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Third Evaluation Round

Second Addendum to the Second Compliance Report on Azerbaijan

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 75th Plenary Meeting
(Strasbourg, 20-24 March 2017)

I. INTRODUCTION

1. The Second Addendum to the Second Compliance Report assesses further measures taken by the authorities of Azerbaijan since the adoption of the Addendum to the Second Compliance Report in respect of the recommendations issued in the Third Round Evaluation Report on Azerbaijan, covering two distinct themes, namely:
 - Theme I – Incriminations: Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - Theme II – Transparency of party funding: Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 48th Plenary Meeting (1 October 2010) and made public on 18 November 2010, following authorisation by Azerbaijan (Greco Eval III Rep (2010) 2E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 57th Plenary Meeting (19 October 2012) and was made public on 8 January 2013 ([Greco RC-III \(2012\) 12E](#)). The Second Compliance Report was adopted at GRECO's 65th Plenary Meeting (10 October 2014) and made public on 2 April 2015 ([Greco RC-III \(2014\) 13E](#)). In its Addendum to the Second Compliance Report ([Greco RC-III \(2015\) 20E](#)), which was made public on 14 March 2016, GRECO concluded that, with respect to Theme I – Incriminations, seven recommendations had been implemented satisfactorily and two recommendations remained partly implemented. With respect to Theme II – Transparency of Party Funding, two recommendations had been implemented satisfactorily, five recommendations had been partly implemented and one recommendation had not been implemented. In view of the fact that only two of the eight recommendations concerning party financing had been fully implemented, GRECO had asked the authorities to submit additional information regarding the outstanding recommendations. This additional information was provided on 13 January 2017.
3. The purpose of this Second Addendum to the Second Compliance Report is, in accordance with Rule 31, paragraph 9 of GRECO's Rules of Procedure, to appraise the implementation of pending recommendations in light of the most recent information submitted by the authorities of Azerbaijan.
4. GRECO selected Liechtenstein and Spain to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Addendum to the Second Compliance Report were Mr Patrick RITTER on behalf of Liechtenstein, and Mr Rafael VAILLO RAMOS, on behalf of Spain. They were assisted by GRECO's Secretariat in drawing up the Second Addendum to the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that in its Evaluation Report GRECO addressed 9 recommendations to Azerbaijan in respect of Theme I. Recommendations i, ii, iv, v, vi, viii and ix were considered to have been

implemented satisfactorily. Recommendations iii and vii were considered partly implemented. Compliance with those recommendations is dealt with below.

Recommendation iii.

6. *GRECO recommended to criminalise active and passive bribery of domestic and foreign jurors and arbitrators in accordance with Articles 2, 3, 4, 5 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible.*
7. GRECO recalls that this recommendation was partly implemented in the previous Addendum. As a result of this recommendation, Azerbaijan had ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), which entered into force in August 2013, but the concept of “arbiters of foreign and national arbitration courts” in the Penal Code (PC) was not broad enough to cover arbitrators (domestic and foreign) in the meaning of Article 1, paragraph 2 of ETS 191, including those acting on the basis of an arbitration agreement between private persons outside an arbitration court. GRECO also indicated that it would be preferable to spell out clearly that Section 308 PC refers to arbitrators who perform their functions not just under the law of Azerbaijan.
8. The authorities of Azerbaijan now indicate that Section 308 of the Penal Code was amended by law 230 of 6 May 2016 on amendments to the Penal Code of the Republic of Azerbaijan, which entered into force on 1 June 2016. As a result, Section 308 now refers to “*Local, foreign and international arbitrators who perform their functions under the laws of the Republic of Azerbaijan or other countries, and also under international agreements that the Republic of Azerbaijan is a party to*”.
9. GRECO welcomes the new amendments and considers that they address the remaining concerns expressed in the previous Addendum.
10. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation vii.

11. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities.*
12. GRECO recalls that this recommendation had been categorised as partly implemented. The practice with regard to the special defence provision contained in the note to Section 312 PC had been analysed, as recommended, but no subsequent decision had been taken to amend the provisions even though some proposals went as far as to recommend abolishing the effective regret mechanism as a whole. GRECO reiterated its misgivings about the automatic nature of the special defence provision and warned against impunity in serious cases of active bribery (in which the bribe giver could for instance exert pressure on the bribe taker to obtain further advantages).
13. The authorities have not submitted any new information in respect of this recommendation.
14. GRECO concludes that recommendation vii remains partly implemented.

Theme II: Transparency of Party Funding

15. In its Evaluation Report GRECO addressed 8 recommendations to Azerbaijan in respect of Theme II. Recommendations ii and iii were considered to have been implemented satisfactorily. Recommendations iv, v, vi, vii and viii were considered partly implemented and recommendation i not implemented. Compliance with these recommendations is dealt with below.

Recommendation i.

16. *GRECO recommended to extend the financial and accounting reference period applicable to election campaigns so that financial reports on election funds reflect more closely the resources and expenditure devoted to these campaigns.*
17. GRECO recalls that this recommendation had previously been considered not implemented. GRECO recalled the concerns expressed in the Evaluation Report (paragraph 84) with regard to an excessively short accounting reference period considered as a potential risk area that could lead to circumvention of the transparency rules of election campaigns and this was not solved through stricter monitoring.
18. The authorities have not submitted any new information in respect of this recommendation.
19. GRECO concludes that recommendation i remains not implemented.

Recommendation iv.

20. *GRECO recommended (i) to require that party accounts be disclosed in a way which provides for easy and timely access by the public; and (ii) to find appropriate ways to support political parties in complying with these transparency regulations.*
21. GRECO recalls that this recommendation had previously been categorised as partly implemented. The authorities had reported that the amendments to the Law on Political Parties (LPP, enacted in November 2014) provide that political parties are to submit annual financial reports, together with an auditor's opinion, to the Central Electoral Commission (CEC) no later than 1 April, and to make public their annual reports together with the auditor's opinion on the webpage of the CEC. Moreover the authorities referred to a new decree of the CEC (#9/79 of 15 May 2015), which requires the CEC to publish those reports within 24 hours following completion of the verification by the CEC. The annual reports are meant to be published on the CEC's webpage within 3-15 days and thus easily available online. The authorities referred to the holding of a seminar for media representatives and a capacity building training course for representatives of political parties. GRECO concluded that, despite the progress made, some further measures were still missing in order to fully implement this recommendation, notably with regard to timely access by the public (due to the absence of clear publication deadlines) and "support to political parties".
22. The authorities of Azerbaijan now report that the CEC amended its Decree #9/79¹ providing for the requirement to publish the reports of political parties within one working day after receipt by the CEC. In addition, further training events have been organised to support the political parties in the preparation and submission of financial reports in line with transparency regulations. These events included a seminar held on 16 March 2016 as well as a seminar organised jointly by the

¹ Decree #5/18 of 13th May 2016

CEC and the Council of Europe on 07 June 2016². Both events involved representatives of political parties, the CEC, Chambers of Auditors, the Ministry of Finance, the Ministry of Justice, NGOs and the media. In addition, the CEC conducted a series of bilateral consultations with representatives of almost all political parties raising awareness of the legal and regulatory framework and its amendments. On 22 February 2017 the CEC has adopted an action plan to implement awareness-raising and support measures to political parties for 2017-2018. The action plan provides practical tools to improve reporting capacities. It envisages 10 core actions and 18 events with specific details (dates, types of events, responsible and partner organisations), including trainings, discussions and video-guidelines on the preparation and submission of reports, transparency and prevention of corruption; methodology of identification and prevention of typical errors; electronic software for receiving financial reports of parties; studying international best practices. The measures planned are expected to be implemented in cooperation with relevant State authorities, NGOs, media, experts and international actors, incl. the Council of Europe and the European Union.

23. As for part (i) of the recommendation, GRECO welcomes the requirement for the CEC to publish the reports of political parties within one working day after receipt, regardless of the time needed to check those reports. GRECO recalls that non-compliance with the rules on submission and publication of reports by political parties is subject to fines of up to 2,000 Manats (960 Euro). This part of the recommendation has thus been complied with. With respect to part (ii) of the recommendation, GRECO appreciates the additional training and awareness raising efforts undertaken up until now and those planned for 2017-2018. Overall, GRECO considers that the new measures are definitely an improvement.
24. GRECO concludes that recommendation iv has now been implemented satisfactorily.

Recommendation v.
25. *GRECO recommended (i) to ensure, as appropriate, independent auditing of the books and accounts of political parties; and (ii) to find appropriate ways to support political parties in complying with such a requirement.*
26. GRECO recalls that this recommendation was considered partly implemented. In respect of the first part, GRECO welcomed the mandatory auditing of party accounts. But, there was an apparent lack of appropriate support to (small) parties for complying with the auditing requirement in relation to the second part of the recommendation.
27. The authorities of Azerbaijan have not reported any new developments in respect of this recommendation.
28. GRECO reiterates that the general auditing requirement may cause unreasonable burden on small parties and be detrimental to the development of pluralistic democracy and that there should be some form of public support to counterbalance this. Therefore part ii of this recommendation has not been dealt with.
29. GRECO concludes that recommendation v remains partly implemented.

² In the framework of Joint CoE/EU project "Strengthening capacities to fight and prevent corruption in Azerbaijan"

Recommendation vi.

30. *GRECO recommended (i) to ensure more substantial and pro-active monitoring of the financial reports on election funds of political parties and election candidates, including a material verification of the information submitted as well as investigation of financing irregularities; and (ii) to strengthen the independence of the election commissions in relation to the supervision of election campaign financing.*
31. GRECO recalls that this recommendation has so far been considered partly implemented. The first part of the recommendation had been addressed since the centralisation of the monitoring of election funds under the control of the CEC – which has been provided with additional staff and control structures – as well as coordination with the election commissions have the potential to ensure more substantial and pro-active monitoring. Concerning the second part of the recommendation, GRECO regretted the lack of progress in resolving the problem of partisan composition of the election commissions (already pointed to in the Evaluation Report). All 18 members of election commissions (as well as those of the CEC itself) continue to be nominated and appointed by Parliament (six from majority parties, six from among independent MPs and 6 from minority parties).
32. The authorities have not submitted any new information in respect of this recommendation.
33. GRECO regrets the absence of any improvement with regard to the independence of the election commissions in relation to the supervision of election campaign financing.
34. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

35. *GRECO recommended to establish independent and substantial monitoring of the general financing of political parties, well-coordinated with the monitoring of election campaign funding.*
36. GRECO recalls that this recommendation was considered partly implemented. GRECO had welcomed the November 2014 legal changes which consolidated the political financing monitoring under the lead responsibility of the CEC, as well as the improvements made with regard to the resources, structures and staffing of the CEC. However, GRECO remained concerned about the partisan composition of the CEC (as in the case of the election commissions), which prevented it from being regarded as being independent from the political parties.
37. The authorities of Azerbaijan have not reported any new developments in respect of this recommendation.
38. GRECO can only conclude that, in the absence of new information, recommendation vii remains partly implemented.

Recommendation viii.

39. *GRECO recommended to clearly define infringements of existing and yet-to-be-established regulations on transparency of election campaign funding as well as general party funding and to*

introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available.

40. GRECO recalls that this recommendation was considered partly implemented. The amendments made in 2012 to the Code of Administrative Violations had led to some improvements in respect of sanctions for violations of the rules concerning party financing under the LPP. GRECO noted, however, that these could be improved further (very low sanctions still applied to accounting offences). As regards the requirement to clearly define infringements in relation to regulations on the transparency of election campaign financing, Azerbaijan had made no improvements at all.
41. The authorities of Azerbaijan now report that, following the amendments to the Code of Administrative Violations adopted on 29 December 2015, sanctions in respect of infringements of election campaign financing have been increased³. Administrative fines for violation of the regulations on the financing of elections (referenda) have been increased from 10-20 Manats (5-10€) to 300-500 Manats (143-240€) for natural persons; from 44-60 Manats (21-29€) to 1500-2000 Manats (714-960€) for officials and from 150-250 Manats (71-119€) to 5,000-7,000 Manats (2,381-3,360€) for legal persons. Furthermore, the fine for *non-submission or non-publication* by parties, candidates or referendum campaign groups of reports on expenditure from their election/referendum funds has been increased from 20-30 Manats (10-14€) to 1,000-2,000 Manats (476-960€). Following internal discussions and feedback from various stakeholders, the CEC has also decided to introduce additional measures to increase the transparency of party financing.
42. GRECO takes note of the recently increased fines applicable for infringements of the campaign financing rules, resulting from the above-mentioned amendments to the Code of Administrative Violations (CAV). However, GRECO considers these sanctions still not effective, proportionate and dissuasive as they often remain significantly lower than those applicable for violations of the rules on party financing⁴. It should be pointed out in this respect that Chapter 14 of the Election Code does not even make cross-references to the CAV. Finally, there has been no further review in respect of sanctions concerning party financing under the LPP, including those for accounting offences, which remain excessively low as was pointed out in the Second Compliance Report. Azerbaijan needs to pursue its efforts to fully implement this recommendation.
43. GRECO concludes that recommendation viii remains partly implemented.

III. CONCLUSIONS

44. In view of the conclusions contained in the previous Third Round Compliance Reports on Azerbaijan and in light of the above, GRECO concludes that to date, Azerbaijan has implemented satisfactorily eleven of the seventeen recommendations contained in the Third Round Evaluation Report. Five further recommendations remain partly implemented and one recommendation remains not implemented.
45. More specifically, with respect to Theme I – Incriminations, recommendations i, ii, iii, iv, v, vi, viii and ix have been implemented satisfactorily, whereas recommendation vii remains partly

³ 177.1. Violation of the financing rules on election (referendum) established by the Election Code is subject to a fine of three hundred to five hundred manats for individuals, one thousand five hundred to two thousand manats for officials, five thousand to seven thousand manats for legal persons.

⁴ The sanctions for violation of legislation on political parties are documented in the Second compliance report on Azerbaijan. They remain the same in the new Code of Administrative Violations, adopted in 2015.

implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii and iv have been implemented satisfactorily. Recommendations v, vi, vii and viii remain partly implemented and recommendation i has not been implemented.

46. Concerning Theme I (Incriminations), Azerbaijan has complied with the large majority of the recommendations addressed in the Evaluation Report. While the compliance with the Criminal Law Convention on Corruption is a major step forward, it is to be noted that no further measures have been taken with regard to the mechanism of effective regret; the problem of automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery remains to be addressed.
47. In so far as Theme II (Transparency of party funding) is concerned, the results are less commendable. Some improvements have been made, for example, to regulate funding/sources, to ensure that political parties keep proper books and to bring more transparency to this area. That said, in various areas no new initiatives have been taken, for instance to extend the financial/accounting reference period applicable to election campaign financing, and to compensate for the (financial) burden inherent to the necessary auditing of the parties' financial statements. Moreover, the clearly partisan composition of the CEC and election commissions is a particularly important issue which remains to be addressed in order to ensure effective and impartial supervision of political financing. GRECO also regrets that, despite certain recent improvements, the system of sanctions is still not consistent and robust enough to deal with the various possible breaches of the political financing rules.
48. GRECO recalls that in view of the overall political situation being marked by the lack of a truly pluralistic political landscape and competitive election campaigning (cf. paragraph 82 of the Evaluation Report), GRECO had confined itself to issuing to Azerbaijan recommendations that are fundamental for the establishment of a coherent system of transparency and which might pave the way for further necessary adjustments and improvements at a later stage. The reform process needs to be vigorously pursued in order to further strengthen the transparency of political financing and to foster the role of political parties as a fundamental element of the democratic system and as an essential tool of expression of the political wishes of citizens. GRECO once again urges Azerbaijan to fully implement the five (out of eight) recommendations on Theme II that remain pending.
49. The adoption of this second Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Azerbaijan.
50. Finally, GRECO invites the authorities of Azerbaijan to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.