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## **Third Evaluation Round**

### **Compliance Report on Georgia**

#### **“Incriminations (ETS 173 and 191, GPC 2)”**

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#### **“Transparency of Party Funding”**

Adopted by GRECO  
at its 60<sup>th</sup> Plenary Meeting  
(Strasbourg, 17-21 June 2013)

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Georgia to implement the 15 recommendations issued in the Third Round Evaluation Report on Georgia (see paragraph 2), 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 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](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Georgia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 16 February 2013 and served as a basis for the Compliance Report.
4. GRECO selected Ukraine and Norway to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Andrii KUKHARUK, Supervisor, the Anti-corruption Policy Development Unit, Department on Anti-corruption Legislation and Legislation on the Judiciary, Ministry of Justice, on behalf of Ukraine (Theme I), and Mr Jens-Oscar NERGÅRD, Senior Advisor, Ministry of Government Administration, Reform and Church Affairs, on behalf of Norway (Theme II). They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

6. It is recalled that GRECO in its Evaluation Report addressed five recommendations to Georgia in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The authorities of Georgia report that, in response to GRECO's recommendations, the Criminal Code of Georgia has been amended so as to revise the definitions of bribery, commercial bribery and trading in influence. Additionally, deficiencies in the functioning of the mechanism of exemption from punishment in the case of effective regret have been dealt with, and jurisdictional issues have been clarified. The amendments to the Criminal Code entered into force in November 2011.

### **Recommendation i.**

8. *GRECO recommended to ensure that the offence of bribery in the private sector (Article 221 CC) is construed in such a way as to unambiguously cover instances where the advantage is not intended for the bribe-taker him/herself but for a third party.*
9. The authorities of Georgia report that the definition of bribery in the private sector as contained in Article 221 of the Criminal Code (CC) has been amended to include the phrase “for the interest of the bribe-taker *or other person*”. Consequently, instances where the advantage is not intended for the bribe-taker him/herself but for a third party are now clearly covered by the provisions on active (Article 221, paragraph 1 CC<sup>1</sup>) and passive commercial bribery (Article 221, paragraph 3 CC<sup>2</sup>).
10. GRECO welcomes the information provided by the authorities. In paragraph 75 of the Evaluation Report, it already stated that in some respects, Article 221 CC went beyond the requirements of the Criminal Law Convention on Corruption in that it was not limited to bribery in the course of business activities, but also covered non-commercial entities (by referring to “commercial or *other type of organisation*”). GRECO is satisfied that the amendments to the Criminal Code have expanded the scope of the offence of commercial bribery to cover, in unambiguous terms, instances where the advantage is not intended for the bribe-taker him/herself but for a third party. This also eliminates previous inconsistencies between provisions of the Criminal Code on bribery in the public sector and in the private sector.
11. GRECO concludes that recommendation i has been implemented satisfactorily.

### **Recommendation ii.**

12. *GRECO recommended to ensure that the offence of active trading in influence (Article 339<sup>1</sup>, paragraph 1 CC) clearly covers instances where the advantage is not intended for the influence-peddler him/herself but for a third party.*
13. The authorities of Georgia report that Article 339<sup>1</sup>, paragraph 1 of the Criminal Code on trading in influence has been amended by inserting the phrase “whether the undue advantage is for him/herself *or any other person*” to ensure that third party beneficiaries of undue advantage are clearly covered.<sup>3</sup>

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<sup>1</sup> Amended paragraph 1 of Article 221 CC reads as follows: “1. promising, offering, giving or rendering, directly or indirectly, *for the interest of the bribe-taker or other person*, of money, security, property or any undue advantage or rendering property service to a person who exercises managerial, representative or other special authority in a commercial or other type of organisation or works in such organisation, in order for that person to act or refrain from acting in breach of his/her duties, for the interest of the bribe-giver or other person, shall be punished by restriction of liberty up to two years or/and deprivation of liberty up to three years, by deprivation of the right to occupy a position or pursue a particular activity up to three-year term or without it.”

<sup>2</sup> Amended paragraph 3 of Article 221 CC reads as follows: “3. request or receipt of offering, promising or giving, directly or indirectly, *for the interest of him/herself or other person*, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organisation or works in such organisation, in order for that person to act or refrain from acting in breach of his/her duties, for the interest of the bribe-giver or other person shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity up to three-year term.”

<sup>3</sup> Amended Article 339.1, paragraph 1 of the Criminal Code reads as follows: “1. promising, offering, giving, directly or indirectly for the interest of him/herself or any another person, of money, securities, other property, material benefit or any undue advantage to a person who asserts or confirms that s/he is able to exert an improper influence over decision-making of public official or a person with an equal status, whether the undue advantage is for *him/herself or any other person* and whether or not influence is exerted or whether or not the supposed influence leads to the intended results, shall be punished

14. GRECO recalls that, in the Evaluation Report, it drew attention to the different construction of the third party element used in the active and passive offences of trading in influence. It therefore welcomes the amendments introduced in the Criminal Code ensuring that the offence of active trading in influence clearly covers instances where the advantage is not intended for the influence-peddler him/herself but for a third party. Relevant provision is now in line with Article 12 of the Criminal Law Convention on Corruption. It is therefore concluded that the recommendation has been properly addressed.
15. GRECO concludes that recommendation ii has been implemented satisfactorily.

**Recommendation iii.**

16. *GRECO recommended to unambiguously cover bribery of foreign arbitrators and foreign jurors, in accordance with Articles 4 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.*
17. The authorities of Georgia report that the Ministry of Justice sent a request to the Ministry of Foreign Affairs to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption. The ratification process was accordingly initiated, and on 25 March 2013 the Additional Protocol was signed. Regarding the criminalisation of bribery of foreign arbitrators and foreign jurors, the authorities recall that Articles 338 and 339 CC criminalise passive and active bribery of domestic public officials. Both Articles refer to “a public official or a *person with an equal status*”. A Note under Article 332 CC (on Abuse of Official Authority), which applies to all crimes provided under Chapter XXXIX (Offences in relation to Exercising Public Service), specifies categories of persons falling within the respective definitions. The authorities report that amendments have been introduced in Note 2 under Article 332 CC, by virtue of which “a person with an equal status” now explicitly covers foreign arbitrators and jurors.<sup>4</sup>
18. GRECO takes note of the information provided. Concerning the bribery of foreign arbitrators, it recalls the previous wording of Note 2 under Article 332 CC and its interpretation by the authorities, namely that foreign arbitrators were covered by Chapter XXXIX CC only if they were considered to be foreign public officials or if they performed any public function for another state. In this regard paragraph 77 of the Evaluation Report stated that it was not always the case that foreign arbitrators had the status of a public official in a foreign jurisdiction or were considered to perform a public function *for* another state, in particular if an arbitrator was chosen (*ad hoc*) by two private parties to settle a private dispute, without recourse to an arbitration tribunal. GRECO is satisfied that this deficiency has now been remedied. Turning to the criminalisation of bribery of foreign jurors, it is recalled that the phrasing of the preceding text of Note 2 led to believe that a public function *for* another state signified categories of persons who could be seen to be

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by fine or corrective labour of up to two years or by restriction of freedom for a similar terms and/or by deprivation of liberty of up to two years”.

<sup>4</sup> Note to Article 332 of the Criminal Code reads as follows: “1. Subjects of the offences foreseen by the present Chapter also include staff members of the Legal Entities of Public Law (except politic and religious unions), who exercise public authority, members and personnel of ad hoc commissions of the Parliament, electoral subjects (natural persons), members of the arbitration courts, private enforcers, as well as any other person, who pursuant to legislation of Georgia conducts public authority. 2. For the purposes of this Chapter, persons with an equal status to a public official also include a foreign public officials (including member of legislative bodies and/or agencies exercising administrative authority), as well as any person who performs any public function for another state, an official or contracted staff member of an international organization or agency, as well as any seconded or not-seconded person who performs functions of such official or a staff member, as well as *foreign arbitrators and jurors*, who exercise their functions based on the legislation of foreign state, member of international parliamentary assemblies, representative of international criminal court, judge or official of international court or judicial body.”

representatives of a foreign state, in the same way as foreign public officials or members of foreign public assemblies, a characteristic which would not be typical for a foreign juror. GRECO is pleased that the revised text of Note 2 now criminalises in unambiguous terms, bribery of foreign jurors, in line with the recommendation and the Additional Protocol to the Criminal Law Convention. It is concluded that this part of the recommendation has been fully addressed.

19. In so far as the second part of the recommendation is concerned, GRECO welcomes the signature of the Additional Protocol to the Criminal Law Convention on Corruption. It encourages the authorities to proceed as soon as possible with its ratification. It concludes that this part of the recommendation has not as yet been fully implemented.
20. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

21. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment in cases of effective regret.*
22. The authorities of Georgia recall that the mechanism of effective regret is foreseen in several articles of the Criminal Code, namely Notes under Articles 221 (active commercial bribery), 339 (active bribery of public officials) and 339<sup>1</sup> (active trading in influence). The authorities further report that the issue of automatic and mandatorily total exemption from punishment in the case of effective regret has been discussed, analysed and reviewed by the Criminal Legislation Working Group set up within the framework of the Criminal Justice Reform Council, composed of representatives of the different government agencies, including the Ministry of the Interior, the Prosecution Service, the judiciary as well as non-governmental organisations and international experts. The Group's deliberations have prompted amendments to the aforementioned Notes by virtue of which a decision on the release from criminal responsibility of persons who commit acts of bribery or trading in influence is now to be taken by an agency conducting criminal proceedings. Such a decision is not automatic but at the discretion of the organ concerned. It is enshrined in a written ruling of a prosecutor on non-initiation or termination of prosecution and contains the reasoning where the circumstances of the case are explained. A decision not to prosecute can be appealed to a superior prosecutor.
23. GRECO notes the nearly identical amendments to Notes under Articles 221, 339 and 339<sup>1</sup> CC and welcomes greater uniformity in the operation of the institute of effective regret. Thus, criminal acts are now to be reported to an agency conducting criminal proceedings (as opposed to the old system where offences were to be reported to a law enforcement agency under Article 339 CC, the Prosecution Service under Article 339<sup>1</sup> CC, and any government authority under Article 221 CC), and it is at the discretion of the said agency to make a decision on the release from criminal responsibility. That said, safeguards against the potential misuse of effective regret, in the opinion of GRECO, still remain insufficient. In particular, internal guidelines or clear criteria for the application of provisions on effective regret have not been developed. Also, prosecutorial discretion has not been made subject to judicial review and the preconditions for the application of the offence such as the immediate reporting of an offence or reporting within a specific time frame have not been set out. GRECO recalls its findings as contained in paragraph 80 of the Evaluation Report, namely that the reporting of corruption in reliance on the defence accounts for 70 to 80% of passive bribery cases in Georgia. Given the extent of the application of the respective provisions, the safeguards against their abuse should be further reinforced. In view of

the foregoing, it cannot be concluded that all aspects of the recommendation have been fully addressed by the authorities.

24. GRECO concludes that recommendation iv has been partly implemented.

**Recommendation v.**

25. *GRECO recommended to (i) abolish the dual criminality requirement for the prosecution of bribery and trading in influence offences committed abroad by its nationals, public officials (including non-nationals working in a similar capacity for Georgia) or members of domestic public assemblies, in cases in which the offence is not a ‘serious’ or ‘especially serious’ crime directed against the interests of Georgia and (ii) establish jurisdiction over acts of corruption committed abroad by non-nationals, involving Georgian public officials (including non-nationals working in a similar capacity for Georgia), members of a Georgian public assembly, Georgian officials of international organisations, Georgian members of international parliamentary assemblies and Georgian judges or officials of international courts.*
26. The authorities of Georgia report that issues related to dual criminality and jurisdiction have been dealt with through amendments to the Criminal Code. The dual criminality requirement for the corruption offences committed abroad by Georgian nationals has been abolished. According to revised Article 5(4) CC: “A Georgian national (...) who has committed abroad an act foreseen by Articles 221 (commercial bribery), 338 (passive bribery of domestic public officials), 339 (active bribery of domestic public officials) and 339.1 (trading in influence), will be prosecuted under the Code, *irrespective of whether* these crimes are foreseen by the legislation of the foreign state in question”. Additionally, jurisdiction has been established over the citizens of a foreign state who exercise public authority for Georgia and who commit a crime on the territory of a foreign state. Revised Article 5(5) CC stipulates that “*A foreign national or a stateless person, exercising public authority on behalf of Georgia, who has committed abroad an act foreseen by Articles 221, 338, 339 and 339.1 of the Criminal Code will be prosecuted under the Code irrespective of whether* these crimes are foreseen by the legislation of the foreign state in question.” Consequently, the revised legislation captures corruption-related offences committed at home and abroad by nationals, including public officials, members of domestic public assemblies, officials of international organisations, members of parliamentary assemblies and judges and officials of international courts. The same applies to non-nationals who are involved in bribery or trading in influence offences abroad in a capacity similar to that of a Georgian public official.
27. GRECO welcomes the abolition of the dual criminality requirement and the establishment of Georgian jurisdiction over all bribery and trading in influences offences committed abroad by nationals, including public officials and members of domestic public assemblies, as well as non-nationals working in a similar capacity for Georgia. GRECO understands that this rule also applies to Georgian officials of international organisations, Georgian members of international parliamentary assemblies and Georgian judges and officials of international courts, as is required by the recommendation. It concludes that the revised Criminal Code is now in compliance with Article 17, paragraph 1(b) and (c) of the Criminal Law Convention on Corruption.
28. GRECO concludes that recommendation v has been implemented satisfactorily.

## **Theme II: Transparency of Party Funding**

29. It is recalled that GRECO in its Evaluation Report addressed ten recommendations to Georgia in respect of Theme II. Compliance with these recommendations is dealt with below.
30. The authorities report on the entry into force, in December 2011, of amendments to the Law on Political Unions of Citizens (LPUC) and of a new Election Code (EC), which has been changed since. Both are substantially different to those available at the time of the evaluation visit. The amendments to the LPUC, in particular, have attracted criticism for their ambiguity, inconsistency and disproportionality.<sup>5</sup> Moreover, it is claimed that the new provisions were at the time “beneficial to incumbents” and “driven by immediate political interests”.<sup>6</sup> The Government in place since the parliamentary elections of 2012 intends to substantially revise the existing regulations, taking into account not only GRECO’s recommendations but also those of the Venice Commission and the OSCE/ODIHR. The authorities also report that in January 2013, the Anti-Corruption Council of Georgia made the transparency of party funding one of its priorities.

### **Recommendation i.**

31. *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).*
32. The authorities of Georgia report in paragraph 29 above on the regulations in force since December 2011 and on the current intentions as regards them. They draw attention to the Government’s plan to revise the legislation on elections and party funding rules with a view to establishing a uniform legal framework, in line with international standards and best practices.
33. GRECO welcomes the efforts made to align the EC more closely with the LPUC. As is evidenced by subsequent paragraphs, the revised legislation addresses many concerns expressed in the Evaluation Report and remedies several important gaps and lacunae. For example, it harmonises to a certain extent rules on donations to parties and election campaigns, as well as restrictions applicable to donations and donors, and introduces more stringent reporting and monitoring mechanisms. Yet, the revisions have not been consistent throughout and the way in which they have been introduced merits further reconsideration. Firstly, the authorities have opted for regulating the transparency of both party and election campaign financing predominantly through norms included in the LPUC.<sup>7</sup> While it may arguably be suitable for this law to regulate parties’ involvement in election campaigns, its extension to other election subjects with no formal links to political parties, such as independent candidates, is questionable (it is worth recalling that relevant provisions have become part of Chapter III LPUC entitled “Property, funds and financial monitoring of a party”). Secondly, cross-referencing between the LPUC and the EC has been preserved and at times is rather misleading. This can be best illustrated by provisions dealing with so-called persons with “declared electoral goals” affiliated to political parties and standing for election.<sup>8</sup> Thirdly, full alignment between the two laws has not been achieved therefore

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<sup>5</sup> OSCE/ODIHR Election Observation Mission Final Report, “Georgia: Parliamentary Elections 1 October 2012”, 21 December 2012, available at <http://www.osce.org/odihr/98399>, pages 2 and 14.

<sup>6</sup> *Ibid.* p. 14.

<sup>7</sup> This concerns e.g. definition of a donation, restrictions applicable to donations, donors and caps on expenditure, monitoring regime.

<sup>8</sup> Such persons have not been granted the status of “election subjects” under the EC yet they are made subject to restrictions applicable to parties under the LPUC and to independent candidates under the EC. This method of regulation creates

discrepancies in the terminology used are substantial. As a result, the goal of establishing a more uniform and unambiguous legal framework has not as yet been attained. GRECO supports the authorities' intentions to pursue further reforms in this field. It concludes that the recommendation has been partly addressed.

34. GRECO concludes that recommendation i has been partly implemented.

**Recommendation ii.**

35. *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.*
36. With respect to the first part of the recommendation, the authorities of Georgia refer to Article 32 LPUC, which obliges parties to submit by 1<sup>st</sup> February each year, a financial declaration on the previous year together with the auditor's conclusions to the State Audit Office (SAO). The declaration is to include information on party income (membership fees, identity of members, amount of donations, information on donors who are natural persons, funding allocated by the state, income from publications and other activities), expenditure (election expenses, financing of various activities, remuneration, business trips, other expenditure) and property (owned premises, number and type of vehicles, their total value and sums held in bank accounts). Information on income and expenditure pertaining to the party's involvement in elections is to be shown separately. Pursuant to Article 32(5) LPUC, the SAO establishes the format of annual declarations (implemented by virtue of Decrees of 17 and 22 August 2012). The standardised format and the latest declarations submitted by parties are available on the SAO's web-site ([http://sao.ge/?action=page&p\\_id=291&lang=geo](http://sao.ge/?action=page&p_id=291&lang=geo)).
37. Turning to debts, their reporting is carried out not pursuant to the LPUC but via standardised forms approved by the SAO.<sup>9</sup> Information regarding loans is to indicate date, name of the bank, currency, type, amount, duration, yearly contractual rate, terms of credit, security, warranties and date of dispatch of the loan. The taking out of loans – up to GEL 1 000 000 (EUR 500 000) – is however only possible in times of elections and prohibited in the context of regular party activities. Information regarding debts is part of the annual financial declaration.
38. As concerns the second part of the recommendation, pursuant to Article 32(3) LPUC, the SAO publishes the annual party declarations on its web site within five working days of receipt and responds to enquiries by interested persons. All donors who are natural persons are to indicate their name, surname and ID number.<sup>10</sup> This information is qualified as public and included in the annual declarations. Consequently, details (such as names and ID numbers of donors) in respect of all donations, and not only those above a certain threshold, are in the public domain. The LPUC prohibits contributions to political parties from legal persons, their corporate structures and other forms of organisational entity.<sup>11</sup>

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confusion, particularly as regards the reporting on the use of election funds by persons with “declared electoral goals” - see Article 26<sup>1</sup>(1) and (2) LPUC.

<sup>9</sup> The authorities referred in particular to Form No. 3 of the annual financial declaration on “Election Campaign Funding Incomes”, Form No. 7, which has a section on “Financial obligations and other debts” and sub-Form No. 9.7.1. “Loans/credits granted during electoral period”.

<sup>10</sup> Article 25(2) and (6) LPUC.

<sup>11</sup> Article 26(1)(a<sup>1</sup>) LPUC.



39. As concerns the first part of the recommendation, GRECO welcomes the development by the SAO of a standardised format for annual party declarations (it also notes that the SAO has replaced the Central Election Commission as the recipient of such documents).<sup>12</sup> It would appear that the new format allows for disclosure, in a significant amount of detail, of information on income, expenditure and assets of political parties.<sup>13</sup> As regards debts, they are reported on standardised forms developed by the SAO. GRECO is however concerned by the ambiguity of legal provisions imposing financial reporting obligations in respect of persons with “declared electoral goals” affiliated to a political party. The definition of such persons as provided in Article 26<sup>1</sup> LPUC is vague and open to interpretation, whereas the term “declared electoral goal” has not been defined but is interpreted in light of the SAO’s Political Financing Monitoring Methodology, which lacks the legally binding force. According to the LPUC, persons with “declared electoral goals” affiliated to a political party are to establish a separate election fund and subject to restrictions and monitoring regime identical to election candidates; yet, in cases where their expenditure is related to the electoral goals and activities of a political party, but not the institutional support provided to the party, such expenditure is to be reported through the party’s annual financial declarations.<sup>14</sup> No criteria however have been established to clearly distinguish between the two reporting channels, which might result in significant reporting confusions. Similarly, it has not been clarified whether information on expenditure incurred by a person with “declared electoral goals” in connection with elections which is to be included in the annual declaration of the party to which s/he is affiliated is to be merged with the overall party election expenditure or to feature separately in the annual statement. GRECO encourages the authorities to eliminate the aforementioned discrepancies as part of the on-going reform process. It is concluded that this part of the recommendation has been partly addressed.
40. As regards the second part of the recommendation, GRECO is satisfied that annual financial declarations include information on all donations provided by natural persons regardless of thresholds. All annual financial statements, including information on donations and donors, are made available on the SAO’s web-site. GRECO furthermore notes that information on the receipt of donations and membership fees is to be reported to the SAO within five working days.<sup>15</sup> The SAO ensures public access to this information, as provided for by law; in particular, it has to provide public access to information on donations through its web-site on a monthly basis. GRECO concludes that this part of the recommendation has been properly addressed.
41. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

42. *GRECO recommended to assess whether there is a need to take measures (for instance, extending the reporting deadline for the submission of final reports by successful parties/election blocs and candidates) to ensure that all financial transactions of the fund are adequately reflected in the final reports on the use of the election campaign fund.*

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<sup>12</sup> It is recalled that, at the time of the evaluation visit, all parties in Georgia, regardless of whether they received public funding or not, were obliged to report on their financial situation through annual financial declarations submitted to the Central Election Commission. Concerns were expressed over the lack of a format for such declarations, as well as the fact that, in spite of legal provisions, only summaries and not the complete declarations had been published.

<sup>13</sup> GRECO also notes Article 27<sup>1</sup>(1) LPUC which obliges parties to submit information on donations and membership fees to the SAO within five working days.

<sup>14</sup> Pursuant to Article 32 (4) LPUC.

<sup>15</sup> Article 27<sup>1</sup> LPUC.

43. The authorities of Georgia report that, as per Article 57(3) EC, within one month from the announcement of the election results, election subjects are to present to the SAO financial reports on the use of election funds, accompanied by an auditor's report; however, those subjects that, according to the preliminary results, have obtained the necessary votes prescribed by law, are to submit their reports, together with the auditor's report, within eight days of the elections. To ensure that all financial transactions that might have taken place in the course of an election campaign are duly reflected, the SAO's Decree of 17 August 2012<sup>16</sup> additionally stipulates that financial reports pertaining to an election campaign are to contain information covering the entire election campaign period, i.e. from the announcement of the polling day until the publication of the final election results. Such information is to be provided within one month from the publication of election results. The authorities report that this requirement has been complied with by all election subjects in 2012 Parliamentary elections and May 2013 parliamentary by-elections.
44. GRECO recalls that, in the Evaluation Report, it drew attention to the very short time frame provided for the reporting on the use of election campaign funds by successful election subjects. Since the election campaign funds remained operational for twenty days following elections, the risks were high that the final reports filed by the successful election subjects would fail to provide a complete picture of their election funding. GRECO observes that the new EC<sup>17</sup> has maintained its previous wording in this regard (except that the reports are now to be filed with the SAO). It is nevertheless satisfied that specific measures have been introduced by virtue of the SAO's Decree which have extended the reporting deadline for the successful election subjects by imposing an obligation to file supplementary financial information within one month from the publication of the final election results. Furthermore, it is to be noted that the SAO's Decrees have eliminated certain other legislative lacunae; namely, they have closed the gap in the reporting obligation prescribed by the EC, in that the election subjects are now required to publish information not only on income but also on expenditure. It is concluded that the recommendation has been properly addressed.
45. GRECO concludes that recommendation iii has been implemented satisfactorily.

#### **Recommendation iv.**

46. *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.*
47. As far as the first part of the recommendation is concerned, the authorities of Georgia report that, pursuant to Articles 25(2) and 25(2<sup>1</sup>) LPUC, material and non-material values (including preferential loans) and services granted without charge, at discount or on preferential terms (except voluntary work) to a party or a person with "declared electoral goals" are to be qualified as donations and subject to the same rules and restrictions. As was previously stated, in the execution of their regular activities, parties have been banned from taking out loans, and it is only for the purpose of an election campaign that an election subject, including a party, once registered, may be granted a loan by a commercial bank not exceeding GEL 1 000 000 (EUR 500

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<sup>16</sup> No. 142/37 on "Approval of the Forms of Financial Reports and the Rules regarding Filling Forms for Ensuring Transparency of Political Activities".

<sup>17</sup> Article 57(3) and (5) EC.

000). The authorities also recall that anonymous donations<sup>18</sup> and contributions from legal entities to parties have been prohibited. Therefore, only natural persons who are citizens of Georgia may act as donors provided that their donations to one or several parties do not exceed an annual total of GEL 60 000 (EUR 30 000) or services of the same value. The authorities indicate that the rules on donations will be further revised as part of the reform package announced by the new Government.

48. On the second part of the recommendation, the authorities report that Article 27(1) LPUC has established a maximum annual limit of GEL 1 200 (EUR 600) on membership fees, complemented by the aforementioned cap of GEL 60 000 (EUR 30 000) on the total amount of donations to political parties by a citizen in a calendar year. Payment of membership fees and donations by natural persons can only be effectuated by bank transfer. Donations can only be processed by a licenced commercial bank based in Georgia, from the account of a donor or person paying a membership fee. An additional restriction in Article 27(7) LPUC stipulates that donors who are natural persons and who receive their income in full or in part from a single source (natural or legal persons or persons related to them), must not contribute more than GEL 500 000 (EUR 250 000) to the benefit of one political party annually. The authorities explain that the essence of this provision is to guarantee a level playing field for all election subjects and to ensure that donation rules are not circumvented by specific entities.
49. With regard to the first part of the recommendation, GRECO welcomes the introduction of more uniform rules applicable to donations received by political parties whether monetary, in kind, provided as other goods or services and available at a discount rate or without charge. It notes that the taking out of loans to support operational activities of political parties has been prohibited. Borrowing is only allowed in times of elections and subject to strict rules, including a fixed upper ceiling. If granted under favourable conditions or in cases where their percentage rate differs from the ordinary market rate, such loans are to be qualified as donations subject to the pertinent rules and restrictions. The rules on such types of donations are applicable to political parties as well as election subjects, such as election candidates. GRECO recalls however that in paragraph 67 of the Evaluation Report it had additionally expressed concerns over the process of practical valuation of in-kind donations and their inadequate reflection in the parties' financial statements. Regrettably, it cannot be deduced from the information supplied by the authorities that specific measures have been introduced, for example, through the development of guidelines, to ensure that such donations are "*properly accounted for*" in financial reports filed by parties and election subjects. Consequently, this part of the recommendation has been only partly addressed.
50. Regarding the second part of the recommendation, GRECO is satisfied that, by introducing an upper limit on both membership fees and individual donations by natural persons per calendar year, the possibility to use membership fees to circumvent rules on donations by natural persons has been reduced, as required by the recommendation. GRECO also takes the opportunity to recall that Recommendation Rec(2003)4 does not contain a requirement to prohibit the financing of political parties and election campaigns by legal persons.
51. GRECO concludes that recommendation iv has been partly implemented.

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<sup>18</sup> Except for donations received as a result of a public event. According to Article 26(4) LPUC, the requirement to reveal the identity of a donor does not apply to donations received as a result of a public event, the maximum cap on such contributions being GEL 30 000 (EUR 15 000) per party per year.

### **Recommendation v.**

52. *GRECO recommended to ensure that all financial documentation relating to the funding of political parties and election campaigns is kept for an appropriate period of time.*
53. The authorities of Georgia report that, under paragraph 6 of Article 32 LPUC, a party must keep financial declarations and all pertinent documentation for a period of six years and to comply with obligations pertaining to the maintenance of tax documents. The authorities further state that, by virtue of Article 55 EC, norms provided by the LPUC and ensuring the transparency of party funding apply *mutatis mutandis* to the financing of election campaigns, including in the part pertaining to the retention of financial documents.
54. GRECO welcomes the introduction of rules requiring a party to keep for an appropriate period of time all documents related to its financing, including involvement in election campaigns. As concerns election subjects other than parties, such as, for example, election candidates, GRECO understands that the norms identical to those established for the political parties also apply in their regard. It is concluded that the recommendation has been properly addressed..
55. GRECO concludes that recommendation v has been implemented satisfactorily.

### **Recommendation vi.**

56. *GRECO recommended to take further measures to prevent the misuse of all types of administrative resources in election campaigns.*
57. The authorities of Georgia report on a series of provisions meant to implement this recommendation. Firstly, as per Article 45(4)(h) EC, public officials of state and local self-government bodies are not allowed to participate in election campaigning, while directly carrying out their duties. This prohibition however does not apply to so-called “political public officials”, including *inter alia* governors, mayors and chief executives of municipalities. Secondly, Articles 48(1) and 49 EC ban any person with the right to participate in election campaigning from abusing administrative resources, such as buildings, means of communication or transportation and from using budget funds, occupational status or official position in the course of an election campaign, including through engaging subordinated persons or otherwise dependent individuals. Thirdly, pursuant to Article 88 EC, the sanction for the misuse of administrative resources has been doubled to GEL 2 000 (EUR 1 000). Lastly, the Interagency Commission which is responsible for monitoring and reacting to the misuse of administrative resources has been detached from the CEC and placed under the National Security Council (NSC).<sup>19</sup> The Commission is a temporary body active only in times of elections. Its composition and mandate are determined by the NSC’s Secretary and it examines signals from the media, election subjects and observer organisations on possible violations by public servants of the election legislation. In cases where such violations have been confirmed, the Commission is authorised to submit recommendations to any public servant, administrative body and the CEC requesting to carry out appropriate measures in a reasonable time.
58. GRECO recalls that the misuse of administrative resources and lack of distinction between the state and the governing party were considered as important areas of concern by the majority of national interlocutors. It also notes that this remained a problem in the 2012 Parliamentary

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<sup>19</sup> Article 48(3) EC.

elections.<sup>20</sup> GRECO notes that the previous EC already addressed the misuse of official position and state resources, such as buildings, vehicles and communication means. It is disappointed that the unlimited campaigning by certain high-level public officials has not been given due attention and that not only has this provision been retained by the new EC but, to some extent, has even been broadened to include governors.<sup>21</sup> As concerns the ban on the misuse of administrative resources, GRECO is of the opinion that it remains rather limited and has not been expanded to include all types of financial, material, technical or human resources. Also, no supplementary guidance on the use of resources under equal access provisions has been developed along the lines suggested in the Evaluation Report.

59. While welcoming the setting up of the Interagency Commission as a body entrusted with monitoring and reacting to cases of misuse of administrative resources, GRECO remains uncertain whether it may be qualified as a body sufficiently removed from the Government to exercise its functions in an impartial manner. Also, it would appear that the Commission has a margin of discretion and is not obliged to react to all cases of identified violations. Moreover, the Commission cannot impose sanctions directly but has to resort to the CEC or other administrative bodies. Even though sanctions have been doubled, they are still not commensurate with the gravity of the effects of the misuse of administrative resources and cannot be deemed effective, proportionate and dissuasive. Last but not least, GRECO cannot disregard reports on alleged widespread violations of the aforementioned provisions during the 2012 Parliamentary elections.<sup>22</sup> It concludes that much more needs to be done in order to achieve – in law and in practice – a more effective prevention of the misuse of administrative resources, proper investigation of instances of such abuses and sanctioning of perpetrators. In view of the foregoing, GRECO is not in a position to conclude that the recommendation has been adequately addressed.
60. GRECO concludes that recommendation vi has not been implemented.

#### **Recommendation vii.**

61. *GRECO recommended (i) to apply, in consultation with the competent bodies, appropriate auditing standards to party and election campaign financing and (ii) to ensure adequate standards are in place as regards the independence of auditors entrusted with the verification of party accounts and campaign funds.*
62. The authorities of Georgia report that, pursuant to Article 33 LPUC, a party is to make a financial audit of its activities annually. For this purpose, it is to resort to any independent auditor who complies with standards defined by the SAO. An auditor's report on the party's financial situation is then submitted to the SAO together with the annual financial declaration,<sup>23</sup> except in respect of those parties whose annual turnover does not exceed GEL 1 000 (EUR 500).<sup>24</sup> Nearly identical

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<sup>20</sup> OSCE/ODIHR Election Observation Mission Final Report, "Georgia: Parliamentary Elections 1 October 2012", 21 December 2012, available at <http://www.osce.org/odihr/98399>, p. 13.

<sup>21</sup> See in this context also the criticism expressed (and the recommendations made) by the Venice Commission of the campaigning of certain high level-officials and of – in general – the regulation of misuse of administrative resources: CDL-AD(2011) 043, Joint Opinion on the draft Election Code of Georgia adopted by the Council for Democratic Elections at its 39<sup>th</sup> meeting (Venice, 15 December 2011) and by the Venice Commission at its 89<sup>th</sup> Plenary session (Venice, 16-17 December 2011), <http://www.venice.coe.int/webforms/documents/?country=40&year=all>.

<sup>22</sup> OSCE/ODIHR Election Observation Mission Final Report, "Georgia: Parliamentary Elections 1 October 2012", 21 December 2012, available at <http://www.osce.org/odihr/98399>.

<sup>23</sup> Article 32 (1) LPUC.

<sup>24</sup> Article 32 (7) LPUC.

obligations as regards the auditing of financial reports have been prescribed for election subjects by virtue of Article 57(3) EC. Decrees of the Auditor General define auditing standards applicable to political parties. Thus, Decree No. 8/37 of 16 January 2012 on the Approval of Auditing Standards for Financial Activities of Political Parties, which is also applicable to the auditing of financial activities of election subjects, stipulates that financial activities of political parties shall be audited in conformity with International Auditing Standards (ISA) issued by the International Federation of Accountants (IFAC). The authorities also refer to the two SAO decrees setting forth standardised formats for annual declarations by political parties and election subjects and providing guidance on filling them in.

63. Turning to the issue of auditors' independence, the aforementioned Decree emphasises professional competence and ethical requirements as appropriate standards for auditors who engage in the auditing of parties' annual financial statements. The Decree also contains a reference to the IFAC, of which one of the standard-setting bodies – the International Ethics Standards Board for Accountants – develops the Code of Ethics for Professional Accountants. The Decree requires the auditors of political parties/election subjects to apply the conceptual framework approach to independence prescribed by this Code, namely a) to identify threats to independence; b) evaluate the significance of the threats identified; and c) apply safeguards, when necessary, to eliminate threats or reduce them to an acceptable level. In practice, audit reports submitted to the SAO typically include the following paragraph: *"We conducted our audit in accordance with International Standards on Audit. Those standards require that we comply with ethical requirements and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement."*
64. GRECO welcomes the amended provisions of the LPUC and EC introducing an independent audit of financial activities of parties and election subjects, the results of which are to be submitted to the SAO alongside financial statements. It furthermore notes the elaboration by the SAO of a Code of Ethics grounded in international standards and embracing such core principles, as political neutrality (prohibition to be a member of a political party or be involved in any political activity), independence and objectivity, regulation of conflicts of interests and relationship ethics (<http://sao.ge/res/files/uploads/etikis%20kodeqsi-ENG.pdf>). As concerns the principle of rotation, GRECO is satisfied that, pursuant to the ISA standards, an auditing company is to implement partner rotation at regular intervals in order to reduce familiarity threats inherent to long-tenured audits. Compliance with this principle, amongst others, is subject to monitoring by the SAO every three years. It is concluded that all aspects of this recommendation have been duly addressed.
65. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation viii.**

66. *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.*
67. The authorities of Georgia report that the LPUC mandates the SAO – which is the highest auditing body under the Constitution – to monitor the financing of parties and election

campaigns.<sup>25</sup> In May 2012, Article 97 of the Constitution was amended so as to reflect these new powers. It states, in particular that the SAO is “to supervise the use and expenditure of public funds and other material values”. The authorities insist however that the constitutional basis for the SAO’s competence in this field remains ambiguous, and the Anti-Corruption Council has therefore decided to treat it as a priority matter. As concerns the SAO’s mandate, it is competent *inter alia* to: (1) elaborate a standard format for the annual party financial declarations; (2) define auditing standards, develop a monitoring methodology and conduct audits of the parties’ financial activities; (3) verify the completeness, accuracy and legality of financial declarations and reports on the use of election campaign funds; (4) request information on party finances from the parties themselves as well as from administrative bodies and commercial banks; (5) ensure the transparency of the financing of political parties; (6) respond to violations of law related to the party funding and apply sanctions; (7) refer to the Prosecution Service possible criminal acts. To fulfil the aforementioned duties, a new structural unit – the Financial Monitoring Service - has been established within the SAO, composed of lawyers and auditors. The LPUC has furthermore placed an obligation on state agencies to report possible violations of the law to the SAO.<sup>26</sup>

68. GRECO welcomes legislative and operational steps to put in place an independent body entrusted with the monitoring of party and election financing and sanction breaches of the law.<sup>27</sup> GRECO is pleased that a single body, which by law is independent, has received a mandate to monitor both party and campaign funding given the practical difficulties of separating campaign financing from regular party funding. However, as regards the first part of the recommendation, GRECO recalls, as also indicated in paragraph 74 of the Evaluation Report, that any monitoring body must “above all, operate in an impartial manner (and also be seen to be operating in such a way)”. In this context, even if by law the SAO is independent, the OSCE/ODIHR Election Observation Mission has noted that the perception of the SAO’s “independence and impartiality was severely undermined by the political affiliations of its management”.<sup>28</sup> Moreover, GRECO takes note of the discretionary powers of the SAO and the conclusion of the aforementioned Election Observation Mission that “in 40 cases examined (...), it applied these powers disproportionately against opposition parties and their donors”. In light of the above, GRECO calls upon the authorities to deploy additional efforts and to provide safeguards to ensure the independent supervision of political financing, as envisaged by the first part of the recommendation.
69. As regards the second part of the recommendation, GRECO states, first of all, as regards the mandate of the SAO and the current wording of Article 97 of the Constitution, that the primary objective of rules on transparency and supervision of political finances – and of the Recommendation Rec(2003)4 – is not only to verify the proper use of public subsidies, but more importantly, to achieve greater transparency of the financial situation of a party, irrespective of whether or not it receives public funding. From this perspective, further refining of Article 97 may indeed be necessary. Secondly, GRECO observes that, while financial activities of parties and persons with “declared electoral goals” affiliated to them are explicitly covered by the SAO’s supervisory powers, oversight of other election subjects such as independent candidates, appears to fall only partially under its remit (for example, Article 34<sup>1</sup>(2)(i) stipulates that it is only in response to violations of legislation related to *party funding* that the SAO can apply sanctions

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<sup>25</sup> Article 34<sup>1</sup> LPUC.

<sup>26</sup> Article 34<sup>1</sup>(3) LPUC.

<sup>27</sup> It is recalled that, at the time of the evaluation visit, the external control in respect of party funding was non-existent and in respect of election campaign financing it was fairly limited, being exercised by the Financial Monitoring Group, an *ad hoc* body lacking a precise mandate and resources, set up by the CEC.

<sup>28</sup> OSCE/ODIHR Election Observation Mission Final Report, “Georgia: Parliamentary Elections 1 October 2012”, 21 December 2012, available at <http://www.osce.org/odihr/98399>, p. 15.

prescribed by law; therefore sanctions foreseen by the LPUC in respect of election subjects other than political parties may only be imposed by the CEC). Also, in many respects the SAO's competences need to be further strengthened (e.g. by introducing obligations to publish the results of its supervisory work on the financing of parties and election campaigns in a timely fashion, to investigate all violations of law according to a common methodology and criteria), and to eliminate the overlap with the CEC's mandate. Furthermore, on the basis of the information provided it is not possible to conclude that adequate resources (such as budget and staff, including experts in the field of party and election campaign financing) have been allocated to the SAO's Financial Monitoring Service. In view of the foregoing, GRECO aligns itself with the conclusion of the aforementioned OSCE/ODIHR Election Observation Mission that the legal framework should define more clearly the scope of the SAO's authority.<sup>29</sup>

70. GRECO concludes that recommendation viii has been partly implemented.

#### **Recommendation ix.**

71. *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.*
72. As far as the first part of the recommendation is concerned, the authorities of Georgia report that, following legislative amendments, sanctions for the violation of the EC and LPUC have been removed from the Code of Administrative Violations and are now provided directly by the respective laws.
73. Concerning the second part of the recommendation, reference is made to Article 34<sup>2</sup> LPUC, which prescribes sanctions for specific violations, such as: acceptance/concealment or provision of illegal donations or membership fees to parties or persons with "declared electoral goals" (transfer of the prohibited donation/fee to the state budget and a fine five times the amount of the prohibited donation/fee); failure to comply with the requirements/obligations emanating from the LPUC by a party or a person with "declared electoral goals" (a fine of GEL 5 000 or EUR 2 500); failure to provide information to the SAO as defined by law (subject to the same fine as above); provision of financial resources, gifts and other material and non-material benefits to citizens, provision of goods or services without charge, on discount or on preferential terms, etc. (a fine of ten times the amount of the corresponding property/service/transaction); exceeding annual or electoral expenditure caps (a fine of five times the amount that exceeded the prescribed limits). When the above-mentioned acts are committed repeatedly or by one person through different legal entities or individuals, a double fine is imposed. Furthermore, all agreements intended to avoid rules/restrictions prescribed by Chapter III LPUC ("Property, Funds and Financial Monitoring of a Party") are void, and property subject to such agreements is to be transferred to the state budget. The authorities report that, bearing in mind serious concerns regarding the proportionate application of the aforementioned sanctions, the Government will revise the legislative framework in order to eliminate any potential for their selective or non-uniform application.

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<sup>29</sup> Ibid, p. 16.



74. As regards the third part of the recommendation, the authorities refer to the aforementioned Article 34<sup>1</sup>(1) LPUC, pursuant to which the SAO is to monitor the legality and transparency of financial activities of political parties. In cases of violations of law, pursuant to Article 34<sup>2</sup>(11) LPUC, the SAO is now entitled to draw up administrative offence protocols, which are immediately sent to a regional (city) court for review. If circumstances might hinder the sanction's enforcement, the SAO can authorise seizing the property of a party and/or person (including bank accounts) of a value proportionate to the sanction foreseen for the offence.<sup>30</sup> The court is to deliver a judgment within 48 hours, and its decision may be appealed in the Court of Appeal within 48 hours. The authorities indicate that the aforementioned procedure has raised concerns due to these very short time spans. The Government plans to revisit this issue as part of its work on the transparency of party funding.
75. As concerns the first and second parts of the recommendation, GRECO notes that sanctions for the violation of rules on party and election campaign financing are currently prescribed by the LPUC and EC (LPUC provides for confiscation and transfer to the state budget of an illegal donation/membership fee, fines and withdrawal of the right to state funding, and the EC for written warnings and the "*random sum up of election results of votes received by the election subject*". Although this new legislative framework sets up a more consistent sanctioning regime, ambiguities still persist with respect to the definition of some violations and sanctions (as the one referred to above provided for in the EC) and the persons/entities on whom/which sanctions and procedural measures, such as property seizure, can be imposed. As regards the requirement of proportionality, on the one hand, GRECO is of the opinion that fines of GEL 2 000 or 3 000 (EUR 1 000 or 2 500) for the misuse of administrative resources, for example, may be too lax and lacking the requisite dissuasive effect. On the other hand, suspension of state subsidies may be too severe a sanction for failure to present an annual financial declaration by a party. In addition, GRECO is aware that in June 2012 a fine of GEL 148 million (EUR 74 million – the highest sanction ever imposed for violation of a party funding regulation on a single entity in a GRECO member state – later halved by the Court of Appeal) imposed on one of the leading persons of the opposition, who is now the Prime Minister, for an "illegal donation", raised concerns about proportionality. It is also aware of reports of "selective and non-uniform application", as observed by the OSCE/ODIHR Election Observation Mission.<sup>31</sup> In light of the foregoing, GRECO invites the authorities to deploy further efforts in order to clearly circumscribe specific irregularities of party and election campaign financing and subject them to concrete effective, proportionate and dissuasive sanctions. The first and second parts of the recommendation can be considered as partly implemented.
76. As for the third part of the recommendation, GRECO welcomes the revised provisions of the LPUC, which describe, in great detail, the procedure for initiating and imposing sanctions, including appeals and judicial review, even if the time frame in which the court is to deliver its verdict is short, which raises concerns about due process. It is regrettable that no information has been provided regarding an assessment of the need to carry out a similar review of the EC. In light of the foregoing, it may not be concluded that all aspects of this part of the recommendation have been fully addressed.
77. GRECO concludes that recommendation ix has been partly implemented.

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<sup>30</sup> Article 34<sup>2</sup>(12) LPUC.

<sup>31</sup> OSCE/ODIHR Election Observation Mission Final Report, "Georgia: Parliamentary Elections 1 October 2012", 21 December 2012, available at <http://www.osce.org/odihr/98399>, p. 15.

### **Recommendation x.**

78. *GRECO recommended to increase the limitation period for administrative violations of party and campaign funding regulations.*
79. The authorities of Georgia reiterate that Article 34<sup>2</sup> LPUC provides administrative sanctions for violations of the law on party and election campaign financing. Pursuant to paragraph 10 of Article 34<sup>2</sup> LPUC, a person can be found liable during the six years after perpetration of the relevant act. As concerns the statutory limitation period for violations established by the EC, it is still regulated by the Code of Administrative Violations. Pursuant to Article 38(1) thereof, administrative sanctions may be imposed within two months from the commission of the relevant act.
80. GRECO welcomes the legislative amendments introduced in the LPUC which extend the statute of limitations to six years for the administrative offences established therein. It regrets that the period of limitation foreseen under the EC has not been altered, as suggested in the recommendation. It is to be recalled that the EC establishes 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. Many of these might be uncovered long after the announcement of election results. In view of the foregoing, GRECO cannot conclude that all the aspects of the recommendation have been duly addressed.
81. GRECO concludes that recommendation x has been partly implemented.

### **III. CONCLUSIONS**

82. **In view of the above, GRECO concludes that Georgia has implemented satisfactorily six of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii and v have been implemented satisfactorily and recommendations iii and iv have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation iii, v and vii have been implemented satisfactorily, recommendations i, ii, iv, viii, ix and x have been partly implemented and recommendation vi has not been implemented.
83. As regards the criminalisation of corruption and trading in influences, GRECO welcomes the entry into force in November 2011 of the amendments to the Criminal Code, which have brought relevant legal provisions in line with the Criminal Law Convention on Corruption and its Additional Protocol. The offence of active trading in influence has been reviewed and now explicitly covers instances where the advantage is intended for a third party and not for the influence-peddler him/herself. Likewise, the offence of commercial bribery now covers in unambiguous terms, instances where the undue advantage is not intended for the briber him/herself but for a third party. The abolition of dual criminality is also a welcome development as it allows for the prosecution of all bribery and trading in influence offences, regardless of their seriousness, committed abroad by nationals, public officials (including non-nationals working in a similar capacity for Georgia) and members of domestic assemblies. Moreover, the criminalisation of bribery of foreign arbitrators and foreign jurors has been provided for in unambiguous terms. GRECO encourages the authorities to eliminate the few remaining deficiencies and to complete as soon as possible the process of ratification of the Additional Protocol to the Criminal Law Convention on Corruption.

84. With respect to the transparency of political funding, GRECO welcomes the adoption of the new Election Code (EC) and the amendments to the Law on Political Unions of Citizens (LPUC). The revised legislation has addressed several concerns expressed in the Evaluation Report and remedied a number of gaps and lacunae. Thus, the rules on donations for political parties and election campaigns and restrictions applicable to donations and donors have been harmonised, in-kind donations and other goods and services provided at a discount or free of charge during elections have been clearly equated with donations and made subject to the same rules and restrictions. Reporting by parties on income, expenditure, assets and debts in a given year and by election subjects on receipt of donations is now pursued in a standardised manner. Furthermore, supervision over party and election campaign financing has been assigned to the State Audit Office (SAO), which has acquired new and important competences in this field. However, the revisions have not been consistent throughout and have not as yet attained the goal of establishing a uniform and unambiguous legal framework. Both the LPUC and the EC need to be clarified and further harmonised in order to eliminate inconsistencies, repetitions and diverging terminology. Moreover, priority attention has to be given to achieving not only in law but also in practice the independence and impartiality of the SAO in order for it to be qualified as an independent monitoring mechanism in the meaning of Recommendation Rec(2003)4 and trusted by all political forces and the public. Another concern which has not as yet been adequately addressed is the prevention and reaction to cases of misuse of administrative resources and official positions in elections. Last but not least, irregularities of both party and election campaign financing remain to be clearly defined and accompanied by concrete, effective, proportionate and dissuasive sanctions which are to be enforceable in respect of all persons/entities on which the LPUC and the EC establish obligations. It goes without saying that the sanctions under both laws need to be imposed in an impartial and non-selective manner. In conclusion, GRECO lends its support for the initiatives announced by the new Government which should help attain better compliance with GRECO's recommendations. At the same time, GRECO wishes to warn against any possible reversals in the law-amending process.
85. In the light of what has been stated in paragraphs 82-84, GRECO notes that Georgia has been able to demonstrate that substantial reforms with the potential of achieving an acceptable level of compliance with the pending recommendations within the next 18 months are underway. GRECO therefore concludes that the current level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Georgia to submit additional information regarding the implementation of recommendations iii and iv (Theme I – Incriminations) and recommendations i, ii, iv, vi, vii - x (Theme II – Transparency of Party Funding) by 31 December 2014.
86. Finally, GRECO invites the authorities of Georgia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.