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Theme I

Third Evaluation Round

Evaluation Report on Hungary on Incriminations (ETS 173 and 191, GPC 2) (Theme I)

Adopted by GRECO
at its 47th Plenary Meeting
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I. INTRODUCTION

1. Hungary joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 5E) in respect of Hungary at its 13th Plenary Meeting (24-28 March 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 5E) at its 27th 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 Hungary on 16-17 November 2009, was composed of Mr Ernst GNAEGI, Head of the International Criminal Law Section at the Federal Office of Justice (Switzerland) and Ms Laura STEFAN, Anticorruption Coordinator, Romanian Academic Society (Romania). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary and Ms Aleksandra KURNIK from GRECO's Secretariat. Prior to the visit, the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 8E, Theme I), as well as the pertinent legislation and case law.
4. The GET met with representatives of the following organisations: the Ministry of Justice, members of the investigating authorities and prosecutors acting in investigation crimes against the integrity of public life (corruption) and economic crime, judges of first and second instance dealing with cases against the integrity of public life (corruption) and economic crime and representatives of the Hungarian Chamber of Advocates. The GET also met with representatives of civil society and academia: Transparency International and the Institute of Legal Sciences of the Hungarian Academy of Sciences.
5. The present report on Theme I of GRECO's 3rd 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 Hungarian authorities 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 Hungary 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 (2009) 4E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Having ratified the Criminal Law Convention on Corruption (ETS 173) on 22 November 2000, the Convention entered into force in respect of Hungary on 1 July 2002. Hungary has made a reservation in respect of Article 8 (passive bribery in the private sector)¹.
8. Hungary has signed but not ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). The authorities indicated that Hungary intends to ratify the Protocol in 2010.
9. The Criminal Code of Hungary, Act No. IV (hereafter: CC), entered into force on 31 December 1978, but has since then been subject to numerous amendments. The most recent amendments of the CC, which entered into force on 1 May 2010, are included in this report.

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

10. Passive bribery of public domestic officials is established under section 250 CC, which reads as follows:

Chapter XV – Crimes against the Integrity of State Administration, the Administration of Justice and Public Life

Title VII – Crimes against the Integrity of Public Life
Bribery

Section 250 CC

(1) Any public official who requests an undue advantage in connection with his/her duties, or accepts such undue advantage or a promise thereof, or agrees with the party requesting or accepting the undue advantage, is guilty of a felony punishable by imprisonment of one to five years.

(2) The punishment shall be imprisonment of two to eight years if the criminal act is committed:

a) by a public official in a managerial position, or otherwise empowered with authority in affairs of greater importance;

b) by any other public official in an affair of greater importance.

(3) The perpetrator shall be punished by imprisonment of two to eight years, or of five to ten years in accordance with the distinction contained in Subsections (1) and (2) respectively, if – in exchange for the undue advantage – he/she breaches his/her official duty, exceeds his/her competence or otherwise abuses his/her official position, or if the act is committed in criminal conspiracy or for regular financial gain.

11. Active bribery (“ad vagy ígér”) of public domestic officials is established under section 253 CC, which reads:

¹ See Appendix.

Section 253 CC

(1) Any person who – in connection with the duties of the public official – gives or promises undue advantage to a public official or to another person on account of such public official, is guilty of a felony punishable by imprisonment of up to three years.

(2) The person committing bribery shall be punished for a felony by imprisonment of one to five years, if he/she gives or promises the advantage to a public official to induce him/her to breach his/her official duty, exceeds his/her competence or otherwise abuses his/her official position.

(3) The director of an economic undertaking, or a member or an employee thereof with authority to exercise control or supervision, shall be punished in accordance with Subsection (1), if a member or an employee of the economic undertaking commits the criminal act defined in Subsections (1)-(2) for the benefit of the economic undertaking, and the criminal act could have been prevented if he/she had properly fulfilled his/her control or supervisory obligations.

(4) The director of an economic undertaking, or a member or an employee thereof with authority to exercise control or supervision, shall be punished for misdemeanour by imprisonment for up to two years, if the criminal act defined in Subsection (3) is committed due to negligence.

Elements/concepts of the offence

“Domestic public official”

12. The definition of “public official” is contained in section 137, subsection 1 CC, by reference to a list of positions and functions:

Chapter IX – Interpretative Provisions

Section 137 CC

For the purposes of this Act:

1) public officials are:

- a) Members of the Parliament;
- b) the President of the Republic;
- c) the Prime Minister;
- d) members of the Government, state secretaries and deputy state secretaries;
- e) constitutional judges, judges, prosecutors;
- f) ombudsman;
- g) members of local government bodies;
- h) notaries and assistant notaries;
- i) independent court bailiffs and assistant court bailiffs;
- j) persons serving at the constitutional court, the courts, prosecutors offices, administrative agencies, local government administrative bodies, the State Audit Office, the Office of the President of the Republic, the Office of Parliament, whose activity forms part of the proper functioning of the organisation;
- k) probation officers working for the national parole board under an employment relationship in the judicial system,
- l) persons exercising public or administrative powers in a body entrusted by law with public or administrative tasks.

“Promising, offering or giving” (active bribery)

13. The elements of “promising” and “giving” are expressly contained in the provision on active bribery (section 253 CC). The authorities have added that the Hungarian word “iger”, which appears in the original text, covers both “promising” and “offering”.

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

14. The provisions of section 250 CC contain the words “requests”, “accepts” or “agrees” to an advantage or a promise thereof.

“Undue advantage”

15. The provisions on active and passive bribery expressly contain the wording “undue advantage” or “promise”. These terms are, according to the authorities, very general and cover material as well as immaterial advantages. In this context, the Hungarian authorities have referred to a handbook (edited by judges and prosecutors), widely used among practitioners and the courts, according to which a bribe can include, *inter alia*, “any sum of money, credit, securing of a contract², possibility of obtaining additional income, a bottle of beverage or small gifts³, a sexual relation, the issuing of an official document or securing of a forged passport”. The authorities have also stated that any advantage is to be considered as undue, irrespective of its economic value. In this connection, they have referred to a judgment of the Metropolitan High Court of Appeal⁴, according to which the offender, a prison guard, requested and accepted two packets of cigarettes in return for allowing an inmate to make a phone call.

“Directly or indirectly”

16. The element “*directly or indirectly*” is not explicitly mentioned in the bribery provisions. However, the authorities affirmed that the situation of acting via intermediary is covered by the general rules on complicity (section 21 CC).

“For himself or herself or for anyone else”

17. The provision on active bribery in section 253 CC includes the expression “*to a public official or to another person*”. However, there is no explicit reference to a third-party beneficiary in the corresponding provision on passive bribery. Despite this, the authorities claim that the wording “undue advantage” would cover not only advantages given to the public official but also advantages to a third party. According to the Commentary (handbook) made for practitioners, on the basis of the wording “agrees with the party requesting or accepting the undue advantage”, it is also a bribery offence if the person who requests or accepts the undue advantage is a third person (e.g: the relative of the public official), but the public official – explicitly or implicitly – agrees that this person requests or obtains undue advantage on account of the public official.

² E.g. in return for services, Decision of the Supreme Court, BH1994.62

³ Decision of the Supreme Court of 1998, Bfv.III.1626/1997

⁴ BH 2006.177,2.KBF.208/2005

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

18. *“To act or refrain from acting in the exercise of his or her functions”* is covered by the terms “in connection with his duties” (section 250 and 253 of the CC). The authorities have affirmed that this wording in the Hungarian text covers actions as well as omissions as part of the official’s duties.

“Committed intentionally”

19. Active and passive bribery are intentional crimes. According to section 13 CC, a crime is committed intentionally if the perpetrator desires the consequences of his/her actions or he/she acquiesces these consequences. In order to establish criminal liability, it is necessary to determine a perpetrator’s intention in respect of all pertinent elements of the offence.

Sanctions

20. Active bribery of domestic public officials is punishable by imprisonment of up to three years, unless the perpetrator induces the public official to breach his/her official duty, exceeds his/her competence or otherwise abuses his/her official position”; in which case the sanctions range from one to five years of imprisonment. Furthermore, if the act of bribery is committed by a member or an employee of the economic undertaking for the benefit of the economic undertaking, then its director, its member or employee exercising control or supervision, is punishable by imprisonment of up to three years. In case where the bribery offence is committed due to negligence, the perpetrator is to be punished for misdemeanour with imprisonment of up to two years.
21. Passive bribery of domestic public officials is punishable by imprisonment of one to five years, unless the crime has been committed by a public official in a managerial position or otherwise empowered with authority in affairs of greater importance or by any public official in an affair of greater importance, in which case the sanctions range from two to eight years of imprisonment. The perpetrator shall be punished by imprisonment of two to eight years, or of five to ten years in accordance with the distinction contained in first sentence, if – in exchange for the undue advantage – he/she breaches his/her official duty, exceeds his/her competence or otherwise abuses his/her official position, or if he/she commits the act in criminal conspiracy or for regular financial gain.
22. In addition to the above-mentioned punishment (imprisonment), other punishments and ancillary sanctions as provided by section 38 CC can also be imposed on perpetrators having committed bribery offences. The new provisions, which entered into force on 1 May 2010, provide that punishments are imprisonment; community service work; financial penalty; prohibition from exercising a profession (disqualification); suspension of a driving licence and expulsion. Ancillary punishments are: deprivation of certain civil rights and banishment. If the maximum sentence of the crime is three years of imprisonment, the term of imprisonment may be substituted by community service work, financial penalty, prohibition from exercising a profession (disqualification), suspension of a driving licence, expulsion or by certain combinations of these punishments. Their application is at the discretion of the court, which takes into account the specific nature in each case. Additionally, section 70 CC refers to other punitive measures of a similar nature, such as, *inter alia*, confiscation of the instruments and proceeds of crime, forfeiture of assets or sanctions in connection with the criminal liability of legal persons. Those measures may also be imposed in respect of bribery offences in a given case.

23. The Hungarian authorities have provided two examples of crime comparable to bribery in terms of sanctions: embezzlement (section 317 CC) is punishable by up to two years of imprisonment and, in aggravated circumstances, imprisonment of up to three years (subsection 4), from one to five years (subsection 5), from two to eight years (subsection 6) or from five to ten years (subsection 7). The same range of sanctions applies in respect of fraud (section 318 CC).

Cases

24. The GET was informed by the Hungarian authorities about a number of cases leading to convictions in respect of these offences, see tables at the end of the descriptive part of the report.

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

25. *Members of domestic public assemblies*, i.e. members of Parliament and of local government bodies, are according to section 137 CC, subsection 1 a) and g) to be considered “public officials” in respect of bribery offences. Sections 250 and 253 CC on active and passive bribery of public officials are therefore applicable also in respect of members of domestic public assemblies.
26. Other elements/concepts, including the penal sanctions, described under bribery of domestic officials (above) are equally applicable in respect of this offence.
27. The GET was informed that there were no cases available in respect of these offences.

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

28. *Active and passive bribery of foreign public officials* are separate criminal offences under sections 258B and 258D CC:

Section 258/B CC

(1) Any person who – in connection with the duties of the foreign public official – gives or promises undue advantage to a foreign public official or to another person on account of such public official, is guilty of a felony punishable by imprisonment for up to three years.

(2) The person committing bribery shall be punished for a felony by imprisonment of one to five years, if he/she gives or promises the undue advantage to a foreign public official to induce him/her to breach his/her official duty, exceeds his/her competence or otherwise abuses his/her official position.

(3) The director of an economic undertaking, or a member or an employee thereof with authority to exercise control or supervision shall be punished in accordance with Subsection (1), if a member or an employee of the economic undertaking commits the criminal act defined in Subsections (1) and (2) for the benefit of the economic undertaking, and the criminal act could have been prevented if he/she had properly fulfilled his/her control or supervisory obligations.

(4) The director of an economic undertaking, or a member or an employee thereof with authority to exercise control or supervision shall be punished for misdemeanour by imprisonment for up to two years, if the criminal act defined in Subsection (3) is committed due to negligence.

Section 258/D CC

(1) Any foreign public official who requests an undue advantage in connection with his duties, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the undue advantage, is guilty of a felony punishable by imprisonment of one to five years.

(2) The perpetrator shall be punished by imprisonment of two to eight years, if – in exchange for the advantage – he/she breaches his/her official duty, exceeds his/her competence or otherwise abuses his/her official position, or if the act is committed in criminal conspiracy or for regular financial gain.

29. The definition of “foreign public official” is contained in section 137, subsection 3 CC, by reference to a list of functions:

Chapter IX – Interpretative Provisions

Section 137 CC

3. “Foreign public official” shall mean:

- a) a person empowered with legislative, judicial, public administration or law enforcement duties in a foreign state;
- b) a person serving in an international organisation created under international convention, whose activity forms part of the proper functioning of the organisation;
- c) a person elected to serve in the general assembly or body of an international organisation created under international convention;
- d) a member of an international court that is empowered with jurisdiction over the territory or over the citizens of the Republic of Hungary, and any person serving in such international court, whose activity forms part of the proper functioning of the court.;

30. Other elements/concepts, except the penal sanctions, described under bribery of domestic officials (above) are equally applicable in respect of this offence.

Sanctions

31. Active bribery of foreign public officials is punishable by imprisonment of up to three years, unless the perpetrator induces the foreign public official to breach his/her official duty, exceeds his/her competence or otherwise abuses his/her official position, in which case the sanction is imprisonment of one to five years. Furthermore, if the act of bribery is committed by a member or an employee of the economic undertaking for the benefit of the economic undertaking, then its director, its member or employee exercising control or supervision is punishable by imprisonment of up to three years. In case where the bribery is committed due to negligence, the perpetrator shall be punished for misdemeanour with imprisonment of up to two years.
32. Passive bribery of foreign public officials is punishable by imprisonment of one to five years, unless the foreign public official, in exchange for the advantage, breaches his/her official duty, exceeds his/her competence or otherwise abuses his/her official position or commits the act in criminal conspiracy or for regular financial gain, in which case the sanction range from two to eight years.

Cases

33. The GET was informed by the Hungarian authorities about cases leading to convictions in respect of these offences, see tables at the end of the descriptive part of the report.

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

34. *Active and passive bribery of members of foreign public assemblies* are criminal offences under sections 258B and 258D CC as the definition of “foreign public officials” contained in section 137 CC, subsection 3 a) includes persons “*empowered with legislative...duties in a foreign state*”.
35. Other elements/concepts, including the penal sanctions, described under bribery of foreign public officials (above) are equally applicable in respect of bribery of members of foreign public assemblies.
36. The GET was informed that there were no cases in respect of these offences.

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

Reservation

37. Hungary has made a reservation (see Appendix) concerning passive bribery in the private sector committed by a foreign citizen in the course of business activities abroad, which is not an offence in Hungary.

Definition of the offence

38. *Passive and active bribery in the private sector* are criminal offences under sections 251, 252 (passive), 254 (active) and 258/C (foreign active bribery) of the Criminal Code, which reads as follows:

Section 251 CC

(1) Any employee or member of a state-financed body⁵, economic undertaking or civil society⁶ who – in connection with his duties – requests an undue advantage, or accepts such advantage or a promise thereof in exchange for breaching his/her duties or agrees with the party requesting or accepting the undue advantage, is guilty of a felony punishable by imprisonment for up to three years.

(2) The perpetrator, who breaches his/her duties in exchange for the undue advantage, is guilty of a felony punishable by imprisonment of one to five years, or of two to eight years if the breach is involved in an affair of greater importance or if the act is committed in a criminal conspiracy or for regular financial gain.

Section 252 CC

(1) Any employee or member authorised to act independently of a state-financed body, an economic undertaking or a civil society, who – in connection with his duties – requests an undue advantage, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the undue advantage, is guilty of a felony punishable by imprisonment of one to five years.

(2) The perpetrator, who breaches his duties in exchange for the advantage, is punishable by imprisonment of two to eight years.

(3) The punishment shall be imprisonment of five to ten years, if the perpetrator:

- a) breaches his duties in an affair of greater importance;
- b) commits the criminal act in a criminal conspiracy or for regular financial gain.

⁵ Or budgetary institutions – the Hungarian term refers to those bodies that are financed from the state budget.

⁶ Under Hungarian law, political parties are also considered as civil societies.

Section 254 CC

(1) Any person who gives or promises undue advantage to an employee or a member of a state-financed body, an economic undertaking or a civil society, or to another person on account of such employee or member, in order to induce him/her to breach his/her duties, is guilty of a felony punishable by imprisonment for up to three years.

(2) The punishment shall be imprisonment for up to three years, if the undue advantage is given or promised to an employee or a member authorised to act independently of a state-financed body, an economic undertaking or a civil society.

Section 258/C

(1) Any person who gives or promises undue advantage to an employee or a member of a foreign economic undertaking, or to another person on account of such employee or member, in order to induce him/her to breach his/her duties, is guilty of a misdemeanour punishable by imprisonment for up to two years.

(2) The punishment shall be imprisonment for up to three years, if the undue advantage is given or promised to an employee or a member authorised to act independently of a foreign economic undertaking.

Elements/concepts of the offence

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

39. The wording *“persons who direct or work for, in any capacity, private sector entities”* of the *Criminal Law Convention* is captured by the wording *“employees or members of a state-financed body, economic undertaking or civil society”* in the above provisions of the Criminal Code.

“In the course of business activity”; “...in breach of [their?] duties”

40. In respect of passive bribery in the private sector, sections 251 and 252 CC contain the wording *“in connection with his duties”*. In contrast, active bribery, sections 254 and 258/C CC, in the private sector does not require a business relation; it may be carried out by *“any person”*.
41. *“Breach of duty”* is not a necessary element for committing such an offence, although the expression is contained in sections 251 (2) and 252 (2) as an aggravating circumstance which may lead to more severe sanctions.
42. Other elements, except the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of this offence.

Sanctions

43. Active bribery in the domestic private sector is punishable by imprisonment of up to three years or of up to five years in case the bribe is given or promised to a person authorised to act independently of a state-financed body, an economic undertaking or a civil society. Active bribery in the international private sector is punishable by imprisonment of up to two years or of up to three years in case the bribe is given or promised to a person authorised to act independently of an economic undertaking.

⁷ By the persons who direct or work for, in any capacity, private sector entities.

44. Passive bribery in the private sector is punishable by imprisonment of up to three years for felony. In case the perpetrator breaches his/her duties in exchange for the undue advantage, he/she is punishable by imprisonment of one to five years. In case the breach is involved in an affair of greater importance or if the act is committed in a criminal conspiracy or for regular financial gain, the perpetrator is punishable by imprisonment of two to eight years.
45. Furthermore, passive bribery in the private sector is punishable by imprisonment of one to five years, in case the perpetrator is a member or an employee authorised to act independently of a state-financed body, an economic undertaking or a civil society. The sanctions range from two to eight years if the perpetrator breaches his/her duties in exchange for the undue advantage and from five to ten years if the breach is involved in an affair of greater importance, or the act is committed in a criminal conspiracy or for regular financial gain.
46. The Hungarian authorities have referred to the following cases concerning bribery in the private sector:
 - 2005 (13.B.259/2005/39): An employee of a bank (the first accused) promised to clients “Formula 1 Grand Prix” tickets at a lower price. The guards (the other accused) agreed to let those persons through the checkpoint without valid tickets in exchange for a bribe. They shared the bribes. The first accused was sentenced to 14 months’ imprisonment, the second accused to one year’s imprisonment and the others to eight and ten months. All sentences were suspended. In addition, the Metropolitan High Court of Appeal imposed on each perpetrator a fine as ancillary punishment and ordered confiscation of assets (approx. 120 EUR).
 - 2007 (B.5/2007/12): The defendant, who was caught red-handed shoplifting, offered the guard 70 EUR in exchange for being let off. The bribe was not accepted. The Zala County Court convicted him for active bribery in the private sector and sentenced him to six months’ imprisonment (and imposed a two-year deprivation of certain civil rights).

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

47. Active and passive bribery of officials of international organisations are criminal offences under sections 258 B and 258 D CC, as the definition of “foreign public official” of section 137 CC, subsection 3 b) includes persons “*servicing in an international organisation created under international convention, whose activity forms part of the proper functioning of the organisation*”.
48. Other elements/concepts of the offence, including the penal sanctions, described under bribery of foreign public officials (above) are equally applicable in respect of bribery of officials of international organisations.
49. The authorities informed the GET that there were no cases in respect of these offences.

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

50. Active and passive bribery of officials of international parliamentary assemblies are criminal offences under sections 258 B and 258 D CC, as the definition of “foreign public official” in section 137 CC, subsection 3 c) includes persons “*elected to serve in the general assembly or body of an international organisation created under international convention*”.

51. Other elements/concepts of the offence, including the penal sanctions, described under bribery of foreign public officials (above) are equally applicable in respect of bribery of officials of international parliamentary assemblies.
52. The authorities informed the GET that there were no cases in respect of these offences.

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

53. Active and passive bribery of *judges and officials of international courts* are criminal offences under sections 258 B and 258 D CC, as the definition of “foreign public official” in section 137 CC, subsection 3 d) includes “*a member of an international court that is empowered with jurisdiction over the territory or over the citizens of the Republic of Hungary, and any person serving in such international court, whose activity forms part of the proper functioning of the court*”.
54. Other elements/concepts of the offence, including the penal sanctions, described under bribery of foreign public officials (above) are equally applicable in respect of bribery of judges and officials of international courts.
55. The authorities informed the GET that there were no cases in respect of these offences.

Trading in influence (Article 12 of ETS 173)

56. “Passive” trading in influence (action taken by the “influence peddler”) is a separate criminal offence under Hungarian law as covered by section 256 CC (domestic public official) and 258/E CC (foreign public officials).

Section 256 CC

(1) Any person who - purporting to influence a public official - requests or accepts an undue advantage for himself/herself or on behalf of another person, is guilty of a felony punishable by imprisonment of one to five years.

(2) The punishment shall be imprisonment of two to eight years, if the perpetrator:

- a) purports to or pretends that he/she is bribing a public official;
- b) pretends to be a public official;
- c) commits the criminal act for regular financial gain.

(3) Any person who commits the criminal act defined in Subsection (1):

- a) in connection with an employee or a member of an economic undertaking or a civil society, is guilty of a misdemeanour punishable by imprisonment for up to two years;
- b) in connection with an employee or a member authorised to act independently of an economic undertaking or a civil society, is guilty of a felony punishable by imprisonment for up to three years.

(4) Any person who commits the criminal act defined in Subsection (3) for regular financial gain, is guilty of a felony punishable by imprisonment of up to three years, or of one to five years, in accordance with the distinction contained in Subsection (3).

Section 258 /E

Any person who - purporting to influence a foreign public official - requests or accepts an undue advantage for himself/herself or on behalf of another person, is guilty of a felony punishable by imprisonment of up to five years.

57. “Active” trading in influence is not regulated separately; however, the authorities have submitted that this offence is covered through the provisions on active bribery of domestic public officials (section 253 CC) and on active bribery of foreign public officials (section 258/B CC) as these provisions apply regardless of whether the perpetrator promises, offers or gives the undue advantage to a public official or any other person, for example an “influence peddler”.

Elements of the offence

“Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]”

58. This concept is implemented in section 256 (1) and (2) CC through the wording “purporting to influence a public official”, “purports to or pretends that he is bribing a public official”, “pretends to be a public official”. The term “improper” is not explicitly transposed; however, with the expression “requests or accepts an undue advantage”, the term “improper” is implicitly transposed in the text of CC, according to the authorities.
59. Other elements/concepts of the offence, including the penal sanctions, described under the bribery offences (above) are equally applicable in respect of trading in influence.
60. *Passive trading in influence* is punishable by imprisonment of between one and five years, or between two and eight years if the “influence peddler” pretends that she/he is bribing the public official, pretends to be a public official or commits the crime for regular financial gain. Active trading in influence is sanctioned in accordance with the regulations on active bribery.
61. On a separate note, “trading in influence in the *private* sector” is also criminalised in Hungary. If the trading in influence is committed in connection with an employee or a member of an economic undertaking or a civil society, the perpetrator is punishable by imprisonment of up to two years. If the act is committed in connection with an employee or a member authorised to act independently of an economic undertaking or a civil society, the perpetrator is punishable by imprisonment of up to three years. If this crime is committed for regular financial gain, the perpetrator is punishable by imprisonment of up to three years or of one to five years, in accordance with the distinction contained in the second and third sentences.

Case law

62. The Hungarian authorities have referred to the following cases concerning trading in influence :
- Judgment of the Csongrád Court (1.B.380/2006/27) of 11 October 2007: A person, who pretended to be a lawyer, promised to another person, suspected of having committed a crime, that he would convince the prosecutor that a plea bargain should be made in his case, and requested 300,000 HUF (1200 EUR) in order to influence the prosecutor. However, this proposal was refused. The court imposed a 16-month suspended imprisonment and a fine as ancillary punishment.
 - The Metropolitan Court case (15.B.981/2003/34.), as an example of active trading in influence in international relations: The accused was convicted for active bribery of foreign public officials.

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

63. The authorities claim that active and passive bribery of domestic arbitrators are criminal offences under sections 250 and 253 CC, as the definition of “domestic public officials” in section 137 CC, subsection 1 l), includes persons *“exercising public or administrative powers in a body entrusted by law with public or administrative tasks”*.
64. The statutory regulation for domestic arbitrators is contained in the Act LXXI of 1994 on Arbitration, according to which, the arbitration proceeding is concluded by a final sentence adopted on the merits of the case, or by a decision of the arbitration tribunal terminating the proceeding [Section 42 (1)]. Pursuant to section 58, the decision of the arbitration tribunal shall have the same effect as that of a binding court decision and its implementation shall be governed by the regulations on judicial enforcement. Thus, according to the authorities, the arbitrators exercise public powers and by virtue of that fact, they are public officials under Section 137 1. l) of the CC.
65. Other 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.
66. The authorities informed the GET that there were no statistics or case law available in respect of these offences.

Bribery of foreign arbitrators (Article 4 of ETS 191)

67. Active and passive bribery of foreign arbitrators are criminal offences under sections 258B and 258D CC, as the definition of a “foreign public official” section 137 CC, subsection 3 a) includes, as seen above, *“a person empowered with legislative, judicial, public administration or law enforcement duties in a foreign state”*.
68. All other elements/concepts of the offence, including the penal sanctions, described under bribery of foreign public officials (above) are equally applicable in respect of bribery of foreign arbitrators.
69. The authorities informed the GET that there were no cases in respect of these offences.

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

70. Active and passive bribery of domestic jurors are criminal offences under sections 250 and 253 CC, as the definition of “domestic public officials” in section 137 CC, subsection 1 j) includes persons *“serving at the constitutional court, the courts, prosecutors offices, administrative agencies, local government administrative bodies, the State Audit Office, the Office of the President of the Republic, the Office of Parliament, whose activity forms part of the proper functioning of the organisation”*.
71. Other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic officials are equally applicable in respect of bribery of domestic jurors.
72. The authorities informed the GET that there were no cases in respect of these offences.

Bribery of foreign jurors (Article 6 of ETS 191)

73. Active and passive bribery of foreign jurors are criminal offences under sections 258B and 258D CC, as the definition of “foreign public official” section 137 CC, subsection 3 a) includes persons “empowered with legislative, judicial, public administration or law enforcement duties in a foreign state”.
74. Other elements/concepts of the offence, including the penal sanctions, described under bribery of foreign public officials are equally applicable in respect of bribery of foreign jurors.
75. The authorities informed the GET that there were no cases in respect of these offences.

Other questions

Participatory acts

76. Sections 19-21 CC contain general provisions on participation in criminal offences (aiding and abetting) which are applicable in respect of any offence, included the above-mentioned corruption offences.

Section 19 CC

Parties to a criminal act include the perpetrator, the indirect perpetrator and the coactor (parties to a criminal act), the abettor and the accomplices (conspirators).

Section 20 CC

- (1) Perpetrator is a person who actually commits a criminal act.
- (2) Indirect perpetrator means the person who performs the criminal act intentionally by using another person who cannot be punished for the act due to being a minor, insanity, coercion or threat or by using another person who is under misconception.
- (3) Coactors are persons engaged in a criminal act jointly, having knowledge of each other's activities.

Section 21 CC

- “(1) Abettor is a person who intentionally persuades another person to commit a criminal act.
- (2) Accomplice is a person who knowingly and voluntarily helps another person commit a criminal act.
- (3) The sentence applicable to parties to a criminal act shall also be applied for conspirators.”

Jurisdiction

77. The rules of Hungarian criminal jurisdiction are laid down in Chapter I (“Scope of the Criminal Code”) of the Criminal Code. They apply to all bribery and trading in influence offences. According to section 3 CC, subsection 1, jurisdiction is established over acts committed within the territory of Hungary regardless of whether the perpetrator is a Hungarian citizen or not (principle of territoriality). Furthermore, Hungarian jurisdiction also covers acts committed by Hungarian citizens abroad and there is no “dual criminality requirement”. Hungarian law is also to be applied in respect of criminal acts committed on board Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary (section 3, subsection 2).

78. Section 4 CC provides that Hungarian law shall be applied to acts committed by foreigners abroad, if they are:
- a) criminal acts in accordance with the Hungarian law and are also punishable in accordance with the law of the place of the perpetration;
 - b) criminal acts against the State, excluding espionage against allied armed forces, regardless of whether or not it is punishable in accordance with the law of the country where it is committed;
 - c) crimes against humanity or any other crime, the prosecution of which is prescribed by an international treaty.

Section 4 (2) CC

Espionage against allied armed forces committed by a non-Hungarian citizen in a foreign country shall be punishable according to the Hungarian Criminal Code, provided that such an offence is also punishable by the law of the country where it is committed.

79. The authorities informed that there were no court decisions/case law in connection with jurisdiction in respect of bribery offences.

Statute of limitations

Section 33 CC

(1) Punishability shall be statute-barred:

- a) in case of a felony that is punishable by life imprisonment, by elapse of twenty years;
- b) in case of any other criminal act, by the elapse of period of time equal to the upper limit of the punishment, but not less than three years."

Section 35 CC

(1) The statute of limitation shall be interrupted by any criminal proceeding act of the authorities acting in criminal proceedings against the perpetrator in connection with the criminal act. The period of limitation shall restart on the day of the interruption.

(2) If the criminal proceeding is suspended, the period of suspension shall not be included in the period of limitation. This provision may not be applied if the criminal proceeding is suspended because the identity of the perpetrator could not be established during the investigation, if the perpetrator cannot be located or if the perpetrator has become mentally ill.

(3) When a criminal proceeding is postponed or suspended on the grounds of personal immunity, and by virtue of the fact that the immunity was not suspended by the authority having powers to do so, or because such authority did not consent to have the proceeding initiated or continued, this period of time shall not be included in the period of limitations. This provision shall not apply to criminal acts under private prosecution, where the case is presented by the accuser.

(4) In case of probation (Section 72), the period of probation shall not be included in the period of limitations.

(5) If indictment has been postponed by the public prosecutor, the length of this period shall not be included in the period of limitations.

80. The period of limitation depends on the maximum term of imprisonment which can be imposed for the offence in question, as regulated under sections 33 and 35 CC. According to section 33 CC in conjunction with the provisions on bribery and trading in influence, the period of the statute

of limitation varies between three and ten years, depending on the gravity of the offence. Pursuant to 552 (1) the Act on Criminal Proceedings (CPA), if the criminal proceeding reveals that the defendant is a person enjoying immunity, the proceedings are to be suspended and a motion is to be filed to suspend the immunity. According to section 35 (3) CC when criminal proceedings are postponed or suspended on the grounds of personal immunity, and by virtue of the fact that the immunity was not lifted by the authority having powers to do so, or because such authority did not consent to have the proceeding initiated or continued, this period of time shall not be included in the period of limitations.

81. In addition, in accordance with section 176 of the CPA, there is a procedural time limit of 2 months within which criminal investigations as a main rule are to be completed. This period is counted from the moment when the investigation is ordered or in case of high priority investigatory actions, from the moment when the investigation commences. It was explained to the GET that the investigation period has no time limit until a person on well founded reasons is suspected and interrogated. Moreover, the 2 months deadline can be extended, according to Section 176 (1) and (2) CPA, ultimately up to 2 years. As long as a suspected person is not identified, the investigation will run with no time limit. Once the investigatory authorities interrogate the suspected person, the time limit will commence in respect of that person. The GET was told that this procedural time limit was in place in order to fulfil the requirements of Article 6 of the European Convention on Human Rights (“the right to a fair and public hearing *within a reasonable time*”) and that it had never caused an obstacle in practice for prosecuting corruption offences, as most of the investigations have normally already been carried out at the point of confronting the suspect.

Act XIX of 1998 on the Criminal Proceedings (CPA)

Section 176

Deadline of the investigation

(1) The investigation shall commence within the shortest possible period and be concluded within two months following its order or start. If justified by the complexity of the case or an insurmountable obstacle, the deadline of the investigation may be extended by two months by the prosecutor, and after the lapse of that deadline, by the chief prosecutor up to the lapse of one year from the commencement of the criminal proceedings.

(2) After one year, the deadline of the investigation may be extended by the Prosecutor General. If the investigation is conducted against a specific person, the extension may not be longer than two years following the questioning of the suspect under Section 179 (1), unless the Prosecutor General has extended the duration of the investigation until the deadline stipulated in the permission, based on Section 193 (3).

(3) If the prosecutor conducts the investigation, its deadline may be extended by the head of the prosecutor's office by two months, by the superior prosecutor up to the lapse of one year from the order of the investigation and thereafter by the Prosecutor General up to the deadline specified in subsection (2).

(4) The decision on extending the deadline of the investigation shall not be subject to protest, the length of this period shall not be included in the period of limitations.

82. The authorities have added that every investigative/procedural action that is capable of making the procedure move forward and helps to identify the perpetrator (even if the investigation was initiated against an unknown person), as well as a request for mutual legal assistance or an international arrest warrant are considered as acts interrupting the limitation period. In addition,

under sections 188 (1) e) and 266 (1) of the Criminal Procedure Act, the criminal procedure is to be suspended at the moment of the sending of the mutual legal assistance request, if no further investigation needs to be conducted in Hungary. The period of time of the suspension should not be included in the statute of limitation according to para (2) of Section 35 CC.

Defences

83. Section 255/A CC, which provides for a special defence in respect of both active and passive bribery offences committed in the public as well as in the private sector, stipulates:

Section 255/A CC	
(1)	The perpetrator of a criminal act defined in subsections (1) and (2) of section 250, subsection (1) of section 251, subsection (1) of section 252, and subsection (2) of section 255 shall be exonerated from punishment if he/she – before the authority becomes aware of the act – confesses the act to the authorities, surrenders the obtained undue financial advantage in any form to the authorities and reveals the circumstances of the commission.
(2)	The perpetrator of a criminal act defined in section 253, section 254, and subsection (1) of section 255 shall be exonerated from punishment if he/she – before the authority becomes aware of the act – confesses the act to the authorities and reveals the circumstances of the commission.

84. The authorities have argued that the above-mentioned provision on special defence is aimed at encouraging perpetrators to report bribery offences. This defence covers both active and passive bribery of domestic public officials. The authorities consider such a regulation necessary as bribery is often a hidden phenomenon that both parties have an interest in keeping secret. They have also stressed that the perpetrator of the act of bribery shall be exonerated from criminal liability only if such a report reaches the pertinent authorities before they have been made aware of the crime. However, such a perpetrator must give testimony in any phase of the procedure (section 82 subsection 4 of the Criminal Procedure Act).

Data provided by the Public Prosecutor's Office

Section 250 of the CC (passive bribery of domestic public officials)

	2006	2007	2008
Number of accused persons	168	125	127
Convictions	142	103	101
Acquittals	22	21	24
Termination	4	1	2

Section 251 of the CC (passive bribery in the private sector, misdemeanour)

	2006	2007	2008
Number of accused persons	11	20	24
Convictions	9	16	21
Acquittals	0	4	2
Termination	2	0	1

Section 252 of the CC (passive bribery in the private sector, felony)

	2006	2007	2008
Number of accused persons	18	10	9
Convictions	16	9	7
Acquittals	2	1	2
Termination	0	0	0

Section 253 of the CC (active bribery of domestic public officials)

	2006	2007	2008
Number of accused persons	234	154	115
Convictions	211	135	96
Acquittals	8	15	15
Termination	15	4	4

Section 255 of the CC (bribery in relation to judicial proceedings)⁸

	2006	2007	2008
Number of accused persons	1	2	8
Convictions	1	2	5
Acquittals	0	0	3
Termination	0	0	0

Section 256 of the CC (passive trading in influence)

	2006	2007	2008
Number of accused persons	43	35	36
Convictions	40	31	31
Acquittals	1	4	4
Termination	2	0	1

Section 258/B of the CC (bribery of foreign/international public officials)

	2006	2007	2008
Number of accused persons	3	6	16
Convictions	3	5	15
Acquittals	0	1	1
Termination	0	0	0

Section 258/E of the CC (passive trading in influence, foreign/international)

	2006	2007	2008
Number of accused persons	0	2	1
Convictions	0	2	1
Acquittals	0	0	0
Termination	0	0	0

⁸ Bribery (section 255 of CC): (1) Any person who gives undue advantage to another person, or to a third person on account of such person, to induce him/her to refrain from exercising his lawful rights in a court or other official proceeding, or to induce him/her to neglect his/her duties, is guilty of a felony and shall be punished by imprisonment for up to five years.

(2) Any person who accepts undue advantage so as to refrain from exercising his/her lawful rights in a court or other official proceeding, or to neglect his/her duties shall be punished according to Subsection (1).

III. ANALYSIS

85. The GRECO Evaluation Team (GET) found the Hungarian legal framework regarding the criminalisation of corruption offences to a large degree in conformity with the standards of the Criminal Law Convention on Corruption (ETS 173) (hereafter: the Convention) and the Additional Protocol thereto (ETS 191). The Hungarian authorities should be commended for this situation which is the result of numerous amendments to the Criminal Code (CC) in the light of the development of international anti-corruption standards, in particular, the Convention. As a result, the Hungarian criminal law contains a broad range of provisions to cover various forms of bribery offences and trading in influence. Furthermore, the data presented in the descriptive part of the report, shows that a not insignificant number of corruption cases have led to convictions both in respect of public sector bribery and bribery in the private sector in recent years. Having said that, the GET nevertheless identified some issues relating to the various elements of corruption offences which need to be addressed.
86. The notion of public official is defined in section 137 CC through a list of specific positions, containing also two more general functional descriptions in subsection 1 j) ("persons serving at the Constitutional Court, the courts, prosecutors offices, administrative agencies, local government administrative bodies, the State Audit Office, the Office of the President of the Republic, the Office of Parliament, whose activity forms part of the proper functioning of the agency in question") and subsection 1 l) ("persons exercising – in accordance with legal provisions – public or administrative powers in a public or administrative body"). These provisions seem to be relatively narrow in scope. For instance, medical doctors in public hospitals or professors in public universities would not be covered, at least, if the corrupt act does not concern public money. Other examples are auxiliary personnel such as drivers or secretaries in an administration. A particularity of Hungarian legislation in this respect is that the rather narrow scope of who is to be considered a public official and thus qualify an act of corruption as public sector bribery or trading in influence, is somewhat "compensated" for by the rather broad concept of bribery (and trading in influence) in the private sector. This can be exemplified by a case in which an employee of a public university responsible for computing, "sold" favourable marks to students and was convicted for passive bribery in the private sector. It follows that the categories of persons employed within the public sector but who do not qualify as public officials in the strict sense may be prosecuted for private sector corruption offences. The GET finds this particularity of the Hungarian criminal law overall acceptable as it could not point at any category of official/employee that would fall outside the scope of these offences. Moreover, the definition of "public official" contained in section 137 CC, despite the fact that the approach taken by Hungarian provisions appear to be slightly different from the usual legal situation in other member States in this respect, is nevertheless in line with the requirements of the Convention in this regard, as Article 1 a) of the Convention contains a definition of public official which is to be understood by reference to national legislation. Consequently, the GET takes the view that the Hungarian notion of public official in relation to corruption offences is in line with the requirements of the Convention.
87. Pursuant to section 253 CC (active bribery in the public sector) and section 254 CC (active bribery in the private sector), the wording of the English translations of these sections only contains the elements "gives" or "promises" in relation to undue advantage. However, following the authorities' explanations, supported by other interlocutors met by the GET on-site, the GET accepts that the Hungarian expression "ígér", which appears in the provisions of the Criminal Code, covers both "promising" and "offering", while "giving" is separately mentioned in the relevant sections. The GET wishes to stress that the official translations of the provisions would benefit from being generally revised.

88. The relevant provisions contained in the Criminal Code do not expressly cover the indirect commission of bribery offences, i.e. bribery committed through intermediaries. The Hungarian authorities referred – convincingly – to the general rules of the Criminal Code on complicity (section 21 CC). In the absence of any indications to the contrary, the GET accepts that the general rules referred to would cover situations of indirect bribery. There was also some discussion on the issue as to what extent section 250 CC (passive bribery of public officials) covers the situation where the beneficiary is a third party. (By contrast in section 253 concerning active bribery, this is explicitly included). It was, however, confirmed by all interlocutors met by the GET, that the request/acceptance of an unlawful advantage covers third party beneficiaries. Furthermore, the element where the bribee "agrees with the party requesting or accepting the advantage" covers the specific situation where the third party is involved in a corruption agreement and is then itself punishable (under the relevant rules on accomplices). The Hungarian authorities have also clarified that the wording "in connection with his duties" as used in all bribery offences covers "acting" as well as "refraining from acting" on the part of the bribee.
89. The various provisions on private sector corruption in the Criminal Code are relatively far reaching and they go beyond some of the requirements of the Convention. There is no "breach of duty concept" in the law, i.e. it is immaterial whether the perpetrator acts in breach of his/her duties. The private sector corruption does not generally require the existence of a business relation, in contrast to what is foreseen in the Convention. Moreover, private sector corruption is not only linked to bribery but also covers trading in influence (section 256, paragraph 3 and 4), at least as regards the passive side of this offence.
90. Hungary has made a reservation concerning Article 8 of the Convention, regarding passive bribery in the private sector, stating that such offences when committed by foreign citizens in the course of business activities abroad are not covered by Hungarian law. The authorities told the GET that the reason for this reservation was the fact that passive private sector bribery is not an offence in many other countries. While section 258/C CC explicitly covers active bribery of employees or members of a business association, there is no similar provision for foreign passive bribery in the private sector. In the absence of any relevant case law the GET has doubts whether the provisions of sections 251 and 252 CC are also applicable to trans-border cases. If not, this may lead to restrictions going far beyond the reservation entered by the Hungarian authorities. And even if the application of the latter provisions were to be possible in foreign corruption cases, the reservation could give rise to restrictions regarding the obligation in Article 17 Paragraph 1 letter b of the Convention in case the receiver of the bribe were a Hungarian public official or a member of one of its domestic public assemblies without being a national. The GET therefore recommends **i) to explicitly criminalise foreign passive bribery in the private sector and ii) to consider withdrawing or not renewing the reservation concerning Article 8 of the Criminal Law Convention on Corruption (ETS 173).**
91. Passive trading in influence is covered in sections 256 CC (domestic trading in influence, including trading in influence in the private sector) and 258/E CC (trading in influence concerning foreign and international public officials). While the aforementioned provisions appear to be broad and overall in line with the requirements of the Convention, there is no specific provision which would cover active trading in influence in the Hungarian Criminal Code. However, the authorities claim that active trading in influence is fully covered by the provisions of active bribery of domestic public officials (section 253 CC) and active bribery of foreign public officials and international officials (section 258B CC) as both provisions are also meant to provide for the case where the advantage is offered/promised/given "to another person on account of" the official. According to the Commentary to the law made for practitioners, the wording "gives or promises undue advantage to another person on account of such public official" refers to a person, who –

regarding his/her real or pretended relation to the public official – may be able to influence the actions of the public official. The authorities furthermore stress that this crime can also be established, if the public official does not agree with the person who accepts the advantage or does not know about the advantage given or promised to the third person at all; neither does the law nor the commentary express that a third person who receives the bribe must state or pretend, that s/he would bribe the public official. The briber commits the active trading in influence if s/he gives the undue advantage to the third person with the presumption that s/he is able to influence the public official. This interpretation of the law as provided by the authorities was not shared by all interlocutors met by the GET on-site; a representative of the academia was clearly of the opinion that Hungarian law was not in full compliance with Article 12 of the Convention in this respect.

92. The GET accepts the Hungarian position, which appears to be justified by case law, that the active bribery offences of the Criminal Code contain the intentional element of a bribe transmitted by the influence peddler to the influenced official. The GET agrees that under such conditions the provisions on active bribery may apply also to situations of active trading in influence. But such a situation is clearly not the sole prerequisite or condition for active trading in influence in the meaning of Article 12 of the Convention. It is not a condition that the public official should be bribed by the influence peddler; the (asserted or confirmed) exertion of an improper influence over the decision-making of the official can be different from the (promised) undue advantage. Sections 253 and 258/B CC would not appear to cover all the forms of active trading in influence as, in the view of the GET, the element “gives or promises undue advantage to another person on account of such public official” contained in section 253 CC limits the scope of the Hungarian provision in comparison with Article 12 of the Convention. The Hungarian position that all forms of trading in influence are covered by the current law was not shared by all interlocutors met and does not appear to be supported by established case law (see Metropolitan Court (15.B.981/2003/34). As a consequence, the GET takes the view that it has not been substantiated that the Hungarian criminal law covers all possible situations of active trading in influence as foreseen in Article 12 of the Convention. The GET therefore recommends **to ensure that active trading in influence under Hungarian criminal law is in full conformity with Article 12 of the Criminal Law Convention on Corruption.**
93. Hungary has signed but not yet ratified the Additional Protocol to the Convention on Corruption. The authorities informed the GET that the ratification process will be launched after the parliamentary elections in spring 2010. They did not see any specific legislative obstacles to Hungary becoming a contracting party to the Protocol. The GET notes that bribery of domestic jurors is in fact covered by sections 250 and 253 CC as the definition of domestic public officials in section 137 CC, subsection 1 j) includes persons “*serving at (...) the courts (...) whose activity forms part of the proper functioning of the organ*”. Furthermore, bribery of foreign jurors would apparently fall under the foreign bribery provisions in sections 258/B and 258/D CC as section 137, subsection 3 a) also covers persons “*empowered with (...) judicial (...) duties in a foreign state*”.
94. However, the situation with regard to bribery of arbitrators is less clear. While foreign arbitrators could also be seen as persons empowered with judicial duties in a foreign state who would, consequently, fall under the foreign bribery provisions of sections 258 B and D CC, domestic arbitrators can, in the view of the GET, hardly be subsumed under the existing definitions of public officials as defined in section 137 CC: they are neither serving at the courts (subsection 1 j), nor are they “*exercising public or administrative powers in a body entrusted by law with public or administrative tasks*” in the sense of subsection 1 l). The Hungarian authorities claim that “public tasks” and “public powers” would also cover “judicial” tasks and powers. The GET

has doubts in this respect and takes the view that, at least for the sake of legal clarity, this perceived lacuna needs to be remedied. The GET therefore recommends **to ensure that the Criminal Code covers the offence of bribery of domestic arbitrators and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).**

95. The criminal sanctions for passive bribery in the public sector range from 1 to 5 years of imprisonment and may go up to a maximum of 10 years in certain circumstances. Passive bribery in the private sector is punishable by 3 years of imprisonment, but the sanctions may go up to 10 years in particularly grave cases. Active bribery in the public sector may lead to 3 years of imprisonment and active bribery in the private sector 3 years of imprisonment, unless there are aggravated circumstances (for instance where the perpetrator induces the bribee to breach his duty) in which case these penalties may be much more severe. Furthermore, the range of sanctions appears to be in line with other comparable crimes such as embezzlement (section 317 CC) and fraud (section 318 CC). The GET therefore takes the view that the current sanctions for the various bribery and trading in influence offences – which were recently slightly strengthened⁹ - appear to be in line with the requirements of Article 19 Paragraph 1 of the Criminal Law Convention, although the maximum penalties for active bribery in the public sector and active trading in influence, where there are no aggravating circumstances, remain rather low. The fact that certain forms of bribery which would be considered public sector bribery in other countries would, in Hungary, fall under the provisions for private sector bribery does not alter the GET's position.
96. According to section 33 CC, the statute of limitation for any offence, including corruption, is equivalent to the length of the maximum term of imprisonment for the particular offence, however, it can never be shorter than 3 years and the limitation period starts to run at the time of the commission of the offence. In practice the limitation period is 5 years or more for passive bribery in the public sector as well as for passive trading in influence; however, active bribery in the public sector and active trading in influence as well as active and passive bribery in the private sector (unless aggravated offences) are statute barred at 3 years, whether committed in the domestic or in the foreign/international context. The GET is of the opinion that this period appears rather short, despite the fact that it may be interrupted for various reasons, given the special difficulties encountered in detecting and investigating corruption offences. The 3 year limit, is short in comparison with the situation in most other member States and has also been criticised by the OECD¹⁰ in relation to foreign bribery. In conclusion, the GET considers that the current situation may limit the possibilities to prosecute a big bulk of corruption offences and recommends **to extend the three year minimum limitation period provided for in section 33 of the Criminal Code regarding bribery and trading in influence.**
97. Section 255/A CC provides for exoneration from punishment in cases of bribery when a perpetrator reports the act to the investigating authorities "first hand", i.e. before the authorities have become aware of the act, "effective regret". This possibility is applicable in respect of all domestic bribery cases, whether aggravated or not, but it has been abolished in the foreign/international context of bribery. The effective regret provision applies in respect of the bribe giver, but also concerning the bribe taker and whether or not the initiative for committing the offence comes from the perpetrator; he or she could even act as an instigator and afterwards be exonerated, as a result of having reported the crime. Furthermore, there is no time limit for reporting; it is sufficient that the confession occurs before the authorities became aware of the

⁹ Act LXXX of 2009 which entered into force on 1 May 2010.

¹⁰ Working Group on Bribery in International Business Transactions: Phase 2 reports on Hungary (September 2007 and earlier).

offence. The application of effective regret leads to an “automatic” and total exemption from punishment, i.e. there is no possibility for taking into consideration the particular situation at stake, for example, the motives that the perpetrator may have for reporting the offence and invoking effective regret and there is no possibility of judicial review. The views of the practitioners met on-site by the GET regarding the provision on effective regret were divided. While some underlined the usefulness and necessity of this provision, others found it neither important nor helpful for prosecution and were of the opinion that the provision was rarely applied, however, no data was presented to the GET regarding this matter. The GET notes that the range of offences covered by the effective regret provision in Hungary is very broad; besides all forms of domestic active bribery in the public and private sector, exoneration is also possible for various forms of domestic passive bribery in the public and private sector. The GET concludes that under this provision very serious cases of active and passive corruption offences may go totally unpunished and that there are obvious risks for misuse of this instrument, for example, by a bribe taker to exert pressure on a bribe giver to add more in addition to a given bribe etc. In view of the above, the GET is concerned about the effective regret provision in section 255/A CC, which - in its view - is a far reaching feature open for misuse. Consequently, the GET recommends **to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of domestic active and passive bribery in the public and private sector in cases of “effective regret”**.

IV. CONCLUSIONS

98. Overall the Hungarian criminal law contains a broad range of provisions to cover various forms of corruption offences and the legislation is currently to a large extent in conformity with the requirements of the Criminal Law Convention on Corruption (ETS 173) which was ratified by Hungary in 2000 and its Additional Protocol (ETS 191), which has not yet been ratified. Having said that, the Hungarian criminal legislation, which has been subject to numerous amendments in order to incorporate requirements of the Convention and other international instruments, is somewhat unusual in its conception and certain criminal provisions go beyond the requirements of the Convention, however, a few shortcomings can also be noted.
99. Private sector corruption offences under Hungarian law are, on the one hand, quite far reaching; there is, for example, a broad range of categories of persons who are covered by these offences and this “compensates” for the rather narrow definition of public officials. This implies that some categories of public employees (for example, university professors or medical staff employed in the public sector) who would be subject to public sector corruption in other states, are covered by private sector corruption in Hungary. Moreover, it is immaterial in private sector bribery whether the offender acts in breach of his/her duties, and there is no requirement of a business relation for these offences; any person may be prosecuted for active bribery, similarly to the requirements in public sector bribery. Consequently, the Hungarian law goes beyond the requirements of the Convention in these respects. On the other hand, Hungary has made a reservation concerning foreign passive bribery in the private sector as such an offence is not covered by the Criminal Code. Trading in influence is not only a public sector offence under Hungarian law; such action is also criminalised in the private sector, which is more than what is required by the Convention. The passive form of trading in influence, which is specifically provided for by the Criminal Code, appears to be in compliance with the Convention, however, the active side of this offence is covered in the Criminal Code through the active bribery offence. This arrangement appears to limit the scope of active trading in influence as compared with Article 12 of the Criminal Law Convention. The bribery offences contained in the Additional Protocol to the Convention are clearly covered by the Criminal Code, except for bribery of domestic arbitrators, where the situation seems less obvious. This possible shortcoming needs to be addressed and followed up

in the on-going process towards ratification of the Additional Protocol to the Convention. Another issue of concern relates to the statute of limitation which when applied in respect of several corruption offences, where no aggravated circumstances are at stake, seems to be rather short. Finally, it is noted that the Hungarian provisions concerning the special defence of “effective regret” make it possible for corruption offenders to obtain an “automatic” exoneration from criminal punishment when they report a corruption offence to the authorities, regardless of the role they have had as offender. This needs to be reviewed in order to minimise risks of abuse to the extent possible.

100. In view of the above, GRECO addresses the following recommendations to Hungary:
- i. **i) to explicitly criminalise foreign passive bribery in the private sector and ii) to consider withdrawing or not renewing the reservation concerning Article 8 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 90);**
 - ii. **to ensure that active trading in influence under Hungarian criminal law is in full conformity with Article 12 of the Criminal Law Convention on Corruption (paragraph 92);**
 - iii. **to ensure that the Criminal Code covers the offence of bribery of domestic arbitrators and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (paragraph 94);**
 - iv. **to extend the three year minimum limitation period provided for in section 33 of the Criminal Code regarding bribery and trading in influence (paragraph 96);**
 - v. **to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of domestic active and passive bribery in the public and private sector in cases of “effective regret” (paragraph 97).**
101. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Hungarian authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2011.
102. Finally, GRECO invites the authorities of Hungary 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.

APPENDIX

Declarations made with respect to treaty No. 173

Declaration contained in a Note Verbale from the Minister for Foreign Affairs of Hungary, handed at the time of deposit of the instrument of ratification on 22 November 2000 - Or. Fr.

In accordance with Article 29, paragraph 2, of the Convention, the Republic of Hungary designates the Ministry of Justice (1055 Budapest, Kossuth Lajos tér 4.) and the State Prosecutor's Office (1055 Budapest, Markó u. 16) as central authorities.

Period covered: 1/7/2002 -

The preceding statement concerns Article(s) : 29

Declaration contained in a Note Verbale from the Minister for Foreign Affairs of Hungary, handed at the time of deposit of the instrument of ratification on 22 November 2000 - Or. Fr.

In accordance with Article 30, paragraph 6, of the Convention, the Republic of Hungary informs that, for reasons of efficiency, requests made under Chapter IV are to be addressed to one of these authorities.

Period covered: 1/7/2002 -

The preceding statement concerns Article(s) : 30

Reservation contained in a Note Verbale from the Ministry for Foreign Affairs of Hungary, handed at the time of deposit of the instrument of ratification on 22 November 2000 - Or. Fr.

In accordance with Article 37, paragraph 1, of the Convention, Hungary reserves the right not to establish as criminal offences the conduct referred to in Article 8 and committed by foreign citizens in the course of business activities abroad.

[Note by the Secretariat : The Government of Hungary has informed the Secretary General of its intention to uphold wholly this reservation for a period of 3 years (Article 38 of the Convention):

- by a Note verbale from the Permanent Representation of Hungary, dated 16 August 2004, registered to the Secretariat General on 17 August 2004 - Or. Engl.

- by a Note verbale from the Permanent Representation of Hungary, dated 14 November 2007, registered to the Secretariat General on 20 November 2007 - Or. Engl.]

Period covered: 1/7/2002 -

The preceding statement concerns Article(s) : 37, 8