagogical or creative). The violations of ethics rules are subject to sanctions, which are provided for in the Law on Internal Regulation of the Parliament and were known at the stage of the previous Compliance Report. GRECO appreciates that the legislation provides for the Disciplinary Commission’s role of guidance and supervision in respect of the Code, including incompatibilities, which is to be welcome. However, there are no indications on the effectiveness of the enforcement of the rules on accessory activities and of their effective supervision in practice. In these circumstances the present recommendation has been partly addressed.
26. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

⁴ including a warning, prohibition to speak for the duration of the sitting, expulsion from the plenary, reprimand and the deprivation of mandate

27. *GRECO recommended that i) the format for asset disclosure by members of parliament be established as a matter of urgency and that the confidentiality in respect of asset disclosure be lifted, with due regard being had to MPs' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to MPs be put into effect (including through the designation of an independent oversight body), accompanied by adequate sanctions for non-compliance with the rules and that details, including the underlying reasoning, of the sanctions imposed be made public.*
28. It is recalled that this recommendation was not implemented in the Compliance Report. The issue of enforcement of asset declarations regime has remained unresolved since 2005, when the relevant legislation applicable also to MPs was adopted. It still lacks the basic pre-requisites to become effective, including a format for reporting, an oversight body and sanctions.
29. The authorities report that there is no progress in the implementation of this recommendation.
30. GRECO regrets the absence of any progress and strongly urges the authorities of Azerbaijan to implement the present recommendation. GRECO reiterates that the absence of any meaningful development since the adoption of the Evaluation Report casts doubt on the political will to enact an effective system of asset disclosure.
31. GRECO concludes that recommendation iv remains not implemented.

Corruption prevention in respect of judges

Recommendation v.

32. *GRECO recommended that i) the objectives of safeguarding and strengthening judicial independence be explicitly stipulated in the mandate of the Judicial Legal Council (JLC); and ii) the role of the judiciary within the JLC be reinforced, notably by providing for not less than half of its members to be composed of judges who are directly elected or appointed by their peers and by ensuring that the JLC president is elected from among the JLC members who are judges.*
33. It is recalled that that this recommendation was partly implemented in the Compliance Report. The Judicial Legal Council (JLC) became operational in 2005 and its responsibilities have progressively been broadened. In particular, GRECO welcomed the legislation which explicitly extended the mandate of the JLC to preserve judicial independence as required by first part of the recommendation. However, GRECO regretted that the JLC has not undergone a more clear-cut and ambitious reform with regard to its composition. Although nine out of fifteen members of the JLC are judges (as was the case already at the time of the Evaluation Report), only a minority of them are appointed or elected by their peers. Furthermore, the JLC was still chaired by the Minister of Justice and not elected from among the JLC members who are judges, as it was recommended. GRECO considered that the second part of the recommendation remained to be addressed.
34. The authorities have not communicated any new information in respect to this recommendation.
35. GRECO regrets the absence of any progress in the implementation of the present recommendation and concludes that recommendation v remains partly implemented.

Recommendation vi.

36. *GRECO recommended that judicial independence be further strengthened by i) increasing the role of the Judicial Legal Council in the appointment of all categories of judges and court presidents; and ii) substantially reducing the five-year probation period for judges and making permanent appointments to the post of judge subject to clear, objective and transparent criteria.*
37. It is recalled that both parts of the recommendation were partly implemented in the Compliance Report. With respect to part (i), GRECO noted the increased role of the JLC in selecting judges for recruitment and the systematic endorsement of JLC proposals for appointment of judges by the President of the Republic. It noted however that the Chair of the Supreme Court and the Chair of the Supreme Court of Nakhchivan Autonomous Republic were directly appointed by the President. With respect to part (ii) of the recommendation, GRECO welcomed the probation period for newly recruited judges having been reduced from five to three years. GRECO underlined the need to spell out and enshrine in law clear, objective and transparent criteria for the process of permanent appointments. Finally, GRECO supported the elaboration of a methodology for evaluation of judges.
38. As regards part (i) of the recommendation, the authorities do not submit any new information. Regarding part (ii), the authorities report that a methodology for the evaluation of judges based on clear, objective and transparent criteria has been prepared within the EU joint-project on "The support to the development of the judicial system" and submitted to the review of the JLC.
39. Concerning part (i) of the recommendation, GRECO regrets the lack of progress and calls for determined measures to ensure that the Judicial Legal Council is involved in the appointment of all categories of judges and court presidents, as required by the recommendation. Turning to part (ii) of the recommendation, GRECO notes the elaboration of a methodology for the evaluation of judges, with the support of international technical cooperation. This methodology still has to be finalised and endorsed by the JLC. GRECO expects that permanent appointments and in particular the related evaluation of judges be made following legally defined criteria - clear, objective and transparent.
40. GRECO concludes that recommendation vi remains partly implemented.

Recommendation ix.

41. *GRECO recommended that i) the format for asset disclosure by judges be established as a matter of priority and that the confidentiality in respect of asset disclosure by judges be lifted, with due regard being had to their and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to judges be put into effect (including by allocating commensurate administrative and expert resources to the Commission on Combating Corruption), accompanied by adequate sanctions for non-compliance with the rules and that details, including the underlying reasoning, of the sanctions imposed be made public.*
42. GRECO recalls that this recommendation was not implemented in the Compliance Report as no progress had been reported.
43. The authorities do not report any new developments.
44. GRECO concludes that recommendation ix remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xii.

45. *GRECO recommended that i) the Prosecutor's Office Act be reviewed so as to eliminate any undue influence and interference in the investigation of criminal cases in the exercise of statutory controls over the activities of the Prosecutor's Office; and ii) the setting up, closure and basic organisational structure of all prosecution offices be determined by law.*
46. It is recalled that both parts of the recommendation were not implemented in the Compliance Report. GRECO was concerned about the interference of the Head of State with the investigation and prosecution in specific cases and the absence of any safeguards in this respect. GRECO also deplored the significant influence of the presidential authority on the organisation / re-organisation of the prosecutorial services.
47. The authorities now report that the Prosecutor's Office Act has been amended in 2017 (by Law N° 880-VQD of 17 November 2017) in respect of the interaction between the Prosecutor General and the legislative and executive powers. The term "oversight" has been replaced by a notion of "information". Section 44 of the law now provides that the Prosecutor General shall inform the Head of State about the work of the Prosecutor's Office, except for pending investigations. A similar provision applies in relation to Parliament.
48. GRECO welcomes the amendments to the Prosecutor's Office Act which, according to the authorities, has limited the "oversight" powers of the President and Parliament over the Prosecution Service. The President and Parliament are to be informed by the Prosecutor General about the work of the Prosecutor's office, except for information on pending investigations. These amendments go in the right direction. GRECO regrets the lack of any progress with respect to the second part of the recommendation.
49. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiv.

50. *GRECO recommended that i) all senior vacancies in the Prosecutor's Office be publicly advertised and access to them be made subject to clear, objective and transparent criteria; and ii) consideration be given to providing for suitable candidates for senior posts to be evaluated and submitted by a body composed of a majority of persons unrelated to the executive.*
51. It is recalled that both parts of the recommendation were not implemented in the Compliance Report. GRECO considered insufficient the measures taken to address the underlying concerns of the first part of the recommendation (public advertisement; clear, objective and transparent criteria with respect to senior appointments). GRECO also noted that no consideration had been given to the second part of the recommendation.
52. As regards part (i) of the recommendation, the authorities now recall that the Constitution regulates the appointment to the senior positions in the Prosecutor's Office (Prosecutor General - 1st category and the Deputies to the Prosecutor General - 2nd category). The President of the Republic nominates the Prosecutor General (with endorsement by Parliament) as well as his/her Deputies and the Prosecutor of Nakhchivan AR (on recommendation of the Prosecutor General).
53. Furthermore, the authorities report that on 29 October 2018, the Prosecutor General issued the Ordinance (Ref10/72-11/540-K) endorsing the Rules for Competitive

Filling of Vacant Positions in the Prosecutor's Office (relating to 3rd-8th categories of staff out of 9 categories). The Rules provide in particular for competitive selection of prosecutorial staff, mandatory publication of vacancies, online submission of applications and registration of candidates as well as the work of the Competition Commission. The Rules refer to the need for clear, objective and transparent criteria. They cover all the positions from the 3rd to the 8th categories of staff, but not the Prosecutor General, Deputies to the Prosecutor General and the Prosecutor of Nakhchivan Autonomous Republic.

54. As regards part (ii) of the recommendation, the authorities state that consideration has been given to the issue of evaluating candidates to senior positions by a body consisting of a majority of persons unrelated to the executive power. However, in a meeting of the Commission on Combatting Corruption held on 30 October 2018, it was decided not to establish such a body.
55. Concerning part (i) of the recommendation, GRECO welcomes the new rules for competitive filling of vacancies in the Prosecutor's Office which provide for a selection process of prosecutorial staff in categories 3-8. However, the rules do not cover the top ranking positions (i.e. the Prosecutor General and his/her deputies which belong to the 1st and 2nd categories of staff). It follows that this part of the recommendation is only partly complied with.
56. As far as part (ii) of the recommendation is concerned, GRECO notes that it has been decided in a formal meeting of the Commission on Combatting Corruption of Azerbaijan held on 30 October 2018 (the minutes of the meeting available to GRECO), not to establish a body composed of a majority of persons unrelated to the executive power for the evaluation of candidates to senior posts. GRECO regrets that the considerations did not lead to any progress towards limiting the influence of the executive in the appointment process within the prosecution service concerning senior positions. However, it accepts that this matter has been considered.
57. In the view of the above, GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xx.

58. *GRECO recommended that i) the format for asset disclosure by prosecutors be established as a matter of priority and the confidentiality in respect of asset disclosure by all prosecutors be lifted, with due regard being had to prosecutors' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to prosecutors be put into effect, including through the designation of an effective oversight structure within the Prosecutor General's Office.*
59. It is recalled that this recommendation was not implemented in the Compliance Report, as no progress had been achieved.
60. The authorities have not reported any new developments in respect of this recommendation.
61. GRECO concludes that recommendation xx remains not implemented.

III. CONCLUSIONS

62. **In view of the foregoing, GRECO notes progress in the implementation of the recommendations addressed to Azerbaijan within the Fourth Evaluation Round.** Thirteen out of twenty-one recommendations have been implemented

satisfactorily, five recommendations have been partly implemented and three recommendations remain not implemented.

63. More specifically, recommendations i, ii, vii, viii, x, xi, xiii, xv, xvi, xvii, xviii, xix and xxi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations iii, v, vi, xii and xiv have been partly implemented and recommendations iv, ix and xx have not been implemented.
64. With respect to members of parliament, the adoption of the Law on Rules of Ethical Conduct of Deputies is a positive development. Progress has also been noted concerning the framework for public consultations on draft legislation.
65. With regard to judges, GRECO is concerned by the lack of further progress in the implementation of pending recommendations. The composition of the Judicial Legal Council needs to be changed in line with European standards and this body should be involved in the appointment of all categories of judges. Clear, objective and transparent criteria for permanent appointments of judges remain to be introduced.
66. GRECO notes that some limited legislative progress has been made to reduce undue influence over the Prosecutor's Office. However, more is needed to eliminate such influence. Moreover, a competitive selection of prosecutors has been regulated, however, not in respect of the senior top positions.
67. With respect to asset disclosure, which covers all three categories of officials under evaluation (parliamentarians, judges and prosecutors), GRECO is alarmed by a persistent lack of will and of necessary measures (reporting format, oversight) to make the system operational. GRECO calls on the authorities of Azerbaijan to take determined measures to finally complete this important anti-corruption reform and to implement the relevant GRECO recommendations.
68. In view of the fact that further progress is required to implement pending recommendations, GRECO, in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, asks the Head of the delegation of Azerbaijan to submit additional information, namely regarding the implementation of recommendations iii to vi, ix, xii, xiv and xx by 31 December 2019.
69. Finally, GRECO invites the authorities of Azerbaijan 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.