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Theme I

Third Evaluation Round

Evaluation Report on the Russian Federation Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 54th Plenary Meeting
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I. INTRODUCTION

1. The Russian Federation joined GRECO in 2007. GRECO adopted the Joint First and Second Round Evaluation Report (Greco Eval I/II Rep (2008) 2E) in respect of the Russian Federation at its 40th Plenary Meeting (5 December 2008). The aforementioned evaluation report as well as its corresponding compliance report are both available on GRECO's homepage (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 the Russian Federation on 3 and 4 October 2011, was composed of Ms Cornelia GÄDIGK, Senior public prosecutor, Head of Division 57 "Corruption Crimes", Prosecution office Hamburg (Germany) and Mr Georgi RUPCHEV, State Expert, Directorate of International Co-operation and European Affairs, Ministry of Justice (Bulgaria). The GET was supported by Mr Michael JANSSEN and Ms Liubov SAMOKHINA from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2011) 6E, Theme I) as well as copies of relevant legislation.
4. The GET met with officials from the Prosecutor General's Office, the Ministry of Justice, the Investigative Committee, the Ministry of the Interior, the Federal Security Service, the Academy under the Prosecutor General's Office and prosecutors, Judges of the Supreme Court and of the Moscow Regional Court. The GET also met with representatives of the Civil Chamber and the Association of Lawyers.
5. The present report on Theme I of GRECO's Third Evaluation Round on Incriminations was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Russian 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 the Russian Federation 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 (2011) 6E - Theme II.

II. INCRIMINATIONS – Description of the situation

7. The Russian Federation ratified, without any reservations, the Criminal Law Convention on Corruption (ETS 173) on 4 October 2006 and it entered into force in respect of the Russian Federation on 1 February 2007. The Russian Federation signed the Additional Protocol to the Criminal Law Convention (ETS 191) on 7 May 2009. This instrument has not been ratified yet.
8. The Criminal Code of the Russian Federation (CC) came into force on 1 January 1997. The corruption-related provisions were subject to the legal amendments of 2011¹ which included, *inter alia*, some changes to the sanctions available for public and private sector bribery offences and to the definition of aggravated cases as well as the criminalisation of bribery of foreign and international public officials.²

Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

9. Article 290 CC establishes the offence of passive bribery and Article 291 CC that of active bribery. Both articles provide that the sanctions may be increased in aggravated cases. There is no complete definition of active bribery in the CC. The authorities indicate that the interpretation of this offence is based on the corresponding passive bribery offence. All the elements of passive bribery, for example the definition of the bribe, (except the act of “receiving” a bribe itself) apply to the offences of active bribery as well. Several terms used in the bribery provisions are defined in “notes” which have, according to the authorities, the same legal force as other parts of the CC. In addition, when it comes to formulating their observations on the subject, the authorities have based themselves on Decree No. 6 of the Plenum of the Supreme Court of 10 February 2000 “On the judicial practice concerning cases of bribery and commercial bribery”³ (hereinafter referred to as “Decree No. 6 of the Supreme Court”) which is aimed at ensuring correct and uniform application of the law in cases of bribery,⁴ pointing out that the decree is authoritative⁵ for courts and law enforcement agencies and is generally complied with in practice.

Article 290 CC: Bribe-taking

(1) The receiving by an official, a foreign official or an official of a public international organisation, personally or through an intermediary, of a bribe in the form of money, securities or other property or in the form of the unlawful provision to them of services of a property-related nature or the provision of other property rights, in return for acts/failures to act which serve the interests of the bribe-giver or persons represented by him/her, if such acts/failures to act fall within the official powers of the official or if s/he is able, through his/her official position, to facilitate such acts/failures to act, as well as general patronage or connivance within the public service structure, is punishable by a fine of between twenty-five and fifty times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years,

¹ Introduced by Law No. 97-FZ of 4 May 2011, entered into force on 16 May 2011, and by Law No. 420-FZ of 7 December 2011, entered into force on 8 December 2011 – except for the provisions introducing new types of punishment which will enter into force at later dates (namely on 1 January 2013, in the case of the sanction on corrective labour).

² In addition, Law No. 97-FZ included a new Article 291-1 on “Intermediation in bribery” in the CC, see paragraph 41 below.

³ Decree No. 6 was later amended by further decrees of the Supreme Court, namely Decree No. 7 of 6 February 2007 and Decree No. 31 of 23 December 2010.

⁴ See section 14 of Law No. 1-FKZ of 7 February 2011 (in the wording of 1 June 2011) “On the courts of general jurisdiction in the Russian Federation”.

⁵ The authorities refer in this respect to the Constitutional Court Ruling No. 1-P of 21 January 2010, which approves the fact that deviation by a court decision from a decree of the Plenum of the Supreme Arbitration Court gives rise to appeal.

or by corrective labour of up to 5 years with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 3 years' imprisonment with a fine of 20 times the amount of the bribe.

(2) The receiving by an official, a foreign official or an official of a public international organisation of a substantial bribe

is punishable by a fine of between 30 and 60 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 6 years' imprisonment with a fine of 30 times the amount of the bribe.

(3) The receiving by an official, a foreign official or an official of a public international organisation of a bribe in return for unlawful acts/failures to act

is punishable by a fine of between 40 and 70 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 3 and 7 years' imprisonment with a fine of 40 times the amount of the bribe.

(4) The actions provided for in paragraphs 1 to 3 of the present article, when committed by persons who hold a government post of the Russian Federation or of a constituent entity of the Russian Federation,⁶ or by the head of a local self-governing body,

are punishable by a fine of between 60 and 80 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 5 and 10 years' imprisonment with a fine of 50 times the amount of the bribe.

(5) The actions provided for in paragraphs 1, 3 and 4 of the present article, when

a) committed upon prior conspiracy by a group of persons or by an organised group;

b) accompanied by extortion of a bribe;

c) committed on a large scale,

are punishable by a fine of between 70 and 90 times the amount of the bribe, or by between 7 and 12 years' imprisonment with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years and with a fine of 60 times the amount of the bribe.

(6) The actions provided for in paragraphs 1, 3, 4 and points a) and b) of paragraph 5 of the present article, when committed on a particularly large scale,

are punishable by a fine of between 80 and 100 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 8 and 15 years' imprisonment with a fine of 70 times the amount of the bribe.

Note:

1. The term "substantial bribe" in the present article and in Articles 291 and 291-1 of the present code shall mean money, securities, other property, services of a property-related nature or other property rights exceeding 25 000 roubles/RUB,⁷ "large-scale" bribery as exceeding 150 000 RUB,⁸ and "particularly large-scale" bribery as exceeding 1 million RUB.⁹

2. The term "foreign official" in the present article and in Articles 291 and 291-1 of the present code shall mean any appointed or elected person occupying any post in a legislative, executive, administrative or judicial body of a foreign state, or any person exercising any kind of public function for a foreign state, including for a public agency or public enterprise; the term "official of a public international organisation" shall mean an international civil servant or any person authorised by such an organisation to act on its behalf.

⁶ The Russian Federation comprises 83 federal subjects (constituent entities), including republics, territories, regions, federal cities, autonomous regions and autonomous areas.

⁷ Approximately 625 EUR.

⁸ Approximately 3 750 EUR.

⁹ Approximately 25 000 EUR.

Article 291 CC: Bribe-giving

(1) *The giving of a bribe to an official, a foreign official or an official of a public international organisation, personally or through an intermediary,*

is punishable by a fine of between 15 and 30 times the amount of the bribe, or by corrective labour of up to 3 years, or by up to 2 years' imprisonment with a fine of 10 times the amount of the bribe.

(2) *The giving of a substantial bribe to an official, a foreign official or an official of a public international organisation, personally or through an intermediary,*

is punishable by a fine of between 20 and 40 times the amount of the bribe, or by up to 3 years' imprisonment with a fine of 15 times the amount of the bribe.

(3) *The giving of a bribe to an official, a foreign official or an official of a public international organisation, personally or through an intermediary, in return for deliberately unlawful acts/failures to act,*

is punishable by a fine of between 30 and 60 times the amount of the bribe, or by up to 8 years' imprisonment with a fine of 30 times the amount of the bribe.

(4) *The actions provided for in paragraphs 1 to 3 of the present article, when committed*

a) upon prior conspiracy by a group of persons or by an organised group;

b) on a large scale,

are punishable by a fine of between 60 and 80 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 5 and 10 years' imprisonment with a fine of 60 times the amount of the bribe.

(5) *The actions provided for in paragraphs 1 to 4 of the present article, when committed on a particularly large scale,*

are punishable by a fine of between 70 and 90 times the amount of the bribe, or by between 7 and 12 years' imprisonment with a fine of 70 times the amount of the bribe.

Note: A person having given a bribe shall be released from criminal liability, if s/he was actively facilitating the detection and/or investigation of a crime and if the bribe has been extorted by the official or the person gave voluntary notification of bribery, after committing the crime, to a body authorised to instigate criminal proceedings.

Elements of the offence

"Domestic public official"

10. The bribery provisions of the CC employ the term "official",¹⁰ which is defined in note No. 1 to Article 285 CC (abuse of office).

Note to Article 285 CC:

1. *Persons who permanently, temporarily or by special authority perform the functions of authority representative, or who perform organisational-managerial or administrative-economic functions in state bodies, local self-government bodies, state and municipal institutions, and also in the Armed Forces of the Russian Federation, other troops and military formations of the Russian Federation, are deemed to be officials in the articles of this chapter.¹¹*

(...)

¹⁰ In this report the term *public official* is used and is to be understood in the sense of "official", unless otherwise specified.

¹¹ I.e. Chapter 30 of the CC on "Crimes against state power and the interests of the civil service and the service in local self-government bodies" (Articles 285 to 293 CC).

11. The definition of a domestic official thus includes (1) persons who perform the functions of authority representative; and (2) persons who perform organisational-managerial or administrative-economic functions in state bodies, local self-government bodies, state and municipal institutions, etc. The authorities indicate that according to the explanations provided by Decree No. 6 of the Supreme Court (paragraphs 2 and 3),¹² (1) the first category of persons refers to “persons exercising legislative, executive or judicial power, as well as employees of government, regulatory or supervisory bodies with administrative powers, established by law, in relation to persons who are not their subordinates, or who have the right to take decisions which are binding on citizens and organisations regardless of their affiliation (for instance, members of the federal parliament and of legislative assemblies of the constituent entities, members of the federal government and of the executive authorities of the constituent entities, judges of federal courts and justices of the peace, empowered prosecutors, tax and customs authorities, Ministry of Internal Affairs, Federal Security Service, etc.)”; and (2) the terms “organisational-managerial or administrative-economic functions” employed in respect of the second category of persons refer to, for example, “team leadership, organisation and selection of personnel, organisation of tasks and structures of subordinates, maintaining discipline, coaching and imposing disciplinary sanctions. Administrative functions may, in particular, include responsibility for managing and administering property and funds (...), taking decisions concerning the payroll, bonuses, controlling of the movement of material values, determination of the procedure of their storage, etc.” The Supreme Court explains that the concept of official in the meaning of the bribery provisions does not include employees of state bodies and local self-government bodies performing professional or technical duties which are not related to such organisational-managerial or administrative-economic functions (paragraph 5 of Decree No. 6).

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

12. The passive bribery provisions use the words “receiving a bribe”, see Article 290 CC. The request for a bribe is mentioned only in the meaning of extortion, as an aggravating circumstance. By contrast, the simple “request” of a bribe and the “acceptance of an offer or promise” are not mentioned. The authorities indicate that in accordance with Decree No. 6 of the Supreme Court (paragraph 11) and with court practice,¹³ cases where the planned transfer of a bribe does not materialise may be dealt with under Article 30 CC in conjunction with Article 290 CC as preparation of or attempted bribery. Cases where no concrete action is taken in view of the transfer of the bribe – for example, mere requests – may only constitute preparation of bribery. It is to be noted that the preparation of a crime is only incriminated in cases of grave and especially grave crimes. Article 30, paragraph 1 CC on preparation of crime is therefore not applicable to crimes of average or little gravity, that is offences punishable by up to five years’ imprisonment or a more lenient penalty,¹⁴ such as bribery offences without aggravating circumstances under Article 290, paragraph 1 CC. Moreover, pursuant to Article 31 CC, the perpetrator of a prepared or attempted crime is not criminally liable if s/he voluntarily refuses to complete the crime. Under the provisions of Article 66 CC, punishment for crime preparation or for criminal attempt may not exceed half of the maximum limit or three fourths of the maximum limit of the severest kind of punishment prescribed for the completed offence respectively.

¹² The authorities also refer in this respect to Decree No. 19 of the Plenum of the Supreme Court of 16 October 2009 “On the judicial practice concerning cases of abuse of office and exceeding of official powers” (paragraphs 2 to 10).

¹³ In particular, the authorities refer to Supreme Court decision N 43-O10-22 of 11 November 2010 concerning a case of extortion of a bribe by an official. The offence had been detected by means of special investigation activities, after the transfer of (a part of) the bribe but before the official act promised.

¹⁴ See Article 15, paragraphs 2 and 3 CC.

Article 30 CC: Preparation and criminal attempt

(1) *The looking for, manufacturing, or adapting by a person of means or instruments for committing a crime, the finding of accomplices for a crime, the conspiracy to commit a crime, or any other intentional creation of conditions to commit a crime shall be deemed preparations for a crime, unless the crime has been carried out owing to circumstances outside the control of this person.*

(2) *Criminal responsibility shall ensue only for preparations to commit grave or especially grave crime.*

(3) *Intentional actions (inaction) by the person concerned, directed expressly towards the commission of a crime, shall be deemed to be an attempted crime, unless the crime has been carried out owing to circumstances beyond the control of this person.*

Article 31 CC: Voluntary refusal to commit a crime

(1) *The termination by the person concerned of preparations for a crime or the termination of actions (inaction) directed expressly at the commission of the crime shall be deemed to be a voluntary refusal to commit a crime, if the person was aware of the possibility of carrying out the crime.*

(2) *A person shall not be subject to criminal responsibility for a crime if s/he voluntarily and finally refused to carry out this crime.*

(...)

“Promising, offering or giving” (active bribery)

13. Article 291 CC uses the word “giving a bribe”. The authorities indicate that in accordance with the explanations provided by Decree No. 6 of the Supreme Court (paragraph 11), “active bribery is considered to be complete at the date of receipt by the bribe-taker of at least part of transmitted advantages.” Cases where the planned transfer of a bribe does not materialise may be dealt with under Article 30 CC in conjunction with Article 291 CC as preparation of or attempted bribery.¹⁵ If no concrete action is taken in view of the transfer of the bribe – for example, cases of mere offers or promises – may only constitute preparation of bribery. It is also to be noted that the preparation of a crime is not incriminated in cases of crimes of average or little gravity, and that Article 30, paragraph 1 CC is therefore not applicable to bribery offences in the absence of certain aggravating circumstances under Article 291, paragraphs 1 and 2 CC.

“Any undue advantage”

14. Articles 290 and 291 CC employ the word “bribe”. Article 290, paragraph 1 CC makes it clear that a bribe may occur “in the form of money, securities or other property or in the form of the unlawful provision (...) of services of a property-related nature or the provision of other property rights”. In accordance with the explanations provided by Decree No. 6 of the Supreme Court (paragraph 9), bribes may consist of money, securities, other property, benefits or services of a material nature, payable services provided for free (for instance, providing tourist vouchers, remodeling apartments, building summer houses, etc.), undervaluation of property transferred, objects to be privatised, discount rentals, discount rates for using bank loans, etc. The monetary value of such advantages must be indicated in the court sentence.

¹⁵ The authorities also refer to court practice, namely to the decision N 22-2044 of 29 October 2009 of the penal chamber of the Sakhalin Regional Court, which confirmed the conviction passed in first instance for attempted active bribery. The decision concerned a case where the bribe-taker had informed the authorities of the offer of a bribe and the bribe-giver was detained at the moment of the transfer of the bribe.

15. The element “undue” is not explicitly transposed. The bribery provisions do not contain any value threshold; the amount of the advantage does not matter.¹⁶ The authorities add that in accordance with Article 575 of the Civil Code, it is permissible to present public officials with “ordinary gifts”, whose value does not exceed 3 000 RUB/approximately 75 EUR, as well as gifts in connection with protocol events and other official events – but only in so far as they are not made in return for acts/failures to act by the official.

“Directly or indirectly”

16. Articles 290 and 291 CC explicitly provide that the offences of active and passive bribery can be committed directly or indirectly, “personally or through an intermediary”.

“For himself or herself or for anyone else”

17. The provisions on active and passive bribery do not specify whether the advantage must be for the official him/herself. According to Supreme Court Decree No. 6 (paragraph 9), bribery also occurs in cases where the official receives an advantage not for him/her personally but for the benefit of family members or close persons, with his/her consent or if s/he did not object and used his/her authority in favour of the bribe-giver.

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

18. Russian legislation expressly covers both positive acts and omissions by a public official “which serve the interests of the bribe-giver or persons represented by him/her, if such acts/failures to act fall within the official powers of the official or if s/he is able, through his/her official position, to facilitate such acts/failures to act”, as well as “general patronage or connivance within the public service structure”. The authorities explain that the element “which serve the interests of the bribe-giver or persons represented by him/her” refers to, for example, members of the bribe-giver’s family, other close persons, commercial or non-commercial organisations or authorities which are headed by the bribe-giver or under his/her trusteeship etc. According to Supreme Court Decree No. 6 (paragraph 4), the element “s/he is able, through his/her official position, to facilitate such acts/failures to act” is to be understood by reference to the “importance and prestige of the official’s position, presence of the other subordinates, in relation to whom the leadership is being exercised by the bribe-taker.” Regarding acts which lie outside the scope of official powers of the official but which s/he nevertheless performs him/herself, the authorities indicate that in line with Supreme Court Decree No. 6 (paragraph 10), in such cases the official would be liable for aggravated passive bribery implying an unlawful act under Article 290, paragraph 3 CC. Finally, the alternative concept of “general patronage or connivance within the public service structure” applies to situations where a relationship between the bribe-giver and the bribe-taker is established by service dependency and not by a concrete act or omission in the exercise of the official’s functions (for example, in relation to undeserved incentives, extraordinary unjustified promotion in office, lack of reaction to wrong acts by the bribe-giver etc.).

“Committed intentionally”

19. The authorities indicate that both active and passive bribery can only be committed with intent.

¹⁶ The authorities refer to several court decisions on cases involving minor benefits. For example, the Sovetskiy District Court of the city of Volgograd in its decision of 15 June 2011 convicted a public official for taking a bribe in an amount of approximately 13 EUR and the Suzdal District Court of Vladimir Oblast, in its decision of 25 March 2010, convicted a person for giving a bribe in an amount of approximately 5 EUR.

Sanctions

20. Passive bribery offences are punishable by a fine of between 25 and 50 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by corrective labour of up to 5 years with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 3 years' imprisonment with a fine of 20 times the amount of the bribe. Article 290 CC provides for several degrees of aggravated sanctions. The most serious case is bribe-taking committed on a particularly large scale (that is bribery involving values exceeding approximately 25,000 EUR), which is punishable by a fine of between 80 and 100 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 8 and 15 years' imprisonment with a fine of 70 times the amount of the bribe. Active bribery is punishable by a fine of between 15 and 30 times the amount of the bribe, or by corrective labour of up to 3 years, or by up to 2 years' imprisonment with a fine of 10 times the amount of the bribe. Article 291 CC provides for several degrees of aggravated sanctions. The most serious case is bribe-taking committed on a particularly large scale, which is punishable by a fine of between 70 and 90 times the amount of the bribe, or by between 7 and 12 years' imprisonment with a fine of 70 times the amount of the bribe. It is to be recalled that only the giving and receiving of a bribe constitute completed offences of bribery. By contrast, according to the authorities, offering, promising, requesting and accepting an offer or promise are punishable as preparation of or attempted bribery. Pursuant to Article 66 CC, punishment for crime preparation or for criminal attempt may not exceed half of the maximum limit or three fourths of the maximum limit of the severest kind of punishment prescribed for the completed offence respectively.
21. The different types of sanctions are defined in Articles 44 to 59 CC. Pursuant to Article 46, paragraph 2 CC in its amended form, a fine which is calculated on the basis of the amount of the bribe cannot exceed 100 times the amount of the bribe but cannot be less than 25 000 RUB¹⁷ and cannot exceed 500 million RUB.¹⁸ According to Article 60 CC, in determining the punishment, the court has to take account of the nature and the degree of the social danger of the crime and the personality of the convicted person, including any mitigating or aggravating circumstances, and also the influence of the imposed penalty on the rehabilitation of the convicted person and on the livelihood of his family. Mitigating and aggravating circumstances are listed in Articles 61 and 63 CC, the former including situations of surrender, active assistance in detecting the offence and voluntary compensation of losses or repairing of damages.
22. Similar sanctions are available for other comparable criminal offences such as fraud (Article 159 CC), misappropriation or embezzlement (Article 160 CC), abuse of office (Article 285 CC) or intermediation in bribery (Article 291-1 CC).

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

23. The authorities explain that bribery of members of domestic public assemblies is criminalised under Articles 290 and 291 CC, as the definition of an "official" in the note to Article 285 CC refers to, *inter alia*, "persons who perform the functions of authority representative". According to the explanations provided by Decree No. 6 of the Supreme Court (paragraph 2), this concept includes persons exercising legislative, executive or judicial power, e.g. members of the federal parliament and of legislative assemblies of the constituent entities. The authorities also refer to a

¹⁷ Approximately 625 EUR.

¹⁸ Approximately 12,5 million EUR.

Supreme Court decision,¹⁹ stating that the deputy of an elected body of representative authority (the Tver City Duma) was to be considered an official and therefore liable for passive bribery. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials in principle also apply to bribery of members of domestic public assemblies. As concerns the passive bribery offence, the authorities explain that members of Parliament are to be considered as “persons who hold a government post of the Russian Federation or of a constituent entity of the Russian Federation” in the meaning of section 290, paragraph 4 CC and are therefore subject to aggravated sanctions, namely a fine of between 60 and 80 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or between 5 and 10 years’ imprisonment with a fine of 50 times the amount of the bribe.

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

24. Bribery of foreign public officials is covered by Articles 290 and 291 CC, which in their amended form expressly include “foreign officials”. This concept is defined in the note No. 2 to Article 290 CC as “any appointed or elected person occupying any post in a legislative, executive, administrative or judicial body of a foreign state, or any person exercising any kind of public function for a foreign state, including for a public agency or public enterprise.” The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. There is no case law/court decision concerning bribery of foreign public officials.

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

25. Bribery of members of foreign public assemblies is covered by the Russian bribery provisions, as the definition of “foreign officials” includes “any appointed or elected person occupying any post in a legislative, executive, administrative or judicial body of a foreign state”, see note No. 2 to Article 290 CC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of foreign public assemblies. There is no case law/court decision concerning bribery of members of foreign public assemblies.

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

26. The CC contains two specific offences which criminalise bribery of persons who are not public officials, namely (1) Article 204 CC on commercial bribery; and (2) Article 184 CC on bribery in sport and commercial entertainment contests.

Article 204 CC: Commercial bribery

(1) The unlawful transfer to a person performing managerial functions in a commercial or other organisation of money, securities or other property, the unlawful provision to him/her of services of a property-related nature or the unlawful provision of other property rights, in return for acts/failures to act which serve the interests of the bribe-giver, in connection with the official position occupied by the person, are punishable by a fine of between 10 and 50 times the amount of the commercial bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 2 years,

¹⁹ Decision N 35-008-15CP of 29 May 2008.

or by up to 2 years' custodial restraint, or by corrective labour of up to 3 years, or by up to 3 years' imprisonment.

(2) The actions provided for in paragraph 1 of the present article, when committed

a) upon prior conspiracy by a group of persons or by an organised group;

b) in return for deliberately unlawful acts/failures to act,

are punishable by a fine of between 40 and 70 times the amount of the commercial bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by corrective labour of up to 4 years, or by between 3 and 6 months' custodial restraint, or by up to 6 years' imprisonment.

(3) The unlawful receiving by a person performing managerial functions in a commercial or other organisation of money, securities or other property, and also the unlawful use of services of a property-related nature or other property rights, in return for acts/failures to act which serve the interests of the bribe-giver, in connection with the official position occupied by the person,

are punishable by a fine of between 15 and 70 times the amount of the commercial bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by corrective labour of up to 5 years with or without deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 7 years' imprisonment with a fine of up to 40 times the amount of the commercial bribe.

(4) The actions provided for in paragraph 3 of the present article, when

a) committed upon prior conspiracy by a group of persons or by an organised group;

b) accompanied by extortion of a bribe;

c) committed in return for unlawful acts/failures to act,

are punishable by a fine of between 50 and 90 times the amount of the commercial bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 12 years' imprisonment with a fine of up to 50 times the amount of the commercial bribe.

Note: A person having committed actions provided for in paragraphs 1 or 2 of the present article shall be released from criminal liability, if s/he was actively facilitating the detection and/or investigation of a crime and if the bribe has been extorted by the official or the person gave voluntary notification of commercial bribery, after committing the crime, to a body authorised to instigate criminal proceedings.

Article 184 CC: Bribery of participants and organisers of professional sports competitions and commercial entertainment contests

(1) The bribing of sportsmen/women, referees, trainers, team managers and other participants or organisers of professional sports competitions, and also organisers or jury members of commercial entertainment contests, with a view to influencing the results of such competitions or contests, is punishable by a fine of up to 200 000 RUB²⁰ or an amount equivalent to the convicted person's salary or other income for up to 18 months, or by community service of up to 360 hours, or by corrective labour of up to 1 year, or by up to 3 months' custodial restraint.

(2) The same actions, when committed by an organised group,

are punishable by a fine of between 100 000 and 300 000 RUB²¹ or an amount equivalent to the convicted person's salary or other income for between 1 and 2 years, or by corrective labour of up to 5 years, or by up to 5 years' imprisonment.

(3) The unlawful receipt by sportsmen/women of money, securities or other property transferred to them for the purpose of influencing the results of the competitions in question, and also the

unlawful use by sportsmen/women of services of a property-related nature provided to them for

²⁰ Approximately 5,000 EUR.

²¹ Approximately 2,500 to 7,500 EUR.

that purpose,
are punishable by a fine of up to 300 000 RUB²² or an amount equivalent to the convicted person's salary or other income for up to 2 years, or by deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 6 months' custodial restraint.

(4) The unlawful receipt of money, securities or other property or the unlawful use of services of a property-related nature by referees, trainers, team managers and other participants or organisers of professional sports competitions, and also by organisers of or jury members of commercial entertainment contests, for the purpose indicated in paragraph 3 of the present article, are punishable by a fine of between 100 000 and 300 000 RUB²³ or an amount equivalent to the convicted person's salary or other income for between 1 and 2 years, or by corrective labour of up to 2 years with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 2 years' imprisonment with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years.

Note: A person having committed actions provided for in paragraphs 1 or 2 of the present article shall be released from criminal liability, if the person was subject to extortion or the person gave voluntary notification of bribery to a body authorised to instigate criminal proceedings.

Elements of the offence

27. The elements described under bribery of domestic public officials largely apply to bribery in the private sector in accordance with the particular elements detailed below. However, in contrast to Articles 290 and 291 CC, the indirect commission of the offence through intermediaries is not mentioned. In the case of active bribery in the private sector, the words “transfer” (Article 204 CC) and “bribing” (Article 184 CC) are employed instead of “giving” an advantage, but according to the authorities, all these terms have the same meaning in the context of the bribery provisions. As regards Article 184 CC, it criminalises bribery of both sportsmen/women and other participants in/organisers of professional sports competitions²⁴ and of organisers or jury members of commercial entertainment contests. The authorities explain that the latter concept has to be understood as any contest held by a commercial organisation within the framework of its business activities and constituting a show for the public (e.g. beauty pageants, television contests). In both cases, the advantage must be transferred with a view to influencing the results of such competitions or contests.

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

28. Article 204 CC uses the term “a person performing managerial functions in a commercial or other organisation”, which is defined in note No. 1 to Article 201 CC (abuse of powers) as “persons who perform the functions of an individual executive office, a member of the board of directors or other joint executive office, and also persons who permanently, temporarily or by special authority perform organisational-managerial or administrative-economic functions in any form of commercial organisation or in a non-commercial organisation that is not a state body, local self-government body or a state or municipal institution”. The authorities explain that this definition is broad enough to also cover private sector enterprises which do not hold legal personality, namely individual entrepreneurs and heads of peasant farm holdings in the meaning of Article 23 of the Civil Code. As for Article 184 CC, it refers to “sportsmen/women, referees, trainers, team

²² Approximately 7,500 EUR.

²³ Approximately 2,500 to 7,500 EUR.

²⁴ In the meaning of Law No. 329-FZ of 4 December 2007 (in the wording of 21 April 2011) “On physical culture and sports in the Russian Federation”.

managers and other participants or organisers of professional sports competitions, and also organisers or jury members of commercial entertainment contests”.

“In the course of business activity”; “...in breach of duties”

29. Article 204 CC refers to actions or omissions by the bribe-taker “which serve the interests of the bribe-giver, in connection with the official position occupied by the person.” Neither Article 204 CC nor Article 184 CC explicitly require that the offence be committed during “business activities” or with “breach of duties” but the transfer or receipt of an advantage must be “unlawful” i.e. – according to the explanations provided by the authorities – not in accordance with the law, other regulatory legal acts, local regulatory acts, constituent instruments of the employing organisation or terms and conditions of a labour contract or any other agreement, etc.

Sanctions

30. Under Article 204 CC, active bribery in the private sector is punishable by a fine of between 10 and 50 times the amount of the commercial bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 2 years, or by up to 2 years’ custodial restraint, or by corrective labour of up to 3 years, or by up to 3 years’ imprisonment. Passive bribery is punishable by a fine of between 15 and 70 times the amount of the commercial bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by corrective labour of up to 5 years with or without deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 7 years’ imprisonment with a fine of up to 40 times the amount of the commercial bribe. More severe sanctions are provided for in aggravated cases, including up to 6 years’ or 12 years’ imprisonment respectively. Under Article 184 CC, active bribery in sport and commercial entertainment contests is punishable by less severe penalties (up to 5 years’ imprisonment in the most serious cases).
31. It is to be noted that pursuant to note No. 2 to Article 201 CC, if an offence under Article 204 CC has caused harm exclusively to the interests of a commercial organisation that is not a governmental or municipal enterprise, then prosecution is instituted only upon the application of this organisation or with its consent.

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

32. Bribery of officials of international organisations is covered by Articles 290 and 291 CC, which in their amended form expressly include “officials of a public international organisation”. This concept is defined in note No. 2 to Article 290 CC as “an international civil servant or any person authorised by such an organisation to act on its behalf”. The authorities indicate that this definition is broad enough to also cover contracted employees, seconded personnel and persons carrying out functions corresponding to those performed by public officials. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international organisations. There is no case law/court decision concerning bribery of officials of international organisations.

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

33. The authorities affirm that bribery of members of international parliamentary assemblies is covered by the bribery provisions, which in their amended form include “officials of a public international organisation”, that is “international civil servants or any persons authorised by such

an organisation to act on its behalf". According to the authorities, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of international parliamentary assemblies. There is no case law/court decision concerning bribery of members of international parliamentary assemblies.

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

34. The authorities affirm that bribery of judges and officials of international courts is covered by Articles 290 and 291 CC, which in their amended form include "officials of a public international organisation", that is "international civil servants or any persons authorised by such an organisation to act on its behalf". According to the authorities, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of judges and officials of international courts. There is no case law/court decision concerning bribery of judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

35. Trading in influence is not criminalised as a separate offence. According to the authorities, several other provisions such as Article 159 CC (fraud), Article 201 CC (abuse of powers), Article 285 CC (abuse of office), Articles 290/291 CC (bribery) or Article 291-1 CC (intermediation in bribery) may be applied, depending on the circumstances. In particular, they point out that an official may be held liable for bribery in cases where s/he does not have the powers to perform the desired official act him/herself but, through his/her official position, can facilitate such acts (or omissions). If an official or another person is not even in a position to illegally influence decision-making by other officials but affirms to have such influence, s/he may be liable for fraud. As concerns the new offence of intermediation in bribery, it may be applied in cases where a person "transfers a bribe on the instructions of the bribe-giver or bribe-taker or otherwise assists the bribe-giver and/or bribe-taker to fulfil or implement an agreement between them concerning the receiving and giving of a substantial bribe".²⁵

Bribery of domestic arbitrators (Article 1, paragraphs 1 and 2 and Articles 2 and 3 of ETS 191)²⁶

36. The authorities indicate that Articles 290 and 291 CC do not criminalise bribery of domestic arbitrators. They explain that Russian legislation only provides for the participation of arbitration judges in the performance of justice – defined by Law No. 102-FZ of 24 July 2002 "On the arbitration courts in the Russian Federation" as physical persons selected by parties or appointed jointly by the parties for the resolution of a dispute in an arbitration court. These can be permanently operating arbitration courts or ones formed by the parties for the resolution of specific disputes. Pursuant to section 4 of Law No. 1-FKZ of 31 December 1996 "On the judicial system of the Russian Federation", arbitration courts are not included in the judicial system of the Russian Federation. According to the authorities, arbitration judges are therefore not "officials" in the meaning of the provisions on public sector bribery but can, however, be held liable for private sector bribery under Article 204 CC. They affirm that in accordance with the requirements of this Article, arbitration judges perform managerial functions in a non-commercial organisation (an arbitration court), as this concept has to be understood broadly to cover any types of organisations and any persons who can be acknowledged as top officials (executive) of these organisations and who can take binding decisions. The authorities go on to state that arbitration

²⁵ Article 291-1 CC. See paragraph 41 below.

²⁶ As for the offences of bribery of arbitrators and jurors, it has to be noted that the Russian Federation signed the Additional Protocol to the Criminal Law Convention (ETS 191) on 7 May 2009 but has not yet ratified this instrument.

courts can be considered as structural subdivisions of the organisations from which they are formed and under which they function, namely chambers of commerce, exchanges, public associations of entrepreneurs and consumers and other organisations (legal persons) created under the laws of the Russian Federation and their amalgamations (associations, unions).²⁷ In practice, permanent arbitration courts function as independent subjects of law, in the form of non-commercial organisations (for example, the autonomous non-commercial organisation “Energy Arbitration Court”). According to the authorities, the elements of the offence and the applicable sanctions detailed under bribery in the private sector also apply to bribery of domestic arbitrators. There is no case law/court decision concerning bribery of domestic arbitrators.

Bribery of foreign arbitrators (Article 4 of ETS 191)

37. According to the authorities, active and passive bribery of foreign arbitrators are criminalised under Articles 290 and 291 CC in so far as they can be considered judges according to the legislation of the foreign state concerned. They affirm that otherwise, foreign arbitrators could be held liable for private sector bribery under Article 204 CC. According to the authorities, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials or under bribery in the private sector also apply to bribery of foreign arbitrators. There is no case law/court decision concerning bribery of foreign arbitrators.

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

38. According to the authorities, the notion of “official” as defined in note No. 1 to Article 285 CC is broad enough to capture domestic jurors, as this definition refers to, *inter alia*, persons who perform the functions of authority representative. According to the explanations provided by Decree No. 6 of the Supreme Court (paragraph 2), this concept includes persons exercising legislative, executive or judicial power. The authorities explain that the participation in the Russian justice system of “jurors” is provided for and regulated by several interconnected laws, namely by Law No. 113-FZ of 20 August 2004 “On the jury of federal courts of the general jurisdiction in the Russian Federation”, Law No. 1-FKZ of 31 December 1996 “On the judicial system of the Russian Federation”, Law No. 3132-1 of 26 July 1992 “On the status of judges in the Russian Federation” and Law No. 45-FZ of 20 April 1995 “On the state protection of judges, officials of law-enforcement and supervising bodies”. They indicate that pursuant to these laws, the status of jurors when participating in the judicial process is equated to the legal status of judges as, in particular, jurors are defined by Article 5, paragraph 30 of the Criminal Procedure Code as persons recruited in accordance with the procedure set by this Code for participation in trials and delivery of verdicts. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of domestic jurors. There is no case law/court decision concerning bribery of domestic jurors.

Bribery of foreign jurors (Article 6 of ETS 191)

39. The authorities indicate that bribery of foreign jurors is covered by Articles 290 and 291 CC, as the definition of “foreign officials” in note No. 2 to Article 290 CC refers to “any appointed or elected person occupying any post in a legislative, executive, administrative or judicial body of a foreign state, or any person exercising any kind of public function for a foreign state (...)”. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign jurors. There is no case law/court decision concerning bribery of foreign jurors.

²⁷ Section 3 of Law No. 102-FZ.

Other questions

Participatory acts

40. Aiding and abetting the commission of all of the above-mentioned criminal offences is criminalised under the general provisions of the CC.²⁸ The same sanctions can be imposed on aiders and abettors – and on “organisers” who organise or supervise the commission of a crime or who create an organised group or a criminal organisation or supervise them – as on the principal offender.
41. In addition to the general rules on participation, the CC contains a new specific offence of “intermediation in bribery” in Article 291.1 CC. If its conditions are fulfilled, the provisions of Article 291.1 CC but not the general rules on participation do apply. The authorities explain that this specific offence has been established because a person rendering such “intermediation services” can in certain cases combine the functions of an accomplice and organiser, and sometimes even of an abettor, to the offence. Furthermore, before the introduction of this provision, law enforcement officers had difficulty in correctly classifying such intermediation services as participation in either active or passive bribery which had consequences, in particular, for the sanctions applicable.

Article 291-1 CC: Intermediation in bribery

(1) Intermediation in bribery, that is the act of directly transferring a bribe on the instructions of the bribe-giver or bribe-taker or otherwise assisting the bribe-giver and/or bribe-taker to fulfil or implement an agreement between them concerning the receiving and giving of a substantial bribe, is punishable by a fine of between 20 and 40 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by up to 5 years' imprisonment with a fine of 20 times the amount of the bribe.

(2) Intermediation in bribery for deliberately unlawful acts/failures to act or by a person using his/her official position

is punishable by a fine of between 30 and 60 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 3 and 7 years' imprisonment with a fine of 30 times the amount of the bribe.

(3) Intermediation in bribery, when committed

a) upon prior conspiracy by a group of persons or by an organised group;

b) on a large scale,

is punishable by a fine of between 60 and 80 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 7 and 12 years' imprisonment with a fine of 60 times the amount of the bribe.

(4) Intermediation in bribery, when committed on a particularly large scale,

is punishable by a fine of between 70 and 90 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by between 7 and 12 years' imprisonment with a fine of 70 times the amount of the bribe.

(5) Promising or offering intermediation in bribery

is punishable by a fine of between 15 and 70 times the amount of the bribe with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, or by a fine of between 25 000 RUB²⁹ and 500 million RUB³⁰ with deprivation of the right to occupy certain

²⁸ See Articles 32 to 36 CC.

²⁹ Approximately 625 EUR.

³⁰ Approximately 12,5 million EUR.

positions or engage in certain activities for up to 3 years, or by up to 7 years' imprisonment with a fine of between 10 and 60 times the amount of the bribe.

Note: A person who is the intermediary in bribery shall be released from criminal liability, if s/he was actively facilitating the detection and/or investigation of a crime and if s/he gave voluntary notification of bribery, after committing the crime, to a body authorised to instigate criminal proceedings.

Jurisdiction

42. Under the relevant provisions of the general part of the CC, which apply to all criminal offences, jurisdiction is, firstly, established over acts committed on the territory of the Russian Federation (principle of territoriality), see Article 11 CC. The authorities indicate that the principle of territoriality also applies if the offence has only begun or been completed in the Russian Federation.

Article 11 CC: Operation of the criminal law in respect of persons who have committed crimes on the territory of the Russian Federation

(1) Any person who has committed a crime on the territory of the Russian Federation shall be brought to criminal responsibility under this code.

(2) Crimes committed within the limits of the territorial waters or the air space of the Russian Federation shall be deemed to have been performed on the territory of the Russian Federation. The validity of this code shall also be extended to offences committed on the continental shelf and in the exclusive economic zone of the Russian Federation.

(3) A person who has committed a crime on board a ship registered in a port of the Russian Federation located on the open sea or in the air space outside the confines of the Russian Federation shall be brought to criminal responsibility under this code, unless otherwise stipulated by an international agreement of the Russian Federation. Under this code, criminal responsibility shall also be borne by a person who has committed an offence on board a warship or in a military aircraft of the Russian Federation, regardless of the place of their location.

(4) The question of the criminal responsibility of diplomatic representatives of foreign states and other individuals who enjoy immunity shall be settled in conformity with the standards of international law, if these persons have committed crimes on the territory of the Russian Federation.

43. As regards offences committed abroad, Article 12, paragraph 1 CC sets forth the principle that citizens of the Russian Federation as well as stateless persons permanently residing in the Russian Federation who commit a criminal act outside the territory of the Russian Federation are subject to criminal liability unless they have been convicted for such acts abroad (principle of nationality). Moreover, pursuant to Article 12, paragraph 3 CC, foreign citizens and stateless persons not permanently residing in the Russian Federation who commit a criminal act outside the territory of the Russian Federation are subject to criminal liability in either of the following two cases (unless they have been convicted abroad and are brought to criminal responsibility in the territory of the Russian Federation): (1) if the crime runs counter to the interests of the Russian Federation, of a citizen of the Russian Federation or of a stateless person who permanently resides in the Russian Federation; (2) in cases provided for by an international agreement of the Russian Federation.

Article 12 CC: Operation of the criminal law on liability in respect of persons who have committed crimes outside the boundaries of the Russian Federation

(1) Citizens of the Russian Federation and stateless persons who permanently reside in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this code, unless these persons have been convicted in the foreign state.

(2) Servicemen of the military units of the Russian Federation located beyond the confines of the Russian Federation shall bear criminal responsibility for their crimes committed in the territories of foreign states under this code, unless otherwise stipulated by international agreements of the Russian Federation.

(3) Foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed their crimes outside the boundaries of the Russian Federation shall be brought to criminal responsibility under this code, if the crimes run counter to the interests of the Russian Federation, of a citizen of the Russian Federation or of a stateless person who permanently resides in the Russian Federation, and in cases provided for by international agreements of the Russian Federation, and unless they have been convicted in a foreign state and are brought to criminal responsibility in the territory of the Russian Federation.

Statute of limitations

44. The period of limitation is determined by the classification of crimes³¹ – into crimes of little gravity, crimes of average gravity, grave and especially grave crimes – on the basis of the severity of the sanctions which can be imposed for the offence in question.³² On this basis, the limitation period provided for active and passive bribery offences in the public sector is respectively 2 or 6 years. If there are aggravating circumstances, the period of limitation increases to 6, 10 or 15 years. The limitation period provided for active and passive bribery offences in the private sector under Article 204 CC is respectively 6 or 10 years. If there are aggravating circumstances, the period of limitation increases to 10 or 15 years respectively. As concerns bribery in sport and commercial entertainment contests under Article 184 CC, the limitation period provided for active and passive bribery offences is 2 years and in certain aggravated cases 6 years.

Defences

45. Provision is made for a special defence for active bribery offences committed in the public or in the private sector in two cases, namely where the bribe was extorted by the official and in cases of voluntary reporting to the authorities.

Note to Article 291 CC³³

A person having given a bribe shall be released from criminal liability, if s/he was actively facilitating the detection and/or investigation of a crime and if the bribe has been extorted by the official or the person gave voluntary notification of bribery, after committing the crime, to a body authorised to instigate criminal proceedings.

³¹ See Article 15 CC.

³² See Article 78 CC.

³³ See also the corresponding notes to the articles on commercial bribery (Article 204 CC), on bribery in sport and commercial entertainment contests (Article 184 CC) and on intermediation in bribery (Article 291-1 CC).

46. In both cases, the defence provisions require that the bribe-giver was actively facilitating the detection and/or investigation of the crime.³⁴ In cases of extortion,³⁵ it is not required that the bribe-giver voluntarily reports to the competent authority. As concerns the second form of this special defence, the authorities indicate that the denunciation can be made orally or in writing to the public bodies vested with the right to initiate criminal investigations, namely the investigative bodies of the Investigative Committee of the Russian Federation (exclusively, since January 2012).³⁶ According to the explanations provided by Decree No. 6 of the Supreme Court (paragraph 22), the denunciation by the bribe-giver can be made for any reason unless the offence had already come to the knowledge of the authorities. If the authorities had already learned of the offence before the denunciation but the bribe-giver was unaware of that fact, s/he could still be released from criminal liability. The authorities add that, as a rule, release from criminal liability is decided upon by the competent court. If the conditions for special defence are fulfilled, the bribe-giver has to be released and does not face any charges or conviction.
47. The authorities furthermore indicate that according to Decree No. 6 of the Supreme Court (paragraph 24), discharge of the bribe-giver from criminal liability does not mean that the elements of a crime are absent. The bribe-giver can therefore not be regarded as a victim and cannot claim restitution of the bribe, which is confiscated to the benefit of the state³⁷ – except where the bribe was extorted from the bribe-giver who, in addition, voluntarily reports to the authorities.

Statistics

48. The authorities have provided the following data on the number of crimes recorded, perpetrators identified, cases transferred to court and convictions:

	Crimes recorded	Perpetrators identified	Cases transferred to court	Persons convicted
2008				
Article 184 CC	1	2	0	0
Article 204 CC	1 712	651	356	266
Article 290 CC	7 131	2 174	1 937	1 604
Article 291 CC	5 381	4 483	3 865	3 771
2009				
Article 184 CC	1	0	0	0
Article 204 CC	1 697	588	365	256
Article 290 CC	7 856	2 409	2 245	1 837
Article 291 CC	5 285	4 425	3 815	3 621
2010				
Article 184 CC	0	0	0	0
Article 204 CC	1 569	730	489	365
Article 290 CC	7 747	2 384	2 289	2 032
Article 291 CC	4 265	3 761	3 335	3360

³⁴ However, this element is absent from the note to Article 184 CC.

³⁵ It is to be noted that Article 291-1 CC does not regulate cases of extortion.

³⁶ Before January 2012, the investigative bodies of the Ministry of the Interior were competent as well.

³⁷ See Article 104-1 CC.

III. ANALYSIS

49. The Criminal Code of the Russian Federation (CC) includes active and passive bribery offences in the public sector (Articles 290 and 291 CC) and in the private sector (Articles 184 and 204 CC) but no specific trading in influence offences. Recent reforms aimed at aligning national legislation with international standards introduced the criminalisation of bribery of foreign and international public officials and changes to the sanctions available for bribery offences and to the definition of aggravated cases. However, a number of shortcomings remain in the corruption provisions of the CC as compared to the requirements of the Criminal Law Convention on Corruption (ETS 173) (hereinafter referred to as “the Convention”) and its Additional Protocol (ETS 191) – the latter of which has not been ratified yet by the Russian Federation. The authorities base their interpretation of Russian bribery law primarily on Decree No. 6 of the Plenum of the Supreme Court of 10 February 2000 “On the judicial practice concerning cases of bribery and commercial bribery” (hereinafter referred to as “Decree No. 6 of the Supreme Court”) which is aimed at ensuring correct and uniform application of the law in cases of bribery, pointing out that the decree is authoritative for courts and law enforcement agencies and is generally complied with in practice. The GET takes due note of this decree in its assessment of the relevant provisions, but wishes to stress that the actual wording of the legislation on bribery must be unambiguous and that a clear, foreseeable, coherent and comprehensive legal framework must be put in place, in keeping with the Convention.
50. According to section 13 of the Law on Combating Corruption,³⁸ individuals who commit corruption offences can be brought also to administrative or civil proceedings and liability for corruption. In this connection, the GET recalls the concerns expressed by GRECO in its Joint First and Second Round Evaluation Report on the Russian Federation, i.e. that the existence of parallel criminal and administrative systems afforded opportunities for manipulation, for example, to escape from the justice process.³⁹ During the visit the authorities explained to the GET that section 13 of the Law on Combating Corruption is only a framework law and that the current legislation does not provide for administrative liability of individual persons (but only of legal persons) for corruption offences. In cases of bribery the provisions of the CC would therefore have to be applied without exception. Given the fact that the Third Evaluation Round focuses on the criminalisation of corruption, the GET refrains from further commenting on the administrative system which is subject to the Joint First and Second Round Compliance procedure.
51. Turning more in detail to the criminal legislation in place, the GET notes that the term “official” is used to determine the possible perpetrators of corruption offences. This term is defined in “note” No. 1 to Article 285 CC which has – according to the authorities – the same legal force as other parts of the CC. The definition uses a functional approach and encompasses (1) persons “who permanently, temporarily or by special authority perform the functions of authority representative” and (2) persons “who perform organisational-managerial or administrative-economic functions in state bodies, local self-government bodies, state and municipal institutions”, etc. The GET is satisfied with the explanation provided by the authorities that this definition covers mayors, ministers, prosecutors, judges as well as members of Parliament and of local assemblies. As regards ‘ordinary’ public officials, the GET notes that according to Supreme Court Decree No. 6 the concept of “official” implies a certain degree of responsibility or of decision-making authority.⁴⁰

³⁸ Law No. 273-FZ of 25 December 2008.

³⁹ Cf. GRECO’s Joint First and Second Round Evaluation Report on the Russian Federation, document Greco Eval I-II Rep (2008) 2E, paragraph 61.

⁴⁰ See also Decree No. 19 of the Plenum of the Supreme Court of 16 October 2009 “On the judicial practice concerning cases of abuse of office and exceeding of official powers” (paragraphs 2 to 10).

The GET is concerned that certain categories of employees in public service performing professional or technical duties which are not related to organisational-managerial or administrative-economic functions may not be covered by the bribery provisions. However, as the GET did not come across particular practical problems in this regard and as the legal situation in Russia is strictly speaking not contrary to the Convention – Article 1(a) of the Convention does not contain an autonomous definition of a public official and permits the use of the definition in the national law of the state in question – no formal recommendation is made in this respect.

52. As concerns the international dimension of bribery offences, Articles 290 and 291 CC were amended to also include (1) “a foreign official” and (2) “an official of a public international organisation”. These concepts are defined in note No. 2 to Article 290 CC as (1) “any appointed or elected person occupying any post in a legislative, executive, administrative or judicial body of a foreign state, or any person exercising any kind of public function for a foreign state, including for a public agency or public enterprise” and as (2) “an international civil servant or any person authorised by such an organisation to act on its behalf”. The authorities indicate that the latter definition is broad enough to also cover contracted employees, seconded personnel and persons carrying out functions corresponding to those performed by public officials. Although the explicit incrimination of bribery by foreign and international officials is clearly to be welcomed, the GET is not convinced that the concept of “an official of a public international organisation” is broad enough to include all members of parliamentary assemblies, judges and officials of international courts in the meaning of Articles 10 and 11 of the Convention (for example, members of the Parliamentary Assembly of the Council of Europe cannot generally be considered as officials of the Council of Europe). In the absence of any clarification of this question by court practice, Supreme Court Decree or other interpretative guidance, and in order to avoid any loopholes in the legal framework, the GET recommends **to ensure that bribery of all members of international parliamentary assemblies and judges and officials of international courts is criminalised unambiguously, in accordance with Articles 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).**
53. Jurors and arbitrators are not specifically referred to in the notes to Article 285 CC (domestic officials) and 290 CC (foreign officials) nor are there any relevant court decisions in this respect. The GET also notes that the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) has been signed but not yet ratified by the Russian Federation. The authorities report in this connection that a process directed at the ratification of the Additional Protocol has been initiated.⁴¹ The authorities furthermore indicate that jurors are covered by the general definitions of domestic and foreign officials in the meaning of the bribery provisions which include – according to Supreme Court Decree No. 6 – any person exercising judicial power in the Russian Federation and any person occupying any post in a judicial body of a foreign state as well as any person exercising any kind of public function for a foreign state. As concerns domestic arbitrators, Russian legislation only provides for the participation of arbitration judges in the performance of justice who exercise their functions in the framework of arbitration courts. The authorities explain that arbitration courts are not included in the judicial system of the Russian Federation and arbitration judges can therefore not be considered “officials” in the meaning of the public sector bribery provisions. At the same time, the authorities stress that such domestic arbitration judges, as well as foreign arbitrators – unless they can be considered judges according to the legislation of the foreign state concerned – may be held liable for private sector bribery under Article 204 CC. Arbitrators could be considered to perform managerial functions in a (non-commercial)

⁴¹ The authorities state that a draft law on ratification of the Additional Protocol has been elaborated and its examination is planned during the 2012 session of the Government Commission on Drafting Legislative Acts. It is expected that after its approval by the Commission, the Government will submit the draft law to Parliament.

organisation in the meaning of Article 204 CC, this concept covering any types of organisation and any persons who can be acknowledged as top officials (executive) of these organisations and who can take binding decisions. In the Russian Federation, arbitration courts would function as independent subjects of law, in the form of non-commercial organisations (for example, the autonomous non-commercial organisation “Energy Arbitration Court”). The GET acknowledges that this analysis was clearly confirmed by legal practitioners interviewed during the visit. On the other hand, in the absence of any relevant court decision, it appears arguable whether the concept of “persons performing managerial functions in a commercial or other organisation” – which seems to be more relevant to business activities than to rendering legally binding decisions in a dispute – can indeed be applied to domestic and even foreign arbitrators. Consequently, in order to remove any possible doubts in this area, it is recommended **to ensure that bribery of domestic and foreign arbitrators is criminalised unambiguously and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).**

54. As regards the different forms of corrupt behaviour, Article 290 CC only uses the word “receiving” and Article 291 CC the word “giving”. The elements “offer” and “promise” of a bribe as well as the “acceptance of an offer or a promise” are therefore missing, just as the “request” which is mentioned only in the meaning of extortion, as an aggravating circumstance but not as stand-alone conduct. The authorities state that such acts may be dealt with under Article 30 CC in conjunction with the bribery provisions as preparation of a crime or as an attempt and they refer, in this respect, to some court decisions and to Supreme Court Decree No. 6. The latter makes it clear, however, that cases where no concrete action is taken in view of the transfer of the bribe may not constitute attempted bribery. Legal practitioners interviewed on site indicated that such cases – for example, mere offers or requests – might qualify as preparation of bribery, depending on the merits of the case. By contrast, other interlocutors opined that, for example, in situations of a mere request the public official might be considered as an instigator of active bribery (if the request is denied, it would be attempted instigation).
55. The GET has serious doubts that Article 30 CC covers in an unambiguous manner the offer, promise, request and acceptance of an offer or promise as referred to in Articles 2 and 3 of the Convention. In particular, under these provisions uncompleted crimes are punishable only if the perpetrator has not voluntarily abandoned the performance of his or her acts.⁴² This condition will almost certainly not be fulfilled in cases where a person withdraws his or her offer or promise, e.g. before it is clearly refused by the bribe-taker. Furthermore, it must be noted that in cases of uncompleted crimes the maximum sanctions are reduced.⁴³ The punishment for crime preparation or attempted crime cannot exceed half of the maximum limit or three fourths of the maximum limit of the severest kind of punishment prescribed for the completed offence respectively. The GET has misgivings about the considerable reduction of penalties in the case of several basic types of corrupt conduct. Moreover, Article 30, paragraph 1 CC on preparation of crime is not applicable to crimes of average or little gravity, such as bribery offences without (certain) aggravating circumstances under Article 290, paragraph 1 CC and Article 291, paragraphs 1 and 2 CC. Finally, the GET wishes to stress that under the Convention, corruption offences are to be considered completed once any of the above-mentioned unilateral acts is carried out by the bribe-giver or the bribe-taker. The GET therefore takes the view that the offer and the promise, the request and the acceptance of an offer or promise which are key components of the bribery offences established under the Convention need to be explicitly criminalised in order to clearly stigmatise such acts, submit them to the same rules as the giving

⁴² See Article 31 CC.

⁴³ See Article 66 CC.

and receiving of a bribe and avoid loopholes in the legal framework. Consequently, the GET recommends **to introduce the concepts of “offering”, “promising” and “requesting” an advantage and “accepting an offer or a promise” in the provisions of the Criminal Code on active and passive bribery, in line with the Criminal Law Convention on Corruption (ETS 173).**

56. The concept of undue advantage as understood by the Convention is transposed by means of the term “bribe”. Article 290, paragraph 1 CC makes it clear that a bribe may occur “in the form of money, securities or other property or in the form of the unlawful provision (...) of services of a property-related nature or the provision of other property rights”. The element “undue” is not explicitly transposed and the bribery provisions do not contain any value threshold. The Supreme Court explains in its Decree No. 6 that bribes may consist of money, securities, other property, benefits or services of a material nature, payable services provided for free (for instance, providing tourist vouchers, remodelling apartments, building summer houses, etc.), undervaluation of property transferred, objects to be privatised, discount rentals, discount rates for using bank loans, etc. The monetary value of such advantages must be indicated in the court sentence. It derives from the text of the law and from these explanations that non-material advantages without an identifiable market value – e.g. positive coverage in the press, providing a promotion or employment opportunity, diplomas, sexual services, etc. – are not covered by the bribery provisions. According to the authorities and some practitioners interrogated on the subject, in cases of such advantages the provisions of Article 285 CC on abuse of office⁴⁴ may apply, depending on the circumstances. However, the GET is not convinced that all cases of bribery – in the meaning of Articles 2 and 3 of the Convention – would indeed be covered by this offence which contains several restrictive elements as compared to the bribery provisions, *inter alia*, the substantial violation of the rights and lawful interests of individuals or organisations, or the legally protected interests of the society or the state.⁴⁵ Moreover, the GET takes the view that corruption acts involving any non-material advantages need to be explicitly criminalised under the bribery provisions. Consequently, the GET recommends **to broaden the scope of the bribery provisions of the Criminal Code so as to ensure that they cover clearly any form of (undue) advantage (in the meaning of the Criminal Law Convention on Corruption, ETS 173), including any non-material advantages – whether they have an identifiable market value or not.**
57. Articles 290 and 291 CC expressly provide for indirect commission of bribery offences, i.e. bribery committed through intermediaries. By contrast, they do not specify whether the advantage must be for the official him/herself or may be intended for a third party as well. The authorities refer in this connection to Decree No. 6 of the Supreme Court, according to which bribery also occurs in cases where the official receives an advantage not for him/her personally but for the benefit of family members or close persons, with his/her consent or if s/he did not object and used his/her authority in favour of the bribe-giver. The GET is concerned that this formulation unnecessarily narrows down the requirement of the Convention – which refers more broadly to an advantage “for himself or herself or for anyone else” – and does not include, in particular, legal persons such as political parties or companies in the circle of third party beneficiaries. The authorities state in this connection that Decree No. 6 of the Supreme Court is based on existing court practice and does not hamper its further development by various courts, and they refer to several recent court

⁴⁴ This offence is defined as the “use by an official of his or her powers, contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organisations, or the legally-protected interests of the society or the state.”

⁴⁵ In addition, the maximum sanctions available under Article 285 CC (10 years’ imprisonment in aggravated cases) are lower than those available under the bribery provisions of Article 290 CC (15 years’ imprisonment in aggravated cases).

decisions on bribery involving legal persons. However, having examined the decisions referred to, the GET takes the view that they do not give clear guidance as to whether Articles 290 and 291 CC generally cover situations where the advantage is given to a legal person.⁴⁶ It furthermore notes that legal practitioners met on site expressed diverging opinions in this respect. Some of them claimed that the bribery provisions were broad enough to cover any situations involving third persons, whereas others argued that the provisions on abuse of office (Article 285 CC) or on exceeding of official powers (Article 286 CC) might apply, depending on the merits of the case. The GET must stress again how important it is that all offences referred to in Articles 2 and 3 of the Convention are clearly and comprehensively criminalised under domestic bribery provisions. Consequently, the GET recommends **to ensure that the bribery offences of the Criminal Code are construed in such a way as to cover, unambiguously, instances where the advantage is not intended for the official him/herself but for a third person, whether natural or legal.**

58. The bribery provisions contain some extra elements which are not mentioned in the Convention. In particular, Article 290, paragraph 1 CC refers to acts and omissions by a public official “if such acts/failures to act fall within the official powers of the official or if s/he is able, through his/her official position, to facilitate such acts/failures to act”, as well as the concept of “general patronage or connivance within the public service structure”. In this connection, the authorities explain that in cases of acts which lie outside the scope of official powers of the official but which s/he nevertheless performs him/herself, the official would be liable for aggravated passive bribery implying an unlawful act under Article 290, paragraph 3 CC. They indicate – on the basis of Supreme Court Decree No. 6 – that any acts and omissions which are made possible by the official’s position, even if the act or omission amounts to misuse of that official position, are thus covered by the bribery provisions. The GET has no reasons to doubt these explanations. As concerns the concept of “general patronage or connivance within the public service structure”, it was explained to the GET by the authorities and other interlocutors – on the basis of Supreme Court Decree No. 6 – that it applies to situations where a relationship between the bribe-giver and the bribe-taker is established by service dependency and not by a concrete act or omission in the exercise of the official’s functions (for example, in relation to undeserved incentives, extraordinary unjustified promotion in office, lack of reaction to wrong acts by the bribe-giver etc.). The GET notes that this concept is an addition to the bribery provisions (by use of the wording “as well as”) and, as such, does not limit but rather broadens their scope.
59. The CC contains two specific offences which criminalise bribery of persons who are not public officials, namely Article 204 CC on commercial bribery and Article 184 CC on bribery in sport and commercial entertainment contests which are similar in many respects. The GET welcomes the approach to criminalise explicitly bribery in sport and commercial entertainment contests in respect of a broad range of persons who might otherwise be excluded from the scope of the – public and commercial – bribery provisions, including sportsmen/women, referees, trainers, team managers and other participants or organisers of professional sports competitions, etc. Moreover, the GET acknowledges that under Article 204 CC, criminalisation is not limited to the involvement of business entities *stricto sensu* but applies to both “commercial” and “other organisations”. The authorities explain that this concept is broad enough to also cover private sector entities which do not hold legal personality, namely individual entrepreneurs and heads of peasant farm holdings in

⁴⁶ A decision of the Moscow Region Court of 26 May 2011 concerned a situation where the advantage was given to a legal person whose president was a participant in an organised group and was convicted, together with the public officials concerned, for aggravated bribery. A decision of the Chelyabinsk Regional Court of 21 June 2010 was based on a situation where the public official himself received a material benefit, namely the right to assets of an enterprise. A decision of the Constitutional Court of 22 March 2011 did not comment on the issue of legal persons as beneficiaries of bribery.

the meaning of Article 23 of the Civil Code. They furthermore explain that while the provisions on commercial bribery do not literally require that the offence be committed in “breach of duties” in the meaning of Articles 7 and 8 of the Convention, the condition stipulated in Article 204 CC that the transfer or receipt of an advantage be “unlawful” corresponds to such a requirement, since it has to be understood broadly as any non-compliance with the law, other regulatory acts, constituent instruments of the employing organisation, labour contract or other agreement, etc. The GET has no reasons to doubt these explanations which were confirmed by legal practitioners interrogated on the subject.

60. That said, the GET notices several shortcomings in the provisions on commercial bribery as compared to Articles 7 and 8 of the Convention on bribery in the private sector, which need to be remedied. Firstly, as regards the range of possible perpetrators, Article 204 CC makes reference to the concept of “persons performing managerial functions in a commercial or other organisation”, which is defined in note No. 1 to Article 201 CC as “persons who perform the functions of an individual executive office, a member of the board of directors or other joint executive office, and also persons who permanently, temporarily or by special authority perform organisational-managerial or administrative-economic functions in any form of commercial organisation or in a non-commercial organisation that is not a state body, local self-government body or a state or municipal institution”. This concept therefore presupposes a certain level of responsibility within the entity concerned, in contrast to Articles 7 and 8 of the Convention which unambiguously refer to “any persons who direct or work for, in any capacity, private sector entities” without any restrictions as to the functions or responsibilities of the person.⁴⁷ Secondly, the GET notes that several elements of Articles 7 and 8 of the Convention are absent from Article 204 CC, namely the offering, promising or requesting of an advantage and the accepting of an offer or promise (only the “transfer” and “receiving” of an advantage are mentioned), furthermore the indirect commission of the offence through intermediaries and third party beneficiaries, finally the coverage of non-material advantages. The GET refers here to its comments on the public sector bribery provisions,⁴⁸ which are almost identical in these respects – except for the concept of indirect commission of bribery which is explicitly mentioned in Articles 290 and 291 CC.
61. The GET also notes that note No. 2 to Article 201 CC introduces a limitation to the prosecution of private sector bribery offences. According to this provision – which also applies to some other economic crimes,⁴⁹ in the case of an offence under Article 204 CC which has caused harm exclusively to the interests of a commercial organisation that is not a governmental or municipal enterprise, prosecution is instituted only upon the application of this organisation or with its consent. Even if the authorities state that such situations are rare and statistics show that law enforcement institutions deal with a relatively high number of cases of private sector bribery, the GET is nevertheless concerned that this formal requirement may constitute an obstacle to prosecution which is against the spirit of the Convention. The GET recalls the preference expressed in the Explanatory Report to the Criminal Law Convention⁵⁰ to limit the differences between public and private sector bribery as corruption in this form may cause significant damage to society at large. Bearing in mind the general need for an effective anti-corruption policy, there is no justification for subjecting the prosecution of corruption in the private sector to a regime different from the general regime applicable to the other corruption offences. In view of the above,

⁴⁷ Including persons in auxiliary positions and persons such as consultants or commercial agents working for the private entity without having the status of employee: see paragraph 54 of the Explanatory Report on the Criminal Law Convention on Corruption.

⁴⁸ See paragraphs 54 to 57, above.

⁴⁹ According to the authorities, this provision was introduced to serve as a safeguard against, in particular, groundless interference into the economic activity of small and medium-sized companies.

⁵⁰ Explanatory Report on the Criminal Law Convention on Corruption, paragraph 52.

the GET recommends (i) to align the criminalisation of bribery in the private sector, as provided for in Article 204 of the Criminal Code, with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), in particular as regards the categories of persons covered, the different forms of corrupt behaviour, the coverage of indirect commission of the offence, of instances involving third party beneficiaries and of non-material advantages; and (ii) to abolish the rule that in cases of bribery offences in the private sector which have caused harm exclusively to the interests of a commercial organisation, prosecution is instituted only upon the application of this organisation or with its consent.

62. Trading in influence is not criminalised as a separate offence. According to the authorities, the bribery provisions under Articles 290/291 CC or several other provisions such as Article 291-1 CC (intermediation in bribery), Article 159 CC (fraud), Article 201 CC (abuse of powers) or Article 285 CC (abuse of office) may be applied, depending on the circumstances. However, the GET notes that all of the offences referred to by the authorities are narrower in scope than Article 12 of the Convention, which addresses trading in influence irrespective of “whether or not the influence is exerted or whether or not the supposed influence leads to the intended result” and irrespective of whether or not the influence peddler him/herself is a public official. By contrast, the aforementioned bribery provisions only apply to situations where the influence peddler him/herself is a public official, intermediation in bribery also presupposes the commission of a bribery offence (namely the transfer of a – substantial – bribe to an official), fraud requires a deceptive element and abuse of powers/abuse of office require the substantial violation of the rights and lawful interests of individuals or organisations, or the legally protected interests of the society or the state. The GET considers that the above-mentioned provisions cover some but not all of the relevant cases. It cannot see, for example, under which provisions a person – who is not a public official – would be liable for receiving an advantage for his or her own benefit in return for exerting influence on a public official. Moreover, in the view of the GET, the above-mentioned types of offences have little to do with trading in influence and clearly miss several specific and crucial elements⁵¹ contained in Article 12 of the Convention. Consequently, the GET recommends **to criminalise trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173)**.
63. The sanctions available for bribery under Russian law broadly meet the requirements of Article 19, paragraph 1 of the Convention. In its most serious form, when “particularly large” amounts (more than approximately 25 000 EUR) are involved, public sector bribery is punishable by imprisonment for up to 12 (active bribery) or 15 years (passive bribery). In these cases, the court must in addition impose a fine of 70 times the amount of the bribe. Private sector bribery is punishable by imprisonment for up to 6 years (active bribery) or 12 years (passive bribery) in the most serious cases. It is to be recalled, however, that cases of a refused offer, promise or request for a bribe and cases of the acceptance of a mere offer or promise may not constitute completed crimes but only preparation of, or attempted, bribery. In such cases the punishment may not exceed half of the maximum limit or three fourths of the maximum limit of the severest kind of punishment prescribed for the completed offence respectively. In this context, the GET must reiterate its concerns about the considerable reduction of sanctions for basic types of corrupt behaviour expressed above.⁵²

⁵¹ For example, the different forms of corrupt behaviour, the indirect commission of the offence, third party beneficiaries, the range of persons on whom the influence may be exerted, including foreign and international officials, etc.

⁵² See paragraph 55.

64. According to Article 78 CC, the period of limitation is determined by the classification of crimes⁵³ – into crimes of little gravity, crimes of average gravity, grave and especially grave crimes – on the basis of the severity of the sanctions which can be imposed for the offence in question. On this basis, the limitation period provided for active and passive bribery offences in the public sector under Articles 291 and 290 CC is respectively 2 or 6 years. If there are aggravating circumstances, the period of limitation increases to 6, 10 or 15 years. The limitation period provided for active and passive bribery offences in the private sector is (1) respectively 6 or 10 years under Article 204 CC on commercial bribery (in aggravated cases, 10 or 15 years) and (2) 2 years under Article 184 CC on bribery in sport and commercial entertainment contests (in certain aggravated cases, 6 years). The GET is of the opinion that the 2 year limitation period in basic cases of active bribery under Article 291 CC and of active or passive bribery under Article 184 CC appears very short, given the special difficulties encountered in detecting and investigating corruption offences, and in comparison with the situation in most other member States. In conclusion, the GET considers that the current situation may limit the possibilities to prosecute a large part of corruption offences and recommends **to extend the two year minimum limitation period for bribery offences under Articles 291 and 184 of the Criminal Code.**
65. The bribe-giver is exempted from punishment in cases of active bribery in the public as well as the private sector if the bribe is extorted from him/her or the latter voluntarily reports to a competent authority.⁵⁴ In the second case of this special defence – effective regret – the denunciation can be made orally or in writing to the public bodies vested with the right to initiate criminal investigations, namely the investigative bodies of the Investigative Committee of the Russian Federation. In both cases it is required, since the legal reform of May 2011, that the bribe-giver was actively facilitating the detection and/or investigation of the crime. The authorities explain that the decision on release from criminal liability is in principle taken by the competent court. If the conditions of the defence are met, the bribe-giver does not face any charges or conviction. According to the general rules on confiscation of the proceeds of crime, in cases of effective regret the bribe is not returned to the bribe-giver but is mandatorily confiscated – except where the bribe was extorted from the bribe-giver who, in addition, voluntarily reports to the authorities.
66. The GET takes note of the decision by the authorities to maintain this tool for the purpose of stimulating reporting. Even if no official statistics on its use in practice are available, the GET's interlocutors unanimously stressed the high efficiency of the defence. At the same time, it would appear that the use of this tool does not hinder Russian courts from securing a significant number of convictions for active bribery. In 2010, for example, 3 360 persons were convicted of active bribery under Article 291 CC (as compared to 2 032 persons convicted for passive bribery under Article 290 CC). In this context, the GET acknowledges the recent amendments requiring the bribe-giver to actively facilitate the detection and/or investigation of the crime – for example, by participating in the identification of the crime and of the bribe-taker etc. The GET takes the view that such an additional condition, which is absent from effective regret provisions in a number of member States, might limit the risks of abuse of this defence. That said, the GET does have misgivings about the fact that there is no possibility for the court to take into consideration other relevant circumstances of the particular situation at stake, for example, the seriousness of the offence or the motives that the perpetrator may have for reporting the offence and invoking effective regret. In principle, very serious cases of active corruption could go totally unpunished by reference to this defence. The effective regret provisions apply in respect of the bribe-giver,

⁵³ See Article 15 CC.

⁵⁴ See the notes to Articles 291 and 204 CC. Similar defences are provided for by Article 184 CC (bribery in sport and commercial entertainment contests) and Article 291-1 CC (intermediation in bribery).

whether or not the initiative for committing the offence comes from himself or herself; s/he could even act as an instigator and afterwards be exonerated, as a result of having reported the crime. The GET notes that this tool could be misused by the bribe-giver, for example as a means of exerting pressure on the bribe-taker to obtain further advantages. The GET therefore recommends **to analyse the provisions of the Criminal Code on the special defence of effective regret and recent cases in which this defence has been invoked, with a view to ascertaining the potential for misuse of this defence and, if need be, to take further appropriate measures.**

67. The jurisdictional principles of territoriality and nationality apply to all bribery offences. As regards nationality jurisdiction, Article 12, paragraph 1 CC establishes that the penal law of the Russian Federation is applicable to Russian citizens and stateless persons permanently residing in the Russian Federation having committed an offence abroad, without establishing a dual criminality requirement. In this context, the GET notes, firstly, that Article 17, paragraph 1.b of the Convention not only establishes jurisdiction for offences committed by nationals abroad but also extends nationality jurisdiction to public officials and members of domestic public assemblies of member States – i.e. not necessarily nationals. The authorities indicated, however, that such situations could not arise as under the legislation of the Russian Federation public officials and members of public assemblies have to be Russian citizens.⁵⁵ The GET accepts this explanation but wishes to stress that, in the case of future legislative changes to this nationality requirement for public officials, the jurisdictional rules would have to be adjusted accordingly. Secondly, as regards nationality jurisdiction over corruption offences committed abroad by non-nationals and *involving* domestic public officials, members of domestic public assemblies and nationals who are, at the same time, members of international parliamentary assemblies, officials of international organisations or judges or officials of international courts – as required by Article 17, paragraph 1.c of the Convention – the authorities refer to Article 12, paragraph 3 CC. This provision establishes jurisdiction over offences committed abroad by foreigners, or by stateless persons not permanently residing in the Russian Federation (1) if the crimes run counter to the interests of the Russian Federation, of a citizen of the Russian Federation or of a stateless person who permanently resides in the Russian Federation or (2) in cases provided for by international agreements of the Russian Federation. The GET is satisfied with the explanations provided by the authorities according to which the situations referred to in Article 17, paragraph 1.c of the Convention are covered by the first part of this provision, in that such bribery offences run counter to the interests of either the state⁵⁶ or Russian citizens (or stateless persons with permanent residence).⁵⁷

⁵⁵ The authorities refer, in particular, to section 1 of Law No. 58-FZ of 27 May 2003 “On the system of public service of the Russian Federation”, section 3 of Law No. 79-FZ of 27 July 2004 “On the public civil service of the Russian Federation”, Law No. 51-FZ of 18 May 2005 “On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation” and Law No. 113-FZ of 5 August 2000 “On the procedure of forming the Federation Council of the Federal Assembly of the Russian Federation”.

⁵⁶ The authorities indicate that this concept was clarified by court practice to include all criminal offences – including all corruption offences – committed against the state, its bodies and organisations (by reference to the Bulletin of the Supreme Court, 1998, No. 9, pp. 4-5).

⁵⁷ In addition, the authorities refer to the second part of Article 12, paragraph 3 CC, relating to cases provided for by international agreements, stating that this clause implements a “universal principle” based on the international obligations of the Russian Federation concerning the fight against the most dangerous offences (“convention offences”) including, notably, bribery offences.

IV. CONCLUSIONS

68. The incrimination of bribery and trading in influence in the Criminal Code of the Russian Federation suffers from several substantial deficiencies as compared to the standards established by the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) – the latter of which has not been ratified yet by the Russian Federation. With respect to bribery in the public sector, the offer and the promise of an advantage, the request for an advantage as well as the acceptance of an offer or a promise of such an advantage do not constitute completed criminal offences. The concept of a “bribe” is not broad enough to capture any non-material advantages and advantages given or offered to a third party are not taken into account sufficiently. The same shortcomings exist in relation to the provisions on private sector bribery which, in addition, do not cover all persons working in private sector entities. Trading in influence is not specifically criminalised or satisfactorily covered by other offences. 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, the possibility provided by the special defence of effective regret to exempt the bribe-giver who voluntarily declares the offence to the relevant authorities should be kept under review in order to limit the risks of abuse. On a positive note, recent legal amendments extending, in particular, the scope of the bribery provisions to foreign and international officials are to be welcomed. However, given the seriousness of the problem of corruption in the Russian Federation, it is crucial to keep the reform of the legal framework high on the political agenda and to remove the remaining shortcomings.
69. In view of the above, GRECO addresses the following recommendations to the Russian Federation:
- i. **to ensure that bribery of all members of international parliamentary assemblies and judges and officials of international courts is criminalised unambiguously, in accordance with Articles 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 52);**
 - ii. **to ensure that bribery of domestic and foreign arbitrators is criminalised unambiguously and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (paragraph 53);**
 - iii. **to introduce the concepts of “offering”, “promising” and “requesting” an advantage and “accepting an offer or a promise” in the provisions of the Criminal Code on active and passive bribery, in line with the Criminal Law Convention on Corruption (ETS 173) (paragraph 55);**
 - iv. **to broaden the scope of the bribery provisions of the Criminal Code so as to ensure that they cover clearly any form of (undue) advantage (in the meaning of the Criminal Law Convention on Corruption, ETS 173), including any non-material advantages – whether they have an identifiable market value or not (paragraph 56);**
 - v. **to ensure that the bribery offences of the Criminal Code are construed in such a way as to cover, unambiguously, instances where the advantage is not intended for the official him/herself but for a third person, whether natural or legal (paragraph 57);**

- vi. **(i) to align the criminalisation of bribery in the private sector, as provided for in Article 204 of the Criminal Code, with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), in particular as regards the categories of persons covered, the different forms of corrupt behaviour, the coverage of indirect commission of the offence, of instances involving third party beneficiaries and of non-material advantages; and (ii) to abolish the rule that in cases of bribery offences in the private sector which have caused harm exclusively to the interests of a commercial organisation, prosecution is instituted only upon the application of this organisation or with its consent (paragraph 61);**
 - vii. **to criminalise trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 62);**
 - viii. **to extend the two year minimum limitation period for bribery offences under Articles 291 and 184 of the Criminal Code (paragraph 64);**
 - ix. **to analyse the provisions of the Criminal Code on the special defence of effective regret and recent cases in which this defence has been invoked, with a view to ascertaining the potential for misuse of this defence and, if need be, to take further appropriate measures (paragraph 66).**
70. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the Russian Federation to present a report on the implementation of the above-mentioned recommendations by 30 September 2013.
71. GRECO invites the authorities of the Russian Federation 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.