

Council of Europe
Group of States against Corruption

PROGRESS REPORT ON RC-III ICELAND
THE IMPLEMENTATION
OF THE RECOMMENDATIONS OF GRECO ON ICELAND
INCRIMINATIONS (THEME I)

Government of Iceland
Ministry of Justice and Human Rights
October 2010

1. Introduction.

Reference is made to GRECO's Third Evaluation Round - Compliance Report on Iceland regarding incriminations, adopted in March 2010. In the report the Icelandic Authorities are invited by GRECO to present a progress report on the implementation of the recommendations made by GRECO in the Third Evaluation Report on Iceland (GRECO Eval III Rep (2007) 7E) on Incriminations or theme I.

2. Implementation of recommendations

GRECO made six recommendations to Iceland in the Second Evaluation Round. Recommendations i. - iv. concern The General Penal Code's (GPC) provisions on bribery, recommendation v. regards increased penalties for bribery offences and finally recommendation vi. addresses specialised training to the law enforcement authorities. Chapters 2.1-2.4 describe what measures have been made by Icelandic Authorities in order to implement these recommendations.

2.1 Recommendations i, ii and iii

- i. to ensure that Members of Parliament are covered by the provisions on bribery and trading in influence of the Penal Code (paragraph 63);*
- ii. to ensure that members of a foreign public assembly exercising administrative powers are covered by the provisions on bribery and trading in influence of the Penal Code (paragraph 64);*
- iii. to ensure that foreign arbitrators and jurors are covered by the provisions on bribery of the Penal Code and to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible (paragraph 65);*

As stated in Iceland's report in January 2010 the Ministry of Justice and Human Rights requested its Permanent Committee on Criminal Law to give its opinion on these recommendations. The committee recommended that amendments would be made to the GPC in order to clarify the relevant provisions. Following this recommendation the Ministry requested the committee to draft a bill to be put before the Parliament this fall. The first draft of the amendments proposed is as follows:

Article 1

The following amendments shall be made to Article 109:

- a. After the wording "public official" in the first paragraph the wording "or a member of Parliament" shall be added.
- b. The second paragraph shall read as follows: The same punishment shall apply to any person who adopts such conduct towards a foreign public official, an official of an international organisation, a member of the assembly of such an organisation or the public legislative assembly of a foreign state, a judge who is a member of an international court, an employee of such a court, a member of a foreign public assembly exercising administrative powers, foreign arbitrator, or juror, in order to have him act or refrain from acting in connection with his official duties.

Article 2

The following amendments shall be made to Article 128:

- a. After the wording “public official” in the first paragraph the wording “or a member of Parliament” shall be added.
- b. The second paragraph shall read as follows: The same punishment shall apply to any person who adopts such conduct towards a foreign public official, an official of an international organisation, a member of the assembly of such an organisation or the public legislative assembly of a foreign state, a judge who is a member of an international court, an employee of such a court, a member of a foreign public assembly exercising administrative powers, foreign arbitrator, or juror, in order to have him act or refrain from acting in connection with his official duties.

It should be mentioned that in July 2010 OECD’s Working Group on Bribery in International Business Transactions was in Iceland due to Phase III evaluation of Iceland’s application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. During the on site visit some issues regarding the bribery provisions of the GPC were raised, for example whether or not employees of enterprises owned by the state are covered by these provisions. Since the Permanent Committee on Criminal Law was already revising the GPC’s provisions on bribery the Ministry of Justice and Human Rights requested the Committee to take these matters also into consideration. This revision is a priority in the committees work and final proposals are expected shortly. If the committee concludes that further amendments are necessary the scope of the provisions can accordingly be widened more than the aforementioned draft proposals stipulate. As soon as the Ministry receives the proposals of the committee they will be submitted to the Parliament. The Icelandic Authorities will inform GRECO on the further developments in this regard.

2.2 Recommendation iv

- iv. *to clarify in an appropriate manner what should be considered “due” and/or “undue” gift/other advantage for all forms of bribery offences (paragraph 66);*

As stated in Iceland’s report in January 2010 this recommendation was carefully considered by the Ministry of Justice and Human Rights. It is necessary to have certain norms or criterion on due and/or undue gift or other advantage relating to bribery offences. However since the definition is subject to evaluation at every time it is important not to limit the application of the provisions in question. It is therefore regarded appropriate to look to codes of ethics as well as the circumstances in each case when evaluating whether or not a gift or an advantage is due or undue.

In this regard it should be mentioned that according to the Government Coalition Platform of the Social Democratic Alliance and Left-Green Movement that was signed in May 2009, the present Government plans to promote open Government, increased transparency and democratic reform. As a part of that reform a code of ethics will be adopted for the Government and public administration. A special committee appointed by the Prime Minister, after consultation with various experts and parties of interests, has written a draft code of ethics based on recommendations from the Council of Europe and the OECD. The draft was made known and discussed among administration personnel. In June 2010 the Parliament passed an Act (No 86/2010) which amended Act No 73/1969 on the Government Offices of Iceland, Act No 85/1997 on the Althing Ombudsman and the Government Employees Act, No 70/1996. The Act is a legal grounding for codes of

ethics and stipulates that the Prime Minister approves code of ethics for the Government offices and that the Minister of Finance approves such guidelines for other public officials. According to the Act the Althing ombudsman shall ensure that the public administration is conducted in conformity with the law, good administrative practice and code of ethics. The final Codes of ethics for government offices and public officials have not been approved yet.

2.3 The fifth recommendation

- v. *i) to increase the penalties for bribery offences in the private sector and (ii) to consider increasing the penalties for active bribery in the public sector (paragraph 70);*

With view to GRECO's comments in paragraph 17 of the compliance report (Greco RC-III (2010) 2E) the Ministry of Justice and human rights has requested its Permanent Committee on Criminal Law to review its opinion and specially look into the relevant provisions in the other Nordic countries. The committee's proposals are expected together with their final proposals on amendments to the GPC's provisions on bribery, cf. chapter 2.1.

2.4 The sixth recommendation

- vi. *that the law enforcement authorities receive specialised training on the content of the existing incriminations of corruption offences, so that they become better prepared to detect, investigate and prosecute instances of corruption (paragraph 72).*

A training seminar was held by the National Police College in cooperation with the Office of the Special Prosecutor 6-17 September on the investigation of mayor economic crimes and as a contribution to that training a Norwegian lecturer was scheduled to discuss and give training on the investigation of corruption cases on 16 September. To this lecture more personnel of the police, prosecution authorities and courts were invited than those attending other seminars. Due to unforeseen circumstances the lecturer had to cancel the lecture at the last moment, which lead to the fact that it was postponed temporarily and is expected to take place shortly.

3. Conclusions

Icelandic authorities have considered carefully the recommendations of GRECO made in the Third Evaluation Round. As described above, various measures have been taken and are ongoing in order to implement the recommendations of GRECO. It is underlined that the intentions of the Icelandic Authorities are to comply with the recommendations of GRECO but due to the reasons referred to above some of these measures have taken longer time than expected.