



Groupe d'Etats contre la corruption  
*Group of States against corruption*

**DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS**  
**DIRECTORATE OF MONITORING**



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

Strasbourg, 1 April 2011

**Public**  
**Greco Eval III Rep (2010) 9E**  
**Theme I**

## **Third Evaluation Round**

### **Evaluation Report on Cyprus on Incriminations (ETS 173 and 191, GPC 2)**

(Theme I)

Adopted by GRECO  
at its 50th Plenary Meeting  
(Strasbourg, 28 March – 1 April 2011)

## **I. INTRODUCTION**

1. Cyprus joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 6E) in respect of Cyprus at its 7<sup>th</sup> Plenary Meeting (17-20 December 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 3E) at its 27<sup>th</sup> Plenary Meeting (6-10 March 2006). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of Party Funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Cyprus on 25-26 October 2010, was composed of Mr Dimitrios GIZIS, Prosecutor, Athens Court of 1st Instance (Greece) and Mr Albert MECA, Judge at Tirana District Court (Albania). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO. Prior to the visit, the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 12E, Theme I), as well as the pertinent legislation and case law.
4. The GET met with representatives of the Ministry of Justice, the Office of the Attorney General, Judges of the Supreme Court and of the Assize (Criminal) Court, officials of the Financial Intelligence Unit ("MOKAS"), the Law Commissioner, the Prosecution Service and the Police. The GET also met with representatives of the Law Faculty of the University of Cyprus.
5. The present report on Theme I of GRECO's 3<sup>rd</sup> Evaluation Round – "Incriminations" – was prepared on the basis of the replies to the questionnaire and information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the authorities of Cyprus in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Cyprus in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II – "Transparency of party funding", is set out in Greco Eval III Rep (2010) 9E, Theme II.

## **II. INCRIMINATIONS**

### **Description of the situation**

7. Having deposited the ratification instrument regarding the Criminal Law Convention on Corruption (ETS 173) on 17 January 2001, the Convention entered into force in respect of

Cyprus on 1 July 2002. Cyprus deposited the ratification instrument concerning the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) on 21 November 2006; this instrument entered into force on 1 March 2007 in respect of Cyprus.

8. In the process of ratifying the Criminal Law Convention on Corruption, Cyprus adopted Law 23(III)/2000, according to which the acts and conduct referred to in the Convention constitute criminal offences in Cyprus which are punishable with imprisonment and/or a pecuniary sentence without prejudice to the trial court to impose any other sentence or to issue any order which it may impose or issue in the adjudication of criminal cases.
9. Similarly, in the process of ratifying the Additional Protocol to the Criminal Law Convention on Corruption, Cyprus adopted Law 22(III)/2006, which - with reference to Law 23(III)/2000 – also incorporates the offences of the Additional Protocol to the Criminal Law Convention into the criminal legislation of Cyprus.
10. In addition to the above legislation, the Criminal Code as well as the Prevention of the Corruption Law and some other legislation contain separate provisions for corruption offences.

#### **Bribery of domestic public officials (Articles 1-3 and 19.1 of ETS 173)**

11. **Active and passive bribery of public domestic officials** are criminalised according to the following provisions:

#### **Law 23(III)/2000**

##### **Section 4:**

“The acts and conduct referred to in the Articles of the Convention [ETS 173] set out below constitute offences which are punishable with [up to] seven years of imprisonment or to a pecuniary sentence of up to 17.000 Euros or to both such sentences without prejudice to the trial court to impose any other sentence or to issue any order which it may impose or issue in the adjudication of criminal cases, which Articles are:

- 2 - Active bribery of domestic public officials
- 3.- Passive bribery of domestic public officials
- 4- Bribery of members of domestic public assemblies
- 5- Bribery of foreign public officials
- 6- Bribery of members of foreign public assemblies
- 7- Active bribery in the private sector
- 8- Passive bribery in the private sector
- 9- Bribery of officials of international organisations
- 10- Bribery of members of international parliamentary assemblies
- 11- Bribery of judges and officials of international courts
- 12- Trading in influence
- 13- Money laundering of proceeds from corruption offences
- 14- Account offences
- 15- Participatory acts
- 18- Corporate Liability

**Law 23(III) 2000 is contained in Appendix I to the report**

**Criminal Code, Cap. 154 (1959 as amended) (CC)**

##### **Section 100 CC (“Official corruption”)**

“Any person who-

(a) being a public official and being charged with the performance of any duty by virtue of such employment, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done by him in the discharge of the duties of his office; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure, to, upon, or for any person, being a public official, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of an offence and is liable to imprisonment up to five years or to a pecuniary sentence up to 17.000 Euros or to both such sentences and the property involved in such corruption offence is subject to confiscation according to Law 96(I)/1996 as amended.”

### **Section 101 CC (“Extortion by public officers”)**

“Any person who, being employed in the public service, takes, or accepts from any person for the performance of his duty as such official, any reward beyond his proper pay and emolument or any promise of such reward, is guilty of a misdemeanour and is liable to imprisonment for three years and also to a fine.”

## **Prevention of Corruption Law, Cap.161 (1959)**

**Section 3 (“Punishment of corrupt transactions with agents”)** of the Prevention of Corruption Law (herein after referred to as “**Cap. 161**”),

“If-

(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gift, or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Law done or forborne to do, any act in relation to his principal’s affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

(b) any person corruptly gives or agrees to give or offers any gifts or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Law done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

(c) any person knowingly gives to any agent, or if any agent knowingly uses, with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding 2,550 Euros or to both such imprisonment and fine.”.

### **Section 4**

A person convicted of an offence under the preceding section shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Republic or any government Department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding one thousand five hundred pounds, or to both such imprisonment and fine.

## Elements/concepts of the offence

### *“Domestic public official”*

12. The concept of public official is covered in various laws. According to Section 4 CC, “*public official*” means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise: (a) any civil or public office or post, the power of appointing/removing a person to/from which is given to the President of the Republic, the Council of Ministers or any public commission or board; (b) any post to which a person is appointed or nominated by law or by election; (c) any civil post, the power of appointing/removing to/from is given to any person or persons holding a public office or post of any kind included in either of the two last preceding points of this definition; (d) any post of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of a court or in pursuance of the law. Furthermore, the term “public officials” includes (i) a member of a commission of inquiry appointed under or in pursuance of the law; (ii) any person employed to execute a process of a court; (iii) all persons belonging to the military or police forces of the Republic; (iv) persons employed in a Governmental Department; (v) a person acting as a minister of religion of whatsoever denomination in so far as s/he performs functions in respect of the notification of intending marriage or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial but not in any other respect; (vi) persons employed by a municipal authority; (vii) the mukhtar (head of a village) and members of the commission of any community. The authorities add that prosecutors, judges and ministers are covered by the notion of “public official” as provided in Section 4 of the Criminal Code.
13. Moreover, according to Section 2 of the Prevention of Corruption Law (“Cap. 161”) “*agent*” includes any person employed by or acting for another and any person serving the Republic or any public body.
14. The authorities also refer to Section 2 of the Interpretation Law (Cap. 1), where it is stated: “*In this Law and in every other Law, and in all public instruments, enacted, issued, kept or in use, before or after the commencement of this Law, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such interpretation or unless otherwise provided therein [...] ‘public official’ includes every official employed in the public service of the Republic, who has powers and exercises duties of a public nature, either according to the direct control of the Council of Ministers or not*”. By virtue of this provision the concept/term of “public official” is also used in relation to the provisions of Law 23(III)/2000.

### *“Promising, offering or giving” (active bribery)*

15. These elements are covered by Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention.
16. Section 100 (b) CC (official corruption) contains the words “*corruptly gives, confers or procures, or promises or offers to give or confer or to procure or attempt to procure*”.
17. Section 3 (b) Prevention of Corruption Law contains the words “*corruptly gives or agrees to give or offers any gifts or consideration*”.

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

18. These elements are covered by Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention.
19. Section 100 (a) CC (official corruption) contains the words “*corruptly asks, receives or obtains, or agrees or attempts to receive or obtain*”.
20. Section 3 (a) Prevention of Corruption Law contains the words “*corruptly accepts or obtains, or agrees to accept or attempts to obtain*”.

*“Undue advantage”*

21. This element is covered by Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention.
22. Section 100 CC (official corruption) contains the words “*corruptly gives...etc, or corruptly receives ...etc ... any property or benefit of any kind*”.
23. Section 3 Prevention of Corruption Law contains the words “*corruptly accepts/gives... etc any gift or consideration as an inducement or reward...*”.

*“Directly or indirectly”*

24. The elements “*directly or indirectly*” are covered by Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention.
25. These elements are not explicitly contained in either Section 100 CC or in Section 3 of the Prevention of Corruption Law. However, the authorities claim that the commission of these offences are criminalised, regardless of whether the act was committed directly or indirectly. Moreover, the authorities refer to the general principles on participation in criminal offences, Section 20, Cap 154 (below).

*“For himself or herself or for anyone else”*

26. The elements “*for himself or herself or for anyone else*” are covered by Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention.
27. The elements “*for himself or for any other person*” are explicitly covered by Section 100 CC. The elements are also covered by Section 3 (a) of the Prevention of Corruption Law (passive corruption) but not in Section 3 (b) of the same Law (active corruption).

*“To act or refrain from acting in the exercise of his or her functions”*

28. This wording is covered by Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention.
29. Section 100 CC covers expressly action and omission. Section 3 of the Prevention of Corruption Law contains the wording “doing or forbearing”.

*"Committed intentionally"*

30. Concerning the requirement of intention, it shall be noted that in the legal system of Cyprus, as a rule, it is only the material conduct ("*actus reus*") which is defined in the law. However, the element of criminal intent is always deemed to be implied and required in the case of any criminal offence unless the definition of the offence specifically lays down that negligence would be sufficient for criminal liability. As none of the bribery offences specify negligence as the required "*mens rea*" for the commission of such offences, wilful criminal intent is required.

Sanctions

*Criminal sanctions*

31. **Active and passive bribery of public officials** as provided for in Section 4 of Law 23(III)/2000 which explicitly refers to Articles 2 and 3 of the Criminal Law Convention are punishable with up to 7 years' imprisonment or to a pecuniary sentence of up to 17.000 Euros or to both such sentences without prejudice to the trial court to impose any other sentence or to issue any order which it may impose or issue in the adjudication of criminal cases.
32. In accordance with Section 100 CC **active and passive bribery of public officials** are felonies punishable with imprisonment of up to 5 years or to a pecuniary sentence of up to 17.000 Euros or to both such sentences. Furthermore, property involved in such an offence may be subject to confiscation according to Law 96(I)/1996 as amended.
33. Section 3 a of the Prevention of Corruption Law provides that **active and passive corruption of agents** are punishable with imprisonment for a term not exceeding two years or to a fine not exceeding 2,550 Euros or to both such sanctions. However, in case the offence is committed in relation to a contract or a proposed contract with a public body, the imprisonment may go up to 7 years (Section 4).

*Overlapping offences – Conflicting sanctions*

34. The authorities stress that, according to Section 37 of the Interpretation Law (Cap. 1), where an act or omission constitutes an offence under two or more Laws, the offender shall, unless the contrary intention appears, be liable and punished under only one of those laws, and can never be liable to punishment twice for the same offence.
35. The GET was informed that in situations where two or more legal provisions are applicable in respect of one criminal act, the Law which provides for the more severe sanction prevails, according to a principle based on the jurisprudence of Cyprus. The decision of which legislation to apply comes under the authority of the Attorney General, who has discretionary powers to this end.

*Additional sanctions*

36. Disciplinary measures are also available against persons, who are convicted for any of the above mentioned offences. According to Section 73 of the Civil Service Law of 1990 ("Law 1/1990"), as amended, a public officer is liable to disciplinary prosecution if (a) s/he commits an offence involving dishonesty or moral turpitude; (b) s/he does or fails to do something in a manner which amounts to a contravention of any of the duties or obligations of a public officer. The term "duties

or obligations for a public officer” includes every duty or obligation imposed on a public officer under the law or regulations or public instrument or direction issued.

37. Moreover, according to Section 79 of Law 1/1990, the following disciplinary punishments may be imposed:
- (a) reprimand;
  - (b) severe reprimand;
  - (c) disciplinary transfer;
  - (d) stoppage of annual increment;
  - (e) deferment of annual increment;
  - (g) fine not exceeding the emoluments of three months;
  - (h) demotion in salary scale;
  - (i) demotion to a lower post;
  - (j) compulsory retirement; and
  - (k) dismissal”.

#### *Level of sanctions for other comparable crimes*

38. The sanction for extortion by public officials (Section 101 CC) is imprisonment of up to 3 years and a fine. Section 126 CC (“Corruptly taking a reward”) provides for imprisonment of up to 5 years. Section 133 CC (“Fraud and breach of trust by public officers”) provides for imprisonment of up to 2 years and a fine. Fraud (felony offence) is according to Section 300 CC sanctioned with imprisonment of up to 5 years.

#### Cases

39. *In the criminal appeal case no. 7217, 27.06.2003, the appellant had been found guilty of nine charges for the offence of passive bribery (Section 100 (a) CC), extortion by public officer (Section 101 CC) and corruption under Section 3(a) of the Prevention of Corruption Law. The total sentence imposed was imprisonment for twenty months.*
40. *In the criminal appeal case no. 7230, (2002) 2 CLR 90, 29.03.2002, the appellant had been prosecuted for a total of thirteen charges, including passive bribery of public official (Section 100 (a) CC), two charges of corruption under Section 3(a) of the Prevention of Corruption Law and two charges of extortion by public officer, Section 101 CC. (Did not lead to conviction.)*
41. *In the criminal appeal case no. 7231, (2002) 2 CLR 38, 26.02.2002, the appellant was a civil servant prosecuted for two charges of having committed passive bribery, Section 100(a) CC, two charges of corruption under Section 3(a) of the Prevention of Corruption Law and for extortion of public officer, Section 101 CC. (Did not lead to conviction.)*
42. *In the criminal case 10866/01, the Assize Court found the defendant guilty of the offences of official corruption (section 100(b) CC) and corruption (sections 2 and 3 of the Prevention of Corruption Law) and imposed a penalty of 18 months’ imprisonment.*
43. *Similarly, in the criminal case 4631/08, the Assize Court found the defendant guilty of the offence of official corruption (section 100(a) CC) and imposed a penalty of 4 months of imprisonment.*
44. *In the criminal appeal cases 185/2006 and 210/2006, the appellant was facing charges of extraction of money by false claims, official corruption, corruption, abuse of office and provision*



*of false documents - these offences were related to the acquiring and sale of immovable property. Among the charges one was related to the offence of extortion by public official of an amount of £130.000 (222.300 Euros) (section 101 CC. The offender was also charged for the corruption offences under section 100 (a) CC and the Prevention of Corruption Law and was sanctioned with three years' imprisonment in respect of the offence of official corruption (section 100 (a) CC. The court did not convict/sanction the public officials in respect of some of the other offences as these were based on the same action (facts).*

#### **Bribery of members of domestic public assemblies (Article 4 of ETS 173)**

45. **Active and passive bribery of members of domestic public assemblies** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
46. Moreover, the authorities submit that these offences are also covered by Section 100 CC (official corruption), in conjunction with Section 4 CC (concerning the definition of public official, see bribery of domestic public officials, above).
47. In addition, Section 3 in conjunction with Section 2 of the Prevention of Corruption Law in respect of the definition of "agent" also covers these offences, according to the authorities (see bribery of domestic public officials, above).
48. The elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are the same in respect of these offences.
49. The authorities informed the GET that there had been no cases in respect of active and passive bribery of members of domestic public assemblies.

#### **Bribery of foreign public officials (Article 5 of ETS 173)**

50. **Active and passive bribery of foreign public officials** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
51. Moreover, the authorities submit that these offences are also covered by Section 100 CC (official corruption), in conjunction with Section 4 CC (concerning the definition of public official, see bribery of domestic public officials, above).
52. In addition, Section 3 in conjunction with Section 2 of the Prevention of Corruption Law in respect of the definition of "agent" also covers these offences, according to the authorities (see bribery of domestic public officials, above).
53. The elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are the same in respect of these offences.
54. (The authorities also refer to Law 2(III)/2004 and Law 37(III)/2003 on the ratification of the Convention on the Protection of European Communities' Financial Interests and its First Protocol. However, this reference is limited to the EU context.)

55. The authorities informed the GET that there had been no cases in respect of bribery of foreign public officials.

### **Bribery of members of foreign public assemblies (Article 6 of ETS 173)**

56. **Active and passive bribery of foreign public assemblies** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
57. Moreover, the authorities submit that these offences are also covered by Section 100 CC (official corruption), in conjunction with Section 4 CC (concerning the definition of public official, see bribery of domestic public officials, above).
58. In addition, Section 3 in conjunction with Section 2 of the Prevention of Corruption Law in respect of the definition of “agent” also covers these offences, according to the authorities (see bribery of domestic public officials, above).
59. The elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are the same in respect of these offences.
60. (The authorities submit that these offences are also covered by Law 2(III)/2004 and Law 37(III)/2003), which ratifies the Convention on the Fight against corruption involving officials of the European Communities or Officials of Member States of the European Union and the First Protocol thereto. However, this law is limited to the EU context.)
61. The GET was informed that there had been no cases in respect of active and passive bribery in foreign public assemblies.

### **Bribery in the private sector (Articles 7 and 8 of ETS 173)**

62. **Active and passive bribery in the private sector** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences as well as all elements referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
63. In addition, the authorities submit that Section 3 of the Prevention of Corruption Law also covers these offences:

<b>Prevention of Corruption Law</b>
<b>Section 3</b>
“If-
(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gift, or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Law done or forborne to do, any act in relation to his principal’s affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or
(b) any person corruptly gives or agrees to give or offers any gifts or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this

Law done or forbome to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(c) any person knowingly gives to any agent, or if any agent knowingly uses, with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

He shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding 2,550 Euros or to both such imprisonment and fine.”.

### Elements/concepts of the offence

*“Persons who direct or work for, in any capacity, private sector entities”*

64. The authorities claim that “any agent... in relation to his principal's affairs or business” contained in Section 3 of the Prevention of Corruption Law (above) cover employees in the private sector (as well as in the public sector). (“Principal” includes “employer” according to Section 2 of the same law.)

*“In the course of business activity”; “...in breach of [their<sup>1</sup>] duties”*

65. Section 3 of the Prevention of Corruption Law is not limited by a breach of duty element.

### *Other elements*

66. The authorities stated that the remaining elements, including the penal sanctions, described under bribery of domestic public officials according to the Prevention of Corruption Law (up to 2 years' imprisonment and/or a fine, unless extraordinary circumstances) are the same in respect of these offences.
67. The authorities informed the GET that there had been no cases of private sector bribery in Cyprus.

### Bribery of officials of international organisations (Article 9 of ETS 173)

68. **Active and passive bribery of officials of international organisations** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
69. Furthermore, the authorities claim that Section 100 CC (“official corruption”) is also applicable since according to Section 4 (b) CC “public official” would include persons holding any office to which a person is appointed or nominated by law or election.
70. (The authorities furthermore submit that these offences are also covered by Law 2(III)/2004, which ratifies the Convention on the Fight against corruption involving officials of the European

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<sup>1</sup> By the persons who direct or work for, in any capacity, private sector entities.

Communities or Officials of Member States of the European Union. However, this law is limited to the EU context.)

71. The elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are the same in respect of active and passive bribery of officials of international organisations.
72. The authorities informed the GET that there had been no cases in respect of these offences.

#### **Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)**

73. **Active and passive bribery of members of international parliamentary assemblies** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
74. (The authorities state that these offences are also covered by Law 2(III)/2004 and Law 37(III)/2003), which ratifies the Convention on the Fight against corruption involving officials of the European Communities or Officials of Member States of the European Union and the First Protocol thereto. However, this law is limited to the EU context.)
75. The elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are the same in respect of bribery of members of international parliamentary assemblies.
76. The authorities informed the GET that there had been no cases in respect of these offences.

#### **Bribery of judges and officials of international courts (Article 11 of ETS 173)**

77. **Active and passive bribery of judges and officials of international courts** are criminalised according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).
78. (The authorities submit that these offences are also covered by Law 2(III)/2004 and Law 37(III)/2003), which ratifies the Convention on the Fight against corruption involving officials of the European Communities or Officials of Member States of the European Union and the First Protocol thereto. However, this law is limited to the EU context.)
79. The elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are the same in respect of bribery of judges and officials of international courts regarding these offences.
80. The authorities informed the GET that there had been no cases in respect of these offences.

#### **Trading in influence (Article 12 of ETS 173)**

81. **Active and passive trading in influence** are offences according to Section 4 of Law 23(III)/2000, which covers the acts and conduct of these offences referred to in the pertinent articles of the Criminal Law Convention (see bribery of domestic public officials, above).

82. The authorities also refer to Section 105A CC (“influence of competent authority”), which reads:

<b>Criminal Code</b>
<p><b>Section 105A</b></p> <p>“(1) Any person who, by any means, attempts to influence any authority, committee, collective body or any member of such authority, committee or collective body, or any public official in the course of their duties related to any procedure of taking, appointing, promoting, allocating, transferring or of exercising administrative control in a governmental service, for himself/herself or for any other person, is guilty of a criminal offence and subject, upon his conviction, to a sentence of imprisonment not exceeding twelve months or to a pecuniary sentence not exceeding 1.700 Euros or to both such sentences.</p> <p>(2) Any member of an authority, committee, collective body or any public official who, having being approached and asked for an influence as described in paragraph one, omits to report to the competent police authorities the person/s who has/have asked for such influence within three days from the commission of the offence, is guilty of a criminal offence and subject, upon his conviction, to a sentence of imprisonment not exceeding twelve months or to a pecuniary sentence not exceeding 3.400 Euros or to both such sentences.”.</p>

#### Elements of the offence

83. Section 105A CC contains the wording “by any means attempts to influence” and does not contain the elements “*promising, offering or giving*” (*active trading in influence*), or the “*undue advantage*” element. The authorities stress that it is irrelevant in Section 105A CC whether the *intended result is achieved or not* for this offence to be completed.
84. Section 105A CC does not contain the elements “*Request or receipt, acceptance of an offer or promise*” (*passive trading in influence*).
85. The elements “*directly or indirectly*” are not explicitly contained in Section 105A CC. However, the authorities claim that the commission of this offence is criminalised, regardless of whether the act was committed directly or indirectly. Moreover, the authorities refer to the general principles on participation in criminal offences, Section 20, Cap 154 (below)
86. The element “*for himself or for any other person*” are explicitly covered by Section 105A CC.
87. Wilful *criminal intent* is required for this offence.

#### “Sanctions”

88. Trading in influence as criminalised under Section 4 of Law 23(III)/2000 is punishable with up to 7 years of imprisonment or to a pecuniary sentence of up to 17.000 Euros or to both such sanctions without prejudice to the trial court to impose any other sentence or to issue any order which it may impose or issue in the adjudication of criminal cases.
89. The sanction for “influence of competent authority” (Section 105A CC), may lead to imprisonment not exceeding 12 months and/or a fine.
90. The authorities informed the GET that there have been no cases in respect of these offences.

## **Bribery of domestic arbitrators (Article 1, sections 1 and 2 and Articles 2 and 3 of ETS 191)**

91. **Active and passive bribery of domestic arbitrators** are criminalised according to Section 5 of Law 22(III)2006 (which ratifies the Additional Protocol to the Criminal Law Convention on Corruption) in conjunction with Section 4 of Law 23(III)/2000 (which ratifies the Criminal Law Convention). These two Laws cover the acts and conduct of the offences referred to in the pertinent articles of the Protocol to the Criminal Law Convention (see bribery of domestic public officials, above).

### **Law 23(III)/2000**

#### **Section 4:**

“The acts and conduct referred to in the Articles of the Convention set out below constitute offences which are punishable with seven years of imprisonment or to a pecuniary sentence of up to 17.000 Euros or to both such sentences without prejudice to the trial court to impose any other sentence or to issue any order which it may impose or issue in the adjudication of criminal cases, which Articles are [a list of all offences contained in the Criminal law Convention on Corruption]

### **Law 22(III)/2006**

#### **Section 4:**

Articles 4 to 9 of the Ratifying Law of the Convention are also implemented in relation to this Law.

#### **Section 5:**

Without affecting the generality of Article 4 of [Law 23(III)/2000], the following Articles of the Additional Protocol [ETS 191], are deemed to fall within the provisions of Article 4 of the Ratifying Law of the Convention, as if they are specifically referred to in it:

- 2.Active bribery of domestic arbitrators.
- 3.Passive bribery of domestic arbitrators.
- 4.Bribery of foreign arbitrators.
- 5.Bribery of domestic jurors.
- 6.Bribery of foreign jurors.

**Laws 23(III)/2000 and 22(III)/2006 are contained in Appendices I and II to the report.**

92. The statutory regulation of domestic arbitrators is contained in the Arbitration Law (Cap.4) and in the Law on International Commercial Arbitration (101/87).
93. The elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of domestic arbitrators.
94. The authorities informed the GET that there had been no cases in respect of these offences.

## **Bribery of foreign arbitrators (Article 4 of ETS 191)**

95. **Active and passive bribery of foreign arbitrators** are criminalised according to Section 5 of Law 22(III)2006, which ratifies the Additional Protocol to the Criminal Law Convention on Corruption, in conjunction with Section 4 of Law 23(III)/2000, which ratifies the Criminal Law Convention. These two laws cover the acts and conduct of the offences referred to in the pertinent articles of the Protocol to the Criminal Law Convention (see bribery of domestic public officials, above).

96. The elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of foreign arbitrators.
97. The authorities informed the GET that there had been no cases in respect of these offences.

#### **Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)**

98. **Active and passive bribery of domestic jurors** are in principle criminalised according to Section 5 of Law 22(III)2006, which ratifies the Additional Protocol to the Criminal Law Convention on Corruption, in conjunction with Section 4 of Law 23(III)/2000, which ratifies the Criminal Law Convention. These two laws cover the acts and conduct of the offences referred to in the pertinent articles of the Protocol to the Criminal Law Convention (see bribery of domestic public officials, above). However, the legal system of Cyprus does not provide for the concept of jurors.
99. The elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of domestic jurors.
100. The authorities informed the GET that there had been no cases in respect of these offences.

#### **Bribery of foreign jurors (Article 6 of ETS 191)**

101. **Active and passive bribery of domestic jurors** are in principle criminalised according to Section 5 of Law 22(III)2006, which ratifies the Additional Protocol to the Criminal Law Convention on Corruption, in conjunction with Section 4 of Law 23(III)/2000, which ratifies the Criminal Law Convention. These two laws cover the acts and conduct of the offences referred to in the pertinent articles of the Protocol to the Criminal Law Convention: (see bribery of domestic public officials, above).
102. The elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of foreign jurors.
103. The authorities informed the GET that there had been no cases in respect of these offences.

#### **Other questions**

##### **Participatory acts**

104. Section 20 CC (Cap. 154) deals with participatory acts, including aiding and abetting of any criminal offence:

#### **Criminal Code**

##### **Section 20**

"When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence."

## Jurisdiction

105. The rules of criminal jurisdiction in Cyprus are laid down in various legal acts. In particular, Section 5 CC establishes jurisdiction over acts committed within the territory of Cyprus (principle of territoriality). The authorities have added that it would be sufficient if the criminal act has been committed partly within the territory of Cyprus. Furthermore, Section 5 CC establishes jurisdiction of Cyprus courts when criminal acts have been committed abroad by a citizen of Cyprus, whilst in service of the republic or, provided that the offence is punishable in Cyprus with imprisonment exceeding 2 years and that the act constitutes an offence in the other country (dual criminality).
106. Section 5 CC does not explicitly criminalise offences committed abroad by public officials who are not citizens of Cyprus. However, the authorities have submitted that such situations would be covered by Section 5 (e)(v) according to which any person committing an offence in any foreign country *“if the offence is one, to which, under any international treaty or convention binding on the Republic, the law of the Republic is applicable”*.
107. Moreover, Law 23(III)/2000 on the Ratification of the Criminal Law Convention on Corruption indicates that the jurisdiction rule contained in Article 17.1.c of the Criminal law Convention is to be applied without prejudice to Section 5 CC. Furthermore, this rule on jurisdiction has been extended to apply also in respect of the offences contained in the Additional Protocol to the Criminal Law Convention through its ratification (Law 22(III)2006).

### **Criminal Code**

#### **Section 5**

“The Criminal Code and any other law, creating an offence, are applicable to all offences committed-

- (a) within the territory of the Republic; or
- (b) within the Sovereign Base Areas by a Cypriot against or in relation to a Cypriot; or
- (c) in any foreign country by a citizen of the Republic whilst in the service of the Republic; or
- (d) in any foreign country by a citizen of the Republic, if the offence is one punishable in the Republic with imprisonment exceeding two years and the act or omission constituting the offence is also punishable by the law of the country, where it was committed; or
- (e) in any foreign country by any person, if the offence is-
  - (i) treason or an offence against the security of the Republic or the constitutional order; or
  - (ii) piracy; or
  - (iii) connected with the coin or currency notes of the Republic; or
  - (iv) related to the unlawful dealing in dangerous drugs; or
  - (v) one, to which, under any international Treaty or Convention binding on the Republic, the law of the Republic is applicable.

#### **Law 23(III)/2000 (ratification of ETS 173)**

#### **Section 6**

“Without prejudice to the provisions of section 5 of the Criminal Code on the jurisdiction of the Courts of Cyprus, the offences committed in breach of the provisions of this Law, shall be tried by the Courts of Cyprus in the cases set out in Article 17(1)(c) of the Convention.”



108. In addition, Section 20(1) of the Courts of Justice Law of 1960 (Law 14/60) as amended, provides, *inter alia*, that, “Subject to Article 156 of the Constitution, every Assize Court shall have jurisdiction to try all offences punishable by the Criminal Code or any other Law...”
109. The authorities informed the GET that there was no pertinent case law available in respect of the question of jurisdiction.

#### Statute of limitations

110. The concept/regime of “statute of limitation” – “prescription” does not exist in the criminal law context in Cyprus. Consequently, there is no legal provision concerning the statute of limitations for any offence. However, in accordance with established case law, the time of the commission of an offence and that of the prosecution for the offence may have an impact on the outcome of the trial. Delays and/or a long period of time which has elapsed from the commission of an offence until the prosecution may not prevent the instigation of proceedings; however, such a factor may be taken into account in the final judgment concerning the sanctions.

#### Defences

111. There are no statutory regulations concerning defences in respect of corruption offences. However, Section 16 CC provides that an act (there are some exceptions concerning certain offences) committed by a person compelled to commit the act under threat of death would not constitute an offence. The result of such a “defence” is the discontinuation of the proceedings. Moreover, there might be some other mitigating factors (i.e. regret, the amount of money involved), which, depending on the merits of the case, may result in the mitigation of the sanction imposed on the offender. The authorities stated that there were no court decisions/case law in connection with defences in cases of corruption.

#### Legal amendments

112. Cyprus has ratified the United Nations Convention against Corruption (UNCAC) through Ratification Law L. 25(III)/2008. However, a draft law which amends the aforementioned Law is pending before Parliament. The aim of this draft legislation is to amend the Ratification Law in order to render it more comprehensive, with the inclusion of some measures from the UNCAC, such as criminal liability and sanctions of legal persons for corruption offences.

#### Data

113. The authorities of Cyprus have submitted the following data concerning convictions and sanctions in respect of corruption offences:

**2006:** 1) Official corruption (Section 100(b) CC) – 18 months’ imprisonment; Corruption (Sections 2 and 3(b) of Cap. 161) – imprisonment 1 year; 2) Extortion by public officers (Section 101 CC) – imprisonment 2 years; Official corruption (100(b) CC) – imprisonment 3 years; 3) Abuse of office (Section 105 CC) – 2 years of imprisonment; 4) Corruption (Sections 2 and 3(b) of Cap. 161) – 15 months’ imprisonment (all belonging to the same case:108/01).

**2007:** 1) Abuse of office (Section 105 CC) - 12 months of imprisonment (Case 17621/06); 2) Abuse of Office (Section 105 CC) – imprisonment 30 days and a fine (170 Euros) (Case 23602/04).

**2008:** 1) Official corruption (Section 100(a) CC) – 4 month imprisonment (Case 4631/08), Extortion by public officers (Section 101 CC), Official corruption (Section 100(a) CC) and Corruption (Sections 2 and 3(b) of Cap. 161) - imprisonment 3 years (Cases 185/2006 and 210/2006).

**2009:** --

### III. ANALYSIS

114. Prior to the ratification of the Criminal Law Convention on Corruption (ETS 173) and the Additional Protocol thereto (ETS 191), corruption was criminalised under the Criminal Code (CC) and the Prevention of Corruption Law. Section 100 CC (“Official corruption”), Section 101 CC (“Extortion by public officers”), Section 105A CC (“influence of competent authority”) and Section 3 of the Prevention of Corruption Law (“Punishments of corrupt transactions with agents”) were, at the time, the main provisions criminalising corruption offences in Cyprus. Aware that these old provisions were not in full compliance with a number requirements of the Criminal Law Convention on Corruption, the authorities of Cyprus, within the framework of the ratification process of this Convention, adopted Law 23(III)/2000 according to which the offences – as defined in the Convention – constitute criminal offences in Cyprus. Moreover, the same law stipulates that these offences are punishable by imprisonment of up to 7 years and/or by a pecuniary sentence of up to 17 000 Euros. Similarly, in the subsequent process of ratifying the Additional Protocol to the Criminal Law Convention on Corruption, Cyprus adopted Law 22(III)/2006, to incorporate also the offences of the Additional Protocol to the Criminal Law Convention into the criminal legislation of Cyprus. However, the previous criminal legislation concerning corruption offences was maintained. As a result, the criminal offences concerning corruption are contained in the “old legislation” (ie the Criminal Code and the Prevention of Corruption Law) and in the “new legislation” (ie the Laws 23(III)/2000 and 22(III)/2006). The provisions of the old and new legislation overlap to a large extent.
115. The notion of domestic public official, defined in Section 4 CC, which is applicable in respect of both the old and the new legislation, is extensive and covers persons who hold posts through public appointments under the authority of the President of the Republic, the Government, public commissions or boards or persons holding a public office or post. Moreover, the definition of public official covers persons appointed or nominated to posts by law or by election. Public post holders, such as ministers, mayors, civil servants, police personnel, prosecutors, judges, employees in governmental or municipal authorities etc are all captured by the notion of public officials. The GET did not come across any information concerning the notion of “domestic public official” as defined under Cypriot legislation that would run counter to the requirements of the Criminal Law Convention.
116. Upon a closer look at the “**old legislation**” (Sections 100 CC and 105A CC and Section 3 of the Prevention of Corruption Law) corresponding to the offences provided for in the Criminal Law Convention and the Additional Protocol thereto, the GET notes, *inter alia*, the following:
- The authorities have submitted that the concept of “*public official*” as provided in the offence “official corruption”, Section 100 CC and defined in Section 4 CC (see paragraph 12) is not limited to domestic officials, but would also apply to foreign public officials and officials in the international context. The authorities have similarly submitted that the term “agent” as used in Section 3 of the Prevention of Corruption Law and which is defined in Section 2 of the same law (see paragraph 13) would comprise domestic as well as

foreign/international officials. However, the GET was not made aware of any supplementary legal provisions or case law that would extend the notion of “public official” or “agent” from the domestic context to cover also foreign public officials or officials of international organisations. This is a major shortcoming of the “old legislation”.

- Furthermore, in the context of trading in influence, the authorities have referred to the offence “influence of competent authority”, Section 105A CC. The GET notes that according to this provision, the advantage (“any means”) needs to be directed to an authority or a public official in the course of his/her duty and not just at “*anyone who asserts or confirms that he or she is able to exert an improper influence*” as required for the offence of trading in influence, according to Article 12 of the Criminal Law Convention. Consequently, Section 105A CC is not in compliance with the Convention in this respect.
  - Bribery of domestic and foreign arbitrators, as provided for in the Additional Protocol to the Criminal Law Convention are not fully covered by the “old legislation” (although arbitrator/arbitration is mentioned in the definition of public official, Section 4 CC).
  - Bribery of domestic and foreign jurors are not covered by the “old legislation” as the legal system of Cyprus does not provide for the concept of “jurors”.
  - As regards the various elements which are common to all bribery offences contained in the Criminal Law Convention, the GET has noted some further shortcomings in Section 3 of the Prevention of Corruption Law; the element “request an offer” in the passive form of bribery is missing and the element “for himself or herself or for anyone else” is not contained in the active bribery offence.
  - The GET also noted that whereas the sanctions foreseen in respect of bribery of public officials under Section 100CC are in line with GRECO’s jurisprudence, the sanctions provided for in Section 3 of the Prevention of Corruption Law concerning public and private sector bribery offences – up to 2 years of imprisonment (unless there are particular circumstances) and a fine – and for “trading in influence” (Section 105 CC) – up to 12 months and a fine – appear to be too lenient in comparison with GRECO’s well-established case law in relation to such offences.
117. In conclusion, the corruption provisions contained in the “old legislation” (the Criminal Code and the Prevention of Corruption Law) which is still in force do not cover all offences contained in the Criminal Law Convention and the Additional Protocol and furthermore fall short of a number of requirements in respect of the offences which are covered. Having said that, the GET will turn to examine the “**new legislation**” that has been adopted by Cyprus through the Laws 23(III)/2000 and 22(III)/2006), ratifying the Criminal Law Convention and the Additional Protocol thereto.
118. The GET recalls that the Criminal Law Convention and its Additional Protocol require that “*each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law*” the specific elements mentioned in respect of each offence covered by the Convention and its Protocol. This clearly means that the mere ratification of the Convention and its Protocol is not a sufficient measure to this end as the Convention and its Protocol are not “self executing” and are not meant to be applied directly by the contracting parties as criminal legislation. Rather the Convention and its Protocol are to be seen as models for what domestic provisions need to contain. Contracting parties would therefore – wherever necessary – normally transpose the principles of the Convention and its Protocol into domestic law by amending or establishing corresponding criminal legislation. This is particularly true for

“civil law countries”, with a tradition of adopting statutory law and this also appears to be the normal procedure in respect of common law member States of GRECO, despite the fact that case law and court practice play a crucial role in the development of their law. Cyprus’ legal tradition is strongly influenced by the common law system. At the same time it is to be noted that the corruption offences in the “old legislation” are based on statutory provisions. Furthermore, the GET notes that Article 169 (3) of the Constitution of Cyprus provides, *inter alia*, that treaties, conventions and agreements concluded in an appropriate way shall have superior force to domestic law.

119. The GET takes into account that the Laws 23(III)/2000 and 22(III)/2006) contain more than the ratification of the Criminal Law Convention and its Additional Protocol. Indeed, these laws provide explicit references to all the criminal offences contained in the various articles of the Convention and its Protocol. In this respect, the GET wishes to stress that the elements of the pertinent articles described in the Convention and its Protocol are so precise that these could well be transferred directly into domestic legislation; however, the provisions of the various offences of the Convention and its Protocol do not stipulate anything about sanctions. Importantly the Laws 23(III)/2000 and 22(III)/2006) are very clear in this respect in that they provide sanctions for all of these offences. Although the measures taken in Cyprus in order to comply with the Convention and its Protocol are unusual and not preferable as they may lead to a number of shortcomings as explained below, the GET is of the opinion that – in a strict legal sense – the adoption of the Laws 23(III)/2000 and 22(III)/2006) incorporates all the offences contained in the Criminal Law Convention and its Additional Protocol into the domestic legislation of Cyprus with sufficient precision. With this conclusion, it also follows that these laws are in compliance with the offences established under the Criminal Law Convention and the Additional Protocol and thus from a purely legal standpoint remedy the lacunae of the “old legislation”, as identified above (paragraphs 117 and 118).
120. The Laws 23(III)/2000 and 22(III)/2006) provide for the same sanctions in respect of all the corruption offences contained in the Criminal Law Convention and the Additional Protocol, ie up to 7 years of imprisonment and/or a fine of up to 17 000 Euros “without prejudice to the trial court to impose any other sentence or to issue any order which it may impose or issue in the adjudication of criminal cases”. The authorities have explained that this enables the court to impose additional sanctions, for example, to order the dissolution of a company. The GET notes that the “new legislation” provides for the same sanctions in respect of all corruption offences, whether in the public or in the private sector, which is in line with the intentions of the drafters of the Convention and its Protocol and the practice developed by GRECO. Furthermore, the upper limit in respect of imprisonment appears adequate in relation to GRECO’s case law. However, the possible fines are considerably restricted, and the wording of Section 4 of Law 23(III)/2000 concerning the court’s possibility to apply various criminal sanctions leaves room for legal ambiguity, in particular, in the current situation where the “old legislation” and the “new legislation” overlap. Moreover, the “new legislation” has never been invoked in a criminal case of corruption and that, consequently, the effectiveness of the stipulated sanctions has never been tested in practice.
121. Information provided by the authorities indicates that there are a rather limited number of prosecuted/adjudicated corruption cases in Cyprus in general and that these cases have been prosecuted exclusively under the “old legislation”, most notably Section 100 CC (“official corruption” in the public sector). The authorities have furthermore indicated that there have been no cases of bribery in the foreign/international context, no cases of bribery in the private sector and no cases of trading in influence. The GET cannot see a compelling reason why up until now the “new legislation” has not been used at all despite the fact that it has been in force for several

years. It can only be concluded from this state of affairs that the “old legislation”, with its known shortcomings so far has formed the exclusive basis for dealing with corruption offences in Cyprus.

122. According to the Constitution, the Attorney General has the discretionary powers to decide on the prosecution of criminal cases (including corruption) and which legislation to apply in connection with criminal investigations. Furthermore, the GET was told that in a situation where two or more legal provisions are applicable in respect of a criminal act, the law which provides for the more severe sanction would – as a main rule – be applied, according to established jurisprudence. The GET cannot see that this principle has been applied in respect of the corruption offences, as the “new legislation” provides for more severe sanctions than the “old legislation”. Moreover, the GET discussed at length with various interlocutors the reasons why the Laws (23(III)/2000 and 22(III)/2006) have not yet been applied. Some interlocutors indicated that the offences prosecuted so far fitted better with the “old legislation” than with the new provisions. However, from these discussions, it also emerged that in the current situation where there are various sets of criminal provisions overlapping and operational in parallel, there appears to be a preference in the prosecution service to use the old well established and well known provisions, most notably those of the Criminal Code, in respect of which there is some jurisprudence and experience. Moreover, it appears that the adoption of the “new legislation” has never been followed up with awareness raising, information and training of law enforcement staff and the judiciary.
123. The GET shares the opinion – expressed by academics and others met on site – that the current legal situation is unnecessarily complex and raises significant concerns in terms of legal certainty, in particular, as the provisions of the criminal legislation concerning corruption is contained in various laws and, on top of that, in two international treaties. This creates obvious difficulties for the law enforcement authorities when investigating corruption offences as the elements of these offences in the “old legislation” are not fully compatible with the elements of the “new legislation” and the decision concerning the applicable legislation is taken by the Attorney General at a later stage. The GET also noted with concern that none of the judges met on site were familiar with the content of the two Laws (23(III)/2000 and 22(III)/2006) ratifying the Convention and its Protocol. Moreover, it goes without saying that it is even more difficult for the wider public to be aware of the various corruption offences. The GET is of the opinion that for reasons of coherence and clarity, it would be an undeniable advantage if all criminal offences in respect of corruption were gathered in a single instrument, preferably in the Criminal Code and that inconsistencies between the “old legislation” and the “new legislation” were eliminated to the extent possible. It appears that the possibility to amend or even abolish the “old legislation”, or parts thereof, was not even considered in the legislative process when the “new legislation” on corruption was adopted. The GET is of the opinion that the current situation calls for determined action by the authorities and recommends **(i) that firm measures be taken in order to ensure that the provisions concerning the criminalisation of corruption as provided for in the Laws 23(III)/2000 and 22(III)/2006 are applied in practice; (ii) to make these provisions accessible as part of the criminal legislation and (iii) for the sake of legal certainty, create a uniform legal framework for the criminalisation and sanctioning of corruption offences in accordance with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), notably by amending and/or abolishing current legislation.**
124. In respect of the rules concerning jurisdiction, it is to be noted that the Laws 23(III)/2000 and 22(III)/2006 which ratify the Criminal Law Convention and the Additional Protocol and make explicit references to all the offences comprised in these instruments also refer to the provisions of jurisdiction in the Convention, however, only in so far as Article 17.1 c of the Convention is concerned. Other rules relating to jurisdiction are solely contained in the Criminal Code.

According to Section 5 (a) CC, criminal jurisdiction is established in respect of all offences under Cyprus' legislation when committed within the territory of Cyprus – in full or in part, according to the interlocutors met by the GET (“territorial jurisdiction”). This is in conformity with Article 17.1 a of the Criminal Law Convention. Turning to the compliance with Article 17.1 b of the Convention, the following is noted: Section 5 (c) CC provides for the application of Cypriot law in respect of all offences committed in a foreign country by a citizen of Cyprus whilst in the service of the Republic. Furthermore, Section 5 (d) CC provides that offences committed by any citizen of Cyprus come under Cypriot law provided the offence is punishable in Cyprus by at least 2 years' imprisonment and that it is also punishable under the law of the country where the offence was committed (“dual criminality”). Consequently, as corruption offences are punishable by more than 2 years' imprisonment under the new legislation, only the “dual criminality requirement” in respect of a citizen committing a corruption offence abroad limits the scope of jurisdiction in comparison with Article 17. b of the Convention. Another area of concern is the meaning of Section 5 (e) (v) CC which contains an additional rule that the criminal laws of Cyprus are applicable to any offence committed in any foreign country by any person if the offence is one to which the law of the Republic is applicable, according to an international treaty or convention. The authorities have put forward that this is an all-embracing rule that makes it possible to prosecute any offender in any country in respect of all offences covered by the Criminal Law Convention. The GET does not agree with this sweeping interpretation of the wording of Section 5 (e) (v) CC. In the view of the GET, this Section – as it is worded – only provides that a treaty or convention, binding upon Cyprus, may indicate that the law of Cyprus is applicable in respect of any offence. There may well be specific treaties which could indicate such jurisdictional rules in respect of certain offences; however, the Criminal Law Convention is not such a treaty and it does not, by itself, bind any particular country in such a way. It follows that in a situation where a public official or a member of a domestic public assembly, who is not a citizen of Cyprus, commits an offence in a foreign country, would not be covered by the jurisdiction of Cyprus. Therefore, the Criminal Code is not in conformity with Article 17.1 b of the Criminal Law Convention. In light of what has been said, the GET recommends **(i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad and (ii) to establish jurisdiction over corruption offences committed abroad by domestic public officials and members of domestic public assemblies who are not citizens of Cyprus.** In so far as Article 17.1 c of the Convention is concerned, the GET notes that the Law 23(III)/2000 does not only explicitly refer to the offences of the Convention, but contains a specific provision (Section 6) which states that the offences committed in breach of the provisions in this law, will be tried by the courts of Cyprus in the cases set out in Article 17.1 (c) of the Convention. The same applies for the offences under Law 22(III)/2006, according to its Section 4. The GET therefore concludes that Article 17.1 c of the Convention including situations of corruption involving others than the offenders, are covered by the law of Cyprus. Consequently, there is full compliance with Article 17.1 c of the Criminal Law Convention.

125. Section 20 CC establishes that participation, such as aiding and abetting the commission of any criminal offence under Cypriot legislation is considered as the commission of the offence. In addition, there is an explicit reference in Law 23(III)/2000 to Article 15 of the Criminal Law Convention concerning “participatory acts”. The concept of statute of limitation does not exist in Cyprus and there are accordingly no fixed time limits which would exclude prosecution and/or adjudication of corruption offences. Neither are there any particular rules concerning corruption offences in relation to defences (effective regret) providing an offender to be exonerated from a criminal charge in return for reporting the offence; however, such situations may result in mitigation of sanctions in certain situations. In conclusion, these three areas of the current evaluation do not appear to pose any discernible problems in respect of Cyprus' commitments in relation to the Criminal Law Convention on Corruption and the Additional Protocol thereto.

#### IV. CONCLUSIONS

126. With the adoption of the ratification Laws 23(III)/2000 and 22(III)/2006 which provide for explicit references to the acts and the conduct of the offences contained in the Criminal Law Convention on Corruption (ETS 173) and the Additional Protocol thereto (ETS 191) respectively, and which in addition make these offences liable to seven years' imprisonment and/or a fine, Cyprus has – in a strict legal sense – enacted criminal legislation which is in compliance with the requirements of the corruption offences contained in the Criminal Law Convention on Corruption and its Additional Protocol. That said, the legal technique used by Cyprus to this end is unusual and controversial and the implementation of the relevant laws in practice need particular attention and follow up; it is to be noted that despite the fact that the aforementioned legislation has been in force for several years, it has never been applied by the prosecutorial authorities nor by the courts. Instead, these authorities have continued to apply the old legislation concerning corruption offences, as provided for in the Criminal Code and the Prevention of Corruption Law and which does not fully comply with the requirements of the Criminal Law Convention of Corruption and its Additional Protocol.
127. The co-existence of various laws and provisions overlapping to a certain degree and which are to be retrieved from different legal acts and international treaties, makes the legal framework of corruption offences inconsistent. Even more so as the decision to apply a given piece of legislation, which is under the discretionary powers of the Attorney General, so far has favoured the application of the old legislation despite the existence of more recent provisions. Furthermore, the current evaluation clearly demonstrates that the awareness of Laws 23(III)/2000 and 22(III)/2006 is critically low within the services that are to apply the legislation in the investigation of corruption offences as well as within the judiciary and, no doubt even more notably, in respect of the general public. The current situation, which is not without criticism in Cyprus, needs to be addressed by the authorities with firm measures in order to make sure that the provisions criminalising corruption in conformity with the Criminal Law Convention on Corruption and its Additional Protocol, are applied in practice. In this context, for the sake of legal certainty, there is a clear need to establish a uniform legal framework. Finally, in respect of the applicability of the criminal law of Cyprus (“jurisdiction”) to offences committed abroad, the Criminal Code of Cyprus is slightly more restrictive than provided for in the Criminal Law Convention on Corruption.
128. In view of the above, GRECO addresses the following recommendations to Cyprus:
- i. **(i) that firm measures be taken in order to ensure that the provisions concerning the criminalisation of corruption as provided for in the Laws 23(III)/2000 and 22(III)/2006 are applied in practice; (ii) to make these provisions accessible as part of the criminal legislation and (iii) for the sake of legal certainty, create a uniform legal framework for the criminalisation and sanctioning of corruption offences in accordance with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), notably by amending and/or abolishing current legislation (paragraph 123);**
  - ii. **(i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad and (ii) to establish jurisdiction over corruption offences committed abroad by domestic public officials and members of domestic public assemblies who are not citizens of Cyprus (paragraph 124).**

129. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Cypriot authorities to present a report on the implementation of the above-mentioned recommendations by 31 October 2012.
130. Finally, GRECO invites the authorities of Cyprus 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.