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FOURTH EVALUATION ROUND

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

ADDENDUM TO THE SECOND COMPLIANCE REPORT AZERBAIJAN

Adopted by GRECO at its 86th Plenary Meeting
(Strasbourg, 26-29 October 2020)

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I. INTRODUCTION

1. The Addendum to 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](#)).
4. The Second Compliance Report was adopted by GRECO at its 82nd Plenary Meeting (22 March 2019) and made public on 18 June 2019, following authorisation by Azerbaijan ([GrecoRC4\(2019\)3](#)). As required by GRECO's Rules of Procedure, the Azerbaijani authorities submitted a Situation Report on further measures taken to implement pending recommendations. This report was received on 17 January 2020 and served, together with information submitted subsequently, as the basis for this Addendum.
5. The current Addendum to the Second Compliance Report evaluates the progress made in implementing the pending recommendations since the previous Second Compliance Report (i.e. recommendations iii to vi, ix, xii, xiv and xx) and provides an overall appraisal of the level of compliance with these recommendations.
6. 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 current Report.

II. ANALYSIS

7. In its Evaluation Report, GRECO addressed 21 recommendations to Azerbaijan. In the Second Compliance Report, GRECO concluded that i, ii, vii, viii, x, xi, xiii, xv, xvi, xvii, xviii, xix and xxi had been implemented satisfactorily or dealt with in a satisfactory manner, recommendations iii, v, vi, xii and xiv had been partly implemented and recommendations iv, ix and xx had not been implemented. Compliance with the eight pending recommendations is dealt with below.
8. In their general comments, the Azerbaijani authorities refer to the dissolution of Parliament, on 4 December 2019, and the general elections, held on 9 February 2020. According to the authorities, these developments impeded the implementation of a number of recommendations relating to members of Parliament.

Corruption prevention in respect of members of parliament

Recommendation iii.

9. *GRECO recommended that accessory activities of MPs be subject to effective supervision and enforcement.*
10. It is recalled that this recommendation was partly implemented in the Second Compliance Report. In particular, GRECO took note of the role of the Disciplinary Commission as regards guidance and supervision of the Code of Ethics and that

sanctions for violations of the ethics rules, provided under the Law on Rules of Ethical Conduct of Deputies, were in place. However, no evidence or concrete examples were provided to demonstrate effective enforcement and supervision of the rules on accessory activities in practice.

11. The authorities now reiterate references to developments already reflected in the Second Compliance Report, such as the adoption of Guidelines on Conduct of MPs, and several training initiatives in this respect. As to new information relating to enforcement and supervision of the rules on accessory activities in practice, the authorities refer to a case where an MP's mandate has been terminated, reportedly on the grounds of his involvement in entrepreneurial activity. The MP in question was also a respondent in a civil claim lodged by a private person before court for the MP's failure to pay a debt. An investigation into this matter was said to have been conducted by the Disciplinary Commission of Parliament. According to the authorities, on the basis of the conclusions of the Disciplinary Commission, Parliament appealed to the Central Election Commission with the request to terminate the mandate of the MP in question. Further, a criminal case had also been initiated by prosecution. In addition, the authorities report that a parliamentary working group was set up on 10 April 2020 to prepare a statute of the Disciplinary Commission. On 17 September 2020, the draft law on the Statute of the Disciplinary Commission was approved at the joint meeting of the working group and the Parliamentary Committee on Legal Policy and State Building. The adoption of the draft law by Parliament is expected in the course of October 2020.
12. GRECO takes note of the information provided by the authorities. While the involvement of the Disciplinary Commission into establishing the facts regarding accessory activities of an MP sends the right signal, several reports in the press suggest that the Parliament's procedure to terminate the mandate of the MP was based on the request of the MP concerned.¹ No details were provided to GRECO as regards the facts established by the Disciplinary Commission, nor as regards any impact of its investigation on the rescinding of the mandate of the MP. It would appear that the MP's request for resignation was initially triggered by the civil case brought in front of a court for failure to pay the debt, rather than his involvement in accessory activities. In any event, a singular case is not sufficient to conclude that the recommendation has been dealt with in a satisfactory manner.
13. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

14. *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.*
15. GRECO recalls that this recommendation was not implemented in the Second Compliance Report. GRECO strongly urged the authorities to implement this

¹ See press articles via the following links:

<https://ru.baku.news/povestka-dnya/18464-rafael-cebrayilov-baresinde-qaldirilan-iddia-uzre-mehkeme-bashlayib.html>
<https://az.sputniknews.ru/incidents/20191002/421900859/deputat-lishilsja-mandat-dzhabrailov.html>
<https://www.kavkaz-uzel.eu/articles/340721/>

recommendation, as not doing so would cast doubt on the political will to enact an effective system of asset disclosure.

16. The authorities do not report any new developments.
17. GRECO deplores the absence of any progress in the implementation of this recommendation and once again urges the Azerbaijani authorities to take necessary steps to put in place an effective system of asset disclosure regarding members of parliament.
18. GRECO concludes that recommendation vi remains not implemented.

Corruption prevention in respect of judges

Recommendation v.

19. *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.*
20. It is recalled that this recommendation was partly implemented in the Compliance Report, and remained so in the Second Compliance Report, as no new information was communicated by the authorities. GRECO welcomed the extension of the mandate of JLC to preserve judicial independence. However, GRECO regretted the absence of any progress in the implementation of the second part of this recommendation, namely, providing that at least half of JLC members be directly elected or appointed by their peers, and its president be elected from among JLC-member judges.
21. The authorities do not report any new information regarding this recommendation.
22. GRECO regrets the absence of any progress in the implementation of the present recommendation and concludes that recommendation v remains partly implemented.

Recommendation vi.

23. *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.*
24. It is recalled that this recommendation was partly implemented in the Second Compliance Report. Regarding the first part of the recommendation, GRECO regretted the lack of progress in ensuring that the Judicial Legal Council be involved in the appointment of all categories of judges. As to the second part of the recommendation, GRECO noted that the methodology for the evaluation of judges was yet to be endorsed by the JLC and that clear, objective and transparent criteria for evaluation of judges were yet to be defined in legislation.
25. The authorities now report that on 6 March 2020, the JLC approved the methodology of the evaluation of judges, which is said to contain clear, objective and transparent criteria. No new information has been provided on as regards the first part of this recommendation.

26. GRECO takes note of the information indicating that a methodology of the evaluation of judges has been adopted; however, the text of the criteria contained therein has not been made available to GRECO. In addition, the first part of the recommendation still needs to be addressed.

27. GRECO concludes that recommendation vi remains partly implemented.

Recommendation ix.

28. *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.*

29. GRECO recalls that this recommendation was not implemented in the Second Compliance Report, as no progress had been reported.

30. The authorities, again, report no new developments.

31. GRECO deplores the lack of effort on the part of the authorities to implement this recommendation and concludes that recommendation ix remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xii.

32. *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.*

33. It is recalled the recommendation was partly implemented in the Second Compliance Report. GRECO welcomed the amendments to the Prosecutor's Office Act to the effect of limiting the "oversight" powers of the President and Parliament over the Prosecution Service to some extent. However, GRECO regretted the lack of progress as regards regulating the setting up, closure and basic organisational structure of all prosecution offices.

34. The authorities do not report any new developments regarding this recommendation.

35. GRECO regrets the lack of progress in the implementation of the present recommendation and concludes that recommendation xii remains partly implemented.

Recommendation xiv.

36. *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.*

37. GRECO recalls that this recommendation was partly implemented in the Second Compliance Report. Regarding the first part of the recommendation, GRECO welcomed new rules for competitive filling of some of the vacancies in the Prosecutor's Office. However, the rules did not cover top ranking positions (i.e. the Prosecutor General and his/her deputies). As to the second part of the recommendation, GRECO noted the decision of the Commission on Combatting Corruption of Azerbaijan not to establish a body composed of a majority of persons unrelated to the executive power for the evaluation of candidates to senior posts, and regretted that no progress had been achieved in limiting the influence of the executive on the appointment of senior prosecutors. Nonetheless, GRECO accepted that this matter had been considered.
38. The authorities now report that the rules for competitive filling of vacancies in the Prosecutor's Office, approved by the Prosecutor General's Ordinance of 29 October 2018, have been amended on 4 November 2019 to cover all vacancies within the Prosecutor's Office. According to the authorities, these include the vacancies of the Deputy Prosecutor General and the Prosecutor of Nakhchivan Autonomous Republic, which have previously been excluded from the rules. The authorities further report that since the adoption of these rules in 2018, several competitive examinations were organised to fill vacant posts in different prosecutor's offices, including publication of vacancies on the Internet and dissemination of information through media, which received an overall positive feedback.
39. GRECO takes note of the information provided by the authorities and welcomes the amendment of 4 November 2019 to the rules for competitive filling of vacancies in the Prosecutor's Office, which are no longer limited to prosecutorial vacancies in categories 3 to 8, but also appear to be applicable to vacancies in the top ranking prosecutorial positions. GRECO encourages the authorities to systematically apply the newly amended recruitment procedure in practice as a measure to promote transparency in the prosecution service.
40. GRECO concludes that recommendation xiv has been dealt with in a satisfactory manner.

Recommendation xx.

41. *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.*
42. It is recalled that this recommendation was not implemented in the Second Compliance Report, as no progress had been achieved.
43. The authorities have not reported any new developments in respect of this recommendation.
44. GRECO concludes that recommendation xx remains not implemented.

III. CONCLUSIONS

45. **In view of the foregoing, only a modest progress can be noted in the implementation of the recommendations addressed to Azerbaijan within the Fourth Evaluation Round. Fourteen out of twenty-one recommendations**

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

46. More specifically, recommendations i, ii, vii, viii, x, xi, xiii, xiv, xv, xvi, xvii, xviii, xix and xxi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations iii, v, vi and xii have been partly implemented and recommendations iv, ix and xx have not been implemented.
47. With respect to members of parliament, Azerbaijan has taken concrete steps to address the shortcomings identified by GRECO. In particular, progress has been made regarding the framework of public consultations on draft legislation, and the Law on Rules of Ethical Conduct of Deputies has been adopted. However, there is still a pressing need to establish an effective system of asset disclosure regarding members of parliament, as this matter has not been addressed.
48. With regard to judges, measures have been taken to increase the role of the Judicial Legal Council (JLC) in the selection of judges, to introduce training on integrity-related matters and counselling on ethics, and, as it appears, a methodology for judicial appointments. However, the composition of the JLC needs to be changed to strengthen the role of the judiciary within this body, so that the JLC is composed of a majority of judges directly elected or appointed by their peers and is chaired by a judge. Further, the JLC should be involved in the appointment of all categories of judges. Finally, the transparency remains lacking as regards judges' asset disclosure.
49. As to prosecutors, GRECO notes that tangible steps have been taken in several areas, notably as regards disciplinary offences, the Code of Ethical behaviour and the periodic appraisal system. Further, a new set of criteria has been introduced for recruiting law enforcement officers, the rules on competitive selection of prosecutors have been extended to cover senior prosecutors, and new guidelines have been adopted on accessory activities. Improvements have also been made regarding training on integrity-related matters. However, the undue influence of the executive over the Prosecutor's Office remains highly problematic and the issue of asset disclosure regarding prosecutors has not been addressed at all.
50. The adoption of this Addendum to the Second Compliance Report terminates the Fourth Round compliance procedure in respect of Azerbaijan. As already noted, some recommendations are still pending, in particular regarding the composition of the JLC and its greater role in judicial appointments, reducing the influence of the executive over the prosecution, and enhancing transparency of asset disclosure of members of parliament, judges and prosecutors. Therefore, GRECO invites the Azerbaijani authorities to keep GRECO informed of future progress on the implementation of these recommendations.
51. Finally, GRECO invites the authorities of Azerbaijan to authorise, as soon as possible, the publication of the present Addendum, to translate it into the national language and to make this translation public.