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Theme I

Third Evaluation Round

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

Adopted by GRECO
at its 35th Plenary Meeting
(Strasbourg, 3-7 December 2007)

I. INTRODUCTION

1. Slovenia joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2000) 3E) in respect of Slovenia at its 4th Plenary Meeting (12-15 December 2000) and the Second Round Evaluation Report (Greco Eval II Rep (2003) 1E) at its 16th Plenary Meeting (8-12 December 2003). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 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 Slovenia from 2 to 3 July 2007, was composed of Mr Matthias KORTE, Federal Ministry of Justice, Head of Division IIA4, "Economic Crime, Computer Crime, Corruption-related Crime and Environmental Crime" (Germany) and Ms Ana NIKOLIC, Senior Advisor, Directorate for Anti-Corruption Initiative (Republic of Montenegro). The GET was supported by Ms Laura SANZ-LEVIA and Ms Tania VAN DIJK 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 (2007) 5E, Theme I), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Commission for the Prevention of Corruption, Ministry of Justice, State Prosecution Service (Office of Organised Crime, District State Prosecutor's Office), Police (General Police Directorate, Police Directorate of Ljubljana), Supreme Court and District Court. Moreover, the GET met with academia and criminal defence lawyers.
5. The present report on Theme I of GRECO's 3rd Evaluation Round – Incriminations – was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Slovenian 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 Slovenia 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 (2007) 1E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Slovenia ratified the Criminal Law Convention on Corruption (ETS 173) on 12 May 2000. The Convention entered into force in respect of Slovenia on 1 July 2002. Slovenia did not enter any reservation to the Criminal Law Convention on Corruption.
8. The Additional Protocol to the Criminal Law Convention (ETS 191) was ratified by Slovenia on 11 October 2004. It entered into force in respect of Slovenia on 1 February 2005. Slovenia did not make any reservations to the Additional Protocol to the Criminal Law Convention on Corruption.

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

Definition of the offence

9. *Active bribery* is criminalised in Article 268 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 official 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 268 (1), Criminal Code [unlawful official acts/omissions]

Whoever promises, offers or gives an award, gift or other benefit to an official, intended for that official or for another, to induce him/her to perform an official act that s/he is not permitted to perform, or to not perform an official act that s/he is obliged or permitted to perform within the bounds of his/her official rights, shall be given a prison sentence of between one and five years, as well as a fine.

Article 268 (2), Criminal Code [lawful official acts/omissions]

Whoever promises, offers or gives an award, gift or other benefit to an official, intended for that official or for another, to perform an official act that s/he would otherwise have been obliged or permitted to perform, or not to perform an official act that s/he would otherwise not have been permitted to perform within the bounds of his/her official rights, shall be given a prison sentence of between six months and three years.

10. Criminalisation of *passive bribery* is provided for under Article 267 of the Criminal Code. The relevant provisions differentiate between three types of conduct: if the bribe has been solicited or accepted before the performance of the official act (1) 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 official acts or omissions); (2) 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); (3) if the bribe has been solicited or accepted after the performance (or non-performance) of the (lawful or unlawful) official act.

Article 267 (1), Criminal Code [unlawful official acts/omissions]

An official who solicits or accepts for him/herself or for another an award, gift or other benefit or promise, or the offer of such a benefit, to perform an official act that s/he is not permitted to perform or to not perform an official act that s/he is obliged or permitted to perform within the bounds of his/her official rights shall be given a prison sentence of between one and eight years, as well as a fine.

Article 267 (2), Criminal Code [lawful official acts/omissions]

An official who solicits or accepts for him/herself or for another an award, gift or other benefit or promise, or the offer of such a benefit, to induce him/her to perform an official act that s/he would otherwise have been obliged or permitted to perform, or not to perform an official act that s/he would otherwise not have been permitted to perform within the bounds of his/her official rights, shall be given a prison sentence of between one and five years.

Article 267 (3), Criminal Code [bribe accepted after commission/omission of official act]

An official who, after performing or neglecting to perform an official act as stated in the preceding paragraphs, solicits or accepts an award, gift or other benefit in connection with this shall be given a fine or a prison sentence of up to three years.

Elements/concepts of the offence

“Domestic public official”

11. The definition of domestic public official encompasses:

Article 126 (2), Criminal Code

(1) a National Assembly deputy, a member of the National Council, or a member of a local or regional representative body;

(2) any person carrying out official duties in the state bodies or exercising an official function;

(3) any other person performing official duties authorised by a law, by regulations issued pursuant to a law, or by a contract on arbitration signed pursuant to a law;

(4) a military person that is defined as such by special regulations regarding special criminal offences, for which an official person is designated but which are not prescribed as criminal offences against military duty.

(5) any person who is accorded by a foreign state the status of an official person, and who meets by its contents the conditions provided for in subparagraphs 1, 2 or 3 of this paragraph

(6) any person who is accorded by the international organisation whose member is the Republic of Slovenia, the status of an official person and who meets by its contents the conditions provided for in subparagraphs 1, 2 or 3 of this paragraph;

(7) any person holding the office of a judge, prosecutor or another official duty or office in the international court, whose jurisdiction is recognised by the Republic of Slovenia.

12. 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 GET was informed that the broad definition of “public officials” would also cover individuals vested by law with public authority to perform certain duties of the state administration (e.g. doctors who fulfil public duties, employees of vehicle inspection services, etc.), employees of public enterprises¹, etc.
13. Prosecutors and judges are considered public officials in Slovenia in so far as, according to Article 126 (2) 2, they carry out official duties in the state bodies and exercise an official function. Pursuant to the broad definition of “public official” provided in legislation, holders of judicial office, whether elected or appointed, are covered.

“Promising, offering or giving” (active bribery)

14. 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)

15. Passive bribery is criminalised when an award, gift or other benefit or promise, or the offer of such a benefit, 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”

16. The relevant provisions of the Criminal Code concerning bribery do not explicitly use the term “undue”. In this connection, any “award, gift or other benefit or promise” (whether due or undue) may come under the scope of the offence if its purpose is to influence a public official’s action in service.
17. Although immaterial advantages are not explicitly mentioned in legislation, the Slovenian authorities stressed that the term “award, gift or other benefit” is broad enough to cover both material and immaterial advantages. When exploring this particular issue at the time of the on-site visit, the Slovenian officials interviewed provided specific examples of what could be understood as immaterial advantage in court: privileges, promotion, attending seminars abroad, other benefits that cannot be transformed in material form (e.g. preferential loans), etc.

“Directly or indirectly”

18. The relevant provisions on active and passive bribery do not specify whether the offence could be committed directly or indirectly. However, the GET was informed during the on-site visit that bribery offences involving intermediaries would be covered by the general provisions on participation in criminal offences.

¹ Public enterprises in Slovenia are regulated by the Law on Public Enterprises; they are organisations where the state or the local community has a majority share or prevailing influence.

“For himself or herself or for anyone else”

19. Bribery offences also apply where the award, gift or other benefit or promise is for a third party (*“intended for that official or for another”*).

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

20. The promise, offer or granting (*active bribery*), as well as the soliciting or acceptance (*passive bribery*) of an award, gift or other benefit are liable to punishment when their purpose is to induce the public official to perform or omit to perform an official act within the scope of his/her official rights. It was explained to the GET during the on-site visit that the term “official rights” refers to the public official’s statutory responsibilities. It is not necessary that the action in service sought to be induced in the public official involves a breach of duty or that the briber has any such intent.
21. For a bribery offence to occur, it is not required that the induced act or omission by the official be unlawful as such.² However, the commission/omission of an unlawful official act entails more severe sanctions (Article 286 (1) of the Criminal Code).

“Committed intentionally”

22. A basic principle of the Criminal Code is that an action is punishable only when committed intentionally, subject to provisions to the contrary (Article 15 (3) 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.

Sanctions

23. *Active bribery* with respect to unlawful official acts or omissions is punishable by imprisonment between one and five years and a fine (Article 268 (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 prescribed sentences range from six months to three years.
24. *Passive bribery* is punished with imprisonment from one to eight years, as well as a fine, if the bribe was solicited or accepted to perform an act that the official should not perform or omissions that the official should or could have performed (Article 267 (1), Criminal Code). If the bribe is accepted in return for performance (or non-performance) of an official act that should (or should not) have been performed anyway, the sentence ranges from one to five years’ imprisonment (Article 267 (2), Criminal Code). Passive bribery after the official act has been performed (or not performed) is punishable by a fine or imprisonment of up to three years (Article 267 (3), Criminal Code).
25. Fines are regulated by the general part of the Criminal Code (Article 38) and their amount is determined on the basis of the offender’s daily income (net salary and other incomes) as well as with respect to his/her family expenditures. The amount of a fine may vary between 125 and 37,556 EUR. Fines can be imposed in daily instalments or, when this is not possible, in a one-off payment.

² An official act is presumed to be lawful unless proven otherwise.

26. In addition, the security measures, which are set forth in the general part of the Criminal Code, are applicable to both active and passive bribery offences. In this context, Article 67 provides that a person found guilty of an offence can be barred from holding certain positions or exercising certain functions for a period between one and five years. The Slovenian authorities confirmed during the on-site visit that the use of temporary bans is also possible in relation to the exercise of public functions.
27. The applicable sanctions for other comparable crimes are: up to three years' imprisonment for fraud (Article 217, Criminal Code), up to five years' imprisonment for embezzlement (Article 245, Criminal Code), up to five years' imprisonment for abuse of position (Article 244, Criminal Code). The applicable sanction for all of the aforementioned offences can range from one to eight years' imprisonment when aggravating circumstances concur.

Statistics and court decisions

28. The State Prosecution Service indicated that, in 2006, 63 corruption-related cases³ were reported (60 reports concerned physical persons and 3 involved legal persons). The figure had increased as compared to 2005 when a total of 32 instances of corruption were reported. The reports were submitted by different institutions: police, Commission for the Prevention of Corruption, citizens, etc.
29. The police deals with an average of 20 to 70 corruption reports per year. According to the statistics gathered by the police, in 2005 there were 12 indictments concerning passive bribery and 5 concerning active bribery respectively. In 2006, 18 indictments concerned passive bribery and 22 dealt with offences of active bribery. According to the data compiled by the Statistics Office of the Republic of Slovenia for the period 2004-2006, there were 14 convictions concerning bribery in the public sector (6 cases of active bribery and 8 of passive bribery, respectively). Sentences for active bribery in the public sector consisted of imprisonment for between 1 and 6 months; the sentences imposed for passive bribery were slightly higher, i.e. imprisonment for between 2 months and 2 years.

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

30. Members of domestic public assemblies are considered public officials according to Article 126 (2) 1) of the Criminal Code, which refers to "*a National Assembly deputy, a member of the National Council, or a member of a local or regional representative body*". The Slovenian authorities confirmed to the GET that the definition is wide enough to also cover members of any other public representative body whose members are elected or appointed and which 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)

31. Foreign public officials are defined in Article 126 (2) 5) of the Criminal Code as "*any person who performs a legislative, executive or judicial function or any other official duty in a foreign country*".

³ Corruption cases reported included instances of: passive bribery in the private sector (Article 247), active bribery in the private sector (Article 248), passive bribery in the public sector (Article 267), active bribery in the public sector (Article 268), acceptance of gifts to secure unlawful intervention (Article 269), giving of gifts to secure unlawful intervention (Article 269a), passive bribery at elections or ballots (Article 168), and active bribery at elections or ballots –vote buying (Article 162).

and at any level, and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)". The Criminal Code does not provide an autonomous definition of the term "foreign official", but refers to the definition in the national law of the State in which the person in question performs that function. In addition, for the definition to apply it would be necessary to determine whether the foreign person would fall within the definition provided for Slovenian officials provided by subparagraphs 1) to 3) of Article 126 (2). This means that the definition in the law of the foreign country is not necessarily conclusive where the person concerned would not have had the status of public official under Slovenian law, as provided by Article 1, point (c) of the Criminal Law Convention on Corruption. 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 have been no court decisions/case law concerning bribery of foreign public officials, but the police reported on several ongoing investigations in this area.

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

32. Members of foreign public assemblies are considered public officials according to Article 126 (2) 5) of the Criminal Code, which covers "*any person who performs a legislative, executive or judicial function or any other official duty in a foreign country and at any level, and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)*". 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

33. *Active bribery* in the private sector is criminalised in Article 248 of the Criminal Code, which establishes two forms of the offence on the basis of the purpose of the briber: (1) making the bribed person favour the briber in the conclusion of a business deal or the performance of a service or (2) rewarding the bribed person for a favour already granted.

Article 248, Criminal Code

(1) Whoever promises, offers or gives an unlawful award, gift or other benefit to a person performing a business activity, intended for that person or for another, such that they obtain, for themselves or for another, an unlawful advantage in the conclusion of a business deal or the performance of a service from the first paragraph of Article 247 of this Code shall be given a prison sentence of between six months and five years.

(2) Whoever promises, offers or gives an unlawful award, gift or other benefit to a person performing a business activity, intended for that person or for another, as a return favour for the conclusion of a business deal or the performance of a service, shall be given a prison sentence of up to three years.

34. *Passive bribery* in private affairs is criminalised in Article 247 of the Criminal Code. The relevant provisions differentiate between three types of conduct: if the bribe has been solicited or accepted before the performance of the business deal or service (1) for the purpose of making the bribed person favour the briber (2) for the purpose of rewarding the bribed person for such favouring; (3) if the bribe has been solicited or accepted after concluding the business deal or performing the service.

Article 247, Criminal Code

(1) *Whoever, in the course of their business activities, solicits or accepts for themselves or another an unlawful award, gift or other benefit or promise, or the offer of such a benefit, with the purpose of omitting the benefits of their company or another natural person, or causing it damage, when concluding a business deal or performing a service shall be given a prison sentence of between six months and five years.*

(2) *The perpetrator of the offence from the preceding paragraph who solicits or accepts for themselves or another an unlawful award, gift or other benefit or promise, or the offer of such a benefit, as a return favour for the conclusion of a business deal or the performance of a service shall be given a prison sentence of between three months and five years.*

(3) *The perpetrator of the offence from the first paragraph of this article who, after concluding the business deal or performing the service, solicits or accepts for themselves or another an unlawful award, gift or other benefit shall be given a prison sentence of up to two years.*

Elements/concepts of the offence

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

35. With regard to the scope of perpetrators, it is understood in its broadest sense to cover “any person performing a business activity”⁴ (active bribery) or “whoever in the course of a business activity” (passive bribery) and is therefore, independent of the person’s position in the business, i.e. members of the board, persons in the service of a business and persons carrying out a duty on behalf of a business.

“Promising, offering or giving” (active bribery)

36. The elements of “promising”, “offering” and “giving” are expressly contained in Article 248 of the Criminal Code.

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

37. According to Article 247, passive bribery is criminalised when an award, gift or other benefit or promise, or the offer of such a benefit, is “solicited” or “accepted”.

“Any undue advantage”

38. Private bribery exists if the award, gift, benefit or promise is “unlawful”. The GET discussed the meaning of “unlawful” with the officials and practitioners interviewed during the on-site visit who explained that the notion used in the original language would be closer to the meaning of the term “undue” in the sense of the Criminal Convention on Corruption, i.e. it does not only refer to something that the recipient is not lawfully entitled/allowed to accept or receive, but would also cover minimum gifts, gifts of very low value or socially acceptable gifts.

⁴ Article 126 (5) of the Criminal Code defines business activity as:

1) the production and trade of goods, the performance of services on the market, banking and other financial operations;
2) the performance of activities, a profession or tasks for which payment has been prescribed or agreed;
3) management services as well as participation in the management, representation and supervision of the activities from the previous subparagraphs.

39. Both material and immaterial advantages are covered.

“Directly or indirectly”

40. The wording “directly or indirectly” is not expressly provided for in law. However, it would appear that the general provisions of the Criminal Code concerning participation would cover cases of indirect bribery.

“For themselves or for anyone else”

41. The unlawful award, gift or benefit could be for either the briber/bribed or for a third party.

“To act or refrain from acting”

42. The relevant provisions on active and passive bribery do not specify whether the offence could be committed by commission or omission. However, the Slovenian authorities indicated that the notions of *“in concluding a business deal”* and *“with the purpose of omitting the benefits of the company or another natural person, or causing it damage”* are broad enough and allow to cover not only the commitment to induce an act, but also an omission to act.

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

43. Bribery in the private sector occurs *“when performing a business activity”* (active bribery, Article 248) and *“in the course of business activities”* (passive bribery, Article 247). The Slovenian authorities confirmed that the domain of “business activity” is interpreted in its widest sense by covering any kind of commercial activity.

44. A breach of duty is not expressly required; however, the Criminal Code covers instances of bribery *“with the purpose of omitting the benefits of the company or another natural person, or causing it damage”* (Articles 247 (1) and 248 (1)) and *“the favouring or rewarding of someone for the conclusion of a business deal or the performance of a service”* (Articles 247 (2) and 248 (2)). Moreover, the GET was told that damage does not actually have to exist as a result of breach of duty in order for prosecution of bribery criminal offences in the private sector to take place. Nevertheless, the Slovenian authorities stressed the fact that the detection of the bribery sector is extremely difficult because all parties have a mutual interest in protecting themselves.

45. In addition, the Slovenian authorities indicated that, with respect to breach of duties, the criminal offence of abuse of position in business activity is relevant (Article 244, Criminal Code). The latter Article does not target bribes, but is concerned with breach of trust in general.

Article 244, Criminal Code

(1) Whoever, in the performance of a business activity, abuses his position or acts beyond the limits of the rights inherent in his position or fails to perform any of his duties with a view to procuring an unlawful property benefit for himself or for a third person or to causing damage to the property of another, whereby such conduct does not constitute any other criminal offence, shall be sentenced to imprisonment for not more than five years.

(2) If a large loss of property has been caused or a large property benefit acquired through the committing of the offence under the above paragraph and if the perpetrator intended to cause such loss of property or to gain such property benefit, he shall be sentenced to imprisonment for not more than eight years.

(3) If the act from the first paragraph of this Article has been committed by a perpetrator with the intention of acquiring a non-material benefit for himself or any other person, the perpetrator shall be sentenced to imprisonment for not more than one year.

“Committed intentionally”

46. As far as the mental element of the offence is concerned, the requirement of intent is necessary, as per the general provisions set forth in Article 15 of the Criminal Code (see under paragraph 22). For *active bribery* to be punishable, the purpose of the briber is to make the bribed person favour the briber in the conclusion of a business deal or the performance of a service (Article 248 (1), Criminal Code) or to reward him/her for such favouring (Article 248 (2), Criminal Code). In instances of *passive bribery*, the purpose of the person accepting the bribe is to favour the briber (Article 247 (1), Criminal Code) or to reward him/her for such favouring (Articles 247 (2) and (3), Criminal Code).

Sanctions

47. *Active bribery* when the purpose of the briber is to make the bribed person favour the briber is punishable by imprisonment of between six months and five years (Article 248 (1), Criminal Code). In cases where the bribe is given to reward the bribed person for the favour already performed, the applicable sanction is imprisonment of up to three years.
48. *Passive bribery* occurring before the conclusion of a business deal or the performance of a service is punished with imprisonment of up to five years (Articles 247 (1) and (2), Criminal Code). *Passive bribery* after the business deal/service has been performed is punishable by imprisonment of up to two years (Article 247 (3), Criminal Code).
49. In addition, the security measures, which are set forth in the general part of the Criminal Code are applicable. Pursuant to Article 67, a person found guilty of an offence can be barred from holding certain positions or exercising certain functions for a period between one and five years.

Statistics and court decisions

50. There are no court decisions concerning bribery in the private sector. However, convictions exist in relation to Articles 244 (1) and (2) concerning the criminal offence of abuse of position in business activity. According to the data submitted by the Statistics Office of the Republic of Slovenia, which corresponds to the period 2004-2006, there were 58 convictions in relation to Article 244 (25 of them were related to the aggravated form of the offence criminalised by Article 244 (2)). The sentences imposed for the aforementioned offence consist of imprisonment ranging between a minimum of two months and a maximum of 3 years. The most severe sanction, i.e. imprisonment for between 3 and 5 years, was imposed in 2004 in relation to an aggravated case of abuse of position in business activity on the basis of Article 244 (2).

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

51. Officials of international organisations are considered public officials according to Article 126 (2) 6) which includes “*any person who has been given an official position by an international public organisation and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)*”. This definition is therefore not an autonomous one and refers to the concept of domestic public official set forth in sub-paragraphs 1) to 3) of Article 126 (2); therefore, it is necessary to determine whether the member of the international organisation concerned would fall within the definition provided for Slovenian officials. According to the Slovenian authorities, all the categories of persons listed in Article 9 of the Criminal Law Convention on Corruption (i.e. contracted employees, seconded personnel, persons carrying out functions corresponding to those performed by such officials or agents etc.) are covered under Slovenian law. 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)

52. Members of international parliamentary assemblies are considered public officials according to Article 126 (2) 6) which includes “*any person who has been given an official position by an international public organisation and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)*”. This definition is therefore not an autonomous one and refers to the concept of domestic public official set forth in sub-paragraphs 1) to 3) of Article 126 (2); therefore, it is necessary to determine whether the member of the international parliamentary assembly would fall within the definition provided for Slovenian officials. 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)

53. Judges and officials of international courts are considered public officials according to Article 126 (2) 7) of the Criminal Code, which refers to “*any person who performs a judicial, prosecutorial or other official duty or function in an international court*”. There is no limitation that Slovenia should have accepted the jurisdiction of this court. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery 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

54. Trading in influence is a criminal offence under Slovenian law and is covered by Articles 269 and 269a of the Criminal Code as follows:

Article 269, Criminal Code: Acceptance of gifts to secure unlawful intervention

(1) Whoever solicits or accepts for themselves or for another an award, gift or other benefit or promise, or the offer of such a benefit, to exploit their position or influence and to intervene so that an official act is or is not performed shall be given a prison sentence of up to three years.

(2) Whoever exploits their position or influence and intervenes in order that an official act that they are not permitted to perform is performed, or that an official act that they are obliged or permitted to perform is not performed, shall be subject to the same penalty.

(3) If the perpetrator accepts the award, gift or other benefit for themselves or for another to intervene, as stated in the preceding paragraph, they shall be given a prison sentence of between one and five years.

Article 269a, Criminal Code: Giving of gifts to secure unlawful intervention

(1) Whoever promises, offers or gives an award, gift or other benefit to another, intended for that person or for another, to induce them to exploit their position or influence and to intervene so that an official act is or is not performed shall be given a prison sentence of up to three years.

(2) Whoever promises, offers or gives an award, gift or other benefit to another, intended for that person or for another, to induce them to exploit their position or influence and to intervene in order that an official act that may not be performed is performed, or an official act that must or may be performed is not performed, shall be given a prison sentence of between one and five years.

(3) The perpetrator from the preceding paragraphs who gave the unlawful award, gift or other benefit at the request of the person who unlawfully intervened and who declared the offence before it was uncovered may be exempt from punishment.

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]”

55. 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 Articles 269 (passive trading in influence) and 269a (active trading in influence) of the Criminal Code by use of the words *“to exploit their position or influence and to intervene so that an official act is or is not performed”*. 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.
56. For the offence of trading in influence to occur, the “position” or “influence” must be real and effectively enable the influence peddler to have the power of intervention or improper influence on the decision-making process; otherwise the perpetrator can be prosecuted for fraud. However, it is not necessary that the influence is actually exerted and leads to the intended result, the mere assertion of the trader in influence that s/he could exercise such influence would be sufficient for the criminal offence to be committed.

Other concepts/elements

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

Sanctions

58. The sanction applicable to *active and passive trading in influence* is up to three years’ imprisonment (Article 269 (1) and (2), Article 269a (1), Criminal Code). In both cases this

sanction increases to a prison sentence of between one and five years, if the trader in influence exploits his/her position or influences and intervenes for the purpose that an official act that should not have been performed is performed, or that an official act that should or could have been performed is not performed. In the case of passive trading in influence, the aggravation of the punishment only applies if the perpetrator accepts the advantage for himself or for another (Article 269 (3), Criminal Code).

59. Debarment (from one to five years) is possible according to Article 67 of the Criminal Code.

Statistics and court decisions

60. According to the data provided by the police, in 2006, there were five indictments concerning the acceptance of gifts to secure unlawful intervention (Article 269) and four dealing with offences of giving gifts to secure unlawful intervention (Article 269a). The Statistics Office of the Republic of Slovenia indicated that in 2006, a sentence of imprisonment of between 3 and 6 months was imposed in respect of an offence of passive trading in influence (Article 269 (2)).

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

61. Domestic arbitrators are considered public officials according to Article 126 (2) 3) of the Criminal Code, which refers to *"any other person performing official duties authorised by a law, by regulations issued pursuant to a law, or by a contract on arbitration signed pursuant to a law"*. In this connection, the Slovenian authorities explained that subparagraph (3) of Article 126 (2): *"any other person performing official duties authorised by a law, by regulations issued pursuant to a law, or by a contract of arbitration signed pursuant to a law"* was specifically introduced into the Criminal Code to comply with the Criminal Law Convention on Corruption, in particular regarding "arbitrators". The explanatory notes to the Bill include a clear reference to this end. Official duties are therefore to be understood in their broadest sense and to cover explicitly arbitration agreements between parties to submit a dispute for a decision which has to be recognised by law. 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)

62. Foreign arbitrators are public officials in the meaning of Article 126 (2) 5) of the Criminal Code which refers to *"any person who performs a legislative, executive or judicial function or any other official duty in a foreign country and at any level, and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)"* (therefore, including a *"person performing official duties authorised by a contract of arbitration signed pursuant to a law"*), as well as Article 126 (2) 6) which includes *"any person who has been given an official position by an international public organisation and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)"*. 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)

63. The term domestic juror is not explicitly covered by law. The Slovenian authorities define "jurors" as "lay judges" who are considered public officials according to Article 126 (2) 3) of the Criminal Code, which refers to *"any other person performing official duties authorised by a law, by*

regulations issued pursuant to a law, or by a contract on arbitration signed pursuant to a law". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of domestic jurors. There are no court decisions/case law concerning bribery of domestic jurors.

Bribery of foreign jurors (Article 6 of ETS 191)

64. Foreign jurors are considered public officials covered by Article 126 (2) 5) of the Criminal Code which refers to "any person who performs a legislative, executive or judicial function or any other official duty in a foreign country and at any level, and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)"; as well as Article 126 (2) 6) which includes "any person who has been given an official position by an international public organisation and who fulfils the conditions from points 1, 2 or 3 of Article 126 (2)". 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

65. In its general part, the Criminal Code, distinguishes between: complicity (Article 25, Criminal Code); criminal solicitation (Article 26, Criminal Code); and criminal support (Article 27, Criminal Code). These types of participation are punishable as principal offences.
66. 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 29 (1), Criminal Code).
67. 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 28, 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 29 (2), Criminal Code).
68. 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 29 (3), Criminal Code).

Jurisdiction

69. The rules of Slovenian criminal jurisdiction 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 within the territory of Slovenia (principle of territoriality, Article 120), as well as acts committed abroad by Slovenian citizens, when they have been apprehended in or extradited to Slovenia (principle of nationality, Article 122). The Criminal Code also provides for jurisdiction to prosecute acts committed abroad by foreigners against Slovenia or any of its citizens ("passive" nationality jurisdiction, Article 123).
70. 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 insofar as his conduct constitutes a criminal offence in the country where the offence is committed (Article 124 (3)).

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

Statute of limitations

72. The period of limitation depends on the maximum term of imprisonment which can be imposed for the offence in question (Article 111, Criminal Code)⁵. These periods are presumed to run from the time of the commission of the offence. 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 (Article 112, Criminal Code).

73. The following table illustrates the applicable limitation periods for bribery and trading in influence offences:

Article CC	Offence	Sanction (imprisonment)	Statute of limitations
Bribery in the public sector			
<i>Active bribery</i>			
268 (1)	Unlawful official acts/omissions	1 – 5 yrs	5 yrs
268 (2)	Lawful official acts/omissions	6 months – 3 yrs	3 yrs
<i>Passive bribery</i>			
267 (1)	Unlawful official acts/omissions	1 – 8 yrs	10 yrs
267 (2)	Lawful official acts/omissions	1 – 5 yrs	5 yrs
267 (3)	Bribe accepted after commission/omission of official act	Up to 3 yrs	3 yrs
Bribery in the private sector			
<i>Active bribery</i>			
248 (1)	Bribe made to favour briber	6 months – 5 yrs	5 yrs
248 (2)	Bribe rewards bribed person for such favouring	Up to 3 yrs	3 yrs
<i>Passive bribery</i>			
247 (1)	Bribe accepted to favour briber <i>before</i> conclusion of business deal or performance of service	6 months – 5 yrs	5 yrs
247 (2)	Bribe rewards bribed person for such favouring	3 months – 5 yrs	5 yrs
247 (3)	Bribe accepted to favour <i>after</i> conclusion of business deal or performance of service	Up to 2 yrs	3 yrs
Trading in influence			
<i>Active trading in influence</i>			
269a (1)	Lawful official acts/omissions	Up to 3 yrs	3 yrs
269a (2)	Unlawful official acts/omissions	1 – 5 yrs	5 yrs
<i>Passive trading in influence</i>			
269 (1)	Lawful official acts/omissions	Up to 3 yrs	3 yrs
269 (2)	Unlawful official acts/omissions	Up to 3 yrs	3 yrs
269 (3)	For the trader in influence or another to intervene in unlawful official acts/omissions	1 – 5 yrs	5 yrs

⁵ A limitation period of 5 years is provided for offences punishable by a maximum period of imprisonment exceeding 3 years (Article 111 (1) 4), Criminal Code). A limitation period of 3 years is provided for offences punishable by a maximum period of imprisonment exceeding 1 year (Article 111 (1) 5), Criminal Code).

Defences

74. Criminal liability for active bribery and trading in influence offences may be waived in cases of effective regret of the briber (Article 268 (3) - active bribery in public sector; Article 248 (3) – active bribery in private sector; and Article 269a (3) – active trading in influence). In all the aforementioned cases, the court is entitled to decide whether the confiscated bribe is to be returned to the briber (Articles 268 (4), 248 (4) and 269a (4), Criminal Code).
75. If the effective regret defence is successfully invoked, the perpetrator would still be considered guilty of the criminal offence, but would be exempted from punishment.

Articles 268 (3) and (4), 248 (3) and 4, 269a (3) and (4), Criminal Code: effective regret

The perpetrator who gave the unlawful award, gift or other benefit upon request of an official and who declared the offence before it was uncovered may be exempt from punishment.

Awards, gifts or other benefits given shall be confiscated, in cases from the preceding paragraph they may be returned to the person who gave it.

III. ANALYSIS

76. The GET found the framework for the criminalisation of corruption largely compliant with the standards of the Criminal Law Convention on Corruption and its Additional Protocol under evaluation. In this context, the provisions contained in the Slovenian Criminal Code concerning incriminations, which were last amended in 2004, appear to provide a sound basis for the prosecution of corruption offences. That said, the GET identified a limited number of deficiencies of the existing system on the basis of a strict reading of the provisions contained in the Criminal Code, since the lack of practical experience in this area resulted in very little jurisprudence and the absence of scientific commentaries providing for further interpretative guidance of the recently adopted amendments to the Criminal Code. In this connection, the GET notes that in Slovenia the main challenge in fighting corruption lies with the effective enforcement of legislation.
77. The Criminal Code contains two central provisions concerning bribery in the public sector (Articles 267 and 268). In particular, Articles 267 (2) and 268 (2) criminalise the acceptance and giving of bribes for lawful acts and omissions by public officials; Articles 267 (1) and 268 (1) contain provisions against the acceptance and giving of bribes for unlawful acts or omissions. The aforementioned provisions, although not using a verbatim transposition of the Criminal Law Convention on Corruption, cover all types of acts of passive bribery (request or receipt, acceptance of an offer or a promise) and active bribery (promising, offering or giving) provided for in the Convention. The object of bribery includes material and immaterial advantages, whether due or undue. The advantage need not necessarily be given to the public official him/herself: it can be given also to a third party.
78. The definition of public official contained in Article 126 (2) is set in broad terms: it encompasses domestic public officials (Article 126 (2) 2), 3) and 4); members of domestic public assemblies (Article 126 (2) 1); foreign public officials and members of foreign public assemblies (Article 126 (2) 5); officials of international organisations and members of international parliamentary assemblies (Article 126 (2) 6); judges and officials of international courts (Article 126 (2) 7); foreign and domestic arbitrators (Article 126 (2) 3); and finally, domestic and foreign jurors

(Article 126 (2) 3) and 5). The aforementioned categories of officials are defined in accordance with the requirements of the Criminal Law Convention on Corruption.

79. The indirect granting of benefits, in particular the commission of the offence through intermediaries, is not explicitly mentioned in the relevant provisions concerning bribery in the public sector. Court decisions in this area were not available. The GET discussed the issue at length with a number of practitioners and scientific experts met during the on-site visit who confirmed that all cases of indirect bribery would indeed be covered by the Criminal Code through the general provisions on participation in criminal offences (aiding and abetting). If the intermediary commits the offence intentionally, the person for whom the intermediary acts would be charged for complicity or at least solicitation according to Articles 25 and 26 of the Criminal Code. If the intermediary is not aware that the benefit granted is intended to bribe, the person behind the intermediary would be considered the perpetrator of a bribery offence, irrespective of the good faith of the intermediary involved. In the absence of practical experience, it is difficult to assess at this stage whether the provisions of the Criminal Code on participation will prove to be suitable legal tools to effectively cover instances of bribery through intermediaries.
80. The Criminal Code criminalises active and passive bribery for the performance of or omission to perform an “official act within the scope of the rights” of a public official. It emerged from the interviews held that the latter notion would only cover situations which are within the framework of the public official's authorised rights. The GET takes the view that this formulation narrows down the requirement of the Criminal Law Convention on Corruption (Articles 2 and 3), which refers to acts and omissions by public officials in the exercise of their functions. In this connection, the Convention covers acts and omissions which are made possible in relation to the public official's function, even if the act or omission is a misuse of the official position, 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 rights or duties of the official concerned. Moreover, it is recalled that the decisive element of the offence is not whether the official has discretion or not to act as requested by the briber, but whether s/he is being offered, given or promised the bribe in order to obtain something in return. Therefore, the GET is of the opinion that the narrow notion of “within the scope of the rights” adds an extra element to the criminalisation of bribery, which may make prosecution of the offence more difficult. The practitioners interviewed indicated that this was indeed the case, but that they were able to prosecute actions and omissions falling outside the scope of the official's rights under the criminal offence of abuse of office (Article 261 of the Criminal Code), which is sanctioned with similar penalties to those provided for bribery. However, the GET has serious doubts that all the constitutive elements of the bribery offence would indeed be covered by the offence of abuse of office. Consequently, the GET can only conclude that Slovenian legislation is not fully in line with the Criminal Law Convention as it introduces a narrow definition of breach of duty, i.e. by requiring proof that the official was expected to act against his/her rights, and therefore recommends **to ensure that the relevant provisions of the Criminal Code concerning bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, including any use/misuse of the public official's position, whether or not within the scope of the official's rights.**
81. Articles 247 and 248 of the Criminal Code criminalise passive and active bribery in the private sector. The material components of the offence: corrupt acts performed, concept of advantage (material and immaterial), and third party beneficiaries, are transposed in accordance with the relevant provisions of the Criminal Law Convention on Corruption. Instances of bribery in the private sector committed through intermediaries appear to be covered by the general provisions of the Criminal Code on participation. As far as the scope of perpetrators is concerned, the broad

definition provided for in Slovenian legislation (“whoever in the course of business activity” – “any person performing a business activity”) covers all persons who direct or work for, in any capacity, private sector entities. In contrast to the provisions against bribery in the public sector, the requirements with regard to the private sector narrow the term “award, gift or other benefits” by the attribute “unlawful”. However, the information gathered by the GET suggests that the meaning of the latter notion is in line with that of “undue” used by the Criminal Law Convention on Corruption. In addition, the criminalisation of bribery in the private sector seeks to protect trust, confidence and loyalty in private contractual relations by including a general obligation not to act to the detriment of the interests of the company or to cause it damage (Article 247(1) and 247 (2)). Furthermore, favouring or rewarding someone for the conclusion of a business deal or the performance of a service may give rise to a bribery offence, irrespective of the existence of a detriment/damage to the company or breach of duty (Articles 247 (2) and 248 (2)). The breach of duty itself is criminalised in Article 244 on abuse of position or rights in business activity.

82. Trading in influence is criminalised pursuant to Article 269a (active trading in influence) and Article 269 of the Criminal Code (passive trading in influence). The constitutive elements of the offence are largely in line with Article 12 of the Criminal Law Convention on Corruption, in particular with respect to the corrupt acts covered, the tangible and intangible character of the advantage, the mental element and third party beneficiaries. Instances of trading in influence committed indirectly appear to be covered by the general provisions of the Criminal Code concerning participation.
83. Although it is not required that the influence is actually exerted and leads to the intended result, the Criminal Code requires that the influence is real and effectively enables the influence peddler to have the power of intervention or improper influence on the decision-making process. The GET notes that the Criminal Law Convention on Corruption covers cases of not only real, but also supposed influence of the influence peddler on other persons. Therefore, according to the Convention, the offence would be deemed to be committed if an advantage is promised/offered/granted to a person who merely asserts or confirms that s/he is able to exert improper influence over the decision-making of the categories of officials covered under Article 12. Consequently, the GET recommends **to clarify or extend the scope of Articles 269 and 269a of the Criminal Code concerning trading in influence to cover instances of supposed influence.**
84. The rules of Slovenian criminal jurisdiction apply to all bribery and trading in influence offences. According to the *principle of territoriality*, the jurisdiction covers acts committed within the territory of Slovenia (Article 120, in connection with Article 10, Criminal Code). The Criminal Code does not explicitly state whether the territorial jurisdiction covers offences only partly committed in Slovenia, but the Slovenian authorities explained during the on-site visit that the principle of territoriality is interpreted broadly and therefore jurisdiction may also be established when the bribery offence is in part committed within the national territory. Moreover, according to Article 10 of the Criminal Code, offences are deemed to be committed “*both in the place where the perpetrator was acting and in the place where the unlawful consequence occurred*”. Likewise, the nationality of the briber or the person who is bribed is immaterial.
85. The *principle of nationality* is included in Article 122 of the Criminal Code, and supplemented by Article 124 (3) which provides jurisdiction for offences committed abroad by Slovenian citizens when the act is punishable both under the law in the foreign country where the act was committed and under Slovenian law (dual criminality). This means that Slovenian citizens could only be prosecuted for bribery offences committed abroad when the offence is also punishable in the foreign state, which restricts the scope of application of Article 17 1.b of the Criminal Law

Convention on Corruption. The GET notes that Slovenia has not made any reservation in this respect and was therefore found not to be in compliance with Article 17 1.b of the Convention. Consequently, the GET recommends **to abolish the requirement of double criminality with respect to the offences of bribery and trading in influence.**⁶

86. Moreover, the GET notes that the Criminal Law Convention on Corruption not only establishes jurisdiction for offences of nationals committed abroad (Article 17, paragraph 1, littera b), but also extends nationality jurisdiction to public officials and members of domestic public assemblies of member States – i.e. not necessarily nationals (Article 17, paragraph 1, littera c). In this connection, Slovenian public officials and members of public assemblies who are not at the same time Slovenian citizens would therefore not be covered by Article 122. The GET acknowledges that traditionally in most cases the latter two categories of officials would be Slovenian citizens; however, in the particular context of the European Union, it is no longer rare that citizens from other EU countries serve as Slovenian officials or as elected representatives in a Slovenian municipal assembly. Officials interviewed were of the opinion that such cases would fall under the provisions of Article 123 (1) governing jurisdiction for criminal offences against Slovenia or any of its citizens committed by foreign citizens in a foreign country. But the GET doubts that the aforementioned provision would always be applicable since there may well be cases that would not necessarily target Slovenia or one of its citizens. Therefore, the GET recommends **to extend the scope of Article 122 of the Criminal Code in order to allow for the exercise of jurisdiction over bribery and trading in influence offences committed outside Slovenia by/or involving Slovenian public officials and members of domestic public assemblies who are not Slovenian citizens.**⁷
87. Punishment for bribery in the public sector ranges from 6 months to 8 years imprisonment and a fine; for bribery in the private sector from 3 months to 5 years imprisonment; and for trading in influence up to 5 years' imprisonment. The sanctions available under Slovenian legislation appear to conform to the requirements established by Article 19(1) of the Criminal Law Convention on Corruption. That said, the GET could not form an opinion on the effectiveness and dissuasiveness in practice of the sanctions in corruption cases, as there was limited established practice in this area with a low number of corruption cases being adjudicated. In this connection, the GET understood from the interviews held during the on-site visit that, although the legal framework providing for criminalisation of corruption offences had been progressively amended (the last amendments were introduced in 2004) to comply with European/international standards, the effective application of the law remained a matter of concern, with prosecution and adjudication of corruption offences still being cautious and hesitant and not as proactive as desirable. A variety of factors were highlighted to the GET, including the reluctance to report instances of corruption, the difficulty of proving the illegitimate origin of corruption proceeds and the intent of the perpetrators, the high level of proof required by the investigative judge to open a judicial investigation and to admit evidence in court, the need of greater specialisation of prosecutors and judges, etc. The GET is of the opinion that even the most comprehensive laws do not assist combating corruption if they are not effectively applied in practice; legislation must be coupled with follow-up measures to promote its enforcement. Consequently, the GET recommends **that the effectiveness of the criminal provisions concerning bribery and trading in influence offences be assessed in order to facilitate their full use in practice.**

⁶ The Slovenian authorities reported, at the time of examination of the report, that the new Criminal Code (whose adoption procedure had started in October 2007) would include provisions to this effect.

⁷ The Slovenian authorities reported, at the time of examination of the report, that the new Criminal Code (whose adoption procedure had started in October 2007) would include provisions to this effect.

88. The period prescribed by the statute of limitations regarding the institution of criminal proceedings with respect to bribery and trading in influence offences generally ranges from 3 to 5 years from the day the offence is committed. The statute of limitations may be interrupted and suspended, but the absolute limitation period expires when twice the prescribed time lapses. The Slovenian authorities met during the on-site visit stressed that they had not been faced with any situation where the prescribed limitation periods had hampered the adjudication of corruption offences. The GET takes the view that the aforementioned statute of limitations is adequate and appears to provide, in principle, a reasonable timeframe for adjudication in corruption cases.
89. Finally, the Criminal Code provides for the special defence of “effective regret”, which exempts bribe-givers from punishment when they report the bribe. In such cases, the court is entitled to restore the seized bribe to the briber. The GET was informed that the effective regret defence had only been used once in court. At the time of the evaluation visit, the effectiveness of this special defence was subject to discussion and the authorities reported their intention to abolish it. In this particular context, the GET explored with the interlocutors interviewed both the advantages of provisions on effective regret (detection of bribery cases) and the potential risks of misuse (e.g. blackmailing the bribed persons, abuse for false defence). It subsequently emerged - at the time of examination of the report - that the authorities had decided to retain the special defence of effective regret. The GET accepts this decision. It is however of the opinion that the provisions in Articles 268 (4), 269a (4) and 248 (4), which allow the return of confiscated benefits to the briber (at the discretion of the competent judge), are questionable. Consequently, the GET recommends **to abolish the possibility provided in the Criminal Code by the special defence of effective regret to return the bribe to the briber who has declared the offence before it is uncovered.**

IV. CONCLUSIONS

90. In Slovenia, the legal framework for the criminalisation of corruption largely complies with the standards of the Criminal Law Convention on Corruption and its Additional Protocol under evaluation. A limited number of deficiencies were identified on the basis of a strict reading of the provisions contained in the Criminal Code, since the lack of practical experience in this area resulted in very little jurisprudence providing for further interpretative guidance. In this connection, Slovenia is encouraged to ensure that domestic legislation fully complies with the Convention with respect to “acts/omissions in the exercise of official functions” in cases of bribery in the public sector and instances of supposed influence of the influence peddler on other persons in connection with the offence of influence trading. Moreover, Slovenia is urged to review its basis for nationality jurisdiction in order to abolish the requirement of double criminality regarding the offences of bribery and trading in influence, as well as to allow for the exercise of jurisdiction over bribery and trading in influence offences committed outside Slovenia by (or involving) Slovenian public officials and members of domestic public assemblies who are not Slovenian. Furthermore, the possibility provided by the special defence of effective regret to return the bribe to the briber, who has declared the offence before it is uncovered, should be abolished. Above all, the main challenge in fighting corruption in Slovenia lies with the effective application of legislation. This calls for full use and stricter enforcement of the relevant criminal provisions in practice.

91. In view of the above, GRECO addresses the following recommendations to Slovenia:
- i. **to ensure that the relevant provisions of the Criminal Code concerning bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, including any use/misuse of the public official's position, whether or not within the scope of the official's rights** (paragraph 80);
 - ii. **to clarify or extend the scope of Articles 269 and 269a of the Criminal Code concerning trading in influence to cover instances of supposed influence** (paragraph 83);
 - iii. **to abolish the requirement of double criminality with respect to the offences of bribery and trading in influence** (paragraph 85);
 - iv. **to extend the scope of Article 122 of the Criminal Code in order to allow for the exercise of jurisdiction over bribery and trading in influence offences committed outside Slovenia by/or involving Slovenian public officials and members of domestic public assemblies who are not Slovenian citizens** (paragraph 86);
 - v. **that the effectiveness of the criminal provisions concerning bribery and trading in influence offences be assessed in order to facilitate their full use in practice** (paragraph 87);
 - vi. **to abolish the possibility provided in the Criminal Code by the special defence of effective regret to return the bribe to the briber who has declared the offence before it is uncovered** (paragraph 89).
92. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Slovenian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2009.
93. Finally, GRECO invites the authorities of Slovenia 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.