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

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING

Strasbourg, 1 October 2010

Public
Greco Eval III Rep (2010) 3E
Theme I

Third Evaluation Round

Evaluation Report on the Republic of Serbia Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 48th Plenary Meeting
(Strasbourg, 27 September – 1 October 2010)

Secrétariat du GRECO
Conseil de l'Europe
F-67075 Strasbourg Cedex

www.coe.int/greco
☎ +33 3 88 41 20 00

GRECO Secretariat
Council of Europe
Fax +33 3 88 41 39 55

I. INTRODUCTION

1. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003. Following the referendum organised in Montenegro on 21 May 2006 and the declaration of independence adopted by the National Assembly of Montenegro on 3 June 2006 and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the State Union of Serbia and Montenegro ceased to exist. Subsequently, the Republic of Serbia became the successor state of Serbia and Montenegro. GRECO adopted the Joint First and Second Round Evaluation Report on the Republic of Serbia (Greco Eval I-II Rep (2005) 1E) at its 29th Plenary Meeting (19-23 June 2006). The afore-mentioned Evaluation Report, as well as its corresponding Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current 3rd 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, 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 Serbia from 26 to 27 April 2010, was composed of Mr Silvio BONFIGLI, Magistrate, Anticorruption and Transparency Service (Italy) and Mr Rolandas TILINDIS, Chief Prosecutor, Prosecutor General's Office (Lithuania). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 5E, Theme I), as well as copies of relevant legislation.

4. The GET met with officials from the following governmental organisations: Ministry of Justice, Republic Prosecutors Office, Appellate Court in Belgrade, Anticorruption Agency and Judicial Academy. Moreover, the GET met with members of academia and Transparency International.

5. The present report on Theme I of GRECO's 3rd 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 effectiveness of measures adopted by the Serbian 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 Republic of Serbia in order to improve its level of compliance with the provisions under consideration.

6. The report on Theme II – Transparency of party funding, is set out in Greco Eval III Rep (2010) 3E, Theme II.

II. INCRIMINATIONS

a. Description of the situation

7. The Republic of Serbia ratified the Criminal Law Convention on Corruption (ETS 173) on 18 December 2002. The Convention entered into force in respect of the Republic of Serbia on 1 April 2003. The Republic of Serbia did not make any reservations to the Criminal Law Convention on Corruption.

8. The Additional Protocol to the Criminal Law Convention (ETS 191) was ratified by the Republic of Serbia on 9 January 2008. It entered into force in respect of the Republic of Serbia on 1 May 2008. The Republic of Serbia did not make any reservations to the Additional Protocol to the Criminal Law Convention on Corruption.

9. The Criminal Code of the Republic of Serbia has been amended several times to, *inter alia*, better comply with international requirements. The last amendments took place in September 2009 and December 2009, respectively.

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

Definition of the offence

10. *Active bribery* is criminalised in Article 368 of the Criminal Code, which establishes two forms of the offence: (1) bribery to induce an official to perform an act s/he should not perform or to omit to perform an act s/he should or could perform within the bounds of his/her official rights (i.e. unlawful acts or omissions); (2) bribery to induce an official to perform an act s/he should or could perform or to omit to perform an act s/he is not authorised in any case to perform (i.e. lawful official acts or omissions).

> **Article 368, Criminal Code**
>
> *(1) Whoever makes, offers or promises a gift or other advantage to an official, or another person, to within his/her official competence perform an official act that should not be performed or not to perform an official act that should be performed, or who acts as intermediary in such bribing of an official, shall be punished by imprisonment of six months to five years.*
>
> *(2) Whoever makes, offers or promises a gift or other advantage to an official, or another person, to within his/her official competence, perform an official act that s/he is obliged to perform or not to perform an official act that s/he is obliged not to perform, or who acts as intermediary in such bribing of an official, shall be punished by imprisonment of up to three years.*
>
> *(3) Provisions of paragraphs 1 and 2 of this Article shall apply also when a bribe is made, offered or promised to a foreign official.*
>
> *(4) The offender specified in paragraphs 1-3 of this Article who reports the offence before becoming aware that it has been detected, may be remitted from punishment.*
>
> *(5) Provisions of paragraphs 1, 2 and 4 of this Article shall apply also when a bribe is given, offered or promised to a responsible officer in an enterprise, institution or other entity.*
>
> *(6) A gift or other benefit seized from the person accepting the bribe may, in cases specified under paragraph 4 of this Article, be returned to the persons giving the bribe.*

11. Criminalisation of *passive bribery* is provided for under Article 367 of the Criminal Code. The relevant provisions differentiate three types of conduct: if the bribe has been solicited or accepted before the performance of the official act: for an official to perform acts that s/he should not perform or to omit to perform an act s/he should or could perform within the scope of his/her official rights, i.e. unlawful acts or omissions (Article 367(1), Criminal Code); for an official to perform acts that s/he should perform or to omit to perform acts s/he should not in any case perform, i.e. lawful official acts or omissions (Article 367(2), Criminal Code); (3) if the bribe has been solicited or accepted after the performance, or non-performance, of the official act (Article 367(4), Criminal Code).

Article 367, Criminal Code

(1) An official who, directly or indirectly, solicits or accepts a gift or other advantage, or promise of a gift or other benefit for himself/herself or another to perform an official act within his/her competence that should not be performed or not to perform an official act that should be performed, shall be punished by imprisonment of two to twelve years.

(2) An official who, directly or indirectly, solicits or accepts a gift or other advantage or a promise of a gift or advantage for himself/herself or another to perform an official act within his/her competence that s/he is obliged to perform or not to perform an official act that should not be performed, shall be punished by imprisonment of two to eight years.

(3) An official who commits the offence specified in paragraphs 1 and 2 of this Article in respect of uncovering a criminal offence, instigating or conducting criminal proceedings, pronouncement or enforcement of criminal sanction, shall be punished by imprisonment of three to fifteen years.

(4) An official who after performing or failure to perform an official act specified in paragraphs 1, 2 and 3 of this Article solicits or accepts a gift or other advantage in relation thereto, shall be punished by imprisonment of three months to three years.

(5) A foreign official who commits the offence specified in paragraphs 1-4 of this Article shall be punished by the penalty prescribed for that offence.

(6) A responsible officer in an enterprise, institution or other entity who commits the offence specified in paragraphs 1, 2 and 4 of this Article shall be punished with the penalty prescribed for that offence.

(7) The received gift or material gain shall be seized.

Elements/concepts of the offence

"Domestic public official"

12. The definition of domestic public official encompasses:

Article 112 (3), Criminal Code

An official is:

1) a person discharging official duties in a State authority;

2) an elected, appointed or assigned person in a State authority, local self-government body or a person permanently or periodically discharging official duty or office in such bodies;

> *3) a person in an institution, enterprise or other entity who is assigned periodical discharge of public authority, who rules on rights, obligations or interests of natural or legal persons or on public interest;*
>
> *4) an official shall also be a person who is in fact assigned discharge of official duties or tasks;*
>
> *5) a member of the military, except in case of provisions of Chapter Thirty Three (Criminal Offences against Official Duty) hereof.*

13. The above-mentioned definition covers persons carrying out official duties or exercising official functions in the State bodies (including mayors and ministers), irrespective of their type of contract and the temporary/permanent character of the functions performed. The wide scope of the definition also covers individuals vested by law with public authority to perform certain duties of state administration (e.g. doctors who fulfil public duties, employees of vehicle inspection services, teachers and professors, driving school instructors, social workers, etc.), employees of public enterprises, etc.

14. Prosecutors and judges are considered public officials. Pursuant to the broad definition of "public official" provided in legislation, holders of judicial office, whether elected or appointed, are also covered.

"Promising, offering or giving" (active bribery)

15. The elements of "promising", "offering" and "giving" are expressly contained in the penal provisions concerning active bribery.

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

16. Passive bribery is criminalised when an award, gift or other advantage or promise, or the offer of such an advantage is "solicited" or "accepted". Accordingly, the scope of the offence is extended beyond receiving to the pre-stage of "solicitation". The term "receive" is not expressly used, but is meant to be comprised in the notion of "acceptance".

"Any undue advantage"

17. The relevant provisions of the Criminal Code concerning bribery do not explicitly use the term "undue". In this connection, any *"gift or other advantage or promise"* may come under the scope of the offence if its purpose is to influence a public official's action in service.

18. Although immaterial advantages are not explicitly mentioned in legislation, the authorities confirmed that the different terms used by the relevant bribery provisions, i.e. "gift", "benefit", "reward", "advantage" are understood to be broad enough to cover both material and immaterial advantages.

"Directly or indirectly"; "For himself or herself or for anyone else"

19. The relevant provisions on active and passive bribery specify expressly that the offence can be committed directly or indirectly.

20. Likewise, third party beneficiaries are explicitly covered.

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

21. Legislation expressly covers both positive – lawful and unlawful – acts and omissions, on condition that they are in the scope of the official's competence.

22. For a bribery offence to occur, it is not required that the act or omission of the official be unlawful as such. However, the commission/omission of an unlawful official act entails more severe sanctions.

"Committed intentionally"

23. A basic principle of the Criminal Code is that an action is punishable only when committed intentionally, subject to provisions to the contrary (Article 14 of the Criminal Code*).* Therefore, as the provisions on bribery do not mention that they can be caused by negligence, it can be inferred *a sensu contrario* that they can only be committed intentionally. Premeditation is defined in Article 25 of the Criminal Code.

Sanctions

24. Active bribery with respect to unlawful official acts or omissions is punishable by imprisonment of between six months and five years (Article 368 (1), Criminal Code). In cases where the bribe is given to perform an official act that an official should or may perform/omit to perform in any case (lawful official acts or omissions), the punishment prescribed is imprisonment of up to three years (Article 368 (2), Criminal Code).

25. Passive bribery is punished by imprisonment of from two to twelve years, if the bribe was solicited or accepted in return for performance of acts that the official should not perform or omissions that the official should or could have performed (Article 367 (1), Criminal Code). If the bribe is accepted in return for performance (or non-performance) or an official act that should (or should not) have been performed anyway, the sentence ranges from two to eight years' imprisonment (Article 367 (2), Criminal Code). Passive bribery after the official act has been performed (or not performed) is punishable by imprisonment ranging from three months to three years (Article 367 (4), Criminal Code). The applicable sanction is increased to up to fifteen years in those cases where the public official has committed the bribery offence in relation to the uncovering of a criminal offence, initiation or conduct of a criminal proceeding, pronouncement or enforcement of criminal sanctions.

26. In addition, the security measures, which are set forth in the general part of the Criminal Code (Articles 94 to 96), are applicable to both active and passive bribery offences. Accordingly, a person found guilty of an offence can be barred from holding certain positions or exercising certain functions for a period of up to ten years.

27. The applicable sanctions for other comparable crimes are: up to five years' imprisonment for fraud (Article 208, Criminal Code); up to five years' imprisonment for embezzlement (Article 364, Criminal Code); up to five years' imprisonment for abuse of office (Article 359, Criminal Code). The applicable sanction for all of the afore-mentioned offences could be increased if substantial benefit is acquired from the commission of the offence.

Statistics and case law

28. The authorities have referred to a couple of cases of active and passive bribery involving judges who solicited/were given a sum of money to change their verdict.

29. Moreover, the following statistics for the years 2000-2008 were provided:

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Complaints									
Accepting bribe	69	108	146	111	75	82	97	129	91
Giving bribe	78	53	95	59	37	55	43	109	102
Indictments									
Accepting bribe	46	44	55	30	39	29	43	38	33
Giving bribe	34	48	45	31	39	36	45	36	35
Convictions									
Accepting bribe	31	38	47	22	26	23	38	31	23
Giving bribe	29	34	41	20	32	34	40	29	31

30. Finally, the authorities indicate that, according to the data of the Republic Public Prosecutor's Office, in 2009, there were 58 persons investigated and 46 indicted for passive bribery offences; 18 persons were investigated and 22 indicted for active bribery offences.

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

31. Members of domestic public assemblies are considered public officials in the meaning of Article 112 (3) of the Criminal Code which encompasses "*persons elected in a State authority and a local self-government body*". The definition of public official is wide enough to also cover members of any other public representative body whose members are elected or appointed and who exercise legislative or administrative powers. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of domestic public assemblies. There are no court decisions/case law concerning bribery of members of domestic public assemblies.

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

32. Foreign public officials are defined as follows:

> **Article 112 (4), Criminal Code**
>
> *A foreign official is a person who is a member of a legislative, executive or judicial authority of a foreign State, public official or officer of an international organisations or bodies thereof, judge or other official of an international tribunal.*

33. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign public officials. There are no court decisions/case law concerning bribery of foreign public officials.

Passive bribery (Article 367 (5), Criminal Code)

(5) A foreign official who commits the offence specified in paragraphs 1-4 of this Article shall be punished by the penalty prescribed for that offence.

Active bribery (Article 368 (3), Criminal Code)

(3) Provisions of paragraphs 1 and 2 of this Article shall apply also when a bribe is made, offered or promised to a foreign official.

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

34. Members of foreign public assemblies are considered public officials according to Article 112 (4) of the Criminal Code, which refers to "*any person who performs a legislative, executive or judicial function of a foreign State".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of foreign public assemblies. There are no court decisions/case law concerning bribery of members of foreign public assemblies.

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

Definition of the offence

35. Bribery in the private sector is criminalised under Articles 367 (passive bribery) and 368 (active bribery) of the Criminal Code.

Passive bribery (Article 367 (6), Criminal Code)

(6) A responsible officer in an enterprise, institution or other entity who commits the offence specified in paragraphs 1, 2 and 4 of this Article shall be punished with the penalty prescribed for that offence.

Active bribery (Article 368 (5), Criminal Code)

(5) Provisions of paragraphs 1, 2 and 4 of this Article shall apply also when a bribe is given, offered or promised to a responsible officer in an enterprise, institution or other entity.

36. Concerning the scope of perpetrators, Articles 367 and 368 of the Criminal Code refer to the notion of a "responsible officer". The definition of a responsible officer is provided in Article 112 (5) of the Criminal Code which reads as follows:

Article 112 (5), Criminal Code

A responsible officer is an owner of a business enterprise or other entity, or a person in a company, institution or other entity to whom, by virtue of his/her office, invested funds are entrusted or who is authorised to perform a specific scope of tasks in respect of management of the property, production or other activity or in supervision thereof, or is in fact entrusted with the discharge of particular duties. A responsible officer shall also be the official in case of criminal offences designating the responsible person as perpetrator, when such offences are not provided in the Chapter on criminal offences against official duty or criminal offences of an official.

37. The elements of the offence described under bribery of domestic public officials also apply to bribery in the private sector.

Sanctions

38. The applicable sanctions in respect of active and passive bribery of domestic public officials apply to the offences of bribery in the private sector.

Court decisions

39. Details have been furnished of a bribery case involving a worker in a warehouse who was given an amount of money in order to perform an act that he should have not performed.

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

40. Officials of international organisations are considered foreign public officials according to Article 112 (4), Criminal Code) which includes "*any public official or officer of an international organisation or body thereof".* The authorities explained that the aforementioned notion is broad and comprises all persons working in the organisation, irrespective of the permanent/temporary nature of their contract, whether officials, contracted employees or seconded agents. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of officials of international organisations. There are no court decisions/case law concerning bribery of officials of international organisations.

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

41. Members of international parliamentary assemblies are considered foreign public officials in the meaning of Article 112 (4), Criminal Code) which comprises "*any public official or officer of an international organisation or body thereof".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of international parliamentary assemblies. There are no court decisions/case law concerning bribery of members of international parliamentary assemblies.

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

42. Judges and officials of international courts are considered foreign public officials according to Article 112 (4), Criminal Code) which refers to "*judges or other officials of an international tribunal".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of judges and officials of international courts. There are no court decisions/case law concerning bribery of judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

Definition of the offence

43. Following the recent amendments to the Criminal Code, which took place in August 2009, trading in influence is a criminal offence covered by Article 366 as follows:

Article 366, Criminal Code

(1) Whoever solicits or accepts, directly or through a third party, for himself/herself or another person, a reward or other advantage to use his/her official or social position or his/her genuine or presumed influence to intercede for the performance or failure to perform an official act, shall be punished by imprisonment of six months to five years.

(2) Whoever promises, offers or gives, directly or through a third party, a reward or other advantage to another to intercede through use of his/her official or social position or his/her genuine or presumed influence for the performance of or failure to perform an official act, shall be punished by imprisonment of up to three years.

(3) Whoever by abusing his/her official or social position or his/her genuine or presumed influence intercedes for the performance of an official act that should not be performed or not to perform an official act that should have been performed, shall be punished by imprisonment of one to eight years.

(4) Whoever promises, offers or gives, directly or through a third party, a reward or other benefit to another to intercede through the use of his/her official or social position or his/her genuine or presumed influence for the performance or an official act that should not be performed or not to perform an official act that should be performed, shall be punished by imprisonment of six months to five years.

(5) If any reward or advantage has been solicited or received for exerting the influence specified in paragraph 3 of this Article, the offender shall be punished by imprisonment of two to ten years.

(6) A foreign official who commits the offence specified in paragraphs 1 through 4 of this Article shall be punished with the penalty prescribed for that offence.

(7) The reward and material gain shall be seized.

Elements/concepts of the offence

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

44. The provision 'asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]' is transposed into Article 366 of the Criminal Code by use of the words *to use his/her official or social position or his/her genuine or presumed influence to intercede for*". The terms "position" or "influence" are understood as an official (including social) position, which enables the influence peddler to have the power of intervention or improper influence.

Other concepts/elements

45. The constitutive elements of bribery offences largely apply with regard to active and passive trading in influence.

Sanctions

46. Active trading in influence is punishable by up to three years of imprisonment in cases implying an – intended or real – lawful act or omission and by between six months and five years of imprisonment in cases implying an unlawful act or omission. The sanctions applicable to passive trading in influence are imprisonment of between six months and five years (lawful acts/omission)

or one to eight years (unlawful acts/omissions). Moreover, in the case of passive trading in influence, an aggravation of the punishment applies if the perpetrator accepts the advantage for him/herself or another person; the applicable sanction in this case consists of imprisonment of between two and ten years.

Court decisions

47. According to the figures gathered by the Statistical Office of the Republic of Serbia, the following experience has been developed when prosecuting unlawful mediation offences[1] :

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Complaints	7	9	19	8	6	5	-	5	18
Indictments	6	6	9	8	4	5	-	8	12
Convictions	1	5	6	5	3	1	-	7	8

Bribery of domestic arbitrators (Articles 1-3 of ETS 191)

48. The term domestic arbitrator is not explicitly provided by law. However, the authorities indicated that domestic arbitrators are considered public officials according to Article 112 (3) 4) of the Criminal Code, which refers to "a person who is in fact assigned discharge of official duties or tasks", as well as Article 112 (3) 3) covering "a person in an institution, enterprise or other entity who is assigned periodical discharge of public authority, who rules on rights, obligations or interests of natural or legal persons or on public interest". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of domestic arbitrators. There are no court decisions/case law concerning bribery of domestic arbitrators.

Bribery of foreign arbitrators (Article 4 of ETS 191)

49. The term foreign arbitrator is not explicitly provided by law. According to the authorities, foreign arbitrators are considered public officials in the meaning of Article 112 (4) of the Criminal Code on foreign public officials in conjunction with Articles 112 (3) 4) of the Criminal Code: "a person who is in fact assigned discharge of official duties or tasks", as well as Article 112 (3) 3): "a person in an institution, enterprise or other entity who is assigned periodical discharge of public authority, who rules on rights, obligations or interests of natural or legal persons or on public interest". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign arbitrators. There are no court decisions/case law concerning bribery of foreign arbitrators.

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

50. The term domestic juror is not explicitly covered by law. However, the authorities stress that "jurors" are considered public officials according to Article 112 (3) 2) of the Criminal Code, which refers to "*assigned persons in a State authority".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials. There are no court decisions/case law concerning bribery of domestic jurors.

[1] The criminal offence of trading in influence replaced the offence of unlawful mediation pursuant to the 2009 amendments to the Criminal Code.

Bribery of foreign jurors (Article 6 of ETS 191)

51. The term foreign juror is not explicitly covered by law. Foreign jurors are considered foreign public officials covered by Article 112 (4) 5) of the Criminal Code which refers to "*a person who is a member of the judicial authority in a foreign State".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign jurors. There are no court decisions/case law concerning bribery of foreign jurors.

Other questions

Participatory acts

52. In its general part, the Criminal Code, distinguishes between: co-perpetration (Article 33, Criminal Code); incitement (Article 34, Criminal Code); as well as aiding and abetting (Article 35, Criminal Code). These types of participation are punishable as principal offences.

53. Accomplices are liable within the limits of their intent or negligence. Those soliciting or supporting a crime are liable within the limits of their respective intents (Article 36 (1), Criminal Code).

54. If the perpetration of a criminal offence does not result in the intended consequence, those who solicited or supported the offence are punishable for the attempted offence (Article 37, Criminal Code). If the accomplice, the person soliciting or the person supporting the criminal attempt has voluntarily prevented the intended criminal offence from being accomplished, the court may refrain from imposing a sentence (Article 32, Criminal Code).

55. Personal relations, attributes and circumstances on the basis of which criminal liability is excluded or a sentence is withdrawn, reduced or extended are to be taken into account only in relation to the accomplice, the person soliciting or the person supporting the criminal attempt in whom such relations, attributes and circumstances inhere (Article 36 (3), Criminal Code).

Jurisdiction

56. Jurisdictional rules are laid down in Chapter 13 of the Criminal Code; they apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed, partially or in whole, within the territory of the Republic of Serbia (principle of territoriality, Article 6 of the Criminal Code), as well as acts committed abroad by Serbian citizens, when they have been apprehended in or extradited to Serbia (principle of nationality, Article 8). The authorities indicated that only Serbian citizens can be public officials or members of a domestic public assembly.

> **Article 6: Applicability of criminal legislation in the territory of Serbia**
>
> *(1) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory.*
>
> *(2) Criminal legislation of Serbia shall apply to anyone committing a criminal offence on a domestic vessel, regardless of where the vessel is at the time of committing of the act.*
>
> *(3) Criminal legislation of Serbia shall apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of criminal offence.*

(4) If criminal proceedings have been instituted or concluded in a foreign country in respect of cases specified in paragraphs 1 through 3 of this Article, criminal prosecution in Serbia shall be undertaken only with the permission of the Republic Public Prosecutor.

(5) Criminal prosecution of foreign citizens in cases specified in paragraphs 1 through 3 of this Article may be transferred to a foreign State, under the terms of reciprocity.

Article 8: Applicability of criminal legislation of Serbia to a national who commits a criminal offence abroad

(1) Criminal legislation of Serbia shall also apply to a citizen of Serbia who commits a criminal offence abroad other than those specified in Article 7 hereof, if found on the territory of Serbia or if extradited to Serbia.

(2) Under the conditions specified in paragraph 1 of this Article, criminal legislation of Serbia shall also apply to an offender who became a citizen of Serbia after the commission of the offence.

57. In addition, jurisdiction extends to criminal offences committed abroad by foreigners against Serbia or any of its citizens (Article 9 (1), Criminal Code) or against a foreign State or another foreign citizen for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied (Article 9 (2), Criminal Code) when these foreigners have been apprehended in Serbia and are not extradited to a foreign State.

Article 9: Applicability of criminal legislation of Serbia to foreigners who commit a criminal offence abroad

(1) Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia other than those defined in Article 7 hereof, if they are found on the territory of Serbia or if extradited to Serbia.

(2) Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by five years' imprisonment or a more severe penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign State. Unless otherwise provided by this Code, the court may not impose in such cases a penalty more severe than set out by the law of the country where the criminal offence was committed.

58. Dual criminality is required to establish jurisdiction in respect of acts committed abroad. In this connection, the perpetrator of a criminal offence may be prosecuted in so far as his/her conduct constitutes a criminal offence in the country where the offence is committed; criminal proceedings may be instituted only upon the permission of the Republic Public Prosecutor (Article 10(2), Criminal Code).

Article 10: Special conditions for prosecution of crimes committed abroad

(1) In cases referred to in Articles 8 and 9, paragraph 1, thereof, criminal prosecution shall not be undertaken if:
1) the offender has fully served the sentence to which s/he was convicted abroad;
2) the offender was acquitted abroad by final judgment or the statute of limitation has set in respect of the punishment, or was pardoned;
3) to an offender of unsound mind a relevant security measure was enforced abroad;
4) for a criminal offence under foreign law criminal prosecution requires a motion of the victim, and such motion was not filed.

(2) In cases referred to in Articles 8 and 9 hereof criminal prosecution shall be undertaken only when criminal offences are also punishable by the law of the country where committed. When in cases referred to in Article 8 and 9 paragraph 1 hereof, the law of the country where the offence was committed does not provide for criminal prosecution for such offence, criminal prosecution may be undertaken only by permission of the Republic Public Prosecutor.

(3) In case referred to in Article 9 paragraph 2 hereof, if the act at time of commission was considered a criminal offence under general legal principles of international law, prosecution may be undertaken in Serbia following the permission of the Republic Public Prosecutor, regardless of the law of the country where the offence was committed.

59. There are no court decisions/case law in connection with jurisdiction over bribery offences.

Statute of limitations

60. The period of limitation depends on the statutory maximum term of imprisonment which can be imposed for the offence in question (Article 103, Criminal Code)[2]. These (relative) periods of limitation are presumed to run from the time of the commission of the offence; if the consequence of the offence occurs later, the statute of limitations commences as of the day the consequence occurred (Article 104, Criminal Code). The statute of limitations may be interrupted (a new period will start anew) or suspended, but criminal prosecution is barred when twice the limitation period has elapsed (absolute statute of limitation). The following table illustrates the applicable limitation periods for bribery and trading in influence offences.

Article CC	Offence	Sanction (imprisonment)	Relative statute of limitations
Bribery in the public and private sectors			
Passive bribery			
367 (1)	Unlawful official acts/omissions	2 – 12 yrs	15 yrs
367 (2)	Lawful official acts/omissions	2 – 8 yrs	10 yrs
367 (3)	In connection with conduct of criminal investigation, criminal proceeding, pronouncement/enforcement of criminal sanction	3 – 15 yrs	15 yrs
367 (4)	Bribe accepted after commission/omission of official act	3 months – 3 yrs	3 yrs
Active bribery			
368 (1)	Unlawful official acts/omissions	6 months – 5 yrs	5 yrs
368 (2)	Lawful official acts/omissions	Up to 3 yrs	3 yrs
Bribery in the private sector (idem as in public sector, see above)			
Trading in influence			
Passive trading in influence			
366 (1)	Lawful official acts/omissions	6 months – 5 yrs	5 yrs
366 (3)	Unlawful official acts/omissions	1 – 8 yrs	10 yrs

[2] A limitation period of 15 years is provided for offences punishable by a maximum period of imprisonment exceeding 10 years (Article 103 (3), Criminal Code). A limitation period of 10 years is provided for offences punishable by a maximum period of imprisonment exceeding 5 years (Article 103 (4), Criminal Code). A limitation period of 5 years is provided for offences punishable by a maximum period of imprisonment exceeding 3 years (Article 103 (5), Criminal Code). A limitation period of 3 years is provided for offences punishable by a maximum period of imprisonment exceeding 1 year (Article 103 (6), Criminal Code). A limitation period of 2 years is provided for offences punishable by a maximum period of imprisonment of less than 1 year or a fine (Article 103 (7), Criminal Code).

Article CC	Offence	Sanction (imprisonment)	Relative statute of limitations
Active trading in influence			
366 (2)	Lawful official acts/omissions	Up to 3 yrs	3 yrs
366 (4)	Unlawful official acts/omissions	6 months – 5 yrs	5 yrs
366 (5)	If reward received for mediation	2 -10 yrs	10 yrs

Defences

61. Criminal liability may be waived in cases of effective regret of the briber (Article 368 (4), Criminal Code - active bribery in public sector). In such a case, the court may return the confiscated bribe to the briber (Article 368 (6), Criminal Code).

> **Articles 368 (4) and (6), Criminal Code: effective regret**
>
> *(4) The offender specified in paragraphs 1-3 of this Article who reports the offence before becoming aware that it has been detected, may be remitted from punishment.*
>
> *(6) A gift or other benefit seized from the person accepting the bribe may, in case specified under paragraph 4 of this Article, be returned to the persons giving the bribe.*

III. ANALYSIS

62. The legislation of Serbia largely meets the requirements of the Criminal Law Convention on Corruption (ETS 173) (hereafter: the Convention). This is the result of a series of legislative amendments reportedly aimed at bringing the Criminal Code (hereafter: CC) closer to international standards in the anti-corruption arena. That said, the GET has identified a limited number of quite specific deficiencies as outlined below.

63. The offence of bribery (including in the private sector) is criminalised by virtue of two central provisions, i.e. Article 367 CC (passive bribery) and Article 368 CC (active bribery). These provisions comprise all types of acts of passive bribery (request or receipt[3], acceptance of an offer or promise) and active bribery (promising, offering or giving) provided for in the Convention. Likewise, material and immaterial undue advantages, third party beneficiaries and commission through intermediaries are covered. The GET also welcomes the fact that Serbia also criminalises bribery when the intended acts or omissions have already occurred (so-called bribery *a posteriori*); this can make the prosecution of bribery easier, for instance, in cases of repeated bribery offences or when agreement has been reached that the bribe would be paid after the (non-) accomplishment of an official act and the prosecution has difficulty in proving the existence of such an agreement (formal or informal) between the bribe-giver and the bribe-taker.

64. When discussing bribery in the public sector and its specific features, the authorities confirmed to the GET that all sorts of advantages are covered, irrespective of their value, in so far as the purpose of such advantages would be to influence a public official's action in service. They stressed that, although under administrative law certain gifts may be acceptable[4], in criminal law,

[3] Although the term "receive" is not expressly used, it is meant to be comprised in the notion of "acceptance". The authorities further clarified that, in Serbian language, the verbs "accept" and "receive" are synonymous.

[4] Rules on gifts are laid out in the Law on the Anti-corruption Agency. There is a general ban on gifts: public officials must not accept any gift in connection with the performance of their public functions, other than protocol or other "appropriate" presents and solely as long as these are not in the form of money or securities. The maximum acceptable value of a single

a criterion of zero-tolerance to benefits applies. Specific examples of prosecuted cases involving bribes of very low value, as well as non-pecuniary advantages (e.g. tenancy rights, holidays, medical certificates, admission to a course, sexual favours) were provided. The authorities further explained that it is commonly understood, both in legal doctrine and judicial practice, that the notion of benefit goes beyond material gain, and thus also extends to immaterial and intangible advantages.

65. With respect to the type of acts to be performed or omitted by the public official in the context of a bribery offence, these have to fall "within the scope of the official's competence". This means in practice that acts and omissions which are completely outside the official's competence, or his/her statutory remit, but that s/he has the opportunity to commit because of the function s/he occupies, would not be covered directly by the bribery provisions (e.g. granting access to confidential information to which the public official has access in the exercise of his/her function when the gathering or disclosure of such information is not strictly within the scope of competence of the official concerned). In the GET's view, this concept is more narrow than the requirements of Articles 2 and 3 of the Convention which refer to acts and omissions which are made possible in relation to the public official's function, even if the act is a misuse of the official position. The GET explored this state of affairs with the interlocutors met on site and heard conflicting views on the issue. While some interviewees, including judges, admitted that this could potentially constitute a loophole in the system, the interlocutors from the Ministry of Justice were of the opinion that such cases could be prosecuted under other criminal offences such as forging a document (Articles 355-357), violation of secrecy (Article 369), or abuse of office (Article 359 CC). The GET is doubtful that all cases of bribery in the meaning of Articles 2 and 3 of the Convention would indeed be covered by the aforementioned offences (e.g. cases where a person unsuccessfully asks a public official to act outside his/her competence). Moreover, the notion of "competence" adds an – excessively restrictive – element to the criminalisation of bribery, which may make prosecution of the offence more difficult, i.e. by requiring proof that the official was expected to act within his/her official statutory competence. The GET, therefore, recommends **to take the legislative measures necessary to ensure that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence.**

66. Concerning the scope of perpetrators, the broad description of the term "official" contained in Articles 112 (3) CC (domestic public officials) and 112 (4) CC (foreign public officials) captures the different categories of persons covered by the Convention. The situation with respect to corruption offences committed by or against jurors and arbitrators regulated by the Additional Protocol to the Convention (ETS 191) is less clear. With respect to domestic arbitrators and jurors, there are no explicit references in the relevant bribery provisions. However, during the on-site visit, the authorities confirmed that domestic arbitrators would be considered public officials pursuant to article 112 (3) 4) CC which defines a public official by referring to any person "who is assigned discharge of official duties or tasks". According to the authorities, private arbitrators (i.e. arbitrators in private matters) would also be considered public officials by virtue of Article 64 (1) of the Law on Arbitration[5] which gives domestic arbitral decisions the same power as domestic court decisions, thus conferring public nature upon arbitrators' duties. As for jurors, Serbia has no jury system as such, but the judicial system uses lay judges who are considered public officials in the meaning of Article 112 (3) 2 CC, i.e. "assigned persons in a State authority…discharging

gift cannot be over 5% of the average net monthly salary (approximately 17 EUR), or more than one average net monthly salary (around 335 EUR) if several gifts are received in one year. All received gifts are to be reported to the Anti-corruption Agency, which is to publish a record of all gifts received each calendar year.

[5] Official Gazette No. 46/06.

official duties". In view of the explanations provided by the authorities and the very broad scope of the term "official" in Article 112 (3) CC, the GET accepts that domestic jurors and arbitrators are covered by the relevant bribery provisions.

67. Turning to foreign arbitrators, the authorities referred in their initial responses to Article 112 (4) CC on foreign public officials in so far as it explicitly refers to "members of a judicial authority of a foreign State", in conjunction with Articles 112 (3) 4) CC on domestic public officials covering "persons who are assigned discharge of official duties or tasks" and Article 112 (3) 3) CC including "persons in an institution, enterprise or other entity, who are assigned periodical discharge of public authority, who rule on rights, obligations or interests of natural or legal persons or on public interests". It was the view of the Serbian authorities that the latter provisions would cover public officials regardless of his/her citizenship. The GET expressed its doubts on such a reasoning since, firstly, Article 112 (4) CC on foreign public officials does not allow coverage of foreign arbitrators who would not necessarily be considered as members of a judicial authority in a foreign State; secondly, Article 112 (4) CC provides an autonomous definition of a foreign official and does not refer back to the definition of official provided in Article 112 (3) CC to supplement its scope. The interpretation provided by the authorities was not substantiated by any relevant case law or court decision in this respect, nor was it generally shared by the interlocutors met by the GET during the on-site visit (doubts on the concrete coverage of foreign arbitrators were cast by practitioners, including judges). The authorities also argued that foreign arbitrators would be covered by the Law on Arbitration as it states, in its Article 19, that arbitrators may also be foreign citizens. However, the GET understood that this provision concerns essentially the ability of a foreign citizen to act as an arbitrator under the Law on Arbitration, i.e. as long as the parties agree to submit their conflict to Serbian arbitration rules. This state of affairs does not meet the requirements of Article 4 of the Additional Protocol, since the concept of foreign arbitrator is understood in the Protocol by reference to the performance of functions "under the national law on arbitration of any other State"; therefore, what prevails is not the nationality of the arbitrator, but the law under which s/he operates. The authorities subsequently added that the general rules on jurisdiction included in Chapter 2 CC would cover bribery of foreign arbitrators. In this connection, the GET wishes to stress that general jurisdictional principles have no bearing on the criminalisation of the offence as such. Finally, in so far as foreign jurors are concerned, these are only covered to the extent that jurors are considered "members of a judicial authority in a foreign State" (Article 112 (4) CC). This is not in line with the Additional Protocol, which criminalises bribery of foreign jurors irrespective of their status in the foreign jurisdiction. In light of the above and for the sake of legal certainty, the GET recommends **to take the necessary legislative measures in order to ensure that foreign arbitrators and jurors are explicitly covered by the bribery provisions of the Criminal Code in conformity with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).**

68. As regards the subject of bribery in the private sector, Articles 367 (6) and 368 (5) CC refer to the term of "responsible officer" which is defined under Article 112(5) CC as: "..an owner of a business enterprise or other entity, or a person in a company, institution or other entity to whom, by virtue of his/her office, invested funds are entrusted or who is authorised to perform a specific scope of tasks in respect of management of the property, production or other activity or in supervision thereof, or is in fact entrusted with the discharge of particular duties...". During the on-site visit, the Serbian authorities clarified that the notion of "responsible officer" would cover persons discharging duties and with burden of "responsibilities" within the company imposed by either a contract of employment or any other contractual relationships with the private entity. Thus, the notion of "responsible officer" includes not only owners and managers of the company, but also employees discharging non-managerial tasks such as secretaries and administrative

assistants. Other types of relationships in a legal entity as for example partners, lawyers and client, and other persons who are not subject to a contract of employment would also be covered. The GET was told by practitioners, during the on-site visit, that low-level employees discharging manual tasks such as maintenance workers, drivers, etc., would not be considered "responsible officers" and thus would not be covered. The GET recalls Articles 7 and 8 of the Convention which clearly target the full range of persons who direct or work for, in any capacity, private sector entities. The GET further notes that Chapter 21 of the Criminal Code dealing with offences against property (e.g. fraud, embezzlement, abuse of trust), as well as Chapter 22 of the Criminal Code on offences against economic interests (e.g. tax evasion, money laundering) establish that the perpetrator of the relevant offences could be "whoever" performs the illegal action/omission in question. The Serbian authorities later provided some practical examples of prosecuted cases for the offence of abuse of position involving low level employees (e.g. waiters, maintenance workers, security employees)[6]; the authorities also referred to a final judicial decision involving a low level employee (a warehouse worker) convicted for an offence of bribery (in conjunction with the offence of abuse of position). Given the statements of the practitioners met on-site, and the fact that only one adjudicated case of bribery dealing with a low level employee was referred to, the GET remains unconvinced that there is a common understanding of the term "responsible person" covering all persons working in a private sector entity, without necessarily presupposing a certain degree of responsibility within the entity concerned. Therefore, the GET recommends **to clarify in an appropriate manner that legislation concerning bribery in the private sector covers the full range of persons who direct or work for – in any capacity – private sector entities.**

69. Trading in influence is criminalised both in its active and passive form. The material components of the offence, i.e. acts performed, material and immaterial undue advantages, third party beneficiaries and commission through intermediaries, are in line with Article 12 of the Convention. The provisions of Article 366 CC are particularly broad in scope in so far as they do not refer to the concept of "improper" influence, but to the concept of "using the official or social position or influence". Moreover, for the offence of trading in influence to occur, the "position" or "influence" can be either real or pretended. Influence does not actually have to be exerted nor lead to the intended result; the mere assertion of the influence peddler that s/he could exercise such influence would be sufficient for the criminal offence to be committed.

70. The sanctions available for bribery vary depending on the action or inaction by the official concerned resulting from a bribe and his/her duties, and more particularly, the lawful or unlawful nature of this action/inaction (i.e. whether duties are breached or not). Likewise, the available sanctions for passive bribery/trading in influence are more severe than those provided for active bribery/trading in influence. By contrast, the range of penalties is the same irrespective of whether the relevant bribery offences are committed in the public or private sector. Sanctions for bribery range from 3 months' to 12/15 years' imprisonment; for trading in influence up to 10 years' imprisonment. Security measures, including professional disqualification, can be cumulatively imposed. The sanctions detailed above appear to conform to the requirements relating to effectiveness, proportionality and dissuasiveness established under Article 19, paragraph 1 of the Convention. The period prescribed by the statute of limitations for bribery and trading in influence offences generally ranges from 5 to 10 years from the day the offence is committed. The authorities met on-site indicated that they had not been faced with any situation where the prescribed limitation periods had hampered the adjudication of corruption offences.

[6] Verdict No. 1957/96 of 21 November 1996; Verdict No. 509/96 of 2 April 1996; Verdict No. 2637/07 of 29 December 2007.

71. Rules on jurisdiction are laid down in Article 6 CC (territoriality jurisdiction: offences committed, in whole or in part, in Serbia), Article 8 CC (nationality jurisdiction for offences committed abroad by Serbian citizens) and Article 9 (1) CC (nationality jurisdiction for offences committed abroad by foreigners against Serbia or Serbian citizens). Article 9 (2) CC regulates situations where the offence is committed abroad by a foreigner against a foreign State or a foreign citizen. In these cases, Serbia retains jurisdiction provided that two conditions are met: 1) the foreign offence is punishable by 5 years' imprisonment or a heavier penalty and 2) the perpetrator is found on the territory of Serbia and s/he is not extradited to the foreign State concerned. For offences committed abroad under Articles 8 and 9 (1) CC, Article 10 CC requires dual criminality. When the law of the country where the offence was committed does not provide for criminal prosecution for such offences, prosecution can be instigated only with the authorisation of the Republic Public Prosecutor. During the on-site visit, the Serbian authorities indicated that the need for such authorisation in connection with corruption offences has so far never occurred. They also stated that the authorisation by the Republic Public Prosecutor is a formal requirement, discretionary in nature and not automatic; that said, the authorities explained that, in the case of international conventions to which Serbia is a party, this authorisation will generally be granted in practice. The GET considers that the requirement of dual criminality under Article 10 CC constitutes an unnecessary restriction which deviates from the Convention; Serbia has not made any reservation in this respect and is therefore found not to be in compliance with Article 17 1.b of the Convention.

72. Moreover, the GET notes 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. This extension is not fully reflected in Serbian criminal law which generally requires citizenship of Serbia. Domestic officials and members of domestic public assemblies who are not at the same time citizens of Serbia would therefore not be covered. The authorities indicated, however, that such situations could not arise as in Serbia public officials have to be citizens of Serbia. 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.

73. With particular reference to situations covered by Article 17, paragraph 1.c of the Convention, i.e. offences committed abroad by foreigners, but involving public officials, members of domestic public assemblies, officials of international organisations, members of international parliamentary assemblies and officials of international courts who are – at the same time – Serbian nationals, it appears that Serbia would retain nationality jurisdiction only if the offence is directed against the country or any of its citizens (Article 9 (1) CC) or if the offence carries a punishment of at least 5 years' imprisonment (Article 9 (2) CC). The GET is concerned that these additional requirements do not cover the different situations foreseen in Article 17, paragraph 1.c of the Convention: for example, there may well be cases where it is difficult to prove that the offence was directed against Serbia or any of its citizens (while this may be possible in relation to corruption offences involving domestic public officials or members of a domestic public assembly, it can be more problematic in the case of officials of international organisations, members of international parliamentary assemblies and officials of international courts of Serbian nationality). Likewise, some bribery/trading in influence offences carry a punishment of less than 5 years' imprisonment. In light of the foregoing considerations, the GET recommends **(i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad; (ii) to establish jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations,**

members of international parliamentary assemblies and officials of international courts who are, at the same time, Serbian nationals.

74. A special defence of effective regret is provided for active bribery committed in the public sector. In particular, Article 368 (4) CC stipulates that the perpetrator may be remitted from punishment if s/he reports the offence before its detection. The decision to exempt the perpetrator from punishment is at the discretion of the court. The authorities further explained that Article 368 (4) CC is to be understood in conjunction with Article 58 CC on remittance from punishment. Thus, the active briber who effectively regrets would be exempted from punishment (i.e. from sanctions listed under Article 43 CC), but s/he would still be considered guilty of the criminal offence with the possibility for the court to impose on him/her other accessory measures (Article 79 CC). The special defence of effective regret is reportedly aimed at encouraging the reporting of bribery; however, the GET ascertained on-site that the defence is rarely invoked in practice since, in such cases, prosecutors rather resort to Article 18 CC on offences of minor significance (which are not considered as criminal offences). In such a case, perpetrators (i.e. persons solicited by a public official to pay a bribe) become witnesses to bribery offences and are under an obligation to cooperate with the authorities. The GET was told that the special defence of effective regret was meant to cover cases of solicitation (including an element of constraint on the bribe-giver); particular examples were provided to this effect (e.g. doctors refusing to provide treatment unless receiving a gratuity). The authorities emphasised that, in those circumstances where bribe-givers are extorted by bribe-takers who would otherwise refuse to perform their duties, it is useful to have provisions on effective regret in place to dissuade and to detect this kind of behaviour. The GET accepts the explanations provided by the authorities on the necessity of this type of defence and the safeguards provided by law against its potential misuse since Article 368 (4) CC is rather limited in scope and has a discretionary nature, which the court may decide to apply or not to apply. More questionable is, however, the possibility pursuant to Article 368 (6) to restore the bribe to the bribe-giver; for this reason, the GET recommends **to abolish the possibility provided by the special defence of effective regret, pursuant to Article 368 (6) of the Criminal Code, to return the bribe to the bribe-giver who has reported the offence before it is uncovered.**

75. The GET considers that existing criminal law provides a sufficient basis for the prosecution and adjudication of corruption offences; however, when looking at the data provided by the authorities, as well as when discussing the general effectiveness of the system with the different interlocutors met on-site, the situation in practice appears to warrant some critical reflection. Most of the cases discussed with the GET involved petty corruption in the public sector; more rare was prosecution of trading in influence and private bribery. The GET was told that investigations into a number of high-profile cases had been opened, but it could not get any details as to whether any of those had effectively led to convictions. The GET also regrets that the statistics submitted by the authorities, covering the period 2000-2008, do not give a complete picture of the sanctions applied in practice. Furthermore, members of civil society expressed their concern at a certain lack of pro-activity by law enforcement authorities when dealing with corruption offences. The authorities stressed that, aware of the problem, they are working on possible mechanisms to increase the effectiveness of the existing criminal legislative framework, including, *inter alia*, through more rapid and effective criminal investigations. They referred, in particular, to ongoing amendments to the Code of Criminal Procedure, providing, *inter alia,* for a leading role of prosecutors throughout the different stages of criminal proceedings. Efforts were also reported concerning the establishment (and reinforcement) of specialised anti-corruption structures within the law enforcement bodies. The GET noted that these measures were deemed, by the majority of interlocutors, to represent valuable tools for fighting corruption more efficiently. The GET acknowledges the steps taken so far by the authorities; efforts need to be continued and further

developed. Moreover, the GET would find it advisable that the authorities take additional measures, including through specialised training and other awareness raising activities concerning the precise content of the existing incriminations of corruption offences, so that law enforcement authorities become better prepared to detect, investigate and prosecute instances of corruption, including other crimes than classic/petty bribery.

IV. CONCLUSIONS

76. Following a series of legislative amendments, the Criminal Code of Serbia is largely in line with the Criminal Law Convention on Corruption (ETS 173). Nevertheless, a limited number of quite specific deficiencies need to be addressed. In particular, it must be ensured that the offences of active and passive bribery in the public sector cover all acts/omissions occurring in the exercise of the function of a public official, whether or not within the scope of his/her official competences. Furthermore, it should be clarified that private sector bribery covers all persons who direct or work for – in any capacity – private sector entities as intended by the Convention. The legal basis for nationality jurisdiction is to be reviewed in order to abolish the requirement of dual criminality and to extend jurisdiction over corruption offences, committed by foreigners abroad, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, Serbian nationals. In addition, the possibility to return the bribe to the bribe-giver, who declares the offence before it is uncovered, should be abolished in order to limit any risk of abuse. Further steps need to be taken to fully align Serbian legislation with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), notably, by ensuring that foreign arbitrators and jurors are fully captured by the relevant bribery/trading in influence provisions.

77. While the criminal legislation of Serbia provides a sound basis for the investigation, prosecution and adjudication of corruption offences, its effectiveness in practice needs to be increased. More must be done to secure convictions not only for petty bribery, but also high-level corruption in the public sector. The authorities also need to remain alert to related problems, other than traditional bribery, such as trading in influence and corruption in the private sector; very few investigations have been launched to date in respect of these offences. It would appear that the authorities, aware of the problem, have already embarked upon concrete measures to ensure more rapid and effective criminal investigations in this field (e.g. establishment/reinforcement of specialised anti-corruption structures within law enforcement agencies, planned amendments to the Criminal Procedure Code). In this respect, efforts need to be pursued and further developed, including by raising the awareness of law enforcement authorities regarding the content of the existing incriminations of corruption.

78. In view of the above, GRECO addresses the following recommendations to the Republic of Serbia:

i. **to take the legislative measures necessary to ensure that the offence of active and passive bribery in the public sector covers all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence** (paragraph 65);

ii. **to take the necessary legislative measures in order to ensure that foreign arbitrators and jurors are explicitly covered by the bribery provisions of the Criminal Code in conformity with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191)** (paragraph 67);

iii. **to clarify in an appropriate manner that legislation concerning bribery in the private sector covers the full range of persons who direct or work for – in any capacity – private sector entities** (paragraph 68);

iv. **(i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad; (ii) to establish jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, Serbian nationals** (paragraph 73);

v. **to abolish the possibility provided by the special defence of effective regret, pursuant to Article 368 (6) of the Criminal Code, to return the bribe to the bribe-giver who has reported the offence before it is uncovered** (paragraph 74).

79. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Serbian authorities to present a report on the implementation of the above-mentioned recommendations by 30 April 2012.

80. Finally, GRECO invites the authorities of Serbia 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.