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## FOURTH EVALUATION ROUND

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

### COMPLIANCE REPORT

### AZERBAIJAN

Adopted by GRECO at its 74<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 November – 2 December 2016)

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## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Azerbaijan to implement the recommendations issued in the Fourth Round Evaluation Report on Azerbaijan which was adopted at GRECO's 65<sup>th</sup> Plenary Meeting (10 October 2014) and made public on 2 April 2015, following authorisation by Azerbaijan ([Greco Eval IV Rep \(2014\) 2E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Azerbaijan submitted a Situation Report on measures taken to implement the recommendations. This report was received on 2 May 2016 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Finland and Georgia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Jouko HUHTAMÄKI, on behalf of Finland and Ms Mariam MAISURADZE, on behalf of Georgia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. 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 Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 21 recommendations to Azerbaijan in its Evaluation Report. Compliance with these recommendations is dealt with below.

### *Corruption prevention in respect of members of parliament*

#### **Recommendation i.**

6. *GRECO recommended that public consultations be systematically held on bills, including those emanating from executive bodies and subject to an accelerated adoption procedure within the parliament.*
7. The authorities report that the Public Participation Act provides that a draft law must be published on the webpage of the Parliament, with possibilities to submit proposals online, not later than three days after it is received by committee(s) concerned. The Parliament has set up a special section on its website for the publication of such drafts, including those initiated by the executive bodies. The authorities point out that in practice all drafts are published promptly. The above system allows for the receipt of all proposals and suggestions from interested parties. Their input is collected and submitted for discussion in the respective committee meetings and furthermore forwarded to the executive bodies concerned, for consideration.
8. The Public Participation Act also provides for the holding of public hearings during the early stages (before the draft goes to Parliament) by the respective executive body. The practice of public hearings on draft laws (including those under accelerated legislative procedure) is reportedly reflected on the improved web page of the Parliament [www.meclis.gov.az](http://www.meclis.gov.az). The authorities indicate that from the autumn session of 2015 until the autumn session of 2016, 144 committee meetings were

held and 432 draft laws, 12 government decrees and 5 opinions discussed. 182 representatives of civil society and public authorities participated in these meetings. There has been no case of a civil society representative being excluded from public discussions in the parliament. 59 media representatives are accredited in the parliament and have free access to all meetings.

9. The authorities also indicate that a draft amending the Internal Regulations of the Parliament is under elaboration. It is expected to define the rules for carrying out public hearings in the Parliament. The new Action Plan on Open Government for 2016-2018 calls for enlarged public participation of civil society in the drafting process and for increasing the number of public consultations. The authorities also indicate that it requires all the executive bodies to strengthen the activities of public councils involved in consultations with state bodies and to give them the necessary support.
10. On 10 September 2016 the Parliament joined the newly established "Government civil society dialogue platform". This platform, composed of representatives of state bodies and more than 30 NGOs, has so far held four meetings. It has been reported that legislative issues had been discussed there. Three MPs, including the Chairman of the Committee on Legal Issues and State building, represent the Parliament in this platform.
11. GRECO takes note of the above information. The Public Participation Act, enacted on 1 June 2014, already before the adoption of the evaluation report, provides that the Secretariat of the Parliament organises public hearings and discussions on draft laws, places the texts of the registered draft laws on a special section of the Parliament's website and informs the public of the results of consideration of submitted texts. GRECO takes note of the information that draft laws are increasingly discussed in committees with the involvement of civil society representatives. The recent setting-up of the "Government civil society dialogue platform" is a positive development. GRECO hopes that it will be as broad and inclusive as possible. The new measures to support public consultations on draft legislation are being contemplated in the amended Internal Regulations for the Parliament (under elaboration) and in the National Action Plan on Open Government for 2016 – 2018. The latter reportedly calls for a higher number of consultations and better structures for holding them.
12. GRECO will need to re-examine the actual benefits of these recent initiatives and proposals, including in relation to accelerated legislative procedures (which are to be conducted within 20 days), when the reform process is more advanced, in particular with regard to the amended Internal Regulations for Parliament and when more tangible information becomes available.
13. GRECO concludes that recommendation i has been partly implemented.

**Recommendation ii.**

14. *GRECO recommended that i) in furtherance of the conflicts of interest rules in the Constitution, the Law on Combatting Corruption, the Status of Deputy Law and the Rules of Procedure Law, standards (a code) of conduct for members of parliament (covering, in particular, conflicts of interest and regulation of contacts with third parties) be adopted and enforced and made easily accessible to the public; and ii) training, guidance and counselling be provided to MPs on legal conduct, parliamentary ethics, conflicts of interest, accessory activities, gifts and other advantages, corruption prevention and boosting of reputation.*
15. In respect of part (i) of the recommendation, the authorities indicate that the draft Code of Conduct for MPs has been prepared in the form of a draft law, registered in

Parliament and scheduled for the autumn session. It provides for the mandatory disclosure by MPs of conflicts of interest (article 7) to the Disciplinary Commission of the National Parliament. It also establishes rules on contacts with third parties seeking to influence the legislature's work. The draft Code is planned to be discussed at the end of December 2016 at Joint meetings of the Parliamentary Committee of Legal Issues and State Building and of the Committee on Defence, Security and Combating Corruption. These will involve the participation of representatives of the Disciplinary Commission of the Parliament and of civil society organisations. The authorities anticipate that the amendments to the Internal Regulation of the Parliament Act will also deal with the subject of liability for breaches of the Code. Finally, the authorities add also that the text of the Constitution approved at the Constitutional referendum in September 2016 provides for the loss of a parliamentary mandate in case of a "serious violation" of the code (amended article 89).

16. As regards part (ii) of the recommendation, the authorities specify that the Disciplinary Commission will be responsible for the supervision of these new standards of conduct. A group of MPs and experts is currently working on its new terms of reference. Upon enactment of the Code of Conduct for MPs, the Disciplinary Commission is expected to issue guidelines and regulations specifying benchmarks for ethical behaviour. It is also expected to provide training and counselling. With regard to certain concerns expressed by GRECO, the authorities stress that following the recent parliamentary election, there are practically no MPs holding the post of private university chancellor who would thus possibly be debating and voting bills in the field of education.
17. Regarding part (i) of the recommendation, GRECO notes that the drafting of the Code of Conduct has progressed since the time of the evaluation: a draft is now in parliament for adoption in form of a piece of legislation. In the light of an English translation provided, GRECO notes that some rules on conflicts of interest are actually contained in article 11 (and not in article 7, which is about "Impartiality"). They merely state that an MP should prevent situations of conflicts of interest and should inform the Disciplinary Commission of the parliament. There is no definition of a conflict of interest and thus no indication of whose interests could be at stake. The draft is also silent about the consequences to be drawn from such situations (e.g. refraining from participating in a decision).
18. Turning to contacts with third parties, the draft actually does not address at all this subject in the way expected by GRECO nor the underlying concerns expressed in the Evaluation Report (the draft refers to polite behaviour and to the duty not to favour a particular group of population – articles 5 and 7).
19. It is clear that Azerbaijan needs to improve significantly the content of the draft which makes use of excessively broad language. Chapter 3 of the draft deals with the implementation and supervision of compliance by the Disciplinary Commission. The supervisory arrangements are drafted in the same excessively broad language as the rest of the Code. This would no doubt prevent its effective enforcement in future, especially as it is meant to be a regulatory legal instrument. GRECO is also concerned by the fact that the Commission is given at the same time the functions of an advisory body on problematic situations. This can be difficult to reconcile with its supervisory functions. GRECO encourages Azerbaijan to take into account the above comments when finalising the adoption of the Code, to subsequently enforce it and to make it accessible. GRECO considers that this part of the recommendation has been partly addressed.
20. As to part (ii) of the recommendation, GRECO takes note of the country's intention to provide the Disciplinary Commission with the clear responsibility to oversee but also to facilitate the implementation of the Code. This goes in the direction

expected and GRECO will need to examine in greater detail the exact responsibilities of the Committee once the process is more advanced, in particular as regards training, providing guidance and counselling to MPs on the various subject-matters under consideration. At this stage, this part of the recommendation has been partly addressed.

21. GRECO concludes that recommendation ii has been partly implemented.

**Recommendation iii.**

22. *GRECO recommended that accessory activities of MPs be subject to effective supervision and enforcement.*
23. The authorities indicate that the Parliament currently applies strict incompatibility rules. A review of the existing mechanism of control, in line with the above recommendation, will depend on the adoption of several additional measures, including the enactment of the Code of Conduct Law and the effective implementation of the declaration mechanism (see recommendations ii and iv). Articles 4 and 15 of the draft Code provide for incompatible activities. The supervision of the Disciplinary Commission would therefore extend to these provisions, once they enter into force. Furthermore, the draft Code and the draft amendments to the Law on Internal Regulation of the Parliament provide for sanctions, ranging from disciplinary measures to deprivation of a mandate.
24. GRECO takes note of the above. It recalls that the Constitution already provides for incompatibilities between a parliamentary mandate and position in another State body or religious organisation, engaging in entrepreneurial, commercial or other paid employment with a few exceptions (academic, pedagogic or creative/artistic work). As pointed out in the Evaluation Report, it should normally be the task the Constitutional Court to decide on such matters but in practice, incompatibilities are not checked except by the Central Election Commission in times of elections. The wording of article 4 of the draft Code of conduct submitted to GRECO repeats the existing constitutional incompatibilities. Article 15 of the draft Code defines the supervisory role of the Disciplinary Commission.
25. The above mentioned provisions appear very general and there is no detailed and specific indication that accessory activities of MPs are subject to effective supervision and enforcement. For instance, it is not clear what are the consequences when the Disciplinary Commission of the Parliament or another body become aware of a situation of incompatibility. The text does not state when the Disciplinary Commission should file a case with the Constitutional Court when it becomes aware of a situation of incompatibility. Article 4 just states that the MP is required to avoid actions which are incompatible with his/her mandate and that s/he should seek an opinion from the Commission where s/he is not in a position to decide on such situations. Overall, the draft legislation is clearly insufficient to consider that the present recommendation has been implemented, even partly.
26. GRECO concludes that recommendation iii has not been implemented.

**Recommendation iv.**

27. *GRECO recommended that i) the format for asset disclosure by members of parliament be established as a matter of urgency and that the confidentiality in respect of asset disclosure be lifted, with due regard being had to MPs' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to MPs be put into effect (including through the designation of an independent oversight body), accompanied by adequate sanctions for non-compliance with the*

*rules and that details, including the underlying reasoning, of the sanctions imposed be made public.*

28. The authorities report that following the newly adopted Open Government Program Action Plan, the Government of Azerbaijan has asked the Cabinet of Ministers and Minister of Justice to take the necessary measures for the introduction of asset declarations for public officials, including in respect of parliamentarians, judges and prosecutors. GRECO will be informed in due course of any new development in this area. The Staff of the Parliament has reportedly launched the work on developing training curricula based on the requirements of the existing legislation.
29. GRECO regrets the absence of any progress in the implementation of this recommendation. GRECO recalls that more than 10 years have now elapsed since the introduction of the asset disclosure mechanism applicable to MPs and, as pointed out in paragraph 40 of the Evaluation Report, it still lacks the basic prerequisites to become effective: an oversight body, sanctions and a format for reporting. The absence of any meaningful development since the adoption of the Evaluation Report casts doubt on the political will to enact an effective system of assets disclosure. GRECO points out that a system of publicly available declarations of income, assets, and interests for MPs and other important public functions has now become standard practice in a number of GRECO member States and urges Azerbaijan to show greater determination in this regard.
30. GRECO concludes that recommendation iv has not been implemented.

*Corruption prevention in respect of judges*

#### **Recommendation v.**

31. *GRECO recommended that i) the objectives of safeguarding and strengthening judicial independence be explicitly stipulated in the mandate of the Judicial Legal Council (JLC); and ii) the role of the judiciary within the JLC be reinforced, notably by providing for not less than half of its members to be composed of judges who are directly elected or appointed by their peers and by ensuring that the JLC president is elected from among the JLC members who are judges.*
32. On part (i) of the recommendation, the authorities indicate that legislation on the judiciary was amended over the years in close cooperation with Council of Europe experts and that the transition from the old system has been gradual since 2000. In 2005, the Judicial Legal Council (hereinafter the JLC) *de facto* started to represent and regulate the judiciary, ensuring its independence (Section 11.0.7 of the JLC Act). The JLC Act was amended on several occasions : a) on 21/12/2012 to include a requirement of judicial independence (1<sup>st</sup> Section on duties); b) on 20/06/2014 to introduce additional safeguards in this area and to formally grant judges with the right to appeal to the JLC in case of improper influence on their activity; c) on 30/12/2014, to ensure the independence of the JLC and, to limit the influence of the Executive, the Supreme Court and the Ministry of Justice lost the power to appoint the members of the JLC representing first instance and appellate court judges (they are now appointed by the JLC upon the recommendation of the associations of judges); d) on 24/02/2015, the JLC was given the power to issue its opinion on the financial annual budget proposals for the functioning of first instance courts, made by the "relevant executive body" (this expression refers to the Ministry of Justice in that case); e) on 28/10/2016, the JLC was given the power to review the Annual Budget Proposals for the courts of appeal; f) on 28/11/2016 the JLC was granted exclusive power to determine the respective territorial jurisdictions of the courts. Finally a draft law which explicitly stipulates that guaranteeing the independence of the judiciary is one of the objectives of the JLC was recently registered in Parliament and subsequently adopted on 29 November. The

authorities provide assurances that although this law still needs to be signed within 56 days by the President and subsequently published to become effective, these are only formal requirements (the draft originally emanated from the president himself).

33. With respect to part (ii), the authorities report that, as a result of the above mentioned reforms, 9 out of 15 members of the JLC are now judges representing various courts, mostly appointed by the judges themselves. The President, Parliament, Ministry of Justice, Prosecutor's Office and the Bar Association appoint the other members of the JLC. These appointments are made by the plenary or collegial sessions of the appointing organisations.
34. GRECO takes note of the above information. As regards part (i) of the recommendation, it is pleased to learn that the responsibilities of the JLC are progressively being broadened. The law recently approved by parliament will explicitly extend the mandate of the JLC to preserve *judicial independence* as required by the recommendation. The underlying concern of the first part of the recommendation has thus been addressed and GRECO takes note of the assurances given by the authorities that nothing will prevent the law of 29 November from becoming effective within the next two months. Concerning part (ii) of the recommendation, article 6 of the Act establishes as follows the composition of the JLC:

**Article 6 of the JLC Act - Composition of the Judicial-Legal Council**

6.1. The Judicial-Legal Council shall be composed of 15 members.

6.2. The Judicial-Legal Council shall be mainly composed of judges, representatives of executive and legislative bodies, prosecutor's office, as well as the bar association in the following manner:

6.2.1. head of the relevant executive body(\*) of the Republic of Azerbaijan;

6.2.2. President of the Supreme Court of the Republic of Azerbaijan;

6.2.3. a person appointed by the head of the relevant executive body(\*\*) of the Republic of Azerbaijan;

6.2.4. a person appointed by Milli Majlis of the Republic of Azerbaijan;

6.2.5. a judge appointed by the Constitutional Court of the Republic of Azerbaijan;

6.2.6. two judges of cassation instance court *selected* by the Supreme Court from among the candidates proposed by the associations of judges;

6.2.7. ~~judge of appeal instance court (Court of Appeal of the Republic of Azerbaijan)~~ *two judges of the Court of Appeal selected by the Judicial Council* from among the candidates proposed by the associations of judges;

~~6.2.8. a judge of appeal instance court (Economic Court of the Republic of Azerbaijan) appointed by the Supreme Court from among the candidates proposed by the associations of judges;~~

6.2.8. judge of the Supreme Court of Nakhchivan Autonomous Republic (NAR) *selected* by the NAR Supreme Court from among the candidates proposed by the associations of judges;

6.2.9. two judges of the first instance courts, *selected by the Judicial Council* from among the candidates proposed by the associations of judges;

6.2.10. a person appointed by the head of the relevant executive body(\*) of the Republic of Azerbaijan;

6.2.11. a lawyer appointed by the Collegial Board of Bar Association of the Republic of Azerbaijan;

6.2.12. a person appointed by the General Prosecutor's Office of the Republic of Azerbaijan.

6.3. The Head of the relevant executive body\* of the Republic of Azerbaijan and the President of the Supreme Court of the Republic of Azerbaijan are *ex officio* members of the Judicial-Legal Council.

6.4. The persons appointed to the Judicial-Legal Council by the relevant executive body of the Republic (\*\*) of Azerbaijan, by the Milli Majlis of the Republic of Azerbaijan, by the relevant executive body(\*) and by the General Prosecutor's Office of the Republic of Azerbaijan shall have high education in law and more than five years work experience.

6.5. The Associations of judges shall propose at least two candidates for any vacancy in the Judicial-Legal Council. The list of candidates for membership to the Judicial-Legal Council can be rejected only once by the person who appoints them. Subsequently nominated persons shall be appointed to the Judicial-Legal Council.

6.6 Term of office of the members of the Judicial-Legal Council is five years.  
~~6.7. Except for persons who are ex officio the members of the Judicial-Legal Council, the same person should not be appointed as a member of the Judicial-Legal Council more than twice.~~

Note: the expression "relevant executive body" used throughout the JLC Act refers sometimes to the Ministry of justice (\*) and sometimes to the President of the Republic (\*\*), in accordance with the Presidential Decree on the application of the Law on JLC n183 from 28 January 2005<sup>1</sup>.

35. GRECO regrets that the JLC has not undergone a more clear-cut and ambitious reform with regard to its composition. Nine out of fifteen members of the JLC are judges representing the various court levels, and this was already the situation at the time when the Evaluation Report was adopted. However, only a minority of them are appointed or elected by their peers, mostly indirectly. Indeed, with the amendments to the JLC Act (dated 30/12/2014), the JLC was given the responsibility to select as members two judges of the appellate courts and two judges of first instance courts from among candidates proposed by the associations of judges. Even though the candidates proposed can only be rejected once by the JLC, this is not in line with the second part of the recommendation. Furthermore, the JLC is still chaired by the Minister of Justice and not elected from among the JLC members who are judges, as it was recommended. It is thus clear that Azerbaijan has not, as yet, taken adequate measures to address the second part of the recommendation.

36. GRECO concludes that recommendation v has been partly implemented

**Recommendation vi.**

37. *GRECO recommended that judicial independence be further strengthened by i) increasing the role of the Judicial Legal Council in the appointment of all categories of judges and court presidents; and ii) substantially reducing the five-year probation period for judges and making permanent appointments to the post of judge subject to clear, objective and transparent criteria.*

38. As regards part (i) of the recommendation, the authorities report that the legislation has been amended to increase the role of the Judicial Legal Council (JLC). As a result of these amendments the President of the Republic appoints all the judges only upon the recommendation of the JLC, except the Chairman of the Supreme Court. The role of the President in respect of the selection of judges has evolved over the years and it is now limited to endorsing the recommendations of the Judicial Legal Council. The Parliament passed the Judicial-Legal Council (Amendment) Act 2014 on 30/12/2014 (Section 12.0.4) providing for the appointment of the presidents of the serious crimes courts and appellate courts on the proposal of the JLC. According to this Act, the JLC makes "*proposals to the relevant executive authority of the Azerbaijan Republic (the President) on changing jobs, position promotions, extending the term of office of judges, appointment of the presidents, deputy presidents and chairmen of the judicial boards of the courts of the Republic of Azerbaijan from among appointed judges, except the chairmen of the Supreme Court of the Republic of Azerbaijan and the Supreme Court of the Nakhchivan Autonomous Republic and serious crimes courts, and removal from the*

<sup>1</sup> The Decree states the following: "2.1. In the JLC Act, under 6.2.3, 6.4 (first case), 11.0.1, 12.0.4 third, 12.0.5, 12.0.8 and 16.0, the "relevant executive authority" shall be the President of the Azerbaijan Republic; 2.2. In the JLC Act, under 6.2.1, 6.2.9, 6.2.10, 6.3, 6.4 (second case), 12.0.26-1, 13.3, 14.1 and 14.1 item 5, the "relevant executive authority" shall be the Ministry of Justice of the Republic of Azerbaijan; [1] 2.3. In the JLC Act, under 11.0.4-1 and 12.0.4-1, the "relevant executive authority" shall be the Ministry of Justice of the Republic of Azerbaijan and for the Nakhchivan Autonomous Republic (only in the case of courts of first instance) it shall be the Ministry of Justice of that Republic."



*office and transfer to another position"* (Section 12.0.4). Although article 109 of the Constitution states that judges of the appeal and supreme courts are appointed by Parliament on the proposal of the President, this constitutional provision only sets a framework for the appointment decision. The appointment decisions are made in accordance with the provisions of the Judges and Courts Act. A decision on the appointment of the judges of the courts of appeal and supreme courts is made in the form of the promotion of a first instance judge. Pursuant to article 94 of the Courts and Judges Act (1997), only judges with five years' experience as a first instance court judge can be appointed to the courts of superior instances, i.e. the appeal and cassation courts.

39. In practice, in the course of the past year, the JLC has issued recommendations on the appointment of three chairs of the Supreme Court collegial boards, four chairmen of the appeal courts, three judges of the supreme courts, thirteen judges of the appeal courts and 76 judges of the first instance courts. All of the recommendations were accepted and followed by the President of the Republic.
40. Turning to part (ii) of the recommendation, the authorities specify that following the adoption of the Courts and Judges (Amendment) Act 2014 on 30/12/2014 the probation period for judges has been reduced from five to three years. They stress that the Judicial Legal Council used in practice clear, objective and transparent criteria during its sessions held in October-December 2015 when studying the files of up to 80 judges elected according to the most recent judge selection procedures in 2010, including chairman of the courts, whose office term terminated. The review of the judges' activities was based on the information provided by the chairperson of the court concerned and by the chairperson of the superior court, as well as data obtained as necessary by the JLC on the occasion of queries carried on-site in the court of the judge concerned. The process also involved the participation of the evaluated judges and Chiefs of the judicial associations. According to the results of these evaluations, the JLC issued appointment recommendations to the President, and each of them was accepted and followed. The recommended candidates were appointed to the judicial offices until the age of retirement on a permanent basis. The JLC continues its efforts in this direction. The support staff of the JLC staff has prepared an overview of international best practices in this area which will serve as a basis for future activities and the elaboration of an Extended Evaluation Form template. Furthermore, the project run jointly with the EU, 'On the support to the development of the judicial system' works on the elaboration of the methodology for the evaluation of judges.
41. With regard to part (i) of the recommendation, GRECO welcomes the increased role of the Judicial Legal Council in the selection of judges. GRECO is also pleased to see that in recent practice, the president has systematically followed the proposals for appointments made by the JLC. This practice could now be confirmed and enshrined in law. Despite the progress made, the executive branch continues to retain excessive prerogatives for key appointments in the judicial system. The Chair of the Supreme Court of the Republic of Azerbaijan and the Chair of the Supreme Court of NAR continue to be appointed by the President of the Republic of Azerbaijan directly. More determined measures are thus required to ensure that the Judicial Legal Council is involved in the appointment of all categories of judges and courts presidents as required by the recommendation. This part of the recommendation has so far been partly implemented.
42. Regarding part (ii) of the recommendation, GRECO takes note of the fact that the probation period for newly recruited judges was reduced from five to three years in December 2014. Article 94 of the Courts and judges Act now reads as follows: "New judges shall be appointed for a term of three years. During this term judges shall take a training course at least once a year. At the end of this period their activity shall be evaluated. If the evaluation does not reveal any professional shortcoming,

the mandate of the judge is extended until the age limit, on the Judicial-Legal Council's proposal". Although probationary periods for judges in office are problematic as such, the reduction of the probationary period to three years is in line with the present recommendation. GRECO welcomes of course the assurances given by the authorities that in practice, the JLC used in 2014-2015 clear, objective and transparent criteria including feedback from the superior judge and "data from other sources". However, it is clear that for the sake of full transparency and objectivity, these criteria would better be spelled out and enshrined in law or regulation. GRECO notes with interest that a standardised template and a methodology for appraisals are currently under consideration within the JLC. GRECO supports this early initiative. Overall, this second part of the recommendation has been partly implemented.

43. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

44. *GRECO recommended that, in the context of the regular evaluation of judges' performance, consideration be given to accounting for all relevant provisions of the Code of Judges' Ethical Conduct (i.e. Articles 5, 7, 10-11, 13, 17 and 18).*
45. The authorities report that the implementation of this recommendation was examined at the JLC session held on 13/10/2016. The JLC endorsed the implementation of the present recommendation. The Ethics Code of Judicial Conduct was amended accordingly by the inclusion of Section 24, which states that "a violation of a requirement of the Code shall be taken into account for the evaluation of a judge's activity".<sup>2</sup>
46. GRECO is pleased to see that violations of all requirements of the Code of Ethical Conduct are now included in the scope of periodic appraisals of a judge's performance. Overall, the main objective of the present recommendation has thus been met. Azerbaijan may need to bear in mind that an appraisal is also a tool for the recognition of the positive and professional attitude of an appraisee, including for future decisions on career progression.
47. GRECO concludes that recommendation vii has been implemented satisfactorily.

**Recommendation viii.**

48. *GRECO recommended that i) a system of confidential counselling on integrity and ethical matters be established within the judiciary, including specifically on judges' accessory activities; and that ii) dedicated on-going training be provided to judges on ethical conduct, conflicts of interest and asset disclosure.*
49. The authorities report that a counselling group was established at the Conference of the Union of Public Associations of Judges held on 20/02/2016, as a result of discussions on the Ethics Code of Judicial Conduct (these were held in light of the Bangalore Principles of Judicial Conduct). The participants of the conference adopted the Statute of the Counselling Group, which regulates the setting-up of this body, the election of its members and other aspects of its functioning. The Group operates on a continuous basis, providing counselling on ethical issues upon request and on a confidential basis. It is composed of three experienced judges, representing all court instances (district court, appellate court and Supreme Court) and genders.

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<sup>2</sup> See [http://jlc.gov.az/ethic\\_code.pdf](http://jlc.gov.az/ethic_code.pdf)

50. Moreover, since 2014, a curriculum for training on ethical conduct, conflict of interests and asset disclosure has been developed through joint efforts of the JLC and the Judicial Academy. The trainings are reportedly conducted on a continuous basis throughout the year. 41 judges in 2015 and 60 judges in 2016 (12% of the entire judicial personnel) have been trained in this area. The Academy is already planning to involve a higher number of judges for the sessions next year. Furthermore, as of this year these topics are part of the mandatory induction training for the newly recruited judges.
51. As for part (i) of the recommendation, GRECO welcomes the setting up of the Expert Counselling Group, composed of three experienced judges provided with the responsibility to deal with confidential counselling on integrity and ethical matters, including on judges' accessory activities; this part of the recommendation has therefore been implemented. Regarding part (ii) of the recommendation, GRECO appreciates that greater training efforts are devoted to the topics covered by the recommendation. Considering the specific information provided on the actual content of the in-service training courses, and of the new initial training curriculum, GRECO concludes that this part of the recommendation has been addressed.
52. GRECO concludes that recommendation viii has been implemented satisfactorily.

**Recommendation ix.**

53. *GRECO recommended that i) the format for asset disclosure by judges be established as a matter of priority and that the confidentiality in respect of asset disclosure by judges be lifted, with due regard being had to their and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to judges be put into effect (including by allocating commensurate administrative and expert resources to the Commission on Combating Corruption), accompanied by adequate sanctions for non-compliance with the rules and that details, including the underlying reasoning, of the sanctions imposed be made public.*
54. The authorities report that the implementation of this recommendation is linked to the implementation of recommendation iv concerning parliamentarians. As indicated in paragraph 26, following the newly adopted Open Government Program Action Plan, the Government of Azerbaijan has asked the Cabinet of Ministers and the Minister of Justice to take the necessary measures for the introduction of asset declarations for public officials, including in respect of parliamentarians, judges and prosecutors. GRECO will be informed in due course of any new development in this area.
55. GRECO can only reiterate its earlier conclusions made in respect of recommendation iv. It urges the authorities of Azerbaijan to take determined action for the implementation of the present recommendation.
56. GRECO concludes that recommendation ix has not been implemented.

**Recommendation x.**

57. *GRECO recommended that consideration be given to empowering the first instance court presidents to file motions for initiating disciplinary procedures against judges of those courts with the Judicial Legal Council.*
58. The authorities report that the JLC looked into the matter at its session held on 13/10/2016. It took into account the results of an overview of international practices prepared for this occasion. The powers of the presidents of the first instance courts are defined by sections 23, 28, 30-4, 34 and 45 of the Judges and Courts Act 1997. According to these provisions, the presidents of these courts are

entitled to ensure adherence to the office discipline, to organise the courts' work and to report on their activities. Section 112 of the Act requires the chief justices of superior courts to refer a matter to the JLC in case they are notified of allegations of disciplinary offences. Moreover, the information provided by the president of the respective court is used in the judge's evaluation (section 13 of the JLC Act). Therefore, the presidents of first instance courts have the appropriate channels of communications and they may, albeit indirectly, bring disciplinary matters to the attention of the JLC. Many of them have used these channels in practice. The JLC has therefore concluded that no further action, such as adopting amendments to the legislation, is necessary. The authorities have also provided the relevant documentation regarding the JLC meeting, including the protocol of the session, which clearly refers to GRECO's expectations.

59. GRECO takes note of this information. The measures recommended have been recently discussed by the authorities. GRECO appreciates the assurances given that first instance court presidents have, indirectly, the possibility to file disciplinary cases. Legally, the initiation of disciplinary procedures remains reserved to the Presidents of the Supreme Court, the NAR Supreme Court, courts of appeal and the Ministry of Justice. Based on the information provided, GRECO concludes that Azerbaijan has taken into consideration the possible benefits of the additional measures recommended.
60. GRECO concludes that recommendation x has been implemented satisfactorily.

#### **Recommendation xi.**

61. *GRECO recommended that the period prescribed for considering a motion for lifting the immunity of a judge filed with the Judicial Legal Council by the Prosecutor General (with the exception of cases of flagrante delicto) be reviewed with a view to substantially reducing it.*
62. The authorities report that appropriate draft legislation, which foresees the reduction of the period to seventy-two hours instead of ten days, has been elaborated and submitted to parliament. It was subsequently adopted on 29 November 2016. The authorities provide assurances that although this law still needs to be signed within 56 days by the President and subsequently published to become effective, these are only formal requirements (the draft originally emanated from the president himself).
63. GRECO welcomes that legislation has recently been adopted to implement this recommendation and it appreciates the assurances given by the authorities that nothing will prevent the law of 29 November from becoming effective within the next two months.
64. GRECO concludes that recommendation xi has been implemented satisfactorily.

#### *Corruption prevention in respect of prosecutors*

#### **Recommendation xii.**

65. *GRECO recommended that i) the Prosecutor's Office Act be reviewed so as to eliminate any undue influence and interference in the investigation of criminal cases in the exercise of statutory controls over the activities of the Prosecutor's Office; and ii) the setting up, closure and basic organisational structure of all prosecution offices be determined by law.*
66. As regards part (i) of the recommendation, the authorities report that since the submission of the GRECO Report by the Government to the Parliament, the

Parliamentary experts, including members of the Parliamentary Legal Policy State Administration, have analysed this GRECO Recommendation. Members of the Supreme Court (and Constitutional Court) have been invited to the consultations. The participants took note of the following provisions contained in the existing legislation:

**Prosecutor's Office Act (1999)**

Section 44. Oversight of the Head of State

The Prosecutor General of the Republic of Azerbaijan regularly reports to the President of the Republic of Azerbaijan on the activity

Section 43. Parliamentary Oversight

The Prosecutor General of the Republic of Azerbaijan reports to the Parliament of the Republic of Azerbaijan on the activity of the Prosecutor's Office, except the cases under investigation.

**Criminal Procedure Act 2000**

Section 7.0.18 Participants of the criminal process – inquirer, investigator, prosecutor, victim, private prosecutor, civil claimant, their legal representatives and representatives, suspects or defendant, their legal representatives, civil respondent, his/her legal representatives and representatives.

67. Furthermore, the authorities state that, according to law, only those who participate in the criminal process have access to the information on the related criminal case. The above consultations led to the conclusion that Section 44 of the Prosecutor's Office Act (POA) does not specifically formulate the right of the President of the Republic of Azerbaijan to familiarise him/herself with the investigation and prosecution in specific cases. The POA was passed in 1999 and when the Code of Criminal Procedure was subsequently adopted in 2000, it did not include the President in the list of participants to criminal proceedings who are entitled to familiarise themselves with the case under investigation or prosecution. The authorities take the view that there is thus no conflict of laws requiring interpretation and even if there was, subsequent laws always take precedence. According to Section 2.4 of the Criminal Procedure Code, provisions on procedural norms of any other laws shall be adjusted to the provisions of this Code.
68. Regarding part (ii) of the recommendation, the authorities stress that the setting up and the closure of prosecution offices are indeed regulated by means of presidential orders.

**Constitution 1995**

Section 95. Competence of the Parliament:

1.3 administrative-territorial division of the territory

**Prosecutor's Office Act (1999)**

Section 2. Prosecutor's Office of the Republic of Azerbaijan

Setting up of the extraordinary, foreign or other prosecutor's offices not provided by this Act is forbidden.

Section 15. Territorial and Specialized prosecutor's offices

In districts of the Republic of Azerbaijan, cities (except towns of regional subordination), and districts of [big] cities, the respectively district and city prosecutor's offices are set up.

Specialised prosecutor's offices are the military prosecutor's offices.

69. Section 8 of the POA specifically describes the system and structure of the Prosecutor's Office, including the General (Chief) Prosecutor's Office, Anti-Corruption Directorate, Military (Chief) Prosecutor's Office, Baku Metropolitan Prosecutor's Office, districts/cities prosecutor's offices, regional military prosecutor's offices, additional units (educational, etc.). According to Section 2, the President cannot set up any prosecutor's office not foreseen by law, i.e. on his own. This is in the competence of the Parliament. Also the POA clearly states that prosecutor's offices are set up according to the administrative-territorial division of the country. The Presidential decrees are only of an organisational and economical

nature, as the President is the chief official to whom budgetary execution of finances is reported.

70. As for part (i) of the recommendation, GRECO regrets that no action has been taken to address its concerns deriving from the description of the situation in paragraph 85 of the Evaluation Report according to which “the Prosecutor General (...) systematically informs the President (annually and upon request) of the [Service’s activities], including criminal cases under investigation”. The Prosecutor’s Office is normally under the oversight of the Parliament, with proper safeguards (“The Prosecutor General ... reports to the Parliament ... on the activity ..., except the cases under investigation”). Subjecting the Prosecutor’s Office to the concurrent oversight of the Head of State, and this without any such safeguards, is clearly problematic. GRECO is not convinced by the arguments put forward to support the absence of conflicting norms and it can only conclude that this part of the recommendation has not been implemented. The same goes for part (ii) of the recommendation, which has not received any follow-up action up until now. It may well be that there are certain legal or territorial-organisational restrictions to the possibility to set-up new offices or to shut down others; however, within those boundaries, the presidential authority retains the faculty to influence significantly the organisation / re-organisation of the prosecutorial services. As the Evaluation Report pointed out, the Prosecutor’s Office is construed in Azerbaijan as an independent authority and it is essential that this is further guaranteed in law. GRECO regrets the lack of progress on this part of the recommendation as well. It urges the authorities to show greater determination in the implementation of this recommendation.
71. GRECO concludes that recommendation xii has not been implemented.

**Recommendation xiii.**

72. *GRECO recommended that objective and transparent criteria and procedure for the appointment to the Prosecutor’s Office of other law enforcement staff be developed and made public.*
73. The authorities report that in order to benefit from the experience of other institutions, the Prosecutor’s Office is recruiting from among other law enforcement bodies. These are experienced officers with several years of experience. The Examination Commission interviews the candidates. The majority of these appointments are made from the Ministry of Taxes to enhance the financial investigation capabilities, and from the police, in order to strengthen the operational capacity of the prosecution services. The Examination Commission is composed of senior (managerial) officers from all areas. The authorities take the view that the interviews and decisions taken are already based on clear, objective, transparent and verifiable professional qualifications, knowledge and skills, by the majority of votes. However, in order to improve the system of recruitment further, objective and transparent criteria and the procedure for appointment to the Prosecutor’s Office of other law enforcement staff has been developed and made public. The Prosecutor General’s Order 10/65 of 13/07/2015 approved the Rules For Appointment of Other Law Enforcement Staff to The Prosecutor’s Office (see annex 1). These rules have been published on the web site of the Prosecutor’s Office.
74. GRECO welcomes the adoption, in July 2015, of new rules on the appointment of other law enforcement staff to the Prosecutor’s Office. It is pleased to see that the level of experience, the general aptitude, the performance at the time of recruitment to the civil service as well as the disciplinary record must systematically be taken into account. GRECO also understands that the recruitment of staff from other law enforcement agencies has to follow the usual competitive examination

used for the hiring of new prosecutorial staff. Overall, Azerbaijan has responded positively to the expectations of this recommendation.

75. GRECO concludes that recommendation xiii has been implemented satisfactorily.

**Recommendation xiv.**

76. *GRECO recommended that i) all senior vacancies in the Prosecutor's Office be publicly advertised and access to them be made subject to clear, objective and transparent criteria; and ii) consideration be given to providing for suitable candidates for senior posts to be evaluated and submitted by a body composed of a majority of persons unrelated to the executive.*
77. As regards part (i) of the recommendation, the authorities report that recruitment at the senior and middle level in the Prosecutor's Office is made internally from the lower level personnel of the Prosecutor's Office. The candidates to the senior and middle levels in the Prosecutor's Office should have experience of prosecutorial work. The Personnel Department of the Prosecutor General's Office took measures to advertise positions within the prosecutor's office. The website of the Prosecutor's Office contains information on all the senior officials, including (chief) district/city prosecutors. It is updated on a regular basis with the existing vacancies.<sup>3</sup>
78. As regards part (ii) of the recommendation, the authorities of Azerbaijan do not provide any information.
79. GRECO takes note of the above information. As for part (i) of the recommendation, the information submitted does not allow to conclude that adequate measures have been taken to address the underlying concerns (public advertisement; clear, objective and transparent criteria). With respect to part (ii) of the recommendation, GRECO regrets that no consideration was given to providing for suitable candidates for senior posts to be evaluated and submitted by a body composed of a majority of persons unrelated to the executive.
80. GRECO concludes that recommendation xiv has not been implemented.

**Recommendation xv.**

81. *GRECO recommended that i) compliance with the Prosecutorial Code of Ethical Behaviour be assessed in the periodic evaluation of prosecutors' performance; and ii) all categories of prosecutors be made subject to periodic performance evaluation.*
82. As regards part (i) of the recommendation the authorities report that the criteria against which all district/city prosecutors are to be assessed every five years have been extended by the Order 10/64 of the Prosecutor General dated 13 July 2015 (see annex 2). They now include the requirement to comply with ethical principles and rules of conduct prescribed by the Prosecutorial Code of Ethical Behaviour. Appropriate measures have also been taken to ensure that the Supreme Attestation Commission has the authority to consider violations of the ethical rules and to submit motions to the competent bodies for initiating disciplinary proceedings against prosecutors. In particular, rule 4.10 of the "Rules on Attestation of the employees of the Prosecutor's Office" of 16/11.2011, with the most recent amendments, now states that members of the Attestation Commission interview employees only in respect to subject-matters which are relevant to his/her position, the tasks performed, the results, the Code of Ethical Behaviour of the employees of

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<sup>3</sup> <http://prosecutor.gov.az/content/28/tabe-prokurorluqlarin-elage-vasiteleri>

the Prosecutor's Office of the Republic of Azerbaijan, as well as regarding issues related to his/her duties and rights.

83. As regards part (ii) of the recommendation, the authorities indicate that the prosecutors have been made subject to periodic assessment of compliance with the Ethical Behaviour Rules, according to the principles the Civil Service Act. The performance appraisal constitutes one of the key principles of the civil service, including such categories of prosecutors as specialised or senior prosecutors, which were exempted before. The compliance of the officer with the Ethical Rules has been included in the criteria for annual appraisal and it is marked accordingly. The Prosecutor General issued an order for the development of curricula and running of ongoing training on a series of topics, including Ethical Rules. In accordance with Paragraph 1 of the "Rules of evaluation of performance of employees of Prosecutor's Office" approved by the Order of the Prosecutor General № 10/42-11/126-k dated 06/05/2016, employees of the Prosecutor's Office holding positions corresponding to the 3<sup>rd</sup>-9<sup>th</sup> categories (in accordance with the classification of article 10 of the "Act on Service in the Prosecutors Office" – POSA) undergo performance evaluation. Consequently, all senior prosecutors and specialised prosecutors, except the Prosecutor General, his/her first deputy, deputies, the Director of the Anti-Corruption Directorate, Military Prosecutor and Prosecutor of Nakhchivan Autonomous Republic are to undergo mandatory performance evaluation.
84. As for part (i) of the recommendation, GRECO welcomes the fact that the system of periodic evaluation of the prosecutors' performance was changed in July 2015 and that as a result of this, the appraisals take into account compliance with the Prosecutorial Code of Ethical Behaviour. It would also appear that the authority of the Supreme Attestation Commission to submit motions for the initiation of disciplinary proceedings has been formally confirmed, which is a positive development. This part of the recommendations has thus been implemented.
85. As for part (ii) of the recommendation, GRECO welcomes the fact that the periodic performance evaluation system was extended also to specialised and senior prosecutors and that only a handful of senior prosecutors are exempted from this system. This part of the recommendations has thus received adequate follow-up.
86. GRECO concludes that recommendation xv has been implemented satisfactorily.

#### **Recommendation xvi.**

87. *GRECO recommended that the application of "encouragement measures" within the Prosecutor's Office (and in particular, of all pecuniary bonuses) be subject to clear, objective and transparent criteria.*
88. The authorities report that the Prosecutor General issued the Order 10/67 dated 13/07/2015, which has introduced a series of internal guidelines and criteria for the attribution of the various "encouragement measures", including general acknowledgement for the work done, pecuniary bonuses, and various honorific distinctions (see annex 3). As regards pecuniary bonuses in particular, item 1.3 of the guidelines states the following: "**Pecuniary bonus and a valuable gift** - shall be issued for execution of sophisticated, long-lasting or labor-intensive tasks in high quality and within reasonable time period, including investigation of serious and especially serious crimes or prosecution of those cases in court, compensation of the damage caused by crimes at the pre-trial investigation stage, participation in the development of significant legislative acts, effective participation in the significant international events, as well as for execution of other significant tasks".



89. GRECO welcomes the adoption of the Prosecutor General's Order 10/67 and the related Rules of Encouragement measures in the Prosecutor's Office, which respond to the underlying concerns of the present recommendation. Azerbaijan may wish to bear in mind that the criteria introduced for the attribution of financial bonuses at times still leave excessive discretion and may need some future refinement.
90. GRECO concludes that recommendation xvi has been implemented satisfactorily.

**Recommendation xvii.**

91. *GRECO recommended that violations of the Prosecutorial Code of Ethical Behaviour be clearly included within the range of the disciplinary offences under the Prosecutor's Office Act and the Act on Service in the Prosecutor's Office and made subject to adequate sanctions.*
92. The authorities indicate that in order to address this recommendation, the Prosecutor's Office Act of 1999 (article 33) and the Act on Service in the prosecutor's Office of 2001 (article 26 para. 1) have been amended – see annex 4. Both texts now spell out explicitly that violations of the Code of ethical behaviour entail disciplinary liability and may attract the general sanctions already provided in relation to "violations of discipline", "improper performance of duties" and "gross and systematic violation of work discipline". The penalties include warnings, different sorts of reprimands, different sorts of demotion and dismissal from service. The relevant amendments to the POA and POSA entered into force by acts 294-VQD and 295-VQD, dated 14/06/2016
93. GRECO welcomes the above amendments which have made it clear that violations of the Code of Ethical Behaviour constitute disciplinary offences under the Prosecutor's Office Act and the Act on Service in the Prosecutor's Office. The applicable sanctions are the general ones.
94. GRECO concludes that recommendation xvii has been implemented satisfactorily.

**Recommendation xviii.**

95. *GRECO recommended that dedicated training (initial and on-going) be provided to all prosecutors on the application of rules on conflicts of interest, asset disclosure and ethical conduct.*
96. The authorities report that the Prosecutor General has issued a new Order 10/68 dated 13/07/2015 to address the present recommendation (see annex 5). In order to ensure adherence to the normative framework in the field of conflicts of interest, asset disclosure and rules of conduct these topics have been included in the mandatory initial and optional in-service training programmes offered to members of the prosecutor's office. Presently, the competent body – the Science and Training Centre of the General Prosecutor's Office – has elaborated the corresponding curricula and run the first set of training activities both for new recruits and current employees at all levels, including the territorial, specialised and General Prosecutor offices. During the training events of 23-29 November and of 1-5 December 2015 which were attended by 32 prosecutors and investigators, a variety of subject-matters were discussed, including ethics in the fight against corruption, professional ethics generally, prevention of conflicts of interest and other related topics. At the training of 8-10 December 2015, which was attended by 18 investigators and prosecutors, the focus was on asset declarations, anti-corruption bodies, and further related subject-matters. Four similar sessions were held in 2016, on 16-17 February, on 19-22 April, on 7-9 June and on 15-18 September for a total of 160 prosecutors and investigators from the prosecution services.

97. GRECO welcomes the adoption of the Order 10/68 dated 13/07/2015 introducing an ongoing training scheme under the responsibility of the Science and Education Centre of the Office of the Prosecutor General on conflicts of interest, asset disclosure and rules of conduct. GRECO appreciates the assurances that the mandatory initial training offered to Prosecutor's Office employees is taking these subjects into account. The information provided to GRECO referred to three training sessions organised in 2015 and four in 2016. At the time of adoption of the present report, the authorities pointed out that the training modules are fairly standardised and will continue to be used in future. GRECO encourages Azerbaijan to ensure in future that these dedicated training sessions (initial and ongoing) continue to be organised regularly.

98. GRECO concludes that recommendation xviii has been implemented satisfactorily.

#### **Recommendation xix.**

99. *GRECO recommended that internal guidelines for prosecutors requiring counselling on permitted accessory activities be developed and widely circulated.*

100. The authorities report that the General Prosecutor's Office has carried out a review of auxiliary work undertaken in practice by prosecutors. It has emerged that this work is mostly of an academic and educational nature. According to the new Order 10/66 of 13/07/2015 (see annex 7), accessory activities are now clearly regulated. It determines which activities can be carried out and under which conditions (time-wise and depending on the income generated), and they now require official consent for which the procedure is regulated in detail (the consent must be given by the head of the office concerned and the Prosecutor General in consultation with the Department of Human Resources. Both the Order and Rules have reportedly been put into effect and circulated among all structural units of the General Prosecutor's Office and subordinated prosecutors' offices (see revised annex 6).

101. GRECO welcomes the adoption of the Order 10/66 of 13/07/2015, containing a series of regulations and guidelines for prosecutors on accessory activities and requiring their declaration and approval by the hierarchy.

102. GRECO concludes that recommendation xix has been implemented satisfactorily.

#### **Recommendation xx.**

103. *GRECO recommended that i) the format for asset disclosure by prosecutors be established as a matter of priority and the confidentiality in respect of asset disclosure by all prosecutors be lifted, with due regard being had to prosecutors' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to prosecutors be put into effect, including through the designation of an effective oversight structure within the Prosecutor General's Office.*

104. The authorities report that the implementation of this recommendation is linked to the implementation of recommendation iv concerning parliamentarians. As indicated in paragraph 26, following the newly adopted Open Government Program Action Plan, the Government of Azerbaijan has asked the Cabinet of Ministers and the Minister of Justice to take the necessary measures for the introduction of asset declarations for public officials, including in respect of parliamentarians, judges and prosecutors. GRECO will be informed in due course of any new development in this area.

105. GRECO can only reiterate its earlier conclusions with respect to recommendations iv and ix. It urges the authorities of Azerbaijan to take determined action for the implementation of the present recommendation.

106. GRECO concludes that recommendation xx has not been implemented.

**Recommendation xxi.**

107. *GRECO recommended that the limitation periods for initiating disciplinary procedures against prosecutors be extended.*

108. The authorities report that in accordance with the Prosecutor's Office (service) [Amendment] Act № 295-VQD dated 14/06/2016, article 27.6 has been amended and now reads as follows: "27.6. An employee of the prosecutor's office cannot be subjected to disciplinary sanction after *three* years from the day of committing of such a disciplinary breach." The aforementioned law is adopted, approved by the President and entered into force.

109. GRECO welcomes the adoption of the relevant legal amendments to the Prosecutor's Office Act, which provides for the extension of the statute of limitation for disciplinary proceedings against prosecutors from one to three years.

110. GRECO concludes that recommendation xxi has been implemented satisfactorily.

**III. CONCLUSIONS**

111. **In view of the foregoing, GRECO concludes that Azerbaijan has implemented satisfactorily eleven out of twenty-one recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, four have been partly implemented and six have not been implemented.

112. More specifically, recommendations vii, viii, x, xi, xiii, xv, xvi, xvii, xviii, xix and xxi have been implemented satisfactorily, recommendations i, ii, v and vi, have been partly implemented and recommendations iii, iv, ix, xii, xiv and xx have not been implemented.

113. With respect to members of parliament, some partial progress has been achieved: measures are being introduced to allow for public consultations on legislative proposals and a code of conduct for parliamentarians is pending for adoption. GRECO encourages the country to institutionalise – as planned – the system of public consultations and to further improve the content of the draft code which is still too broadly formulated and does not adequately address some of the important subject-matters such as the management of conflicts of interest and relations with third parties. GRECO is looking forward to an improved version of the document and to its final adoption and application in practice. Supervision of its implementation has yet to be put in place, together with adequate training, guidance and counselling.

114. When it comes to the system of assets disclosure, which covers all three categories of officials under evaluation (parliamentarians, judges and prosecutors), after ten years on hold, unfortunately Azerbaijan has not taken any measures (reporting format, oversight), to make the system finally operational. GRECO encourages Azerbaijan to show greater determination in implementing this important reform and in adopting the other measures recommended with regard to the transparency of the legislative process and a framework to deal with incompatibilities and accessory activities of parliamentarians.

115. With regard to judges, GRECO welcomes the increased role of the Judicial Legal Council (JLC) in the selection of judges and in ensuring the independence of the judiciary as a whole, but it calls to strengthen the role of the judiciary within the

JLC itself, especially so that it is composed of a majority of judges directly elected or appointed by their peers and that it is chaired by a judge. The recent positive developments include the introduction of dedicated training on integrity-related matters and counselling on ethics, as well as the inclusion of all relevant provisions of the Code of Judges' Ethical Conduct in the evaluation of judges' performance. Moreover, legislation was adopted in parliament to accelerate the JLC's decisions on the lifting of a judge's immunity.

116. Finally as regards prosecutors, GRECO notes that noticeable progress has been achieved. For instance, disciplinary offences and the Code of Ethical behaviour have been made more consistent and improvements have been made to the periodic appraisal system. A new set of objective criteria has been introduced for hiring law enforcement officers and new guidelines have been adopted on accessory activities. Better training opportunities are now offered on integrity-related matters. However, GRECO remains concerned about the absence of any measure to remove the direct presidential oversight of the Prosecutor's Office. GRECO also expects progress towards the setting up of a transparent and impartial system for the appointment to senior positions.
117. Overall, Azerbaijan is making clear efforts to implement the recommendations contained in the Fourth Round Evaluation Report. GRECO notes that further reforms are underway in respect of a number of the pending recommendations. It encourages the country to pursue the reforms, bearing especially in mind that none of the recommendations concerning integrity rules for members of Parliament have been fully implemented and that certain fundamental improvements still need to be introduced as regards the judiciary and the prosecution service. GRECO invites the Head of delegation of Azerbaijan to submit additional information regarding the implementation of the pending recommendations i to vi, ix, xii, xiv and xx by 30 June 2018 at the latest.
118. Finally, GRECO invites the authorities of Azerbaijan to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.

## **ANNEX 1**

### **Prosecutor General's Office of the Republic of Azerbaijan O R D E R № 10/65**

**Baku, "13" July 2015**

#### **On approval of Rules for appointment of other law enforcement staff to the Prosecutor's Office**

In order to ensure the recruitment of suitable and qualified candidates to the Prosecutor's Office in a transparent manner and on a competitive basis that meets international standards and governed by the article 10 of the "Prosecutor's Office Act" of the Republic of Azerbaijan

#### **I. Order:**

1. Rules for appointment of other law enforcement staff to the Prosecutor's Office (added) to be adopted.
2. Supervision over implementation of the Order to be delegated to Department of Personnel Resources.
3. The Order to be distributed to all structural units of the Prosecutor General's Office and other subordinate prosecutorial bodies.

**Prosecutor General of the Republic of Azerbaijan  
State councillor of justice 1<sup>st</sup> class Zakir GARALOV**

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#### **RULES**

##### **On appointment of other law enforcement staff to the Prosecutor's Office**

1. This Ruling regulates the procedures and criteria for the appointment of other law enforcement personnel to the Prosecutor's Office.
2. Candidates with more than 5 years' legal experience and aptitude for the post as decided by the Attestation Commission, who showed higher results in case they were recruited to the public service on a competitive basis, and who meet the requirements of article 29 of the "Prosecutor's Office" Act of the Republic of Azerbaijan may be appointed to the Prosecutor's Office. Their promotion and disciplinary records are also considered.
3. Applicants for appointment to the Prosecutor's Office submit an application in a form determined by the Prosecutor General of the Republic of Azerbaijan.
4. Documents of applicants are checked in accordance with the "Rules for collection and review of records of applicants for appointment to the Prosecutor's Office".
5. Applicants whose documents have been approved are interviewed in an open and transparent manner. Interview is held in accordance with the "Statute on Rules for the competitive recruitment of candidates to the Prosecutor's Office" approved by the Decree of the President of the Republic of Azerbaijan from 19 June 2001.

## **ANNEX 2**

### **Prosecutor's Office of the Republic of Azerbaijan**

**Order №10/64  
Baku 13/07/2015**

#### **Amendments to the Rules on Attestation of the Prosecutor's Office Employees**

In order to further improve the activity of the Prosecutor's Office of the Republic of Azerbaijan, as well as to bring the attestation rules in line with the requirements of international standards,

#### **I. Order:**

1. the Rules on Attestation of the Prosecutor's Office Employees approved by the Order of the Prosecutor General, dated 16/11/2011, Ref. 10/95-11/373-k, the words 'consequences' shall be followed by the 'according to the Code of Ethical Behaviour of the employees of the Prosecutor's Office of the Republic of Azerbaijan'.

**Zakir GARALOV**  
**Prosecutor General of the Republic of Azerbaijan**

**ANNEX 3**  
**Prosecutor's Office of the Republic of Azerbaijan**

**Order**  
*Nº10/67*

*Baku 13/07/2015*

**Approval of the Rules of Encouragement measures in the Prosecutor's Office**

In order to further improve the activity of the Prosecutor's Office, as well as ensure encouragement of the prosecutor's office employees based on transparent and objective criteria, strengthening the spirit of healthy competition within the prosecutor's office, and to ensure that highly qualified personnel works in an environment of appropriate labour,

**I. Order:**

1. The Rules of Encouragement Measures in the Prosecutor's Office shall be approved. (attached)
2. The Personnel Department of the General Prosecutor's Office (and personnel units of the subordinate prosecutor's offices within their competence) shall ensure application of the encouragement measures according to the requirements of these Rules.

**Zakir GARALOV**  
**Prosecutor General of the Republic of Azerbaijan**

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**Rules of Encouragement Measures in the Prosecutor's Office**

- 1.1. In accordance with the legislation on the prosecutor's office, the encouragement measures for the prosecutor's office employees shall be applied according to the following grounds and criteria.
- 1.2. Acknowledgement shall be issued for generally diligent performance, long and flawless career, as well as qualitatively and timely execution of commissions.
- 1.3. Pecuniary bonus, a valuable gift shall be issued for the execution of sophisticated, long-lasting and intense commissions qualitatively and within reasonable time period, including investigation of serious and especially serious crimes and prosecution of such crimes in court, compensation of the damage cause due to commission of such offences, contribution to the development of significant legislation, effective participation in the international activity, as well as other significant commissions.
- 1.4. An honour certificate shall be issued for long-lasting and efficient service in the prosecutor's office.
- 1.5. Badge shall be granted for long-lasting and efficient service in the prosecutor's office during the solemn ceremonies dedicated to anniversaries.
- 1.6. Advance or accelerated conferment of a special rank shall be issued for flawless and efficient professional activity or demonstration of high professionalism in timely and effective execution of utmost significance.
- 1.7. Advance termination of the previously issued disciplinary punishment shall be issued if the prosecutor's office employee improves his behaviour, as well as rectifies flaws, which served as ground for his/her disciplinary punishment with short time period.
- 1.8. Breastplate of the Honorary Prosecutor's Office Employee is issued for long-lasting and exemplary activity or special services aimed at guarding and increasing of the prestige of the prosecutorial profession.
2. Other issues related to encouragement of the prosecutor's office employee shall be regulated by the legislation on the prosecutor's office.

## ANNEX 4

### LAW OF THE REPUBLIC OF AZERBAIJAN

#### **On amendments to the 7 December 1999 "Prosecutor's Office Act" of the Republic of Azerbaijan No 767-IQ**

National Assembly (Milli Majlis) of the Republic of Azerbaijan in order to amend the 7 December 1999 "Prosecutor's Office Act" of the Republic of Azerbaijan No 767-IQ governed by the article 94, chapter I, paragraph 5 of the Constitution of the Republic of Azerbaijan hereby decides as following:

1. The 7 December 1999 "Prosecutor's Office Act" of the Republic of Azerbaijan No 767-IQ (*Collection of Legislative Acts of the Republic of Azerbaijan, 2000, № 7, art. 494, Collection of Legislative Acts of the Republic of Azerbaijan, 2002, № 8, art. 464, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, № 2, art.57, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, № 1, art.10, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, № 3, art.133, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, № 4, art.202, Collection of Legislative Acts of the Republic of Azerbaijan, 2006, № 11, art. 927, Collection of Legislative Acts of the Republic of Azerbaijan, 2007, № 1, art.1, Collection of Legislative Acts of the Republic of Azerbaijan, 2007, № 2, art.82, Collection of Legislative Acts of the Republic of Azerbaijan, 2009, № 06, art. 399, Collection of Legislative Acts of the Republic of Azerbaijan, 2009, № 11, art. 877, Collection of Legislative Acts of the Republic of Azerbaijan, 2009, № 11, art. 878, Collection of Legislative Acts of the Republic of Azerbaijan, 2010, № 11, art.944, Collection of Legislative Acts of the Republic of Azerbaijan, 2011, № 4, art.269, Collection of Legislative Acts of the Republic of Azerbaijan, 2011, № 7, art. 611, Collection of Legislative Acts of the Republic of Azerbaijan, 2012, №6, art. 519*) has to be amended as following:

1. The following sentence to be added after the eighth indentation of the article 33:

"Prosecutors are subject to disciplinary responsibility for violation of the Prosecutorial Code of Ethical Behaviour of the Republic of Azerbaijan"

2. This Law enters into force from the day of signature.

**Ilham Aliyev,  
President of the Republic of Azerbaijan**



## **LAW OF THE REPUBLIC OF AZERBAIJAN**

### **On amendments to the 29 June 2001 "Act on Service in Prosecutor's Office" of the Republic of Azerbaijan No 167-IIQ**

National Assembly (Milli Majlis) of the Republic of Azerbaijan in order to amend the 29 June 2001 "Act on Service in Prosecutor's Office" of the Republic of Azerbaijan No 167-IIQ governed by the article 94, chapter I, paragraph 5 of the Constitution of the Republic of Azerbaijan hereby decides as following:

The 29 June 2001 "Act on Service in Prosecutor's Office" of the Republic of Azerbaijan No 167-IIQ (*Collection of Legislative Acts of the Republic of Azerbaijan, 2000, N° 7, art. 494, Collection of Legislative Acts of the Republic of Azerbaijan, 2002, N° 8, art.464, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, N° 2, art.57, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, N° 1, art.10, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, N° 3, art.133, Collection of Legislative Acts of the Republic of Azerbaijan, 2004, N° 4, art.202, Collection of Legislative Acts of the Republic of Azerbaijan, 2006, N° 11, art.927, Collection of Legislative Acts of the Republic of Azerbaijan, 2007, N° 1, art.1, Collection of Legislative Acts of the Republic of Azerbaijan, 2007, N° 2, art.82, Collection of Legislative Acts of the Republic of Azerbaijan, 2009, N° 06, art.399, Collection of Legislative Acts of the Republic of Azerbaijan, 2009, N° 11, art.877, Collection of Legislative Acts of the Republic of Azerbaijan, 2009, N° 11, art.878, Collection of Legislative Acts of the Republic of Azerbaijan, 2010, N° 11, art.944, Collection of Legislative Acts of the Republic of Azerbaijan, 2011, N° 4, art.269, Collection of Legislative Acts of the Republic of Azerbaijan, 2011, N° 7, art.611, Collection of Legislative Acts of the Republic of Azerbaijan, 2012, N°6, art.519*) has to be amended as following:

1. The article 26 paragraph 1 to be read as following:  
"26.1 Prosecutors are subject to following disciplinary measures for disciplinary breach, inappropriate performance of official duties, as well as for violation of the Prosecutorial Code of Ethical Behaviour of the Republic of Azerbaijan"
2. The word "one" to be substituted with the word "three".
3. This Law enters into force from the day of signature.

**Ilham Aliyev,**  
**President of the Republic of Azerbaijan**

**ANNEX 5**  
**Prosecutor's Office of the Republic of Azerbaijan**

**Order**  
*Nº10/68*

*Baku 13/07/2015*

**Thematic Trainings at the Science and Education Center of the General Prosecutor's Office of the Republic of Azerbaijan**

In order to further improve the activity of the Prosecutor's Office, raise the professional level of the prosecutor's office employees, as well as to ensure strict compliance with the anti-corruption legislation and Code of Ethical Behaviour of the employees of the Prosecutor's Office of the Republic of Azerbaijan,

**I Order:**

1. Science and Education Center of the General Prosecutor's Office of the Republic of Azerbaijan shall run, on an on-going basis, the following thematic topics:
  - 1.1. Prevention of Conflict of Interests;
  - 1.2. Declaration of Financial Interests;
  - 1.3. Compliance with the provisions of the Code of Ethical Behaviour of the employees of the Prosecutor's Office of the Republic of Azerbaijan.
2. Science and Education Center of the General Prosecutor's Office of the Republic of Azerbaijan shall develop curricula.
3. Science and Education Center of the General Prosecutor's Office of the Republic of Azerbaijan shall be commissioned with the execution of this order.

**Zakir GARALOV**  
**Prosecutor General of the Republic of Azerbaijan**

## **ANNEX 6**

### **Prosecutor General's Office of the Republic of Azerbaijan**

#### **O R D E R**

##### **On approval of Rules for accessory activities of the prosecutors in substitutional order**

In order to improve activity of the Prosecutors Office of the Republic of Azerbaijan, to regulate accessory activity of the prosecutors and to unify practice in this field,

#### **I. O R D E R**

1. Rules for accessory activities in prosecutorial bodies to be approved.
2. Supervision over execution of issues stemming from the implementation of the Order to be delegated to the Department of Personnel Resources.

**Prosecutor General of the Republic of Azerbaijan  
State councillor of justice 1st class Zakir GARALOV**

#### **RULES**

##### **On accessory activities in prosecutorial bodies in substitutional order**

1. Prosecutors have the right to be engaged in scientific, pedagogical and creative activity. Prosecutor may be engaged in abovementioned fields in educational or non-educational institutions on permanent or temporary basis paid or unpaid.
2. Prosecutors can't be engaged in scientific, pedagogical and creative activity in following cases if:
  - That activity results in disciplinary breach;
  - That activity threatens leakage of secret information as defined by the legislation of the Republic of Azerbaijan.The right of prosecutors to be engaged in scientific, pedagogical and creative activity shall not be subject to any arbitrary limitations.
3. Any salary (gift) for scientific, pedagogical and creative activity affecting or creating impression of lack of impartiality in execution of official duties can't be accepted by prosecutor.
4. In order to be engaged in scientific and creative activity during working hours, as well as in pedagogical activity at any time prosecutor reports to the Prosecutor General with consent of the head the relevant structural body. The Department of Personnel Resources within 7 days provides its opinion on report to the Prosecutor General. The Department of Personnel Resources within 3 days informs applicant by letter on the results of review of his report by the Prosecutor General. In cases of rejection reasonable response indicating grounds for rejection shall be provided. Copy of the letter of review of appeal is kept in personal file of the applicant.
5. In accordance with the article 58 of Labour Code of the Republic of Azerbaijan the place where labour contract on engagement in scientific, pedagogical and creative activity in substitutional order has been signed is considered the accessory work place of the prosecutor. Work record-book of the prosecutor working in

substitutional order is kept in his main work place in the Department of Personnel Resources of the Prosecutor General's Office. Prosecutor is provided with reference letter for signature of the labour contract in substitutional order.

6. A copy of the labour contract of prosecutor engaged in scientific, pedagogical and creative activity in substitutional order and information about his salary is kept in his personal file in the Department of Personnel Resources of the Prosecutor General's Office.
7. Working hours of prosecutor engaged in scientific, pedagogical and creative activity in substitutional order cannot exceed 4 hours per day, 20 hours per week.
8. Rejection on previous appeals for engagement in scientific, pedagogical and creative activity does not limit the right of prosecutor to re-appeal on the same issue.