



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



**DIRECTORATE GENERAL I – LEGAL AFFAIRS**  
**DEPARTMENT OF CRIME PROBLEMS**

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## **First Evaluation Round**

## **Evaluation Report on Albania**

Adopted by GRECO  
at its 12<sup>th</sup> Plenary Meeting  
(Strasbourg, 9-13 December 2002)

## **I. INTRODUCTION**

1. Albania was the 28<sup>th</sup> GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter referred to as "the GET") was composed of Mr. Sandor DUSIK, Principle Counsellor, Ministry of the Interior, Hungary (law enforcement expert), Mr Joseph E. GANGLOFF, Senior Counsel, Office of International Affairs, Department of Justice, U.S.A. (policy expert) and Mr Håkan ÖBERG, Director, Economic Crimes Bureau, Sweden (criminal justice expert). This GET, accompanied by one member of the Council of Europe Secretariat visited Albania from 8 to 12 April 2002. Prior to the visit, the GET experts were provided with a comprehensive reply to the Evaluation Questionnaire (document GRECO Eval I (2001) 16) as well as with copies of the relevant legislation.
2. The GET met with officials from the following Albanian Governmental bodies: The Minister of State to Prime Minister responsible for anti-corruption and anti trafficking, the Ministry of Justice (Directors of codification, approximation of legislation and judicial co-operation), the Council of Ministers (Directors of the anti-corruption permanent unit, department of public administration and the public procurement agency), the Office of the Prosecutor General (the Head of the economic crime bureau), the Ministry of Public Order (Directors of general control and the criminal police), the Ministry of Finance (Directors of money laundering, legal affairs, customs and tax directorates), the State Audit, the Office of the Commissioner of People's Advocate, the Chairman of Tirana District Court, the Director of the State Intelligence Service (secret service), the Chairman of the Parliamentary Committee on Immunities, the chairman of the Chamber of Commerce (a state body) and with the Board of the Anti-Corruption Monitoring Group and its Permanent Unit (final meeting). The GET also met with members of The Anti-Corruption Coalition of Civil Society (NGO), international organisations (Council of Europe Office in Tirana, Friends of Albania, World Bank and the Centre for European Constitutional Law) and with representatives of the media (the newspaper "Korrieri" and others).
3. GRECO agreed, at its 2nd Plenary meeting (December 1999) that the evaluation procedure to be used in the 1st Evaluation round would, in accordance with Article 10.3 of its Statute, be based on the following provisions:
  - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
  - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
  - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
4. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for Recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Albanian authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Albania, the general anti-corruption policy, the institutions and authorities in charge of combating it – their functioning, structures, powers, expertise, means and specialisation – and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Albania is fully compatible with the undertakings

resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Albania in order for this country to improve its level of compliance with the GPCs under consideration.

## II. GENERAL DESCRIPTION OF THE SITUATION

5. Albania is strategically placed on the Balkan peninsula at the entrance of the Adriatic Sea. Albania, which has a surface of 28.748 sq km, has land borders with Greece, The Federal Republic of Yugoslavia and The Former Yugoslav Republic of Macedonia. The total population is 3.2 million of whom approximately 98 per cent are ethnic Albanians. It is worth noting that more Albanians are living outside Albania than in the country - the total number of Albanians in the World have been estimated to over seven million people.
6. Following a long history of totalitarianism and isolation, resulting *inter alia* in a country with almost no contacts with the surrounding world, the first pluralist elections were held in Albania in 1991. Democratisation of Albania has since been on the agenda of the various Albanian governments, but the progress has been impaired as a result of a strong polarisation between two leading political coalitions.
7. It was not until 1998 that Albania adopted a new Constitution, based on the values of a Parliamentary democracy, replacing the interim constitution that had been in place since the abandonment of the communist-inspired constitution in 1991. The present Albanian Constitution provides for a multi-party parliamentary system and free elections. Moreover, it provides for a traditional division between the legislative, executive and judicial powers.
8. The Assembly (Parliament) is unicameral and comprises 140 deputies (members of Parliament). The Head of State, the President, is elected for a term of five years by the Parliament in a secret ballot, requiring a three-fifth majority of the votes of all Deputies. The Prime Minister is appointed by the President of the Republic and the Ministers are appointed by the President upon proposal of the Prime Minister. The Assembly approves the programme and composition of the Council of Ministers (Government) by simple majority.
9. Albania has since the early 1990's benefited from extensive co-operation and assistance programmes for strengthening democratic values from international organisations, such as the Council of Europe, the European Union, the OSCE and the World Bank as well as individual states. The assistance has focused on reforming the legislation and the public administration. Albania participates since 2000 in the Stability Pact Anti-corruption Initiative (SPAI) which is covering countries of south eastern Europe. Specific programmes for the promotion of anti-corruption measures in Albania are run by the Council of Europe (PACO-programme) and the USAID.
10. The process of democratisation and institutional building have suffered from situations of political instability in Albania. The progress was particularly damaged by an incident sometimes referred to as the *pyramid mania*, which happened when transition from central planning system to a market economy had just started in Albania, 1996 – 1998. Even if Albania's transition to a market economy at the time was rapid, its financial sector reform was still limited, the legal framework was vague and an informal economy was developing, This was the momentum which allowed the "pyramid schemes" to develop. The typical pyramid schemes were such as a fund or company offering investors very high returns; these returns were paid to the first investors out of the funds received from those who invested later. Although the enormity of the problem became clear when

the Bank of Albania discovered that one of the biggest company deposits in the banking system were equivalent to \$120 million (5 percent of GDP), and despite repeated warnings from the IMF and the World Bank, the authorities did not warn the public in time. Hence, by March 1997, Albania was in chaos—a civil unrest unfolded in the entire nation in a very rapid way. From early March 1997 through July 1997 there was a situation of emergency in the country and the national law enforcement agencies were more or less non functional. It was not until 1998 that Albanian authorities could be seen to have regained control after this extraordinary situation.

11. Albania is one of the poorest countries in Europe. Its GDP per capita was approximately 1345 Euros in 2001, which is far below the average of member states of the EU and the OECD. Moreover, high unemployment (more than 18 per cent) and a lack of development of legitimate businesses in the private sector, has provided for an environment in which an extensive “informal economy” has been developed over the passed years.

**a. The phenomenon of corruption and its perception in Albania**

12. Albania was one of the most isolated countries in the world, and certainly within Europe, during the Communist régime. Public authorities as well as civil society recognise that corruption is affecting the activity of most Albanian institutions, undermining the democratic and economic development of the Country. The authorities explain this situation as a result of many problems due to the political, legal, economic and social transition leading to weak public institutions, low salaries, a developing market economy and a weak and poorly developed civil society.
13. Surveys<sup>1</sup> (referred to by the Government) carried out with the support from the international community, show that the Judiciary, the Customs, the Privatisation Agency and the Health service are among the most corrupt. However, corruption is also a problem in the taxation administration and in the field of public order (police). The authorities consider that the most common form of corruption in Albania is bribery. Civil servants or other officials are inclined to accept bribes to expedite service delivery, to refrain from using punishment foreseen in law/regulation or judges who may be ready to change court decisions, etc. Surveys also show that it is very common that private enterprises pay bribes to public officials to avoid taxes and regulations, or that court and arbitration decisions are being bought.
14. The Albanian Government considers the fight against corruption as one of its main priorities. In 1997, the Government started discussions on formulating a programme against corruption. With strong support from the international community represented in Albania, surveys on the corruption situation in Albania were carried out and, as from February 1998, a Steering Group composed of high-level government officials was established as an inter-ministerial co-ordinator to collect information through surveys on corruption. A conference on corruption was organised by the Steering Group in July 1998 during which the Government initiated a national programme against corruption. The active participation of the Albanian Government in the activities of the Stability Pact Anti-corruption Initiative (SPAI) in South-eastern Europe underlines the Government commitment in this respect. The Government has informed the GET that it is very sensitive to the recommendations of “SPAI”.
15. With the Government decision (No. 515, 1998) *“On the approval of the action plan of the fight against corruption”*, the Government launched for the first time an official reform programme

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<sup>1</sup> i) Survey conducted by the Albanian Centre for Economic Research (ACER) and ORT, funded by USAID and Soros Foundation, June 1998.

ii) Anti-Corruption in Transition: A Contribution to the policy debate, World Bank, 2000

against corruption. Following extensive input from several international organisations active in Albania, this action plan has since been revised and updated a few times. For example, the Albanian commitments under the SPAI programme have been incorporated as well as a plan for the overall implementation.

16. At the time of the visit of GET to Albania, the anti-corruption strategy of the Albanian Government was reflected in the *National Anti-Corruption Plan* ("the Matrix"), which takes the form of a matrix comprising a comprehensive set of measures in five areas. The Plan is a multidisciplinary instrument comprising various public bodies and, to some extent, the business sector. The Matrix is considered as a living document which is continuously monitored (see below) and updated. It contains columns describing "objectives" of each action as well as "measures and expected results", "responsible institutions", "deadlines", "risks" (problems in the implementation), and "success indicators". The Plan (Matrix) has the following fields of interest: 1) *Institutional reform* (civil service reform and high state control), 2) *Strengthening of legislation and consolidation of the rule of law* (legislation, judiciary and police), 3) *Public Finance Management* (budget, taxation, customs and public procurement), 4) *Promotion of Transparency and Integrity in Business Transactions* (transparency during privatisation and simplifying licensing) and 5) *Enhancing Public Information and Promotion of an Active Civil Society* (promotion of civil society initiatives).
17. *The Governmental Commission of the Fight against Corruption* was established in 1999. The main tasks of this high-level body, headed by the Prime Minister and responsible before the Council of Ministers (the Government), is to define and revise the National Anti-Corruption Plan and to monitor its implementation. The Commission also has a monitoring function over the Anti-Corruption Monitoring Group, described below.
18. The more detailed implementation of the National Anti-Corruption Plan (the Matrix) is monitored and co-ordinated by the *Anti Corruption Monitoring Group* (ACMG), consisting of the Board of Directors, i.e. high-level officials representing various ministries and other state bodies concerned by the Matrix. The work of the ACMG is coordinated by the Minister of State to the Prime Minister and supported by a Permanent Unit of civil servants within the structure of his/her office.
19. In order to provide for as efficient a co-operation as possible between the various bodies involved in the described multidisciplinary structure and to ensure the continuing reporting to the ACMG, a network of contact points has been set up, i.e. two-three civil servants have been identified in each institution/ministry as the main interlocutors between their institutions and the ACMG.
20. The Albanian authorities informed the GET that the implementation of the Matrix is constantly monitored and that progress in almost all fields of interest has been noticed. In particular, the changes of the national legislation and the accession to international treaties and instruments was highlighted as well as the reforming of the existing institutions (judiciary, police, public procurement, etc) and the creation of new bodies, such as the judicial inspectorate at the High Council of Justice. Above all, the very creation of the Matrix and the machinery for its implementation was highlighted as a great achievement in itself.
21. The GET was also informed that within the wide range of activities included in the Matrix, the Government has given particular priority inter alia to the following areas in the future implementation: reform of the civil service, including training, transparency of the privatisation process, reform of the public procurement system, reform of the State Police (legal status etc), elimination of corruption within the judiciary, information to the public and co-operation with civil society.

22. Concerning the involvement of civil society in the fight against corruption, the GET was told by the Albanian authorities that NGO's "interested to co-operate in the fight against corruption," were regularly invited to the meetings of the ACMG and that these take an active part in this work. Moreover, an "Anti- Corruption Alliance of NGO's" had been established in 2001, which, in co-operation with the Permanent Unit of the ACMG, had organised some seminars and which was to have a monitoring role over the process foreseen in the Matrix.
23. Media representatives provided the GET with inter alia the following information: The fight against corruption in Albania has often been used primarily as a tool in the political environment between the ruling party and the opposition or between factions within political parties. Another point raised by media is the malfunctioning judiciary; only very few of the investigated cases on corruption lead to conviction. There is a low level of trust by the public in the impartiality of the courts. Finally, the GET was informed that even if the legislation on access to public documents may appear to be good, it was in reality very difficult for media representatives to obtain information from the authorities in Albania; some newspapers/journalists were even refused access to information by the authorities.
24. As representative of civil society, the *Albanian Coalition Against Corruption (ACAC)*, an NGO, funded by USAID, active in several anti corruption projects, informed the GET that there was a lack of a comprehensive written assessment of the situation of corruption in Albania. The anti-corruption legislation in place was considered being of a relatively good level, however, its implementation was difficult. Institutions like the judiciary, the taxation, customs and public procurement were mentioned as examples of institutions connected with a lot of corruption. The public procurement was considered far from adequately equipped (staff etc) to carry out their duties. An ACAC representative also mentioned that the Albanian citizens had "zero-trust" in the public institutions and that the awareness raising by the authorities was more of propaganda than of information. Representatives of the ACAC had, however, noted that some parts of the society had begun to consider corruption as a heavy cost for the Albanian society.
25. Albania was considered as one of the most corrupt countries in Europe by the World Bank in 1998. At that time, in the shadow of the "pyramid schemes", nearly half of the Albanian citizens surveyed admitted to paying bribes. Two-thirds of public officials admitted that bribery was a common phenomenon in the Country. This situation had improved considerably according to another World Bank survey in 2000. Albania received Transparency International (TI) Country Perception Index (CPI) ranking in 1999 with a score of 2.3 on a scale from 1 (most corrupt) to 10 (least corrupt). The index ranked Albania 84<sup>th</sup> of 99 countries studied, indicating a very high level of corruption. Since then, Albania has been excluded from TI's ranking as a result of a lack of information. However, in TI's most recent ranking (2002), Albania appears again; in this survey ranked 81<sup>st</sup> of 102 countries studied, with a CPI of 2.5. At the time of the GRECO visit, there was no Chapter of TI in Albania<sup>2</sup>.
26. The GET was informed by the Albanian Government that although from a theoretical point of view, links between corruption and organised crime (including money laundering)<sup>3</sup> can never be excluded, at present there are no concrete cases in Albania which prove a connection between these phenomena. This position was confirmed by the Directorate of Money Laundering of the Ministry of Finance and by the Police.

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<sup>2</sup> The Albanian authorities informed the GET after the visit that a TI Chapter had been established in Albania

<sup>3</sup> It should be noted that the fight against money laundering in Albania is a relatively new phenomenon; the Money laundering department (Ministry of Finance) has been operational since November 2001.

i) As to the law

27. The Albanian authorities have in recent years considered it a priority to update its legislation in order to make it comply with international standards. Legal reforms against corruption, has had a preventive approach, to a large extent aiming at public administration in general and at the criminal justice system in particular. New laws on the functioning of the High Council of Justice, the Prosecution, on notaries and bailiffs, etc. have accordingly been enacted. However, the reform has to a large extent also focused on the criminalisation and penalisation of corruption activities. The important legislation in this respect is contained in the Criminal Code and the Criminal Code of Procedure.
28. The Albanian *Criminal Code* contains several provisions concerning corruption offences and other offences which are closely connected to acts of corruption, including active and passive bribery. Some of the provisions have recently been amended or changed to comply with international instruments and the prevailing situation in Albania. The relevant offences are "proposals for remuneration made to officials holding public office", "remuneration to officials holding public office" (active bribery), "abuse of office", "misuse of state contributions", "illegal benefiting from interests", "breaching the equality of participants in public bids or auctions", "asking of a bribe" and "receiving a bribe" (passive bribery). Moreover, there are special offences for corruption measures carried out by certain officials belonging to particularly exposed areas, such as officials belonging to the law enforcement system or to the criminal justice system. The mentioned offences are contained in APPENDIX 1 to this report.
29. The Criminal Code covers corruption offences in the public sector, i.e. committed by or *vis-à-vis* civil servants or other public employees (elected persons, such as Parliamentarians, are covered by this definition). The corruption offences concern material as well as intangible advantages. The Albanian legislation does not deal with bribery of foreign officials or officials belonging to international organisations, however, the GET was informed, after the visit, that the Albanian authorities were drafting legislation to cover also such officials. Corruption in the private sector is not criminalised in Albania, but a drafting process aiming at criminalising private-sector corruption had started.
30. The penalty for active bribery is a fine or, up to three years of imprisonment (Article 244), for "asking of a bribe" a fine or imprisonment, up to seven years (Article 259) and for "receiving a bribe" (passive bribery) imprisonment three to ten years (Article 269).
31. There is a specific provision applicable when a judge, a prosecutor, a defence lawyer, an expert or an arbitrator within the framework of a particular case, for which s/he has been assigned, is asking for or receives remuneration or benefits for carrying out a particular act connected to his/her function. In such a case the penalty is five to ten years of imprisonment. A similar provision applies to procurement proceedings (Article 319).
32. According to the Albanian Criminal Code, the creation or using of an invoice or other accounting document or record containing false or incomplete information, is a criminal offence ("falsification of official documents"). The illegal removal of documents aiming at performing, disguising or hiding corruption is qualified as "abuse of office". In addition, there is a recent (2001) special provision which punishes the act of falsification of documents of the justice bodies, such as judgments (313/a).

33. It could be added that the Albanian Criminal Code penalises smuggling carried out by customs officials (Article 175), with three to ten years of imprisonment and the non fulfilment of duties by tax authority employees with up to ten years of imprisonment (Article 181a). Such offences are often closely related to activities of corruption and may substitute corruption offences.
34. "Money laundering" is defined in the Law on the Prevention of Money Laundering (No 8610/2000) as *"the cycling and recycling of money derived from criminal activities called "dirty"*". Money laundering covers the deposition, disposition, transferring and exchange of money, ownership in bad faith and mediation.
35. Moreover, money laundering is a separate criminal offence in the Criminal Code, including the following elements: *"financial or other economic actions with the purpose of laundering money, which is known to derive from criminal activity"* (Article 287/a)<sup>4</sup>. The sanction is imprisonment, five to ten years. There is also the offence "Disposition of proceeds of crime" contained in the Criminal Code (Article 287). Based on both these provisions, any kind of proceeds deriving from criminal activity ("all offences approach"), including corruption, and put into circulation, is thus criminalised. As a consequence, corruption offences are predicate offences with regard to both these crimes.
36. The establishment of a criminal organisation and/or participating therein is punished as separate offences (Article 333). When corruption is committed in an organised and systematic manner (by an organised crime group) that is considered as an aggravating circumstance. In such a case the penalty for the corruption offence may be considerably sharpened (Article 334). The same applies to money laundering.
37. The Albanian legislation provides for the confiscation of proceeds of crime under two provisions contained in the Criminal Procedural Code. Firstly, Article 30 (headed "supplementary punishments") states that a person who has committed offences or criminal contraventions may also be punished by confiscation of the means of the criminal act and of the profit deriving from it. Article 36 (headed "confiscation of the means for committing the criminal act") provides for the confiscation consisting of seizure and transfer to the State of the means of a crime as well as money or other property resulting from crime.
38. There is no corporate liability for corruption offences in Albania. Nor is there such liability for money laundering. Instead, money laundering by legal persons is qualified as an administrative offence, which is punishable with a fine. The GET was informed that the Albanian authorities were in the process of drafting new comprehensive corporate legislation based on international standards.
39. The rules on Albanian criminal jurisdiction are laid down in Articles 6, 7 and 8 of the Criminal Code. These are based on the principles of territoriality and personality. Albanian criminal jurisdiction includes acts committed within the territory of the Republic of Albania, by Albanian citizens, foreigners or persons without nationality. Albanian jurisdiction also applies to offences committed abroad by Albanian citizens when that offence is concurrently punishable (dual criminality), unless a foreign court has given a final sentence. This implies that acts, such as active bribery committed abroad by Albanian citizens, are subject to Albanian criminal jurisdiction when the act is punishable both under the law in the territory where the act was committed and under Albanian law. Moreover, Albanian jurisdiction applies when non Albanians commit crime

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<sup>4</sup> The GET was informed that the Ministries of Justice and Finance were drafting an amendment to this Article in order to comply with EU standards.



outside Albania against the interests of the Albanian State or citizens in cases of extreme criminality, such as terrorism, etc. The same apply with regard to crime which affect the life or health of Albanian citizens where the punishment is five years of imprisonment or more. (The punishment for active bribery is up to five years.)

40. With regard to special investigative techniques (SIT) the Albanian legislation, in particular the Code of Criminal Procedure but also some other special laws, provides for the following measures : bugging in public and private premises, telephone tapping, other interception of communications, electronic surveillance, observation, controlled delivery, infiltration, etc. The use of SIT has to be requested by a prosecutor and the approval, including terms of conditions, is given by a judge. The SIT may be used for offences with a sanction of more than five years of imprisonment or any criminal offence committed by an organised crime or armed group.

ii) Conditions of civil servants, administrative procedures, codes of conduct and ethical standards

41. The reform in civil service has been given high priority by the Albanian Government. The first attempt to provide comprehensive legislation in this area was the enactment of the Law on Civil Service in 1996. A more recent law on the Status of the Civil Servant is in place since 1999. The Civil Service Commission is an independent institution (five members appointed by Parliament upon proposal from the Government, High State Control and local authorities) charged with supervisory functions at all institutions having civil servants. The admission and dismissal, career, training, salaries, duties and rights of civil servants is thus regulated and the Commission is the administrative and appeal resort for this. The duties provided for in the legislation is, for example, "not to seek or accept any moral or material gain in the fulfillment of ...obligations...". The GET was informed that the implementation of the law, i.e. to give public officials civil servant status was costly, for what reason this reform was rather slow. At the time of the visit of the GET, there were some 124.000 employees in public administration in Albania. Some 2000 employees working in ministries were becoming civil servants. The GET was told that the prospect was to make some 30.000 employees civil servants in the future; police, customs and taxation staff were not included.
42. A preventive element in the perspective of guaranteeing the impartiality of the administrative decision making, is the institution of the "disqualification", foreseen in the law on the Code of Administrative Procedures (articles 37-45): The law foresees that no civil servant may participate in a contract, where the administration s/he represents is party, in cases the civil servant has or/and is suspected to have a direct or indirect personal interest in the case in question. The direct or indirect personal interests are defined in a list containing 9 situations.
43. The Albanian Government is preparing a law on the rules of ethics in Public administration. The law is aiming at defining ethical standards for public officials and at the same time making the public aware of expected standards with regard to the conduct of public officials. The GET was shown an extract of the draft law dealing with conflict of interests, avoiding conflicts of interests and expected reactions to (bribery) offers. The GET was informed that the draft law was based on the Council of Europe Recommendation on Codes of Conduct for Public Officials (Rec No. R(2000)10). It was hoped that the further development of this draft law would be a source for a wide discussion, involving public administration as well as civil society.
44. The State Supreme Audit has a Code of Ethics for auditors in the form of a Decision (April 2001) by the President of the State Supreme Audit. This instrument, which is based on an international code of ethics ("the INTOSAI Code of Ethics", 1998) is a document of values and principles,

dealing with trust, confidence, integrity, independence, objectivity and impartiality. Moreover, this document also deals with secrecy and competence, etc.

45. There is a Code of Ethics for the State Police in Albania. This instrument was at the time of the visit by GET being updated.
46. The Code of Ethics for the Judiciary was adopted by the National Judge's Conference. This Code, which came into effect in 1999, comprises a set of recommendations directed to judges on their independence and impartiality, respect of law and behaviour.
47. The GET was informed that rules on conduct for practising lawyers were included in the law on the Advocacy as well as in the Statutes of the Chamber of lawyers. Moreover, there are Codes of Conduct in the form of Government Decisions (2000) concerning accountants (certified and approved). Finally, there are also codes of conduct for medical doctors and nurses.
48. Public officials, who during exercise of duty become aware of a criminal offence are, according to the Criminal Procedural Code, Article 281, obliged to make a written indictment to the prosecutor or judicial police.
49. The GET was provided with statistics concerning disciplinary and administrative measures and prosecutions against public officials (ministries and central institutions) for the period of January – October 2001. The information had been provided by the various institutions to the ACMG, which had processed the data. The statistics show that there were 1075 disciplinary measures used (282 dismissals), 984 administrative measures (fines) and 109 criminal denunciations (three court decisions). Most of these figures were not related to corruption.

*iii) International undertakings*

50. The GET was informed that, according to the Albanian Constitution, already the ratification of international treaties brings them into the national legislation of the country, with a status superior to ordinary legislation.
51. Albania ratified the Council of Europe Criminal Law Convention on Corruption (ETS No. 173) on 19 July 2001. It ratified the Civil Law Convention on Corruption (ETS No. 174) on 21 September 2000. Moreover, Albania ratified the Council of Europe Convention on Laundering, Search, Seizure and confiscation of the Proceeds from Crime (ETS No. 141) on 31 October 2001.
52. Albania has ratified all other Council of Europe Conventions in the field of criminal matters, among them the European Convention on Extradition and protocols thereto (ETS Nos. 024, 086 and 098) on 19 May 1998, the European Convention on Mutual Assistance in Criminal Matters and protocols thereto (ETS Nos. 030, 099 and 182) on 4 April 2000 and 29 June 2002 and the European Convention on the Transfer of Proceedings in Criminal matters (ETS No. 073) on 4 April 2000.
53. Albania is also a party to several multilateral and bi-lateral agreements in the field of justice and police co-operation, in particular, with neighbouring countries and other states in the near region. The bi-lateral justice co-operation concerns legal assistance in criminal matters, transfer of convicted persons, execution/implementation of judicial decisions and extradition, etc. The police co-operation concerns, in particular, cross border crime, such as organised crime, including for

example terrorism and trafficking in drugs, but also more general topics, such as security and public order.

54. The legal assistance is assured through the international treaties to which Albania is a party and/or based on the provisions of the Albanian Criminal Procedural Code, which in Articles 488-525 deals with "jurisdictional relations with foreign countries", including extradition abroad and from abroad, foreign letters of application and the execution of sentences. These cases are processed through the Ministry of Foreign Affairs and the Ministry of Justice. It should be mentioned that extradition is allowed only on the basis of international treaties to which Albania is a party and only by a judicial decision (Article 38.2 of the Constitution and Article 10 of the Criminal Procedural Code in conjunction with Article 11 of the Criminal Code). There is also the requirement of "dual criminality".
55. The authorities informed the GET that the number of cases on mutual legal assistance is increasing constantly and that the Ministry of Justice presently is dealing with some 1000 files per year.

**b. Bodies and institutions in charge of the fight against corruption**

56. Two specific high-level bodies with the overall objective of directing the National Anti-Corruption Plan (the Matrix) of Albania has been established, i.e. the *Governmental Commission of the Fight against Corruption* at Governmental level and the *Anti Corruption Monitoring Group (ACMG)* at the highest civil servant level. The work of the latter body is particularly aiming at co-ordinating the implementation of the Matrix and thus depends on co-operation from other state bodies. To this end and to ensure the reporting to the ACMG, a network of *contact points* have been set up in various institutions to serve as interlocutors between them and the ACMG. The classical repressive side of the fight against corruption is represented by the police, the prosecution and the judiciary. In addition, there are various other state bodies which play a role in the fight against corruption as a part of their other duties.

**b1. The overall responsibility for anti-corruption measures**

*i) The Governmental Commission of the Fight against Corruption*

57. *The Governmental Commission of the Fight against Corruption* was established in 1999. The Commission is composed of 13 representatives of the Government and independent institutions. It is headed by the Prime Minister. The duties of this Governmental body is to lead and supervise the process of revision and implementation of the National Anti Corruption Plan, to approve the structure and the composition of the expert groups involved in the revision of the Plan and to prepare Governmental decisions concerning the Plan, as well as the ACMG.
58. The GET was informed that with the establishment of the Commission and the ACMG, Albania, for the first time, has established a permanent structure for the fight against corruption. The main difficulties explained lay with the co-ordination between the various institutions concerned, in particular those which are legally independent. Even if it was considered too early to measure the impact of the work, positive progress had been noted in several areas, such as customs and taxation. Every three months a summary of the ACMG reports is presented before the Commission/Government. All reports discussed in the meetings of the ACMG are made public through media and Internet and presented to the Governmental Anti-Corruption Commission.

ii) *The Anti Corruption Monitoring Group (ACMG)*

59. In 2000/2001 the *Anti Corruption Monitoring Group (ACMG)* was established (with assistance from international organisations<sup>5</sup>) in order to ensure the implementation of the Anti Corruption Plan (Matrix). The ACMG consists of a Board of Directors composed of:

- the Director General of the Codification at the Ministry of Justice (Chair)
- the Director General of the Bailiff at the Ministry of Justice
- the Director of the Legal Directorate at the Ministry of Finances
- the Director of the Legislation Approximation at the Ministry of Justice
- a representative of the Department of Public Administration
- a representative of the Information Department at the Council of Ministers
- the Chief of General Control at the Ministry of Public Order
- the Chief of the Sector at the Public Procurement Agency
- the Director of the Prefectures' Directorate at the Ministry of Local Government
- the Chief of the Legal Sector at the Ministry of Health
- the Director of the Secretariat of the Water National Council at the Ministry of Public Affairs
- the Head of the Cabinet at the State Supreme Audit
- the Deputy Chief Inspector at the Inspectorate of the High Council of Justice
- the Chief of the Economic Crime Division at the Prosecutor General
- a Commissioner of the People's Advocate (Ombudsman)

60. The objectives of the ACMG Board are to monitor the implementation of the Matrix, to promote and support the inter-institutional collaboration and coordination, to counsel and support the institutions included in the Plan as well as to propose preventive activities, to advise the institutions and to report progress to the Government (the Commission and the Council of Ministers), via the Minister of State of the Prime Minister (who is not a member of the Board, but who may occasionally participate in its meetings). The Board meets at least every two months. The ACMG is closely connected to the SPAI programme.

61. The secretariat of the ACMG is provided by the Anti-Corruption Permanent Unit (ACPU), comprising six civil servants attached to the Office of the Minister of State of the Prime Minister. The Unit is composed of a Director and five inspectors (covering areas of public order, public administration, economy/finances, legal affairs/justice, media/civil society and translations). The ACPU supports the Board in the monitoring of the situation in Albania and with regard to the implementation of the Matrix and is, therefore, also involved in the co-ordination between the various bodies concerned as well as in the preparation of measures to increase the impact of the Matrix. The ACPU prepares and proposes strategies, methodologies and operational changes of the Plan to the Monitoring Board for approval. Moreover, the ACPU has an important role with regard to the transparency and public awareness of the anti-corruption strategy and provides a "bridge" to the civil society at large, including the political opposition, non-governmental organisations, the business community, media, etc.

62. In its support to the ACMG, the ACPU gathers, processes and classifies data concerning the corruption situation and the progress of the Matrix. It prepares regular and *ad hoc* reports to be presented at the meetings of the ACMG. Since it commenced its work in April 2001, the ACPU has completed a report based on information from the different "contact points", prepared a manual of operations (a summary of rules and procedures established by the ACMG), prepared studies on notaries and on the use of disciplinary measures in 2001 as well as preparatory work

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<sup>5</sup> Council of Europe (PACO), World Bank, OSCE/Friends of Albania, MSI/USAID

for the improvement of the Matrix and reports for national and international anti-corruption meetings and conferences. This work was carried out on the bases of a detailed plan. Since 2001, the ACPU is working on a programme, *“Albania - Strengthening of the ACMG”*, which has been approved in co-operation with Council of Europe experts under the “PACO programme”, with the objective of establishing an institutional mechanism for the implementation of the Matrix.

63. The GET was informed by the ACMG Chairman that the basic anti-corruption legislation was in place as well as the basic institutional framework and, that the focus of the work was on the implementation of the legislation (operational level), to strengthen the institutions and that further development in the civil society sector, including media was, necessary.

## **b2. Police (Ministry of Public Order)**

### *The Organisation of the Police*

64. The transition of the Albanian Police from a military structure of the former totalitarian regime to a police service suitable for a democratic state has undergone a difficult step by step process. The Government has in its reform efforts been assisted by various initiatives of the international community. Important steps were taken when the basic legislation on the Police system in Albania was adopted – firstly, *the law on the State Police of Albania* in 1999 and, secondly, *the law on the Organisation and the Functioning of the Judicial Police* in 2000. The introduction of this legislation was an important step forward to establish new institutions; the State Police (the traditional national police) and the Judicial Police, the latter being a functional designation of the police when performing criminal investigations under the lead of the Prosecution.
65. Following the adoption of the law on the State Police, a programme for its implementation was established for the years 2000-2003. A great variety of legislation has since been enacted, for example concerning the status of the police, their ranks and professional responsibility. The reform of the police is an ongoing process and, in addition to the legislative changes, there have been institutional and structural reforms as well as replacement of staff for various reasons, including their involvement in corruption activities.
66. The State Police of Albania is under the responsibility of the Ministry of Public Order. According to the Law on the State Police, the Minister of Public Order is the highest authority of the Police. The powers of the Minister include directing and supervisory functions through the establishment of normative acts (orders and regulations) according to the Law on the State Police as well as operational instructions in particular cases (Article 7). According to the Albanian authorities, these instructions are of a “general character”. The General Director of the Police is the highest administrative and technical authority of the Police. S/He depends directly on the Minister, represents the Police, issues orders and takes all the necessary measures for the everyday activity of the State Police, in order to implement the law and the normative acts issued by the Minister (Article 8). The General Director and his Deputy are appointed by the Council of Ministers (the Government) following proposal by the Minister of Public Order.
67. The State Police is organised at central and regional levels. At the central level, the General Directorate consists of the order police, the criminal police, the border police, traffic police, special and rapid intervention forces and directorates concerning personnel, logistics and budget. There are 12 regional police directorates, which are the administrative bodies of the operational local units (police stations etc). The Directors of the regional police are responsible for the activities of

the region, however, they depend on the General Director. There are commissariats, divisions, units and posts within the regional directorates.

68. Albanian citizens between 19-30 years of age may, following a competition, be recruited to the Albanian Police provided they fulfil some basic criteria (high education, no criminal record, etc). Every year, 50 persons are recruited as middle rank police officers and 100-120 as basic grade staff. Appointment and discharge of basic grade staff is done by the regional directors, with regard to middle management staff by the General Director and concerning higher grades (not comprising the General Director and the Deputy General Director) by the Prime Minister upon proposal by the Minister.
69. Basic grade staff are trained in the Police Institutes during one year. Recruits for the middle grades are trained at the Police Academy during three years. The GET was informed that training in corruption matters was done within the framework of international seminars (PACO, etc). The GET was also informed that corruption was included in the educational programmes of the Police Academy. There are some 12,600 employees within the Albanian Police; approximately 2000 of them are civilian staff and the remaining, police officials.

#### *The fight against corruption*

70. The Directorate of the criminal police is divided into five sectors: sub directorate of organised crime, sector of life and property, sector of the fight against terrorism, sector of technical chasing, Interpol sector and the Statistics and archives sector. The sub directorate of organised crime is composed of the sector of the analysis and information, the sector of special operations, the sector of specific investigations, the sector of fight against illegal trafficking, the sector of fight against economic and financial crime and the central service of the fight against drugs. In addition, the economic and financial crime sector is divided into two offices: the office of financial crime and money laundering and the office against fraud and falsification. The Office against fraud and falsification also covers corruption and collaborates with all other sectors of the organised crime sub directorate through mutual exchange of information, joint operative actions and plans and its competence with regard to the fight against corruption is a resource also for the regional/local police bodies. However, more complicated cases in the regions may be taken over by this Office. The Directorate of Criminal Police has 1,065 staff. There are 220 staff working in the Sub-Directorate of Organised Crime and in the Sector of Fight against Economic and Financial Crime there is a staff of 56 officers. This staff may also deal with corruption offences.
71. In addition to the ordinary crime detection (including corruption), the structures of the Ministry of Public Order provide for a multidisciplinary internal control mechanism. The Directorate of General Inspection is a general monitoring mechanism of all Ministry activities and the staff conduct (all Ministry staff, including the Police) in relation to legislation and bi-laws, codes of ethics, etc. The Directorate investigates all allegations concerning Ministry and Police staff. The Directorate of Economic-financial control is there to administrate and protect property and to control the use of monetary funds. Finally, the Directorate of Financial Audit is the internal financial controlling body of the Ministry/police.
72. Police staff who violate rules relating to their duties may be subject to disciplinary proceedings. The disciplinary measures are reprimand, fine, postponement of upgrading, demotion, suspension from duty and dismissal. Disciplinary measures against police staff may be made public.

73. The GET was provided with statistics concerning violations identified as relating to corruption activities by Ministry of Public Order/Police staff, during the period of January - October 2001, according to the following. There were in total 528 cases reported, out of which 138 concerned passive bribery, 109 trafficking offences and 281 abuse of office. 74 cases were transmitted to the prosecution service for criminal investigation and 402 cases were dealt with within the disciplinary proceedings of the Ministry. 190 persons were dismissed and the rest were subject to other less strong measures.

### **b3. Public Prosecution**

74. The Office of the Prosecution has been reformed considerably since the end of the totalitarian system in Albania. It is organised as a centralised and independent (not under the responsibility of any ministry) institution and further reforms are envisaged. The Office of the Prosecution is regulated in the Constitution, in the law on the Organisation and Functioning of the Prosecutor's Office, the latter enacted in 2001, and in the Criminal Procedural Code. The main duties of the Office of the Prosecutor are to exercise criminal investigation and prosecution, to bring and represent the accusations before court on behalf of the State and to supervise the execution of criminal decisions. The Public Prosecution in Albania has a far going independent structure.

75. The Prosecutor General is the overall responsible official of his/her Office, which consists of various directorates of investigation as well as directorates for foreign relations, personnel, etc. Until recently, the Prosecution Office did not have any special department on corruption. However, with the support from international organisations (Paco programme), the Economic Crime Bureau of the Office of the Prosecutor General was established some five month before the visit of the GET. The Bureau, which is operational all over Albania, directs all districts with regard to various economic crime offences and corruption. The GET was informed that there are no prosecutors with specialised competence in questions relating to corruption. The investigations are carried out by the Judicial Police under the lead of the Prosecution office.

76. The Prosecution Service of Albania is leading the pre-trial criminal investigations, is the State representative in the prosecution before court and supervises the implementation of penal sanctions. The structure of the Prosecution Service<sup>6</sup> extend in three levels, following the structure of the court system:

- i) Prosecutors at the Office of the Prosecutor General at the High Court
- ii) Prosecutors at the Appeal Courts
- iii) Prosecutors at the judicial group of the Judicial District Courts

77. According to the described structures, the prosecutors share the territorial jurisdiction with the respective courts. The hierarchical distribution of tasks is as follows. District prosecutors are primarily investigative (and directing the judicial police) and brings prosecution before the District Courts, regional prosecutors are charged with appeal at the Appeal Courts and prosecutors at the Office of the Prosecutor General deal with appeal before the High Court and carry out investigations in specific cases ("Special Prosecution Services"). According to the law on the Organisation and Functioning of the Prosecution office (Article 4) and the Criminal Procedure Code (CPC) (Article 24.4), the orders and instructions of a superior prosecutor are compulsory for the inferior prosecutor. Orders must be done in a written form and only in accordance with conditions provided in the CPC. These provisions are not applicable when prosecutors are exercising their duties during court hearing (Article 25 CPC).

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<sup>6</sup> There are also prosecutors only dealing with military prosecutions

78. The Prosecutor General is appointed by the President of the Republic with the consent of Parliament and may be discharged by the President on a proposal by Parliament.
79. All prosecutors in Albania are appointed and discharged by the President of the Republic, following proposal from the Prosecutor General. For the appointment of new prosecutors, the Prosecutor General has at his disposal the *Council of the Office of the Prosecutor*, which conducts competitions for recruitment to the Prosecution service. The Council, which consists of representatives of the Office of the President of the Republic (1), the Ministry of Justice (1) and five prosecutors has only an advisory function to the Prosecutor General. Albanian citizens, more than 25 years old, with a law degree and who have completed the Magistrate school (there are some exceptions) may apply to become a prosecutor.
80. The total number of prosecutors in Albania at the time of the visit by GET was 265. However, the GET was informed that the Prosecution Service had asked for another 70 posts to be added and that it was approved in 2002 to increase the total number of prosecutors in Albania to 330.
81. Training of prosecutors in service is foreseen in the law; the School of Magistrates provides initial and in-service training for judges as well as for prosecutors. However, the GET was told that in reality there was very limited training provided for prosecutors in Albania, and apart from some training provided by the international community on organised crime and corruption, etc, no training devoted to the fight against corruption was offered to prosecutors.

### **b3.1 Criminal investigation of corruption**

82. The investigation and prosecution of criminal cases are regulated in the Criminal Procedural Code. The rules and principles governing the investigation and prosecution of corruption related offences are the same as for any other offence. The judicial police conduct the criminal investigations together with and under the lead of the public prosecutor. A case is initiated by one of these bodies *ex officio* or, following any external information received.
83. Any Albanian who has become aware of a criminal offence must notify the prosecutor or the judicial police. Moreover, public officials are obliged to report - in writing - crime they come across during exercise of duty. The law does not include provisions to mitigate penalties imposed on a party to corrupt transactions who voluntarily discloses the transaction to authorities
84. Upon notification of a criminal offence, the judicial police report in writing to the prosecutor or, verbally in urgent cases. The judicial police undertake investigative proceedings under its own initiative. The prosecutor leads and controls the investigation of the judicial police operations and may undertake his/her own investigation when that is considered necessary. After having carried out the investigation, the judicial police submit the files to the prosecutor together with an explanatory report, including suggestions on how to terminate the investigation (Articles 293, 327 of the Criminal Procedure Code). The time limit for criminal investigation is three month, after which a decision on whether to prosecute or not must be taken. The deadline of the investigation can be extended by another three months by the prosecutor. Such a decision may be appealed by the defendant or the victim before the Judicial District Court. (Articles 323, 324 and 327).
85. The legal basis for the special investigative techniques (SIT) is described earlier in this report. The GET was informed that the practical use of SIT was extremely limited in cases of corruption.



86. Albania has a system of mandatory prosecution. The prosecutor has, according to the Code of Criminal Procedure, to decide whether to initiate or discontinue a criminal case. (Art 24). Moreover, the prosecutor has an obligation to discontinue a criminal case in certain situations, listed in Article 328, which include, for example, no grounds for the accusation, action not criminalised or the death of the offender. A decision to discontinue the proceedings may be appealed to the District Court (Art 329).
87. A case of corruption would normally be investigated by the judicial police (which has some specialists with regard to economic crime, but not on corruption cases) under the supervision of the district prosecutor, who may also take over the investigation. The district prosecutors have no special competence with regard to corruption offences, but may ask for assistance from the Economic Crime Bureau at the Prosecutor General's Office. The latter supervises the development of corruption cases in all districts and may at any time take over a case, if necessary.
88. In case the prosecutor considers the offence to be under the jurisdiction of another court district, s/he shall transfer the case to the relevant prosecutor of that district. If the receiving prosecutor does not agree, the decision on the transfer will be taken by the Prosecutor General.
89. There is no specialised body for *witness protection* in Albania. If the occasion arises in more serious cases, however, the police/prosecution can take special security measures for the protection of witnesses outside court hearings. The GET was informed, that this area was of concern for the Government, which had on-going co-operation activities with international organisations as well as with individual states for the protection of witnesses and collaborators of justice. Draft legislation was expected to be presented to Parliament by the end of 2002.

#### **b4. The Courts**

90. The Constitutional Court in Albania is subject only to the Constitution and guarantees the respect for the Constitution. There are nine members of the Constitutional Court, appointed for nine years (not renewable). These are appointed by the President of the Republic, with the consent of Parliament.
91. All types of civil and criminal cases are processed in one court system, which comprises 29 Judicial District Courts of first instance (some also have military courts attached), six Courts of Appeal (second instance) placed in Tirana, Durres, Vlore, Shkoder, Gjiorkaster and Korca, and the High Court (Tirana, supreme instance). Cases of corruption are dealt with by criminal sections of the courts as any other criminal offence.
92. According to statistics (1994-1997) there were 8 per cent penal cases and 92 per cent civil cases before the judicial district courts. Less than 10 per cent of all cases are appealed to the Courts of Appeal and about 25 per cent of these cases are referred to the High Court, which selects only particular cases (leave to appeal) for the development of the case law. There are only professional judges and these work alone or in three-judge panels, divided into penal and civil panels - at all levels. The criminal panels of the court deal with cases concerning corruption offences.
93. The Courts of Albania have, according to the Constitution, a separate budget which they administer themselves. Judges are independent and subject only to the Constitution and the law.

The Constitution also stipulates that being a judge is incompatible with any other state, political or private activity. There are some 300 judges in Albania.

94. The members of the High Court are appointed by the President of the Republic, with the consent of Parliament, for a period of nine years (not renewable). Other judges are also appointed by the President of the Republic, however, upon proposal of the High Council of Justice (described below) and without any time limit. The mandate of a High Court judge ends if s/he is convicted for a crime, fails to appear for duty without reason for more than six months, resigns or is declared incapable of acting by a final court decision.
95. Judges may only be transferred with their consent, except in cases when the reorganisation of the judicial system so requires.
96. High Court judges may be removed from duty for violating the Constitution and all judges may be removed from their duties for commission of a crime, mental or physical incapacity, acts an behaviour that seriously discredit judicial integrity or reputation, or professional integrity. A decision to remove a judge is taken by Parliament (2/3 majority), concerning High Court judges and by the High Council of Justice regarding other judges and may in the latter case, be appealed to the High Court. Judges retire at the age of 65.
97. The High Council of Justice is an institution regulated in the Constitution and in the law on the Organisation and Functioning of the High Council of Justice. The High Council of Justice consists of the President of the Republic (Chair), the President of the High Court, the Minister of Justice, three members elected by Parliament, and nine judges of all levels, elected by the National Judicial Conference. The main functions of the High Council of Justice are to prepare the nomination procedure of judges and to monitor judges in office, disciplinary matters, etc.
98. The High Council of Justice, which through its "Inspectorate" is performing the control over the judges, has the following duties: general and special inspections in the district courts and in the courts of appeal, investigation of complaints against judges, evaluation of the professional skills of judges every two years, verification of declared and non-declared assets of judges and the irreconcilability of their function with other activities.
99. In its on-going monitoring of the judges, the High Council of Justice has developed a "point system" which apply to each judge. Every court keeps a file on their judges and one important element in the point system is the number of adjudicated cases. The quality of judgments is measured on the basis of whether a lower court decision is changed or not by a superior instance and, furthermore, information on judges is collected through superiors, colleagues, prosecutors and practising lawyers. Representatives of the judiciary expressed discontent with the system of points and the reliability of the evaluation to the GET.
100. Representatives of the judiciary also expressed strong discontent with the fact that district court judges had very low salaries, approximately half of the salary of a higher civil servant of the Ministry of Justice. The salaries of these judges were not enough to support a normal family. The High Court judges earn approximately three times that of an ordinary judge.
101. The GET was also informed by representatives of the judiciary that the low level of adjudicated corruption cases in Albania, was largely due to very few cases being brought to court by the prosecution as a result of insufficient investigations.

## **b5. Other bodies and institutions**

102. In addition to the specific bodies for the overall fight against corruption and the police, the prosecution service and the judiciary, there are other state authorities in Albania, which, although primarily competent in areas other than corruption, have a role to play in the prevention and disclosure of this phenomenon. The following bodies and institutions should be mentioned: the State Intelligence Service the People's Advocate (Ombudsman), the Public Procurement Agency, various bodies of the Ministry of Finance (Customs, Money laundering, and Tax departments) and the State Supreme Audit.

### *i) The State Intelligence Service*

103. The State Intelligence Service, re-organised at the end of 2001 is an intelligence gathering agency. The State Intelligence Service, including its Anti-Corruption Sector, reports directly to the Prime Minister, the President and to Parliament. This body collects information and evidence mainly at the request of other institutions, ministries etc. The State Intelligence Service has no executive powers more than the collection of data. The information collected, which is confidential, is provided to the ministry/institution concerned.

104. The GET was told that the State Intelligence Service among other activities was focused on information gathering concerning organised crime in Albania and that it considered that organised crime is a serious problem in the country.

### *ii) The People's Advocate (Ombudsman)*

105. The Albanian Constitution and the supplementary Law on the People's Advocate provide the basis for the institution of the People's Advocate (Ombudsman). This institution had a very broad support during the adoption of the Constitution in 1998. The People's Advocate defends individual's legitimate rights and freedoms against illicit and incorrect action and inaction, performed by public administration bodies.

106. The People's Advocate is independent in the exercise of his/her duties, has a separate budget, has immunity and is elected by Parliament (3/5 majority). The Office of the People's Advocate is divided into three Commissions, each led by a Commissioner. There are approximately 20 employees at the Office. The lawyers are experienced, often former judges or prosecutors. The Office deals with complaints from individuals and non-governmental organisations concerning mal administration at central and local levels. Anonymous complaints or requests are not accepted. However, the People's Advocate may start a review procedure on his own initiative on the condition that he subsequently obtains the approval of the concerned party. Orders within the armed forces and verdicts by courts are not included in the competence of the People's Advocate, however, alleged violations resulting from judicial administration are covered. The GET was informed that complaints against court decisions could be related to, for example, legal assistance.

107. Public organs and officials are obliged to provide the People's Advocate with all documents and information requested. The People's Advocate has only the power to give recommendations and to propose measures when s/he finds violations of mal administration and violations of individual's human rights and fundamental freedoms by the public administration.

108. The GET was informed that the People's Advocate received some 800 complaints in 2000 and some 2400 complaints in 2001. The majority of complaints were against court decisions, local authorities and the Ministry of Public Order/police. The GET was furthermore told that approximately twenty police officers had received disciplinary measures and the Prosecutor General was considering measures against one prosecutor following recommendations from the People's Advocate. Two cases concerning corruption had been sent to the Prosecution for criminal investigation.
109. The GET was told that some rights and working methods of People's Advocate derived from interpretation of the Constitution and the Law on People's Advocate and that the work of the People's Advocate would benefit from an explicit regulation. Furthermore, the GET was informed that the public awareness of the institution was insufficient and that this hampered its effectiveness.

*iii) The Public Procurement Agency*

110. The Public Procurement system of Albania is established under the Law on Public Procurement of 1995. This law, which is based on the UNCITRAL model code and which has been amended several times, offers a system of decentralised authority for public procurement at central and local government levels of the administration, based on values, such as equality and transparency. The legislation offers a variety of procurement methods, with the open tendering as the preferred model.
111. The Law on Public Procurement (Article 16) contains a specific regulation for the prevention of corruption. According to that law, a violation of the proper procurement procedures, for example, the provision of bribes to an employee of the procuring entity or other governmental authority in any form, would disqualify the tender or applicants and is considered as an administrative offence and sanctioned accordingly, unless the act is qualified as a criminal offence. Moreover, there are provisions that exclude the disqualified candidates from participating in further tenders; to participate in a tender the applicant must show a clean criminal record as well as clean records from tax and customs authorities, etc. Moreover, the procurement agency should check if applicants have previously violated procurement rules.
112. The Public Procurement Agency is a central body for the co-ordination, monitoring and development of the public procurement system in Albania, reporting directly to the Government (Prime Minister). The Agency fulfils the administrative re-examinations of complaints against decisions taken by procurement institutions. However, before approaching the Agency, the complainant must exhaust the possibilities to complain at local and central levels of the procuring institutions. The procuring institution shall suspend further action with regard to the case while the Public Procurement Agency is considering a complaint. The decision of the Public Procurement Agency may be appealed only at court.
113. The Public Procurement Agency has 20 employees; the Director, 13 administrators and supporting staff, none of them have civil servant status. The GET received information (provided by the Government) concerning the Public Procurement Office indicating that "the effectiveness of the Public Procurement Office has been severely undermined by the weakness of this institution, characterised by under-researching, high staff turnover, and susceptibility to political influence"<sup>7</sup>. The GET was informed by representatives of the Procurement Agency that they considered it important that the Agency be given a higher and independent status and that the

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<sup>7</sup> Legal assessment of corruption in Albania, prepared by ICS (2001)

staff should be given civil servants status, not only to provide reasonable salaries, but also to provide for the institutional legal framework of such a status.

*iv) Ministry of Finance (Audit, tax departments and customs)*

114. The Ministry of Finance, which is dealing with areas of public administration subject to corruption, has taken several measures to fight this phenomenon, in particular with regard to money laundering, taxation and customs. A special Directorate on Money Laundering was set up in August 2001. The legal framework of taxation and customs departments has been improved.

115. Moreover, the General Directorate of Financial Audit has the powers to monitor all authorities of the Ministry of Finance and to monitor internal audit offices in other ministries. The GET was informed that the Government was discussing the possibilities of giving the powers of auditing all ministries to the General Directorate of Financial Audit (draft law). In the first quarter of 2002, 36 audits had been carried out, and one case, - where there were suspicions concerning corruption - had been sent to the prosecution service. In 2001 two suspected corruption cases were sent to prosecution. Every six months, the Audit of the Ministry of Finance sends an audit report to the Prime Minister.

116. The structures of the control mechanisms of the taxation and customs departments are similar. There is an internal audit unit as well as an investigative unit (also dealing with corruption) included in each of these departments. In addition, these departments have their own judicial police in place for investigations (39 persons).

117. The GET was informed that there have been a lot of measures taken with regard to the staff in the taxation department and customs. There is approximately 1.300 staff employed in the taxation department and during the last three years, 37 per cent of them had been subject to disciplinary measures (including 105 dismissals). In customs there were some 1000 employees and in 2001, 296 of them had received disciplinary sanctions (including 35 dismissals). However, it should be stressed that most of these cases were not related to corruption. The GET was told that following these measures, the irregularities among staff had decreased considerably.

118. Representatives of the various sections of the Ministry of Finance told the GET that there was a lack of expertise in the prosecution service to deal with economic/financial cases. Moreover, the GET took note of a wish expressed in favour of establishing a special administrative court in Albania to deal with administrative matters, such as taxes etc.

*v) The State Supreme Audit (High State Control)*

119. The Constitution (articles 162-165) determines the basic function of the State Supreme Audit as the highest institution of the economic and financial audit of the State, subject only to the Constitution and the law (monitored by Parliament). The Constitution also defines the activities of the institution, which includes the audit of the economic activity of state institutions and other legal entities of the state; control of the use and protection of state funds by organs of central and local government and the economic activity of legal entities in which the state owns more than half of the shares, or whose loans, credits, and obligations are guaranteed by the state.

120. The Chairman of the High State Control is elected (and dismissed) by the Assembly on the proposal of the President of the Republic for a period of seven years (renewable). There is a staff

of 150, of which 102 accountants (five years of experience or more) and the remaining staff assistants.

121. The main powers of the State Supreme Audit lay in its possibility to request the audited subjects to take measures in compliance with the auditing recommendations; to request audited subjects to take indemnity and disciplinary measures against persons who have directly or indirectly caused damages; to take measures according to the procurement rules where the procedures of procurement were broken; to send to the prosecutor the auditing materials in cases of criminal investigation.
122. The State Supreme Audit regularly informs Parliament on the implementation of the State budget, it gives its opinion on the report of the Government for the expenses of the previous financial year before Parliamentary approval; and gives information on the results of audits and reviews whenever requested by Parliament. The Chairman of the State Supreme Audit may also be invited to report to the Government.
123. The Ministry of Finance is the only institution being audited every year. All other institutions are audited according to an audit plan which is established every year (approximately 40 institutions per year). This plan is not made public. However, the reports on the audits are published in a quarterly and annual bulletin and, summaries of these are communicated through Internet.
124. The work of the State Supreme Audit is based on the unique professional standards approved by the international auditing bodies (INTOSAI) and on a Code of Ethics.
125. The GET was informed that in audits carried out in 2001, there had been observed financial infringements and irregularities equivalent to approximately 5.000.000,000 Leke (30.000.000.Euros), out of which two thirds relating to infringements to the revenue of the state budget and one third to spending. There was no data given to the GET specifically on corruption.
126. Representatives of the State Supreme Audit informed the GET that it needed more modern device, such as computers, etc and staff training in order to become more efficient. Representatives of the State Supreme Audit announced that it had difficulties in implementing its planned annual activities, due to the system for approving its budget. Following the adoption of the budget by Parliament and ensuing budgetary cuts, planned activities could sometimes not be implemented.

**c. Immunities from investigation, prosecution and adjudication for corruption offences**

127. According to the Albanian Constitution (and some other laws) immunity (of different kind) is provided for the following categories of officials in Albania:
  - The President of the Republic
  - Members of Parliament
  - Members of the Government (ministers)
  - Judges of the Constitutional Court
  - Judges of the High Court
  - Members of the Central Commission of Elections
  - The Chairman of the High State Control
  - People's Advocate
  - Other judges

- Prosecutors

128. According to Article 73 of the Constitution, *Members of Parliament* do not bear responsibility for opinions expressed or votes cast in Parliament (non-liability). This immunity is not limited in time and may not be lifted. According to the same Article, MP's also enjoy immunity with respect to prosecution and arrest (inviolability). This immunity may be lifted by Parliament in a secret ballot (simple majority) following a request by the Prosecutor General. The immunity does not apply for arrest in case the MP is apprehended during the commission of a serious crime (*in flagrante delicto*) or immediately after such a crime (the Albanian authorities have given the following definition of "serious crime" : the establishment of an organised crime group or an armed criminal group and any crime committed by such groups, crimes sanctioned by more than fifteen years' imprisonment, armed robbery and some offences relating to narcotics).
129. The procedure for lifting the immunity is the following: the Prosecutor General informs the Speaker of Parliament, who in turn notifies the Parliament and sends the request to the Parliamentary Commission on Immunities. The Commission assesses the legal grounds for the request (the MP at stake may give explanation to the Commission) and suggests a decision to Parliament during its following session. The Parliament, sitting in plenary, holds a debate, hears the MP and decides in a secret ballot (simple majority needed for lifting the immunity).
130. The GET was informed that there is a general discussion among MP's on how to limit their immunities. It was stated, by representatives of Parliament, that as a result of several allegations of abuse of power and corruption that have occurred in the context of political exchange, it was believed that MP's immunity in the future should not cover corruption offences at all.
131. The *President of the Republic* is not responsible for actions carried out in the exercise of his/her duty (*inviolability*), Article 90. The President may be dismissed from office for serious violations of the Constitution or for having committed serious crime. A proposal for dismissal needs at least one fourth of the votes in Parliament and a decision at least two thirds of all votes. The question of guilt is dealt with by the Constitutional Court.
132. *Members of the Government (ministers)* enjoy the same immunity as MP's.
133. *High Court Judges, the People's Advocate, the Chairman of the High State Control and Members of the Central Commission of Elections* enjoy the same kind of inviolability-immunity, i.e. they may only be prosecuted with the approval of Parliament and only arrested or detained in case apprehended while committing a crime (*in flagrante delicto*) or, immediately after its commission. The Constitutional Court shall in such a case give its consent to the deprivation of liberty within 24 hours.
134. *Constitutional Court Judges* cannot be prosecuted without the consent of the Constitutional Court (inviolability) and may only be arrested or detained if apprehended while committing a crime (*in flagrante delicto*) or, immediately after its commission. The Constitutional Court shall in such a case give its consent to the deprivation of liberty within 24 hours.
135. *Other judges* may be prosecuted only with the approval of the High Council of Justice (inviolability) and may only be arrested or detained if apprehended while committing a crime (*in flagrante delicto*) or, immediately after its commission. The High Council of Justice shall in such a case give its consent to the deprivation of liberty within 24 hours.

136. Prosecutors may not be detained, searched or arrested, without the permission of the Prosecutor General, except in cases when caught committing a crime or immediately after its commission. In that case the Prosecutor General shall be notified immediately.
137. According to the Vienna Convention, an Albanian diplomat may be prosecuted by the competent Albanian authorities, without a decision on lifting the diplomatic immunity. As a sending state, however, Albania may waive the immunity from prosecution of persons protected by diplomatic immunity in case of a criminal offence, including corruption. There have been no such cases.

### **III. ANALYSIS**

#### **a. General policy on corruption**

138. During the GET visit, it was clear that public authorities and civil society recognise that corruption is a significant problem. Public officials met by the GET, generally demonstrated a high level of personal commitment to reform and a clear understanding of the critical importance of an effective fight against corruption. However, there seemed to be a relatively high level of tolerance to corruption throughout the Albanian society. Pervasive corruption in the past is likely to have created a significant barrier to achieving public confidence that the fight against corruption will lead to improvements. The political, legal, economic and social transition and the situation of high unemployment, generally low salaries, a considerable “informal” economy and, a generally low confidence in public administration, are other factors that work in the same direction.
139. A limited experience in managing newly created or reformed public institutions poses a problem to effective reform. This has led to ready acceptance of reform recommendations made by the numerous international organisations active in Albania. The international input has indisputably provided Albania with very important know-how and assistance, but unfortunately, in some ways the difficulties created by lack of internal co-ordination have been mirrored by international efforts to assist Albania. The GET noted that many Albanian officials expressed frustration that efforts by specific international organisations generally have not been well co-ordinated with the efforts of other international organisations and/or states. As a result, these well-intended undertakings have often covered the same ground. More significantly, the typical process of analysis has yielded a series of new recommendations based on limited information, rather than developing follow-up strategies to implement previously identified objectives. In short, most of those interviewed shared the perception that past, disjointed efforts by the international community have overlooked the acute need to develop and follow through with concrete short and medium range priorities. This scenario has changed in recent years and initiatives, such as the Council of Europe PACO programme and the USAID assistance, which have longer term approaches, including monitoring of the developments and follow-up activities. The GET observed that experience of other countries in fighting corruption – often provided through international organisations – should be disseminated as widely as possible.
140. The Albanian authorities have undertaken an ambitious and necessary programme to fight corruption. The GET was impressed by the National Anti-Corruption Plan (the Matrix), which provides the basic roadmap for the Government’s efforts to combat corruption. The Plan, developed in close co-operation with the international community, is broad and comprehensive, including more than 150 specific measures relating to the rule of law, economic policy, administration, public procurement, audit and public awareness. At this point, anti-corruption strategy has focused on developing a legal framework, structures and defining functions and



responsibilities. The future perspective is more focused on the implementation of the structures and principles and, in particular, on the development of civil society involvement.

141. The "Anti-Corruption Monitoring Group" (ACMG), has been set up to deal specifically with the coordination of the anti-corruption activities of the Matrix conducted by various institutions. The GET clearly recognises the need for such a body as it brings together experts from different ministries and other individuals to deal on a continuing basis with the many issues that arise in undertaking a comprehensive fight against corruption. Moreover, the structure of the ACMG reflects a mature understanding of the several factors that must be addressed in order to ensure sound anti-corruption policies and practices.
142. Virtually all of the structural and legislative objectives of the initial Anti-Corruption Matrix have been achieved, and Albania is now poised to undertake the difficult task of effectively implementing reform measures. This next stage - developing operational effectiveness - will severely test the commitment to the fight against corruption of public institutions and their officials. The Matrix and its implementation under the lead of the ACMG is clearly based on a "top-down approach" which is almost exclusively dictated by state interests, whereas the involvement of the wider Albanian society in this process is less reflected. It is true that Albanian officials repeatedly informed the GET that civil society should be more involved in the future. The GET fully agrees with such an approach, however, it considers that it cannot be limited to closer co-operation with a few NGO's representing civil society, but that such a new focus should be an overall objective of the Matrix. **The GET recommended the Albanian authorities to amend the National Anti-Corruption Plan explicitly with a stronger notion of involvement of the civil society and the business sector in the implementation of the Plan.**
143. Turning to the Albanian legislation for the general prevention of corruption within public administration (accompanied by numerous bi-laws and codes of conduct or ethics), the GET found it comprehensive and adequate. Moreover, the criminal legislation concerning corruption seems to be adequate. It must be noted, however, that the criminalisation of corruption is limited to the public sector and that no corporate criminal liability exists. In conclusion, the GET was of the opinion that Albania in a short period of time has developed a reasonably good legislative framework to support an efficient anti-corruption policy. However, the lack of successfully completed criminal prosecution and adjudication of corruption offences was striking as an indication on the need for an improved implementation of the criminal legislation.
144. Public awareness of policies and procedures in public administration, including the budgetary process especially concerning revenue collection and public expenditures, is a means for better understanding of and respect for public administration, and also serves as a monitoring mechanism of public bodies. It is thus a preventive tool in the fight against corruption as well as related phenomena such as fraud and abuse involving public property and funds. Moreover, well-focused government efforts to promote transparency and accountability are critical ingredients for constructing the inextricably intertwined foundation of mutual government-citizen interests and objectives required to succeed in fighting corruption in all its forms. Public awareness as to the information available and the process for obtaining it should be expanded in Albania. Specifically, it may be appropriate to establish information units for the public in at least major central and local government institutions. At present, it appears that requests are often handled haphazardly and the extent of actual document production in response to a particular request may be improperly influenced by the attitude of officials involved or by the relationship of the requesting person to the subject institution.

145. Likewise, the fight against corruption could be strengthened by improving the availability and dissemination of information concerning the procedures and practices for receiving public services. Notably, a public information effort focused on increasing awareness about for example health care and social insurance benefits, would define realistic expectations for citizen and could also have a significant impact on developing public support for and confidence in the fight against corruption.
146. A necessary component of a public information program would be a wide dissemination of public statements identifying mechanisms for reporting allegations of abuse and periodic progress reports, addressing inter alia the number and nature of allegations as well as tracking dispositions. The reports of the Anti Corruption Monitoring Group should be disseminated to the extent possible.
147. In conclusion, awareness of public information and the process for obtaining it should be improved. The Albanian Constitution and the Law on the Right of Information on Official Documents constitute a legal framework on access to public documents which seems to generally provide for such access, however, the GET was concerned that journalists often were faced with problems raised by the authorities in exercising the right to access. On the other hand, journalists told the GET that they had not used available legal means (appeal) to obtain wanted information. Moreover, it was explained that it is not clear whether the access covers the administration of the courts. To remedy this uncertainty the Albanian authorities were, at the visit of the GET, preparing a regulation on public and mass media relations applicable to the courts, the purpose being to open the judiciary to the public. **The GET recommended Albania to improve the transparency of public authorities vis-a-vis media and the wider public through implementation of the legislation on access to public information and documents.** This could primarily be achieved through education of public officials.
148. Even if there are several indications on the level of the problem of corruption in Albania, most of these are based only on perception surveys and often, state bodies and institutions have to rely on very limited research. A general lack of comprehensive statistical information was obvious throughout the entire visit. If comprehensive data and research on the situation in Albania was available, the situation could be analysed in a more objective and precise manner. **The GET recommended the authorities to systematically collect and process in a coherent way data concerning corruption, in particular in fields where there are particular corruption problems encountered.**

**b. Bodies and institutions in charge of the fight against corruption**

**b1. The overall responsibility for anti-corruption measures**

*i) The Governmental Commission of the Fight against Corruption*

149. The establishment of the Commission of the Fight against Corruption underlines the high priority given to the fight against corruption in Albania. The involvement of the Government in the overall development and monitoring of the Matrix provides also a direct link between the representatives of the institutions concerned and the highest executive power. The GET commended Albania for the creation of this body, however, the close involvement of the Government called for precaution with regard to using the anti-corruption work for short-sighted political gains, as such an approach could destroy the image of the Matrix as a long-term *national* strategy.

ii) *The Anti Corruption Monitoring Group (ACMG)*

150. The Anti Corruption Monitoring Group (ACMG) is the executive body for the implementation of the National Anti-Corruption Plan. The establishment of this multidisciplinary instrument is a great achievement in itself. Its structure, with the Permanent Unit as a combination of secretariat and research body as well as the link between the ACMG and the contact points of other institutions and its direct input from the "SPAI" initiative appears to be excellent. The GET noted, however, that the ACMG had only been functioning during one year and it felt it was premature to judge its efficiency. On the other hand, the GET wished to reiterate its earlier position, that the Matrix should be more oriented versus the wider public than is now the case (see recommendation above). As a consequence, it considers that also the working methods of the ACMG should be developed in such a direction. This could imply, for example, that civil society and the private business sector be more involved in the work of the Group, that the operational activities be more focused on public education and that the awareness of the Group among the public be promoted. **The GET recommended Albania to strengthen the involvement of the civil society and the business sector in the activities of the Anti Corruption Monitoring Group (ACMG).**

**b2. Police (Ministry of Public Order)**

151. The GET noted with satisfaction that a basic legal framework for the State Police was in place since a few years. This provides the continuity of the Albanian Police, which has been the subject of transition for many years. With the implementation of the new internal structure, covering an organised crime sector also dealing with corruption, there are reasons to believe that the police in the future will be better equipped to deal with the particular problems of corruption in criminal investigations. This should be followed up with training. **The GET recommended that specialised education and training of police on corruption (in particular its typologies and the international dimension) and its links to connected crime be arranged.**

152. Furthermore, the GET noted that the Albanian Ministry of Public order and the Police are closely interlinked with each other. The Minister of Public Order has not only the overall responsibility of the Police, its budget, general policy etc, but the Law on the State Police also gives the Minister operational powers in individual cases, and the Director General is regulated as the highest administrative and technical authority of the Police. Even if the Minister only uses the operational police powers to a limited extent, the prevailing organisational/legal situation puts doubts as to the organisational autonomy of the Albanian Police vis-à-vis the political sphere. Moreover, this situation is likely to negatively affect people's trust in the efficiency of the Albanian Police to fight corruption, in particular considering its past as a tool of a totalitarian system. **The GET therefore recommended that the organisational structures of the police be reconsidered with a view to establishing a higher degree of organisational autonomy of the police.**

**b3. Public Prosecution (including criminal investigation)**

153. The independence of the Public Prosecution is clearly indicated in the Constitution and in the law.

154. The GET was pleased that the specialisation on corruption had been provided for within the Prosecution Office, with the establishment of the Economic Crime Bureau as a central body for the fight against economic crime and corruption. The GET saw this as a first step in the right direction and observed that some degree of specialisation also in the district would be a useful follow-up. It also took note of a general lack of staff as announced by representatives of the Prosecution Office. Moreover, the GET observed that there was generally a lack of in-service

training of prosecutors and that the specialisation in the organisational structure should be followed by staff training in order to be efficient. **The GET recommended that specialised education and training of prosecutors and judicial police on corruption (in particular its typologies and the international dimension) and its links to connected crime be arranged.**

155. With regard to criminal investigation of corruption, the GET was of the opinion that the root of the continuing problem of effectively combating corruption arises partly from the clandestine nature of corrupt activities. Generally, the use of special investigative techniques is required in order to pierce the veil of secrecy that conceals corruption. The use of such techniques in Albania appeared to be minimal. **The GET therefore recommended that the conditions for using special investigative techniques in cases involving serious corruption be reconsidered, keeping in mind the need to respect the principle of proportionality and existing constitutional and legal safeguards.**

#### **b4. The Courts**

156. The GET recalls that the independence of the judiciary is of paramount importance under the rule of law, however, such independence is not without limits and must be connected to a system of accountability. The Albanian Constitution provides for the independence of the judiciary and the authorities are struggling to put in place an accountability mechanism of the judges. The GET recognises the difficulties linked to this, considering that the judicial system in Albania appears to be suffering from a general lack of public confidence. Furthermore, this is an area where the Albanian authorities consider anti-corruption measures to be very important. It was also noted, however, that it seems that the judiciary consists of dedicated officials working under difficult conditions.
157. The control of judges in other courts than the Constitutional Court and the High Court is ensured through the activities of the High Council of Justice, which may decide on the transfer of judges as well as their disciplinary responsibility. Furthermore, the Council may remove a judge for commission of a crime, mental incapacity, etc. The Council evaluates the judges continuously on the basis of a complicated "point system", which deals with work capacity (speed) as an important element and with quality. The previous is based on the number of cases dealt with and the latter on whether the judgments produced are changed following appeal. Furthermore, information is collected on the judges through superiors, colleagues, prosecutors and practising lawyers. A bad evaluation can in principle lead to removal.
158. Representatives of the judiciary expressed discontent with the evaluation system concerning both the procedure for collection of information and the reliability of the evaluation.
159. The GET was concerned as to what extent the evaluation system provides accurate information. The number of adjudicated cases may not be the best criterion for assessing the performance of judges; a slow but thorough judge may be preferable, changed judgments may not necessarily be a result of incorrect judgment in the lower instance, the use of information from other bodies of the justice system may affect the impartiality of the judge, etc. The system for evaluation of judges may limit the independence of the judiciary in a negative way. On the other hand, the GET was fully aware of the prevailing status of the judiciary and the need to remedy its problems through a developed accountability.
160. The GET took note of the need for improving the working conditions of first instance judges in general, and their remuneration in particular, which was described as much below salaries of

equivalent ministry staff. Adequate working conditions and fair remuneration of judges are particularly critical for the independence and impartiality of the judiciary. **Therefore, the GET recommended that the conditions of judges, in particular those of the district courts, be improved, and that the present evaluation system of judges - within its constitutional framework – be reconsidered, in order to develop an accountability mechanism of the judges without undue interference with their independence and impartiality.**

**b5. Other bodies and institutions**

*i) The State Information Service*

161. The GET observed that the newly established State Information Service (SIS) has no function other than to collect information for further use by other state authorities. The specific information and recommendations of the Service are confidential. The GET developed no basis to believe that the work of the Service could appropriately be made more transparent; however, the limited information of the Service's activities disclosed to the GET underscored the importance of maintaining close working relationships of this service or with the General Prosecutor and other enforcement agencies, notably the Customs Department and Tax Department, in order to most effectively focus anti-corruption enforcement efforts.

*ii) The People's Advocate (Ombudsman)*

162. The Peoples Advocate has a wide range of responsibilities. It is an independent institution which has a potential to become a powerful weapon in the arsenal for fighting corruption.

163. However, the GET noted some shortcomings of this institution with regard to its potential as a body to be used in the fight against corruption; the regulation of the Ombudsman should be more explicit and allow for reviews even without the consent of the concerned party when the ombudsman has been informed of concrete cases of concern. The latter, which was explained by the Albanian authorities to be constitutionally difficult to achieve, was still considered very important by the GET for the powers of this institution. Efforts to increase public awareness of the responsibilities and the authority of the Ombudsman's office would also be warranted. **The GET recommended that a more explicit regulation of the People's Advocate be put in place and the public awareness of the People's Advocate be increased. Moreover, Albania should consider allowing the People's Advocate to carry out reviews *ex officio*.**

*iii) The Public Procurement Agency*

164. Public procurement is highly vulnerable to corruption as it involves large values. Therefore it is important to ensure that goods and services are procured in a transparent way with the necessary safeguards to prevent misuse of public resources. The GET received information, indicating that public procurement is one of the most critical areas with regard to corruption.

165. The Public Procurement Agency supervises the public procurement with the aim of increasing the transparency and effectiveness. The Law on Public Procurement is based on the model law of UNCITRAL with contributions from inter alia the European Union directives on public procurement. The legislation seems to provide the necessary legal framework.

166. The GET believes that the contribution of the Public Procurement Agency to the fight against corruption could be significantly enhanced by addressing several specific issues. Above all, the

autonomy and accountability of the Public Procurement Agency is crucial for its functioning. At present, the Agency seems to lack sufficient autonomy, staff and specialisation to effectively realise its responsibilities. The GET learned that while the importance of specialised training for staff members is well recognised by Albanian officials and, the international community has supported these efforts, structural personnel problems undermine the long term usefulness of the training to the Agency. Turnover of employees at the Agency is high. Stability of the staff, for example giving them civil servant status, appears to be important. The training should be institutionalised.

167. **The GET recommended that the autonomy and specialisation of the Public Procurement Agency be considerably strengthened, that staff, to the extent possible, be given civil servant status and that training be institutionalised and focused on anti-corruption measures.**

*iv) Ministry of Finance (Audit, tax departments and customs)*

168. Albania has identified the process of collecting personal and business taxes as an environment conducive to corruption. The observations and analysis relating to this environment may also be applied *mutatis mutandis* to the collection of customs duties. On-site checks by tax administration officials are routine bribe opportunities. Recent efforts have been targeted to address this issue. The Get was pleased that internal control mechanisms, both with regard to tax and customs officials have been established in the Ministry of Finance. It appears that disciplinary measures have been used to a large extent, and that the staff conduct has been improved as a result. Moreover, law enforcement efforts have been undertaken in a few specific cases, however, only focusing on officials involved. No case was identified in which a person was prosecuted for unsuccessfully trying to bribe an official. Such a prosecution would likely serve as an important deterrent.

169. The GET was of the opinion that the extensive measures taken were steps in the right direction. At the same time it was of the opinion that the considerable problems in this area had largely to do with public attitudes, and that an efficient fight against irregularities and corruption within the Ministry of Finance had to be complemented with a much wider public awareness approach with the aim of establishing a general acceptance of legitimate tax collection (see recommendations above).

*v) The State Supreme Audit (High State Control)*

170. The State Supreme Audit (SSA) potentially plays a powerful role in the fight against corruption as the highest institution of economic and financial control for public property and funds. It provides an effective platform to identify corruption phenomena, denounce inappropriate policies and practices and to recommend measures for improvement. This institution must maintain its independence, while at the same time, working closely with state institutions in order to develop an understanding of the types of misconduct discovered in public administration. In particular, close working relations with the Prosecution Office would be advantageous, as the GET received various information indicating that there was a low level of expertise on auditing matters at the prosecution level, which in turn may have a negative effect on the number of audited cases.

171. While the SSA publishes a bulletin of information concerning completed audits, there is no publicly available audit plan setting forth the objectives of the Office. This is particularly significant because during the fiscal year, Parliament may reduce appropriated funds. The overall

responsibilities of the State Supreme Audit are not thereby reduced but it may have to carry out its planned duties within a reduced budget. **The GET recommended that the State Supreme Audit at the outset of the fiscal year should announce a public statement reflecting the scope and justification for planned activities, and that the State Supreme Audit be given adequate and predictable budgetary means to plan and fund their intended activities.**

c. **Immunities**

172. The GET was concerned about the wide scope of immunities in Albania. It was fully aware that a wide use of immunities in several transitional countries was considered an important tool for the protection of independence of particular institutions. This situation prevailing in young democracies like Albania could, however, have a negative impact on the fight against corruption and a fair balance between the two interests should be found. The GET took note of Albanian considerations to limit immunities and, **recommended Albania to further consider a reduction in the list of categories of officials covered by immunity and/or to reduce the scope of immunity to a minimum.**

IV. **CONCLUSIONS**

173. Corruption appears to be a widespread phenomenon in Albania, affecting most of its institutions. Even if there are signs of improvements, corruption remains one of the most difficult challenges of the Albanian authorities. The "classical" corruption of public officials in tax administration, customs, procurement, health or the judiciary, are some of the main areas of concern. However, allegation of corruption is sometimes used as a tool in the political struggle for power.
174. Albania has during the last years taken extensive action against corruption with impressive results. The development of the National Anti-Corruption Plan (the Matrix) and the establishment of the multidisciplinary Anti-Corruption Monitoring Group (ACMG), clearly indicates the strong commitment - at the highest political level - to fight the problem of corruption. There is, in addition, a strong support and assistance provided by the international community.
175. Moreover, a generally good legal framework is in place and several key institutions for the fight against corruption have been transformed with regard to anti-corruption measures. In brief, Albania has in a first phase developed legislation and a structure with a potential to deal seriously with the problems of corruption. However, a second phase remains to be dealt with, that of implementing the legislation and to introduce good practice and procedures, not least with regard to investigation and adjudication of corruption cases. Moreover, the fight against corruption in Albania should, in addition to its strong focus on improving public administration, target the wider public at all fronts with awareness and education measures. An increased transparency *vis-à-vis* the public would help this process.
176. In view of the above, GRECO addressed the following recommendations to Albania:
- i. **to amend the National Anti-Corruption Plan explicitly with a stronger notion of involvement of the civil society and the business sector in the implementation of the Plan and, to strengthen the involvement of civil society and the business sector in the activities of the Anti Corruption Monitoring Group (ACMG);**

- ii. to improve the transparency of public authorities *vis-a-vis* media and the wider public through implementation of the legislation on access to public information and documents;
  - iii. to systematically collect and process in a coherent way data concerning corruption, in particular in fields where there are particular corruption problems encountered;
  - iv. that the organisational structures of the police be reconsidered with a view to establishing a higher degree of organisational autonomy of the police;
  - v. that specialised education and training of police, prosecutors and judicial police on corruption (in particular its typologies and the international dimension) and its links to connected crime be arranged;
  - vi. that the conditions for using special investigative techniques in cases involving serious corruption be reconsidered, keeping in mind the need to respect the principle of proportionality and existing constitutional and legal safeguards;
  - vii. that the conditions of judges, in particular those of the district courts, be improved and that the present evaluation system of judges - within its constitutional framework - be reconsidered, in order to develop an accountability mechanism of the judges without undue interference with their independence and impartiality;
  - viii. that a more explicit regulation of the People's Advocate be put in place and the public awareness of the People's Advocate be increased. Moreover, Albania should consider allowing the People's Advocate to carry out reviews *ex officio*;
  - ix. that the independence and specialisation of the Public Procurement Agency be considerably strengthened, that staff, to the extent possible, be given civil servant status and that training be institutionalised and focused on anti-corruption measures;
  - x. that the State Supreme Audit at the outset of the fiscal year should announce a public statement reflecting the scope and justification for planned activities, and that the State Supreme Audit be given adequate and predictable budgetary means to plan and fund their intended activities;
  - xi. to further consider a reduction in the list of categories of officials covered by immunity and/or to reduce the scope of immunity to a minimum.
177. Furthermore, GRECO invites the Albanian authorities to take account of the comments made by the experts in the analysis part of this report.
178. Finally, and in accordance with Rule 30.2 of its Rules of Procedure, the GRECO invites the Albanian authorities to report to it on the implementation of the above recommendations by 30 June 2004.



## APPENDIX I

### CRIMINAL CODE OF ALBANIA

#### Chapter VIII

##### "Crimes against State authority"

###### Section I

###### "Criminal acts against State activity committed by (Albanian) Citizens"

###### Article 244, Proposals for remuneration made to officials holding a public office:

*"The proposal for remuneration, gifts or other benefits made to an official holding a state duty or public service, if the latter undertakes to act or refrains from acting on an action connected to his duty or service, or to use his influence toward other authorities in order to insure favours, courtesies and any other benefits, is punishable by a fine or up to three years of imprisonment."*

###### Article 245, Remuneration given to officials holding a public office:

*"Remunerating or awarding other benefits to an official holding a state duty or public service to have him act or refrain from acting on an action connected to his duty or service, or to use his influence toward other authorities in order to insure favours, courtesies and any other benefits, is punishable by a fine or up to five years of imprisonment."*

###### Section II

###### "Criminal acts against the activity of the state committed by public officials"

###### Article 248, Abuse of office:

*"The willingly accomplishment or omission to accomplish actions or non action in opposition to the law, which constitute non-fulfilment of the duty by the employee in charge with a state function or public service, when they have produced grave consequences to the legitimate interests of the state and citizens, is punishable by fine or up to seven years imprisonment."*

###### Article 256, Misusing state contributions:

*"Misusing contributions, subsidies or financing given by the state or state institutions to be used in works and activities of public interest, is punishable by a fine or up to three years of imprisonment."*

###### Article 257, Illegal benefiting from interests:

*"Direct or indirect holding, retaining or benefiting from any sort of interest by a person holding state functions or public service in an enterprise or operation in which, at the time of conducting the act, he was holding the capacity of supervisor, administrator or liquidator, is punishable by a fine or up to four years of imprisonment."*

Article 258, Breaching the equality of participants in public bids and auctions:

*“Committing actions against the laws which regulate the freedom of participation and the equality of citizens in bids and public auctions, by a person holding state functions or in public service in order to create illegal advantage or benefits for third parties, is punishable by a fine or up to three years of imprisonment.”*

Article 259, Asking of bribe:

*“A person holding state functions or public service who asks for or orders remuneration to which he is not entitled or which exceeds the amount allowable by law, is punishable by a fine or up to seven years of imprisonment”.*

Article 260, Receiving a bribe:

*“Receiving remuneration, gifts or other benefits by a person holding state functions or in public service and during their exercise, in order to carry out or to avoid carrying out an action related to the function or service, or to exercise his influence toward different authorities in order to provide to any person favours, gratuities, jobs and other benefits, is punishable by three to ten years of imprisonment”.*

**Chapter IX**

**“Criminal acts against Justice”**

Article 319, Asking for or receiving unlawful remuneration:

*“Asking for or unlawfully receiving remuneration, gifts or other benefits, as well as procuring promises to get them, by the judge, the prosecutor, the defence lawyer, the experts, every arbitrator assigned for a case, with the intent of carrying out or avoiding to carry out an act which is connected to the function, is punishable by five to ten years of imprisonment.*

*Mediation conducted by the person interested in the case or by any other person for remuneration, gifts or other benefits in favour of persons cited in first paragraph of this article, is sentenced up to three years of imprisonment”.*

Article 328, Remuneration and promises:

*“Offering or giving money, making promises for jobs or other favours in any form, with the intent of getting signatures for presenting a candidate, for voting in favour or against a candidate or for taking part in or abstaining from taking part in elections, constitutes criminal contravention and is punishable by a fine or up to six months of imprisonment.*

*Accepting money, promises or other favours in order to conduct the above-mentioned actions, constitutes criminal contravention and is punishable by a fine”.*