

**Conclusions from the Third Evaluation Round  
adopted by Group of States against Corruption (GRECO)**

49th Plenary Meeting (Strasbourg, 29 November - 3 December 2010)

**1. Evaluation Report on Montenegro: Incriminations (Theme I)**

Full report:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)7\\_Montenegro\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)7_Montenegro_One_EN.pdf)

Conclusions:

- Following various amendments to Montenegrin criminal legislation in order to comply with developing international standards, that legislation is largely in line with the requirements of the Criminal Law Convention on Corruption (ETS 173). That said, the applicable bribery and trading in influence provisions are not always explicit in terms of the particular elements required by the Convention (e.g. direct/indirect commission of the offence, advantages intended for a third person, international dimension of scope of perpetrators) or they comprise inconsistent terminology (for example, with respect to the notion of undue advantage). The current legislation would clearly benefit from further adjustments to prevent possible problems in the application of the law in practice and to fine-tune the existing provisions for the sake of legal certainty. It must also be ensured that the offences of active and passive bribery in the public sector cover all acts/omissions occurring in the exercise of the function of a public official, whether or not within the scope of his/her official competence. Furthermore, with respect to bribery in the private sector, the range of possible perpetrators needs to be extended to cover all persons who direct or work for - in any capacity - private sector entities, as well as to include unambiguously all instances implying a breach of duty. Further steps need to be taken to fully align Montenegrin legislation with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), notably, by ensuring that foreign arbitrators and jurors are fully captured by the relevant bribery/trading in influence provisions. In addition, Montenegro has restricted its jurisdiction and its ability to prosecute cases with an international dimension, including by requiring dual criminality; this state of affairs is not in line with the Convention and needs to be remedied.
- Moreover, despite the recent upgrading of Montenegrin legislation and despite notable improvements with regard to the institutional set-up for fighting corruption, in particular through the establishment of specialised anti-corruption structures within the law enforcement bodies, it would appear that corruption remains a critical problem in Montenegro which meets with great public concern and that further efforts are still needed to significantly reduce its occurrence. Above all, the main challenge in fighting corruption in Montenegro lies with the effective application of legislation; a sound track record of investigations and convictions, including that of high-level corruption, is to be accomplished as a matter of priority in order to regain public trust in the system.
- In view of the above, GRECO addresses the following recommendations to Montenegro:

- to harmonise the provisions relating to bribery (in the public and private sector) and trading in influence offences with a view to enhancing their consistency and clarity, in particular by unambiguously covering: (a) immaterial/intangible advantages; (b) the indirect commission of the offence; and (c) third party beneficiaries (paragraph 68);
  - to ensure that the provisions concerning active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of his/her official powers (paragraph 69);
  - to ensure that foreign arbitrators and jurors are explicitly covered by the bribery provisions of the Criminal Code, in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (paragraph 70);
  - (i) to provide for a consistent definition of bribery in the private sector; (ii) to cover in an unequivocal manner the full range of persons who direct or work for - in any capacity - private sector entities; (iii) to capture unambiguously all instances implying a breach of duty by the briber/bribed person (paragraph 73);
  - (i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad; (ii) to establish jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, Montenegrin nationals (paragraph 79).
- In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Montenegro to present a report on the implementation of the above-mentioned recommendations by 30 June 2012.
  - Finally, GRECO invites the authorities of Montenegro to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.

## 2. Evaluation Report on Montenegro: Transparency of Party Funding (Theme II)

Full report:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)7\\_Montenegro\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)7_Montenegro_Two_EN.pdf)

- Montenegro has recently passed legislation on the financing of political parties and campaigns containing valuable features to increase the transparency and financial discipline of political parties and candidates (e.g. bookkeeping and financial reporting obligations, establishment of dedicated campaign accounts, bans on cash and anonymous donations, disclosure of private donations, etc.), and thereby decrease possibilities of corruption in this area. However, the fundamental weakness of the system is a largely deficient monitoring machinery which undermines the effectiveness in practice of the relevant rules. There is a clear lack of responsibility of any public entity, or combination of entities, for competent monitoring and compliance with the laws. A direct consequence of this deficient supervision, is the absence of any sanction having been imposed to date for breaches of political financing regulations, even though there are concerns that irregularities may be occurring in practice with respect, for example, to failure to submit financial reports, misuse of public resources (facilities, financial resources, vehicles, technical means and other State property for the purpose of electoral campaigns) and acceptance of other in-kind types of contributions, including media discounts. As a matter of priority, GRECO calls for a thorough overhaul of the oversight system of political finances in Montenegro; until that happens, the current institutions with key responsibilities in this area, notably, the Ministry of Finance, the State Election Commission and the State Audit Office, are to develop more coordinated and effective action. Likewise, it is essential that external independent auditors are engaged in the verification process of party accounts. As for the control role of civil society, this is severely hampered by the current irregular publication practices: information on party and candidate accounts, as well as donors' identity, comes either too late or never, thereby preventing a genuine oversight by the general public. While the transparency measures have been increased on paper, it remains critical that they be effectively implemented and the information conveyed in a timely and accurate fashion to the public; disclosure of information is paramount in assuring transparency of political funds. Finally, as experience with implementation of the law evolves, the authorities should remain alert on possible circumventions of its provisions, for example, in relation to entities closely related to - or coming under - the influence of a party (e.g. interest groups, political education foundations, research institutions, youth organisations) which may be used as a "back door" for hidden party financing.
- In view of the above, GRECO addresses the following recommendations to the Montenegro:
  - to seek ways to consolidate the books and accounts of political parties to include, as appropriate, the accounts of entities which are related directly or indirectly to a political party or otherwise under its control (paragraph 63);
  - to revise collection/expenditure ceilings, including by considering that the existing formula for private funding be disconnected from the total amount of public funding for election campaigns (paragraph 64);
  - to establish precise rules for the identification, accounting and reporting of in-kind donations, including the cancellation of loans, as well as the provision of goods and services (other than voluntary work from non-professionals) below market value (paragraph 66);

- to introduce clear rules and guidance concerning the use of public resources for party activity and election campaigns (paragraph 67);
  - that (i) any government entity responsible for posting required campaign/party finance records be provided with sufficient financial and personnel capacity to carry out this responsibility in a timely and accurate fashion; and (ii) any such entity also be required to notify the responsible enforcement authority when reports have not been received, when reports are incomplete (after a request for the missing documents has gone unheeded) and for clear violations of any other law or regulations of which they become aware (paragraph 71);
  - that (i) an institution, whether new or existing, be given appropriate independent authority and resources to monitor the funding of political parties and electoral campaigns (both from private and public sources), and (ii) until that occurs, for the existing institutions with current responsibilities to (a) develop a practical working arrangement ensuring effective implementation of party/campaign funding rules; (b) describe that arrangement publicly on the websites of the Ministry of Finance and the State Election Commission (and the local commissions where appropriate), and (c) include clear information to the public regarding how and where to lodge complaints (paragraph 76);
  - to considerably strengthen the auditing of political parties, in particular, by (i) assessing the need to adjust the current rules in order to establish consistent and clear auditing obligations for political parties, including a review of the current auditing threshold for campaign accounts (i.e. total amount of funds raised and spent from private sources in an election campaign exceeds 50,000 EUR); (ii) introducing provisions to ensure the independence of auditors who are to audit political finances (paragraph 77);
  - (i) to better adjust the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive, including by broadening the scale and range of penalties available; (ii) to cover all possible infringements of the law, as appropriate (paragraph 79);
  - to increase the limitation period for violations of the Law on the Financing of Political Parties and the Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities (paragraph 80).
- In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Montenegro to present a report on the implementation of the above-mentioned recommendations by 30 June 2012.
  - Finally, GRECO invites the authorities of Montenegro to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.