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## **Second Evaluation Round**

### **Evaluation Report on Albania**

Adopted by GRECO  
at its 22<sup>nd</sup> Plenary Meeting  
(Strasbourg, 14-18 March 2005)

## I. INTRODUCTION

1. Albania was the 14<sup>th</sup> GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Gerassimos FOURLANOS, Judge by the Court of Appeal in Athens (Greece); Mr Henrik HORN, Senior Adviser, Ministry of Justice (Norway); and Ms Eline WEEDA, Policy Maker at the Investigation Department, Ministry of Justice (Netherlands). This GET, accompanied by two members of the Council of Europe Secretariat, visited Albania from 11 to 15 October 2004. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2004) 8E), as well as copies of relevant legislation.
2. The GET met with officials from the following governmental organisations: the Anticorruption Monitoring Board; the Cabinet and the Anti-Corruption Unit of the Ministry of State for Coordination; the General Directorate of Codification of the Ministry of Justice; the Internal Audit Directorate and the General Directorate of Police of the Ministry of Public Order; the Directorate of Coordination of the Fight against Money Laundering, the Directorate of Legal Issues, the General Directorate of Audit and the Accounting Directorate of the Ministry of Finance; the Internal Audit and Investigation Directorate of the General Directorate of Tax Office, the Internal Audit Directorate of the General Directorate of Customs, the Public Procurement Agency, the Public Administration Department; the Inspectorate of the High Council of Justice, the District Court of Tirana; the Organised Crime Directorate of the General Prosecutor's Office and the Economic Crime Division of the Tirana Prosecution Office; the People's Advocate; the Supreme State Audit; the High Inspectorate for Declaration and Control of Assets; the National Bank of Albania; and the Tirana Municipality. Moreover, the GET met with representatives of the Bailiffs' Office, the Chamber of Commerce and Industry, the Albanian Agro-Business Council, the Authorised Expert Accountants Institute and the Albanian Coalition Against Corruption (ACAC).
3. The 2<sup>nd</sup> Evaluation Round runs from 1<sup>st</sup> January 2003 to 31 December 2005, in accordance with Article 10.3 of its Statute, the evaluation procedure deals with the following themes:
  - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 para. 3, 13 and 23 of the Convention<sup>1</sup>;
  - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, para. 2 of the Convention.
4. The present report was prepared on the basis of replies to the questionnaire by the Albanian authorities and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of the measures adopted by the Albanian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains first a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Albania in order to improve its level of compliance with the provisions under consideration.

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<sup>1</sup> Albania ratified this Convention on 19.7.2001, with no reservations or declarations and it entered into force on 1.7.2002.

## II. THEME I - PROCEEDS OF CORRUPTION

### a. Description of the situation

#### Interim measures

5. By virtue of Article 274/2 of the Criminal Procedure Code (CPC) on “preventive attachment”, a judge may, upon request by a prosecutor, order the attachment of objects, proceeds of crime and any other property which can be confiscated. According to the Albanian authorities, such attachment of objects and proceeds can be ordered regardless of who owns them. Articles 208-220 CPC deal with sequestration of “things of evidential value”. Article 210 CPC deals with sequestration orders - that can also be issued by prosecutors in urgent cases, subject to subsequent court approval - for banking records, security bonds and sums deposited in current accounts. Communication, freezing and seizure of banking, financial or commercial data can only be carried out with the authorisation of the Court or of the Directorate for Coordinating the Fight Against Money Laundering within the Ministry of Finances (the Albanian FIU), which subsequently sends the file for approval to the Court. Under Article 300 CPC, in urgent cases and when the prosecutor is not authorised to intervene urgently, the officers of the judicial police can seize so-called “real evidence” as defined by Article 190 CPC (goods which have been used as the instrumentality of a crime, or which can be traced to a crime or constitute proceeds of a crime).
6. With regard to administrative measures, the FIU may issue temporary blocking and freezing orders on any financial transaction. Overall postponement cannot exceed 72 hours. From 2001 to 2004, the FIU received 41.000 reports of which 94 related to suspicious transactions. 15 of those were sent to the General Prosecutor’s Office. The FIU blocked transactions in 6 cases and froze 56 bank accounts for a total value of 2.136.226€, 1.814.703\$ and 4.116.438 Leks. It also froze the assets of 2 Tower buildings in Tirana.
7. There are no specific rules for the administration of seized proceeds which is entrusted to the court. However, during the GET’s visit the Albanian authorities were in the process of drafting legislation with a view to conferring to a specialised body the management and recovery of all seized proceeds.<sup>2</sup>
8. In the process of investigating a criminal offence, no distinction is made between the investigation of the total sum of the elements of the criminal offence and the investigation concerning the proceeds which stem from it or concerning the property of suspected persons.<sup>3</sup>
9. It is possible to use special investigative means in corruption cases, depending on the gravity of the offence, by virtue of Law No 9187 of 12.2.2004 which amended the Criminal Procedure Code of 1995. According to the Albanian authorities, some special investigative means (simulating acts), are also used in cases of trading in influence and accounting offences.

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<sup>2</sup> Article 36 of Law N° 9284 of 30.9.2004 “on preventing and striking at organised crime” provides for the creation of an Agency for the Administration of Sequestered and Confiscated Assets, to be regulated by a Council of Ministers’ decision.

<sup>3</sup> However, the Law N° 9284 of 30.9.2004 “on preventing and striking at organised crime” contains detailed provisions on investigations performed about the financial means, assets, economic activities, manner of living and sources of income of the persons involved in organised crime, terrorism and other serious crimes (but not corruption) provided for in that law.

## Confiscation

10. Article 30 of the Criminal Code (CC), as amended by Law No 9086 of 19.6.2003, provides for the possibility to impose “confiscation of the means relevant to the commission of a criminal act and the proceeds deriving from it” with regard to a person who has committed criminal offences or contraventions (misdemeanours), as a supplementary punishment. According to the law, confiscation can be imposed alone, without a prison sentence or fine, when the latter are considered inappropriate by the Court and when the law provides for a maximum term of imprisonment of 3 years. According to Article 482 CPC, in all cases, decisions involving confiscation are entered in the criminal record<sup>4</sup>. By virtue of Article 36 CC, confiscation is mandatory and is applicable to objects used or meant to be used for committing a crime (instrumentalities), direct or indirect, transformed or merged proceeds, given or promised remunerations for the commission of an offence, any other property (movable or immovable, in the form of a material thing or property, money or securities), the value of which corresponds to the criminal proceeds, and objects of which the production, use, possession or alienation constitutes a criminal offence. Expenditures for gaining the proceeds of crime can not be deducted. The assessment of the real economic advantage obtained through a crime is the responsibility of the prosecutor or the judge, who may appoint experts.
11. With the exception of goods of which the production, use, possession or alienation constitutes a criminal offence, it is only possible to impose confiscation in connection with a conviction.<sup>5</sup> The prosecution authorities must establish a link between predicate offences and criminal assets. No particular balance in the burden of proof (in connection with a conviction) has been established to assist the authorities in identifying corruption proceeds liable to confiscation.

## Third parties

12. Property owned by a third party shall be confiscated when it is substantiated that its transfer or alteration was made in order to conceal its origin and its owner has not obtained it legally. According to Article 36/3 CC, if the proceeds of a crime have been merged with legally gained property, the latter shall be confiscated up to the limit of the criminal proceeds. The prosecution authorities must prove the connection between these criminal proceeds and the defendant. If they prove the criminal origin of such proceeds, they can ask the courts to confiscate them even if they are owned by relatives or life partners. Once this decision is taken, the person to whom these assets belong could be held liable for the criminal offence of “laundering the proceeds from a criminal offence” (Article 287 CC).

## Statistics

13. The current system of judicial statistics does not provide for recording the number of cases resulting in the freezing, seizure and confiscation of instrumentalities, proceeds and property equivalent to such proceeds nor their value in criminal cases, including corruption cases.<sup>6</sup>

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<sup>4</sup> In addition, the GET was told that new draft law “On the criminal liability of legal persons”, which has been adopted by decision of the Council of Ministers on 13.1.2005 (made available to the GET only in Albanian), provides for the seizure or confiscation of proceeds of corruption, trading in influence and money laundering in respect of legal persons. All decisions involving confiscation will also be entered in the criminal record.

<sup>5</sup> In cases of money laundering (Article 287.3 CC), confiscation of the proceeds of crime shall be applied “even in the cases when the person committing the criminal offence from which the proceeds of the criminal offence stem, cannot be taken as a defendant, can not be sentenced, or a cause exists which extinguishes the criminal offence or it one of the conditions for the criminal prosecution for such an offence is missing”.

<sup>6</sup> According to the General Prosecutor’s Office, in 2002, 331 persons were accused of corruption, 166 were sent to trial and 127 other cases are still pending. 58 persons were convicted and 11 acquitted. In 2003, 224 persons were accused, 111

## Money laundering

14. The criminal offence of money laundering in Article 287 CC is of an all crime nature. However it does not explicitly cover own proceeds laundering. Prosecution is possible even where the person committing the predicate offence cannot be taken as a defendant or cannot be sentenced, where there is a cause which extinguishes the criminal offence, or where one of the conditions for the criminal prosecution for such an offence is missing<sup>7</sup>. The evidentiary requirements for an indictment and conviction for money laundering (in relation with the predicate offence) are not mentioned explicitly. During the last three years, no cases on money laundering connected with corruption have been tried. Article 3 of Law No 8610 of 17.5.2000 "On the Prevention of Money Laundering" provides that "subjects obliged to report" may be natural or legal persons whose activities are defined in the Civil Code. They include financial institutions, designated non-financial business institutions and professions as described in detail in the law. Failure to report required information, suspicions or criminal offences related to money laundering, terrorist acts or financing of terrorism is an administrative offence, when not constituting a criminal offence, and is punishable by a fine.

## International co-operation

15. The legal framework for international legal assistance on provisional measures and confiscation of proceeds of corruption is based on the relevant provisions of the Criminal Code and the Criminal Procedure Code as well as on the international treaties in force in Albania, in particular, the Civil and Criminal Law Conventions on Corruption (ETS Nos 173 and 174), the European Convention on Mutual Assistance in Criminal Matters (ETS No 30) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from crime (ETS No 141). According to the Constitution, international conventions which have been ratified are directly applicable in Albania even without a specific law transposing them into national law. When Albania is the requesting state, provisional measures are governed by Article 509 of CPC and Articles 7, letter i, 164/a, 164/b, 244, 245, 259, 260, 312, 319, 319/a, 328 of CC. Confiscation is governed by Articles 30, 36 of CC, and Articles 217, 509, 274, 275, 276, 457 and 522 of CPC. When Albania is the requested state, provisional measures and confiscation are governed by Article 505 of CPC. The FIU is a member of the Egmont Group and co-operates with foreign counterparts, notably through the signature of memoranda of understanding. Unfortunately, no cases or statistics were provided to illustrate the application of these provisions and the conditions required.

### **b. Analysis**

16. In general, the measures adopted during recent years have borne some encouraging results illustrated by the "Inventory of Achievements" of the "Action Plan For Prevention and Fight Against Corruption 2003-2004" for July 2003 – May 2004<sup>8</sup> as well as by a number of convictions of public officials for crimes related to abuse of office and corruption: 58 in 2002, 76 in 2003 and 171 in 2004 according to the General Prosecutor's Office. There was no element of money laundering in any of the cases. That said, a general problem faced during the evaluation was the lack of relevant statistics permitting to evaluate the practical implementation of existing legislation on identification, seizure, freezing and confiscation of crime proceeds in general and of corruption

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were sent to trial and the other 86 cases are still pending. 92 were convicted and 20 acquitted. In 2004, 258 persons were accused, 159 were sent to trial, 47 were convicted and for 88 cases the procedure is still pending

<sup>7</sup> See footnote 5.

<sup>8</sup> After the GET's visit this Inventory was updated for the period July 2003-November 2004.

proceeds in particular. *The GET observes that the availability of appropriate statistics – including, for example, the number of investigations, prosecutions and other decisions on seizure and confiscation of the proceeds of corruption, the amounts at stake and data on international co-operation – could contribute to a more focused anti-corruption policy with a view not only to obtaining convictions for corruption offences, trading in influence and money laundering but also to depriving offenders of any benefit from their crimes.*

17. Corruption remains one of the main concerns in Albania, which also faces other types of serious criminality, such as organised crime, trafficking in human beings, drug trafficking, smuggling, etc. The recent amendment of the provisions of the Criminal Code on corruption (Law No 9275 of 16.9.2004), the adoption of a new “anti-mafia law” (Law No 9284 of 30.9.2004 on preventing and striking at organised crime) and the amendments to the legislation concerning illegal trafficking constitute welcome developments. They could affect positively the fight against corruption if, in every aspect of the fight against corruption, the possible connection with organised crime and money laundering is taken into account. In the GET’s view, enhanced coordination and co-operation between the authorities in charge of the fight against corruption and those in charge of the fight against organised crime, trafficking in human beings, drug trafficking and money laundering will enable them to enhance their effectiveness.
18. With regard to access by the different authorities involved in the detection and investigation of corruption to bank, financial and commercial records, it was unclear to a number of the GET’s interlocutors, to what extent and under which conditions information covered by business or bank secrecy can be accessed / disclosed. This is not clarified by Articles 210 CPC (attachment in the banks), 300 CPC (immediate verification on the spot) and 300 CC (failure to report a crime). After the GET’s visit, the Albanian authorities reported the relevant provisions enabling the prosecuting authorities and the FIU to obtain information covered by bank and business secrecy<sup>9</sup>, including Instruction of 2000 of the Supervisory Council of the Bank of Albania on banking secrecy. The GET was not able to assess to what extent these provisions are effectively implemented at the earliest stage of the investigations. The effective investigation and seizure of the proceeds of corruption may be hindered by the lack of knowledge in practice of these provisions as the effectiveness of confiscation measures depends in practice on the possibilities to carry out the necessary investigations as to the quantity of the proceeds gained or the expenses saved and the way in which profits (openly or not) are deposited. The effective implementation of Article 23 paragraph 2 of Convention ETS No 173 could thus be hampered. Therefore, *the GET observes that the measures enabling the competent authorities to order that bank, financial or commercial records be made available or seized should be clarified in order to facilitate the gathering of evidence at the earliest stage of investigations and the confiscation of proceeds.*
19. Due partly to recent structural changes within the police<sup>10</sup> and despite the appointment of a body specialised in corruption offences, the GET obtained no example of an investigation into the proceeds of a corruption case nor other concrete information on the means, competencies and results of the police in identifying and evaluating proceeds of corruption or on economical investigations on the property of suspected persons; whereas information on combating other

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<sup>9</sup> Article 211 CCP, Articles 23 and 24 of Law No 8365 of 2.7.1998 on Banks in the Republic of Albania and Articles 183 and 300 of the law No 7638 of 19.11.1992, “On commercial companies”.

<sup>10</sup> In August 2004, three police commissariat chiefs and some 400 policemen, high-ranking police officers in most cases, wanted to leave the State Police. It is possible that the wave of discharges among the police has frightened many of its members into resigning from positions they have held for many years. Many of them are suspected not only of corruption but also of links to organized crime. The Director General of the State Police issued orders whereby no police officer shall be allowed to leave his duty before the completion of all investigations into the motives that have made him tender his resignation.

forms of crimes, such as trafficking in human beings and drugs was available. In the GET's view, this may be the result of a lack of appropriate resources of specialisation and training of police officers / prosecutors regarding the tracking of offenders' assets. Further, neither the police nor the prosecuting authorities have specific guidelines for detecting proceeds and for preventing the transfer and investment of assets at home or abroad. Therefore, **the GET recommends to develop clear procedures to be used by police officers and prosecutors concerning financial investigations in respect of offenders' assets, in order to enable them to make full use of the relevant legal provisions on detection and seizure. Furthermore, resources, specialisation and training in this area should be increased.**

20. The provision on "preventive attachment" refers to "any objects, proceeds of crime and any other property which can be confiscated". In principle, it should then be possible to attach property equivalent to suspicious proceeds but this possibility had never been used. According to the Albanian authorities, confiscation is clearly mandatory. Although the assessment of the real economic advantage obtained by virtue of a crime is in principle the responsibility of the prosecutor or judge (who may appoint experts), prosecutors and judges appeared to rely very much on the results brought forward by the investigating police to identify proceeds of corruption. Although the confiscation of proceeds of corruption is provided for in law - even value confiscation - it is rarely used in practice. Prosecutors rarely order additional financial criminal investigation of a suspect in order to confiscate proceeds of crime and the burden of proof lies entirely on them. Judges, in turn, consider that it is not their responsibility to prove the illicit origin of the assets or other proceeds of crime. Finally, no mechanism is foreseen to update the financial information on offenders' assets from the beginning of an investigation to trial. **The GET recommends to provide appropriate training for prosecutors and judges concerning the use of interim measures (preventive attachment) and confiscation, including value confiscation. The Albanian authorities should also consider establishing an appropriate apportionment of the burden of proof, in connection with a conviction, to assist the authorities in identifying corruption proceeds liable to confiscation in suitable cases.**
21. The GET welcomed the information received from the Albanian authorities according to which a special body will be established for the management of seized proceeds and the enforcement of decisions on confiscation. The GET understood that the Agency for the Administration of Sequestered and Confiscated Assets foreseen in Article 36 of Law No 9284 of 30.9.2004 on preventing and striking at organised crime would be required to deal with proceeds of any type of crime. In addition, the GET noted that the new Law No 9284 contained detailed provisions on preliminary verification, investigation, temporary suspension of the administration and disposition of property, preliminary sequestration, criteria for sequestration, including in the absence of a suspect or for assets which belong to a third person, and confiscation. *The GET observes that these new provisions of the Law No 9284 should also apply to corruption cases.*
22. As mentioned above, the Albanian FIU received 41,000 reports of which 94 related to suspicious transactions (August 2001 to October 2004) and the others to transactions above the legal thresholds. 15 files were sent to the General prosecutor's Office and the GET did not receive any information on the number of persons convicted for money laundering. None of these cases were linked with a corruption offence. There are no specific guidelines for the FIU or the reporting entities on the detection of corruption. Their contribution, as well as that of persons bound by anti-money laundering obligations, appears therefore to be very limited in the fight against corruption. **The GET recommends the establishment of guidelines on detection of corruption to include typologies of operations that might involve corruption for persons and institutions with a duty to report suspicious transactions in the area of money laundering.**

23. The GET was unable to obtain relevant information on statistics or cases involving international co-operation in connection with corruption in general and with the freezing, seizure and confiscation of proceeds of corruption in particular. The GET had the impression that there was a lack of international co-operation in this field, possibly because of the lack of knowledge and experience of prosecutors and judges of the relevant international instruments to which Albania is a Party. Such problems appeared to exist also in international co-operation for seizing criminal proceeds in the context of the money laundering offence. *The GET observes that specific training should be provided for prosecutors and judges on all aspects of international co-operation in the field of seizure and confiscation of instrumentalities, proceeds of corruption and property equivalent to such proceeds, and that mutual legal assistance in this field be strengthened.*

### III. THEME II - PUBLIC ADMINISTRATION AND CORRUPTION

#### a. **Description of the situation**

##### Definition of public authority/administration

24. The Republic of Albania is a unitary State. Public administration covers state, regional and district levels and comprises 12 regions/prefectures, 65 urban municipalities and 309 rural communes. Tirana alone has 11 municipal units. Article 3 of the Code of Administrative Procedures (CAP), defines the "bodies of public administration" as "the bodies of central power which exercise administrative functions; the bodies of public entities to the extent they exercise administrative functions; the bodies of local power exercising administrative functions; and the bodies of Army Forces, as well as any other structure, whose staff enjoy the military status, as long as they carry out administrative functions". The general framework that governs the organisation and functioning of public administration is laid down in the Constitution and, in general, laws on public administration such as: Law No. 9000 of 30.1.2003 on the Organisation and Functioning of the Council of Ministers; the CAP (Law No. 8485 of 12.5.1999); Law No. 8480 of 27.5.1999 on the Organisation of Collegial Bodies in State Administration and Public Institutions; Law No. 8510 of 15.7.1999 on Extra-contractual Liability of State Administration Bodies; Law No. 8549 of 11.11.1999 on the Status of Civil Servants; and Law No. 9131 of 8.9.2003 on the Rules of Ethics in Public Administration (Law on Ethics), Law No 8503 of 30.6.1999 on access to official documents and Law No 8517 of 22.7.1999 on the Protection of Personal data.

##### Anti-corruption policy

25. The prevention of and fight against corruption remain amongst the highest priorities of the Government, which has established two high-level bodies to direct anti-corruption efforts: the Government Commission for the Fight Against Corruption (GCFC) and the Anti-Corruption Monitoring Group (ACMG) comprised of a Monitoring Board and an Anti-Corruption Unit (see 1<sup>st</sup> Round Compliance Report). The Government's current anti-corruption strategy is regularly updated, in co-operation with all interested stakeholders, including international actors. In 2003, it focused on specific areas: law enforcement, prevention, public awareness and education, as well as good governance and legislation. The "*Action Plan on the Prevention and Fight Against Corruption 2003-2004*" was adopted by Decision No. 580 of 21.8.2003 of the Council of Ministers and includes a number of recommendations from domestic actors and international donors. One of the main branches of this Action Plan is the Public Administration Reform.<sup>11</sup> Finally, by virtue of a Memorandum of Understanding signed on 15.7.2003 by the Minister of State to the Prime

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<sup>11</sup> The draft anti-corruption plan for 2004-2005 was amended following the 4<sup>th</sup> Conference on the Fight Against Corruption that took place in Tirana on 9-10 December 2004.



Minister, the Prosecutor General, and the Head of the Albanian Coalition Against Corruption, a "Triangle Commission on Exchange of Information and Co-operation on data in the Field of Corruption" was established with a view to sharing information on anti-corruption measures, achievements, denunciations, corrupt practices and priorities of action.

### Transparency

26. Access to information held by public authorities, i.e. local, regional or state, is foreseen in the Constitution and regulated by Law No. 8503 of 30.6.1999 "On the Right of Access to Official Documents" as well as the CAP. The People's Advocate (regulated by Law No. 8454 of 4.2.1999) monitors the implementation of this law, promotes and ensures the right of information of individuals and may issue recommendations to the authorities. The Government has taken several initiatives to increase transparency in the operation of governmental bodies and their co-operation with civil society and the business community in cases of primary and secondary legislation. There seems to be no obligation on state bodies to consult interested parties and whether or not this is done depends, in principle, on the state body responsible for the process. However, in a number of fields consultations have taken place.

### Control of public administration

27. Administrative decisions – whether state, regional or local - are subject to administrative (Articles 135-146 of the CAP) and judicial review (Articles 324-333 of the Code of Civil Procedure). Public administrations are submitted to other internal and external controls such as the control of the People's Advocate (see hereafter), the Supreme State Audit<sup>12</sup> (see GRECO's First Evaluation Round Report), the High Inspectorate for Declaration and Control of Assets (see above), the Internal Audit Directorates and other specific inspectorates. In February 2003, the Parliament enacted legislation (Law No 9009) creating an Internal Audit Commission, addressing internal audit entities within Government ministries and agencies, regulating auditor certification and qualifications for internal auditors, and adopting a *standardised audit procedures manual*, a code of ethics and training programme for internal auditors. In particular fields, special bodies have been established by Law such as the Civil Service Commission (CSC), the Special Taxation Commission and the Public Procurement Agency.
28. The People's Advocate was established some 4 years ago and is competent to review a case whenever an individual claims that his/her rights have been violated. In approximately one out of four cases his recommendations are to the advantage of the individual. The People's Advocate can also recommend changes in working routines if these are likely to lead to breach of rights. The People's Advocate has received several complaints against prosecutors, judges, police officers and other public officials concerning corrupt practices. The People's Advocate has looked into these complaints, and cases involving suspicions of a criminal offence have been transmitted to the General Prosecutors' office or to the High Council of Justice when those suspicions related to judges.

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<sup>12</sup> The Supreme State Audit is an independent institution responsible for conducting financial audits of central and local government entities. It publishes audit results every three months, as well as an annual report that the Chairman delivers to Parliament. Its capacities are improving (though not yet up to E.U. standards), as measured in a 2003 study by SIGMA, an EU institution charged with reviewing state audit institutions. The Supreme State Audit has consistently increased the number of cases of corruption/abuse of office/mismanagement discovered through its audits that merit administrative or criminal sanction (the latter cases are forwarded to the Prosecutor's Office). The Minister of State for Coordination, on behalf of the Prime Minister, requires that all institutions report to him on the actions taken to implement the recommendations of the Supreme State Audit. The implementation rate for State Supreme Audit recommendations for 2003 is 80 per cent.

## Status, recruitment, career of public officials

29. The general conditions for appointment to public offices and the procedure regulating these appointments are laid down in the Law on the Status of the Civil Servant. About 10.000 out of a total of 110.000 public officials in Albania are covered by the Law. According to that Law, the recruitment procedure commences with the publication of vacancies in the most widely circulated press and is done in three selection phases: the pre-selection phase; the competition; and the selection of one of the candidates by the institution which has published the vacancy. The general exclusions for entering the civil service are the existence of a criminal record or the dismissal from the public service for a serious disciplinary offence. Eligibility is decided in the pre-selection phase, on the basis of a clean criminal record, as confirmed by the Ministry of Justice, and the working and personal records for those who have already served as civil servants (Articles 481-484 of the Criminal Procedure Code). With regard to the recruitment and career of civil servants, a Civil Service Commission (CSC) was set up in the form of an independent institution charged with supervisory responsibility of the management of the civil service at all institutions. The CSC deals with appeals in matters relating to the civil servant, such as resolving individual appeals concerning recruitment in the public service, probationary periods, promotions, lateral transfers, disciplinary measures and the rights of civil servants.<sup>13</sup> The GET was informed that the CSC can invalidate the recruitment procedure if it has not been carried out correctly, but that the grounds for the decision to select a candidate cannot be reviewed by the CSC.

## Codes of Ethics

30. The Code of Ethics for Civil Servants forms part of the Law on Ethics. According to the authorities, this Code is generally applicable to all public officials. Besides the Law, codes of ethics also exist for public officials of specific bodies, such as the Police, Customs, Judiciary, the Supreme State Audit, Tax Administration etc. Codes of Ethics have also been introduced for local government in different municipalities. According to Article 19 of the Law on Ethics, breaches of the law are subject to disciplinary and administrative proceedings. Apart from civil servants, whose disciplinary matters are in the hands of the CSC, implementation of the codes of conduct is the responsibility of each respective institution and any data on violations is kept by the institution.

## Conflict of interest, incompatibilities and accessory activities

31. The Constitution contains provisions on incompatibilities in exercising their duties for some categories of State officials, such as the President of the Republic, Parliamentarians, the People's Advocate, Members of the Council of Ministers, Judges and Members of the Central Election Commission. They focus on the incompatibility of their function with other state, political or private activities. In addition, the GET was told that provisions on incompatibility of some specific positions with other functions are also established by special laws<sup>14</sup>. The Law on Ethics contains specific provisions in Chapter II on conflicts of interests. Article 4 describes the situations where a conflict of interest could arise, while Article 5 describes the mechanisms to avoid them. The Code of Administrative Procedures also contains detailed provisions aimed at guaranteeing impartiality, describing cases and procedures of disqualification from participating in administrative decision-making, and avoiding occasional conflicts of interest during the administrative decision-making

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<sup>13</sup> If an appeal is not resolved by the CSC within the prescribed period, the plaintiff shall be entitled to appeal his case directly to the courts. The CSC decisions are binding on the institutions of central and local public administration.

<sup>14</sup> On 1<sup>st</sup> March 2005, the GET was also informed of the Council of Ministers' Decision No 714, of 22.10.2004 "On the "external" activities and presentation of gifts to civil servants during duty" (available only in Albanian).

- (Articles 37 to 43). However, special ethical laws covering different sectors of state administration (police, taxation, customs, etc) contain special provisions on conflicts of interest, procedures for avoiding such conflicts and applicable sanctions. Several special laws for different fields of state activities (e.g. the law on public procurement) contain specific regulations to avoid conflicts of interests (e.g. during decision-making in procurement procedures).
32. Measures to avoid conflicts of interests commence with the appointment of the civil servant. Only after the direct superior and the head of the personnel unit have been convinced that the appointment will not imply a conflict of interests is the final selection concluded. In *modus operandi* the avoidance of conflicts of interests during administrative decision-making, is assured through existing templates declaring that there is no such conflict (e.g. the declaration of the members of ad-hoc committees for competitions in civil service or members of tender evaluation processes that they do not fall under situations of conflict of interests).
  33. In addition, the Anticorruption Unit undertook a study, at the end of 2003, on the revision of the legal framework in the conflict of interests' perspective. This study aimed at analysing the existing provisions with regard to conflicts of interests (in almost 50 different texts) and identifying proposals for completing the legal framework by designing adequate provisions. As a general view, it emerged, *inter alia*, that there are discrepancies between several provisions in laws and codes of ethics and amendments are required to bring them into conformity with international standards. Some of the crucial issues identified by the Albanian authorities requiring further work were the following: further regulation of the incompatibility; harmonisation and standardisation of the conflict of interests' definition and concept; detailing the procedures (identification, declaration, registration); expanding the scope of conflicts of interests to all public officials and institutions; defining the responsible authority of the conflict of interests; unification and standardisation of ethics issues in general, and promotion of awareness-raising on this very important issue. The GET was told that a draft law on these issues was under preparation.
  34. A new control body, the High Inspectorate for Declaration and Control of Assets, is operating in Albania.<sup>15</sup> It is an independent institution with a duty to verify obligatory declarations of assets required of individuals particularly exposed to corruption. Medium, higher and elected public officials, including at local level, as well as judges, prosecutors, etc. are obliged to report all kinds of assets, financial obligations, income etc. to this body. Their family members and close associates are also subject to this obligation. Failure to do so may lead to disciplinary, administrative and/or criminal sanctions. Control of their financial statements is carried out by requesting information from banks, registers etc. which hold pertinent information. Responding correctly to such requests is an obligation. Suspicious cases have already been examined. In one case, a person has been dismissed. The case was also reported to the prosecutor's office.
  35. Articles 16 and 17 of the Law on Ethics specifies that public administration employees must not use confidential information gained in exercising their duties, after leaving the job, for their personal interests. For a 2-year period public officials must not represent any person or organisation in any conflict or trade relationship with the Albanian public administration, regarding their duties in their previous position. Besides, certain former public officials have a duty to make a declaration of assets for 2 to 4 years after leaving the civil service.

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<sup>15</sup> Law No. 9049 of 10.4.2003 "On declaration and control of assets, financial obligations of the elected officials and some public employees" and Order No. 1 of 13.1.2004 of the General Inspector "On the way of establishing the lower inspectorates" According to the new draft law "On the prevention of conflicts of interests in the exercise of public functions" of the Council of Ministers, adopted by Decision No 98 of 18.2.2005, the High Inspectorate for Declaration and Control of Assets is also going to be the central authority responsible for the implementation of this law, and will be able to impose administrative sanctions.

## Gifts

36. Pursuant to Article 260 CC, officials who – in the exercise of their functions – accept gifts for not performing their duties or for providing a benefit to a third party are subject to criminal sanctions. Disciplinary proceedings may also be initiated. Article 10 (Gifts and benefits) and Article 11 (Reaction towards offers) of the Law on Ethics define the restrictions on gifts, hospitality and other benefits. The law foresees that an employee of the public administration shall neither seek nor accept gifts, favours or any other type of benefit; or avoidance of potential losses, as well as promises about those, for himself, his family, relatives, persons or organisations with whom he/she has relations, which influence or seem to influence their fairness in the exercise of their duty; or represent or seem to represent a remuneration for the way he/she conducts the official duty. Exceptions to these rules are usual invitations, traditional hospitality, gifts of symbolic or traditional value, and which do not give rise to doubts concerning the impartiality of the employee. The law foresees that employees shall seek the advice of the personnel unit of the institution.<sup>16</sup>

## Training

37. Civil servants are instructed and trained with regard to the main principles of public administration and on the rules of ethics in various ways. Prior to nomination in the civil service, civil servants receive a copy of the Law on Ethics and are instructed by the “personnel unit” (human resources) on its content and the civil servant obligations. In fact, the Law on Ethics was distributed by the Department of Public Administration (DoPA) to all public administration employees, immediately after its adoption by Parliament. The newly appointed civil servants are subject to an obligatory training activity, organised by the Training Institute of Public Administration (TIPA). This activity comprises an intensive 15-day training module, including the general principles of public administration and rules of ethics. This training module is followed by a testing procedure and the result of this test is one of the elements upon which confirmation of employment is based at the end of the probationary period. Other civil servants who have never before taken part in such training are also subject to participation. The TIPA also organises other special modules of training focused on rules of ethics for special target groups that supervise the implementation of the Law on Ethics (special module for “personnel units” staff), as well as at different managerial levels. The module is called “Ethics and Anticorruption” and was started in 2003. With regard to public officials other than civil servants no similar systematic teaching programme on ethical questions and challenges exists.

## Rotation of staff employed within public administrations

38. Neither at state nor at regional or local level any general system of rotation exists for positions vulnerable to corruption. The civil servant policy is based on a career system, aiming at creating a sustainable administration, with experienced employees. However, in the customs sector, in some positions where the risk of corruption is considered high, employees are subject to rotation every two years.

## Obligation to report

39. By virtue of Article 300 CC, there is a general obligation for all persons, including public officials, to report a crime (which is in the process of being committed or which has been committed) to the organs of criminal prosecution, to the court, to the organs of public order or to the appropriate

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<sup>16</sup> See footnote 14 above.

authorities or administration.<sup>17</sup> Failure to report is punishable by a fine or up to three years' imprisonment. Generally, the officials are under instruction first to inform their superior. Exempted from this obligation to report are those who are sworn to secrecy by their profession and those with special links to the perpetrator. Article 211 CCP authorises those who are obliged to secrecy to report to the prosecutor. Those who make false denunciation or provide false evidence (Articles 305 and 306 CC) and refuse to testify (Article 307 CC) are also subject to criminal proceedings. The obligation to report is not explicitly mentioned in the Law on Ethics or in other special laws or codes on ethics.

40. There are no specific measures or mechanisms in place to protect public officials who make such reports from retaliation. However, Chapter IX of the Criminal Code contains provisions defining the following acts as criminal offences: intimidation not to make a denunciation (Article 311 CC), proposal or intimidation to provide false statements, false testimony, false expertise or translation (Article 312 CC). At the same time, the sanctions of Article 248 CC relating to the misuse of office are applicable to the officials who exercise pressure or commit other illegal acts against the officials reporting such acts.<sup>18</sup>

#### Disciplinary proceedings

41. Disciplinary investigation is carried out by the direct superior of the civil servant involved. It is started either *ex officio* by the direct superior or on the basis of a request made by any person or institution. The procedure is adversarial and the civil servant has the right to be heard and the right to a specialised legal assistant. The disciplinary measure is taken by the direct superior and the civil servant has the right to appeal to the Civil Service Commission (CSC) (mentioned above).<sup>19</sup> By virtue of Article 20 of the Law on Ethics, all public institutions should report the disciplinary measures taken to the Department of Public Administration (DoPA). The Ministry of Justice, the Supreme State Audit, the General Directorate of Audit of the Ministry of Finance and the Anti-corruption Unit also collect and process statistical data regarding the number of cases where disciplinary measures and administrative sanctions have been recommended and where they have recommended to bring criminal charges.<sup>20</sup>
42. Disciplinary and criminal proceedings are not carried out in parallel. If criminal proceedings are initiated against a person already under disciplinary proceedings, disciplinary action is suspended, until the criminal investigation and the trial on the criminal charge have ended.

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<sup>17</sup> The amendments made to the Criminal Code, by virtue of Law No 9275 of 16.9.2004, and in particular Article 245/2 CC, enable a person who was implicated in a corruption offence to benefit from an exemption or reduction of penalty if s/he reports it in due time and contributes to the criminal proceedings.

<sup>18</sup> After the visit, the Albanian authorities indicated that Article 20 of the draft law "On the prevention of conflict of interest in the performance of public functions", provides for a certain level of protection against administrative sanctions for public officials giving information on cases of conflicts of interest.

<sup>19</sup> The High Council of Justice -- responsible for the nomination, discharge, professional evaluation and inspection of the activities of judges -- adopted a specific regulation on disciplinary proceedings against judges, in force since February 2003.

<sup>20</sup> In 2003, 25 disciplinary proceedings were concluded against 19 prosecutors and 8 judges, as well as the dismissal of 5 prosecutors and 4 judges. In the six first months of 2004, 3 judges were dismissed and disciplinary actions have been initiated against 5 other judges. According to the figures held by the Ministry of Justice, from 2002 to 2004, 25 judges underwent disciplinary sanctions and 11 were dismissed. In 2002, the Supreme State Audit recommended to initiate disciplinary measures in 259 cases, administrative measures in 52 cases and to press criminal charges in 9 cases. In 2003, the figures were respectively, 344 (disciplinary measures), 142 (administrative measures) and 11 (criminal charges). The General Directorate of Audit of the Ministry of Finance recommended 696 disciplinary measures, 2012 administrative measures and 37 criminal charges. The Supreme State Audit reported that for the first 9 months of 2004, there have been respectively, 196 disciplinary measures, 56 administrative measures and 24 criminal charges. For 2004, the General Directorate of Audit of the Ministry of Finance recommended 1 713 disciplinary measures, 2 309 administrative measures and 36 criminal charges.

Likewise, during a disciplinary action, if there are elements that constitute a criminal act, the competent authority in charge should make a criminal report to the appropriate body on the basis of Article 300 CC. When necessary, the disciplinary body can suspend from office a person who has been criminally charged. The nature of the actions taken by the disciplinary body after the criminal investigation or the conviction of the person depends on the circumstances verified by the court's decision. According to the nature of the public function, if the court has taken no decision as a supplementary punishment apart from the principal punishment, the appointing and disciplinary body may decide to dismiss the person found guilty or to take other measures according to law. However, according to the Albanian authorities, in practice, a person held liable for a felony, even without an explicit supplementary punishment, could not continue to be part of the civil service and the Department of Public Administration (DoPA), which issues the dismissal act from civil service, is notified of such convictions decided against public officials by the Ministry of Justice, through a criminal record certificate or by the institution where the employee used to work.

**b. Analysis**

43. The overall impression of the GET was that Albania has undergone significant changes since it started modernising its administrative structures and institutions in the mid 90s. The GET also had the impression that the national authorities are eager to address the phenomenon of corruption, which is still considered to be widespread in certain sectors of public administration. This also includes a strong will to implement new measures and take international contributions into consideration. Major changes have already taken place and a number of important reforms are under way. A lot of them, directly or indirectly, relate to public administration, and aim at reducing corruption. Combating corruption is a continuous struggle, where laws and practices need constantly to adapt to a changing world.
44. Albania has a *state* anti-corruption policy that seems to work well. Through the Anti-Corruption Monitoring Group (ACMG) and the Anti-Corruption Unit (ACU) it is investing heavily in carrying out the Action Plan which is also regularly updated. However, during the visit, the GET was told that the Action Plan, as regards public administration and apart from the legislation that covers *all* public administration, has limited reach into the local/regional sphere/sector. Measures taken in this field depend largely on decisions made by the regional or local administration. Whereas the Municipality of Tirana seems to have its own well designed strategy against corruption, in many municipalities or regions this is apparently not the case. After the visit, the Albanian authorities reported that they have organised regional activities with representatives of local authorities informing them on anti-corruption policies; contact points at local level to report on achievements made in adopting anti-corruption measures have also been established. The GET has serious doubts as to what extent anti-corruption measures generally are carried out at *local* and *regional* levels in sectors where the Albanian state has no competence. Consequently, **the GET recommends that the government promotes anti-corruption policies and measures at local and regional levels and monitors their implementation.**
45. Transparency of state public administration in Albania has improved significantly in recent years. The Action Plan shows that informing the public of the activities of state bodies as well as including the public in various state activities, is a priority in the fight against corruption. Concerning the process of legislation and the administrative process of making individual decisions of general interest, the practice of involving the public is not mandatory, nor subject to specific criteria and derogations, and differs extensively from case to case.

46. Concerning the recruitment and career of civil servants, there is a system in place which is designed to guarantee basic rights of the individual, mainly laid down in the Law on the Status of the Civil Servant. Nevertheless, some doubts still exist as to whether those public officials not covered by the Law enjoy equal protection. The Albanian authorities should make sure that this is the case. Concerning the majority of officials who do not enjoy civil servant status (e.g. employees of institutions under the authority of the Council of Ministers) the GET was told that the general principles of the Law are adopted in special legislation. The GET was informed that legislation is being considered to extend the scope of the Law to include 30,000 new public officials. The GET also gained the impression that the discretionary decision to hire a public official is beyond review for an applicant who claims to have been passed over; only the legality of the process can be reviewed. According to the Albanian authorities, the Civil Service Commission can never substitute the ad-hoc committee that sets up the examinations and informs candidates of the results of these examinations; however, the Commission could intervene at any stage and declare null the procedure of recruitment of a civil servant.
47. Ethical rules are mainly established by virtue of the Law on Ethics, and Laws on the Status of Civil Servants as well as other subsidiary legislation.<sup>21</sup> Furthermore, there are particular codes of ethics applicable to different categories of professions. However, some public officials or professions are, either entirely or partly, excluded from the application of some of these texts.<sup>22</sup> In certain cases, there is a lack of harmonisation or overlapping between the relevant provisions. The GET noted that one of the aims of the Albanian authorities was to pursue the unification and standardisation of ethics in general and the promotion of awareness-raising in this area.
48. The rules on conflicts of interest differ from one text to another and from one category of public officials to another; the rules on incompatibilities and accessory activities are not satisfactory and some groups are not covered. However, this problem was already under consideration by the Albanian authorities, in particular by the Anti-Corruption Unit and the working group established by Order No. 108 of 3.6.2004, during the GET's visit. The objective was to simplify these rules and to bring them in line with the relevant international standards. The GET was told that a law was being prepared with a view to dealing in a comprehensive manner with conflicts of interest.<sup>23</sup> The GET was not provided with sufficient information enabling it to assess this draft. The GET noted however, with satisfaction, that the High Inspectorate for Declaration and Control of Assets (cf. paragraph 34) was meant to monitor that law once adopted. As the Inspectorate will also have other important functions, such as the prevention of conflicts of interest, and the assessment of new draft laws, it is advisable to confer to the Inspectorate the necessary means to perform its duties effectively and independently.
49. As mentioned before the High Inspectorate for Declaration and Control of Assets has recently been set up. In the GET's view, the Inspectorate has the potential to contribute to the fight against corruption and the detection of corruption proceeds in an effective manner. However, co-operation with the police and other competent bodies appeared to be still limited. Furthermore, the High Inspectorate recognised that it had very limited possibilities to identify and trace property that had been transferred abroad. These problems could possibly be resolved through increased co-operation / coordination between the competent authorities and international co-operation.

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<sup>21</sup> See footnotes 14 and 15.

<sup>22</sup> For instance public officials that are not civil servants are not subject to the Law on Civil Service and collaborators to the public service are not either subject to ethical clauses. According to the new draft law on conflicts of interest, restrictions with regard to conflicts of interests and accessory activities apply only to civil servants of the high and middle management level, according to the corresponding definition of the Status of the Civil Servant.

<sup>23</sup> See footnote 15.

50. The GET welcomes that a system of rotation has been put in place in the customs administration for some positions exposed to corruption as a tool to reduce risks of corruption in vulnerable sectors. *The GET observes that this approach could serve as a model for other sectors of public administration.*
51. Article 17 of the Law on Ethics provides that for a 2 years period, after his/her release from duty, an ex-employee should not represent any person or organisation in a conflict or trade relation with the Albanian public administration, related to his/her previous position. The GET welcomes this provision that draws inspiration from Article 26 para 3 of the Model Code of Conduct for Public officials (Recommendation (2000) 10). In addition, the GET was told, after the visit, that some former public officials have the duty to continue to provide declarations of property (but not of any other interests) for 2 to 4 years after the termination of their public functions. In the GET's opinion, there are currently no sufficient means to control the abusive migration from the public to the private sector (pantouflage). In view of the above, **the GET recommends to make sure that ethical rules apply to all public officials and collaborators of the public service and also cover situations where public officials move to the private sector.**
52. Regarding the issue of gifts, facilitation payments are considered to be widespread in certain segments of the public sector in Albania. The Criminal Code makes it a crime for a "person holding state functions or public service and during their exercise" to accept a gift with a view to carrying out or refusing to carry out his/her functions. The Law on Ethics authorises "usual" invitations, "traditional" hospitality, gifts of symbolic nature, etc.<sup>24</sup> Civil servants undergo extensive training on ethics, where the issue of gifts and corruption appears to be included. However, such training is not provided to the large majority of public officials. The GET understood that unsolicited presents to public officials are still customary. The borderline appeared to be unclear for some of the public officials met by the GET between acceptable gifts and such advantages which could lead to criminal and/or disciplinary sanctions. . In the GET's view, training on such issues should be mandatory for all public officials, also for those who are not civil servants. **The GET recommends to provide proper training to all public officials regarding the existing rules on gifts by using, in particular, practical examples of potential conflict situations.**
53. According to Article 300 of the Criminal Code everyone, including public officials, is obliged to report a crime which is in the process of being committed or which has been committed to the appropriate authorities. According to special legislation, certain public officials are under specific obligation to report crimes. However, the GET was told that the reporting of *colleagues* seldom or never happens. This might be an indication of poor law-abidance. A higher degree of internal reporting should be expected in a country where corruption within sectors of the public administration is considered common. In the light of this, **the GET recommends to encourage and facilitate the reporting of corruption in public administration and to ensure protection of whistle-blowers.**<sup>25</sup>
54. The GET found that the existing system for dealing with suspicions of corruption in public administration might be an obstacle to the efficient criminal investigation of corruption: the

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<sup>24</sup> However, on 1<sup>st</sup> March 2005, the Albanian authorities informed the GET that the above mentioned Decision of the Council of Ministers No 714 of 22.10.2004 on the administering of gifts (available in Albanian) defined a certain value for the gifts that can be accepted in the exceptional cases provided for by law. This issue is also dealt with in the new draft law on conflict of interests, which prohibits categorically the reception of the gifts by the public official in the course of their employment because of his/her position.

<sup>25</sup> In this connection, the GET was informed after the visit that Article 20 of the draft law "On the prevention of conflict of interest in the performance of public functions", provides for certain protection against administrative sanctions for public officials giving information on cases of conflict of interest.



obligation for public officials to report such suspicions to their superiors can delay the initiation of criminal investigations. Further, the internal investigations which are carried out in all such cases (which can take considerable time) imply exposing the matter to the suspected person and can thus lead to crucial evidence being lost. Finally, the internal investigations are carried out by the direct superior of the official suspected of corruption. This adds a personal element to the case, which can be a disadvantage for effectively dealing with the matter. In the light of this, **the GET recommends to review the manner in which suspicions of corruption are being processed in public administration, in order to ensure the prompt initiation of criminal investigations, where appropriate.**

#### **IV. THEME III - LEGAL PERSONS AND CORRUPTION**

##### **a. Description of the situation**

###### General characteristics

55. The Civil Code (Articles 24-38) defines legal entities. Public legal entities are state institutions and enterprises, which are self-financed or financed from the state budget, as well as the other public entities recognised by law as legal entities. Private legal entities are companies, associations, foundations, and other entities of private character, which attain the legal personality in the way foreseen by law. The legal entities have the capacity to attain rights and undertake civil obligations, starting from the moment of their establishment and, if the law provides that the entity has to be registered, from the moment of registration.
56. Commercial companies can be set up, under the Law No 7638 of 19.11.1992 “on commercial companies” by two or more persons who agree to conclude a contract putting their property or services into a joint undertaking, in order to share the profit or benefit the incomes which stem from it. Partners undertake to pay their respective share for the losses. In the cases foreseen by law, the company can be set up even through the act of the expressed will of only one person. Commercial companies shall have a minimum initial capital. For Limited Liability Companies (Ltd), the minimum value of the initial capital is 100 000 Lek (800€).

###### Registration

57. Commercial companies shall be registered in the Commercial Register that has its seat in the Court of Tirana. Article 33 of Law No 7667 of 28.1.1993 “On commercial register” details all the information that should be submitted to the Commercial Register, including any major changes in the composition and ownership of important companies. The Ministry of Justice in its legislative working plan for 2004 has undertaken important legislative initiatives with regard to legal persons, such as the preparation of a draft law on some amendments in the company law, and a draft law on some amendments in the law for the registration of companies. The Register is in the process of completing its computerisation. The GET was informed that Articles 13 and 14 of Law No 8788, of 7.5.2001 “On non-profit Organisations”, establish that such organisations shall also be registered by court decision.

### Professional interdictions

58. Article 40 CC provides for the temporary deprivation (from 1 month to 5 years<sup>26</sup>) of the right to perform leading functions in legal entities as a result of the conviction for any kind of criminal offence.

### Accounting obligations

59. Under Article 21 of Law No 7661 of 19.1.1993 "On Accounting", accounting documents are required to be kept for a period of ten years, unless it is otherwise specifically required by other laws. However, after the visit, the GET was informed that this Law had been repealed by Law No 9228 of 29.4.2004 and that the relevant provision was the new Article 17. Associations, "centres" and foundations are all subject to the requirement to keep records and accounting books by virtue of Article 2 of the Law "On Accounting". In addition, by virtue of Article 6.1 letter b of the Law on the Prevention of Money Laundering, the data, information and reports of the transactions performed on behalf of a customer shall be kept for a period of not less than 5 years after the last transaction has taken place. The rule No 5 of 3.6.2004 "For the prevention of money laundering and for the fight against financing terrorism" of the Minister of Finance, clarifies the time limit for preserving the records, which is 5 years from the date the client accounts are closed (Article 6).

### Liability of legal persons

60. The new Article 45 CC<sup>27</sup> establishes criminal liability of legal entities, with the exception of the state and with some restrictions for bodies of local government. Nevertheless, the criminal offences, the sanctions and the procedures for the application of these sanctions have to be regulated by virtue of a special law. After the visit, the GET was provided with an Albanian version of the draft law "on criminal liability of legal persons" adopted by the Council of Ministers on 13.1.2005 and was informed that this draft law regulates the responsibility of legal entities, including involvement in corruptive activities, trading in influence and money laundering. Yet, the GET found that Article 14 of the Law on the Prevention of Money Laundering makes it possible to impose fines on the subjects of the Law, which also includes legal persons, such as financial institutions, for violations of the provisions of that Law. Furthermore, according to Article 32 of the Civil Code, a legal person is responsible, within the limits of its property, for the damages caused by its organs in the course of performing their functions. Persons who have acted in the capacity of the legal entity have personal responsibility for the compensation of damages, which have been caused due to their fault.

### Tax deductibility and fiscal authorities

61. By virtue of Article 20 of Law No 8438 of 28.12.1998 on "Income Tax", deductible expenses are considered to be only those expenses which incur for profit purposes, for insuring and maintaining profits, on the condition that such expenses are documented and proven by the

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<sup>26</sup> From 5 to 10 years when the sentence is of 5 years imprisonment or more, according to the Law No 9275 of 16.9.2004

<sup>27</sup> Article 45 - The Application of the criminal law on legal persons/entities - established by Law No 9275 of 16.9.2004

Legal persons, with the exception of the state, are criminally responsible for crimes performed by their agencies or representatives on behalf of or for the benefit of them.

The bodies of local government are criminally responsible only for the actions performed during the exercise of their activity that may be exercised by the delegation of public services.

The criminal responsibility of the legal persons does not exclude that of the physical persons who have committed crimes or are collaborators for the commission of the same crimes.

The criminal offences and the sanctioning measures taken against the judicial entities, as well as the procedures for the approval and application of these measures are regulated by a special law."

taxpayer, and are object to limitations specified by the provisions of this law. Therefore, in principle, no expenses incurred or which may incur for facilitation, expenses to enjoy a privileged treatment or bribe expenses for business privileges are deductible expenses and are not part of tax base.

62. According to the Albanian authorities, all persons, including public officials (and therefore tax officials too) have the duty to report crimes, including corruption infringements, pursuant to Article 300 CC. Article 211 CCP enables those obliged to keep professional secrecy to provide information to the prosecuting authorities, except when they declare that it is a state secret or a secret related to their duty or profession. In the latter case, the necessary verifications shall be completed and, when it results that the declaration has no ground, the prosecuting authority orders the sequestration of the relevant documents. Tax authorities also have an obligation to report suspicions of money laundering offences under the provisions of Law No 8610 of 17.05.2000 "On Prevention of Money Laundering" (with respective amendments). This law defines the mechanism of reporting to the General Department on Prevention of Money Laundering and the co-operation with the General Prosecution Office.
63. All structures of the tax administration, including the enforcement authorities (Audit and Tax Police sections), are obliged by law to collaborate and exchange information, for the purposes of realising common tasks. The concrete ways of collaboration and exchange of information are defined by laws, regulations, instructions, manuals, etc. According to Article 69 of Law No. 8560 of 22.12.1999 "On Tax Procedures in the Republic of Albania", Tax Authorities shall provide information in relation to the taxpayer to judges and prosecutors involved in ongoing tax cases as well as criminal cases (when the taxpayer may be involved in corruptive practices or money laundering or taxpayers that have carried out business transactions with such persons). Confidential information is given to the Supreme State Audit on all taxpayers under the legal control of the tax authorities, and to courts for all taxpayers who have not carried out an economic activity or who have failed to submit a return for a period of at least two years. In these cases, as interested parties, tax authorities have the right to require the court to remove the person from the trade register.

#### Account offences

64. Tax legislation contains provisions that do not allow expenses that are not evidenced or proven with proper documentation<sup>28</sup>. In addition, Article 180 CC incriminates concealment or false statement of income in cases where other administrative sanctions have previously been imposed. Destruction or hiding of accounting books may also be punished under the Law on Accounting on the basis of Article 21<sup>29</sup> (obligation to keep record books for 10 years). According to Article 72<sup>30</sup>, any violation of this law, if it does not constitute a criminal act, shall be punished by a fine from 3000 to 5000 Lek (25-42€). In the new Law No 9228 of 29.4.2004, mentioned after the GET's visit, sanctions can be criminal, civil or administrative. In addition, Article 14 (e) of the Law on the Prevention of Money Laundering states that "...the erasing, damaging or changing in the register of data on legal subjects, when not comprising a criminal offence, are considered administrative offences and are punishable by a fine that ranges from 50.000 to 10.000.000 Lek

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<sup>28</sup> If the taxable person fails to issue a tax invoice more than once or the person issues more than once a tax invoice without being registered, the Head of the Local Tax Office has the right to: seize goods, materials and other assets used by the economic activity; order the closure of shops or warehouses; publish the name of the taxable person and the violation committed (Paragraph 3, item 21.2, Instruction no.4, dated 11/02/2002, "On VAT").

<sup>29</sup> Article 17 in the new law No 9228 of 29.4.2004, "On Accounting" that has repealed the law No 7661 of 19.1.1993.

<sup>30</sup> Article 23 in the new law No 9228 of 29.4.2004, "On Accounting" provides in such cases for civil, administrative and criminal sanctions.

(420-840.000€). Finally, in accordance with Article 261 of Law No 8449 of 27.1.1999, "On the Customs Code of the Republic of Albania", submission of double invoicing and/or other forged documentation is considered an offence punishable with a penalty up to three times of the difference in value, and is also considered a crime of counterfeiting documentation.

65. The GET was told that the Audit and Investigation Directorate in the General Taxation Department has continuously punished taxpayers for the abusive use of false invoices. Important improvements were made to the fiscal framework at the end of 2003, through passing some changes in the form of VAT invoices in Parliament. Improved exchange of information with Local Tax Offices with regard to lost or stolen invoices declared by taxpayers has avoided abusive use of these invoices through illegal ways. Data processing improvements through using IT programmes have facilitated the control of supplying blocks of invoices to the taxpayers by Tax Authorities, restrained illegal invoices and disclosed any abusive case (especially in biggest Local Tax Offices). The auditing system of Local Tax Offices is further improved in the cross-checking of purchases and sales invoices, by introducing it as an ordinary process of the job in all tax offices, which has given good effects in preventing the concealing of business transactions, as well as abuse of the documentation used. A continuous monitoring system is set up to check all business transactions carried out in areas of particular importance with regard to revenue collection, as well as control business turnover, for example, to those passed by Treasury Office, customs clearance of goods, etc., and declarations made in the books (kept) by companies. Other agreements are in the process of elaboration with other public bodies. These agreements will consolidate the fight against fiscal evasion.

#### Role of accountants, auditors and legal professions

66. According to the Albanian authorities, accountants and auditors have the obligation to report their doubts on the commission of any criminal offence by virtue of the legal provisions and rules for the functioning of the respective professional orders. The GET was also informed that Articles 183 and 300 of Law No 7638 of 19.11.1992 "On Commercial Companies" oblige accounting experts to notify competent authorities on violations of law provisions that they have faced during the audit of the companies. There is an association of professional auditors (even if they are called accountants) and two other associations of accountants.
67. In addition, subsection "f" of article 3 of Law No 8610 of 17.5.2000 "On the Prevention of Money Laundering"<sup>31</sup>, states that certified public accountants, financial advisors and certified auditors are required to report to competent authorities, in cases of prohibited money laundering transactions.

#### **b. Analysis**

68. The Commercial Code states the requirements for the establishment of a private company, including the registration of the company. The registration takes place at the Court of Tirana. Besides all the private companies, the court registers NGOs and political parties. The information in the registers is public, but not yet on the Internet. The Court is working hard on the computerisation of data on commercial companies (capital, shares, ownership and participation). This process has been completed for the period up to 2000.
69. To register a private company, all necessary documents must be submitted to the Court of Tirana. However, the Court does not check whether the information given is correct and

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<sup>31</sup> As amended by Law No 9084 of 19.6.2003 "For some additional and amendment in Law No 8610 of 17.05.2000 on the Prevention of Money Laundering"

undertakes only a formal control on the basis of the legal requirements. During the visit the GET was told that it is not even possible for the Court to check whether one of the persons having a leading position in the establishing company is subject to the additional sanction of limitation of right. The Court regrets not having the possibility to check the (criminal) records of the persons involved in the establishing company.<sup>32</sup> Therefore **the GET recommends to ensure that persons establishing companies are screened in respect of possible entries in their criminal record and/or limitations of rights to which they might be subjected.**

70. Currently, there is civil liability of legal persons for damages by virtue of Article 32 of the Civil Code. However, it is still not clear for the GET how and for which public or private entities this liability works in practice and if the legal persons held liable in accordance with Article 18 of Convention ETS No 173 can be subject to effective, proportionate and dissuasive sanctions, including monetary sanctions. Although Article 45 of the Criminal Code stipulates that legal persons are criminally liable for all offences, this recent article is not sufficient, because it requires the adoption of subsidiary legislation. At the time of the GET's visit, the Albanian government was preparing a new draft law for the implementation of Article 45 CC and there were still ongoing discussions on certain issues. Sanctions should be in conformity with the requirements of Convention ETS No 173. Appropriate training will be necessary for the police, prosecutors and judges to effectively implement these new provisions. Therefore **the GET recommends to adopt the necessary legislation to speedily implement liability of legal persons for offences of bribery, trading in influence and money laundering with sanctions that are effective, proportionate and dissuasive, including monetary sanctions, in accordance with the Criminal law Convention on Corruption (ETS No 173).**
71. The GET was told that there are several provisions on account offences. However, it is still unclear for the GET in which legal texts these provisions were included. In the opinion of the GET, the representatives of the Tax authorities were themselves uncertain about these provisions. According to Article 72 of the Law on accounting (Article 23 under the new law of 29.4.2004), violations of the accounting obligations under Article 21<sup>33</sup> (new Article 17) were subject to fines ranging from 3 000 to 5 000 lek (25-42€), while the new law, according to the Albanian authorities, provides for administrative, civil and criminal sanctions, without specifying them<sup>34</sup>. In the GET's view such sanctions are not dissuasive, and, in any case, neither proportionate nor effective with regard to the necessity to sanction accounting offences when committed intentionally, in order to commit, conceal or disguise the corruption offences as referred in Article 14 of Convention ETS No 173. **The GET recommends to review the system in place on accounting offences and to establish appropriate offences and sanctions in line with the Criminal Law Convention on Corruption (ETS No 173).**
72. According to Article 69 of the Law No 8560 "on Tax Procedures in the Republic of Albania", the tax bodies can give information on taxpayers to other state bodies only: to judges and prosecutors involved in ongoing tax cases, as well as in other criminal cases; to the Supreme State Audit, for all the taxpayers who are subject to its control according to the law; to the courts

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<sup>32</sup> The GET was told that new draft law on criminal liability of legal persons adopted by the Council of Ministers on 13.1.2005, provides for such screening before a person or persons apply to register a company. According to Article 33 of this draft law Articles 481-484 CPC (on the criminal record) are also applicable to legal persons.

<sup>33</sup> to assure protection on a regular basis and according to a certain filing system, of the inventory of opening the activity and other periodical inventories, annual accounts and annual report of the activity, of the documents, account books, documents on support to those registrations, as well as the other documents holding accounting information

<sup>34</sup> The sanctions may be either the criminal contraventions (misdemeanours) of Article 32 of the Criminal Code from 50.000 to 5.000.000 Leks (250 à 25.000€), or administrative contraventions (by virtue of the Law No 7697 of 7.4.1993 on administrative contraventions, or civil sanctions.

in all the cases for the taxpayers who have not exercised an economic activity or have not submitted any declaration for a period of more than two years. In these cases, the tax bodies have the right, as interested parties, to ask the court to revoke the licence of the person, according to the legislation in force. During the visit, the GET was told that there is a major problem with the use of double or false invoices. To fight the use of double or false invoices the tax authorities established strict procedures, clear laws and the right of the tax official to “reconstruct” the real taxes. This means that in case a tax official is of the opinion that the document provided by the tax payer, does not represent the real information, he may ignore this document. The tax official is even allowed to produce real documents on the basis of which the tax will be estimated. Unfortunately, the tax authorities do not pay attention to corruption; there are no guidelines to detect corruption and training programmes do not include corruption. Although the tax authorities acknowledged this lack of interest/focus on corruption, they are of the opinion that it is not within the scope and possibilities of tax officials to look for corruption; since corruption is a crime, specific (judicial) knowledge is needed for the investigation of corruption. Of course the GET acknowledges that tax officials are not investigation officers; however they can detect suspicions of corruption and report them to the prosecuting authorities in the most appropriate manner. The GET is of the opinion that tax authorities could and should play an important role in the fight against corruption. Directives, such as those contained in the OECD Bribery Awareness Handbook for Tax Examiners, and training would be helpful in this respect. Therefore **the GET recommends that tax authorities pay particular attention to the problem of corruption, particularly through directives and specific training modules concerning the detection of corruption offences and the enforcement of the relevant legislation.**

73. According to the Albanian authorities there is no tax deductibility for bribes, but the tax authorities could not clarify whether this implicit interdiction is working in practice. Tax authorities have the duty to report account offences only insofar as they concern tax matters and money laundering. That said, the GET was told that there had been no case where tax deductibility for a bribe had been requested to the tax authorities.
74. The Supreme State Audit (SSA) verifies the efficiency and utilisation of public finance, however, for the moment they only scrutinise problematic cases. Municipalities make use of private auditors and accountants. The SSA audit has a duty to report criminal offences. In case of a violation of the law they report to the prosecutor. In case of suspicion of corruption, the SSA first starts a preliminary investigation to make sure there is a suspicion of a crime. In case this suspicion is made clear, the State audit reports to the prosecutor. If they report to the prosecutor they inform the authority, which has been audited. The SSA acknowledges the considerable impact corruption has on the resources, and therefore sees detecting corruption as an important task. According to the SSA it is their function to pay attention to corruption during a control and each year the SSA audit detects many cases. There are training programmes on what corruption is, how to detect corruption and which areas to look for.
75. According to the Albanian authorities, Article 300 CC and the Law on Commercial Companies oblige private auditors and accountants to report suspected crimes. However, there are no reports made by auditors on corruption and probably this is the same for accountants. The Ministry of Finance is obliged to verify that the persons who aim at performing audits have not been sentenced in criminal proceedings. The GET was told that there are cases of disciplinary sanctions against auditors. For auditors it is mandatory to be a member of the professional association, and training is obligatory as well. There is no training on how to detect corruption, nor are there guidelines and explanations of the law. There are auditors' standards, but the association acknowledged that this is perhaps not sufficient for detecting corruption and that specific training would be useful. The GET was told that the Ministry of Justice has undertaken

important legislative initiatives to amend the company law and to review the role of accountants and auditors. According to the GET the auditors and accountants could play an enhanced role in the fight against corruption. This is particularly necessary, as the control of the finances of municipalities is carried out by private auditors and accountants only. Therefore, **the GET recommends that legislative developments be accompanied by guidelines and training for private accountants and auditors on how to identify signs of corruption and its proceeds as part of their professional activities and to report their findings.**

## V. CONCLUSIONS

76. Albania took several initiatives with a view to adapting the legal provisions concerning the seizure and confiscation of proceeds of crime as well as the criminal liability of legal persons. It also adopted a comprehensive anti-corruption strategy for the public sector and entrusted specific bodies with the task of monitoring that strategy. Several codes of ethics exist, including for sectors particularly vulnerable to corruption. The issue of conflict of interest has also been dealt with in greater detail, in particular through the preparation of specific legislation in this field. The High Inspectorate for Declaration and Control of Assets should continue to be supported in order to carry out its functions in an effective manner. The control of the registers of companies and on professional interdictions is to be strengthened. Finally, tax authorities, accountant and auditors could also play a more significant role in detecting and reporting corruption. In all these areas, a number of changes to the existing law, coupled with stricter enforcement, education and training and more detailed statistics, should help to achieve the intended results.
77. In the light of the foregoing, GRECO addresses the following recommendations to Albania:
- i. **to develop clear procedures to be used for police officers and prosecutors concerning financial investigations in respect of offenders' assets, in order to enable them to make full use of the relevant legal provisions on detection and seizure. Furthermore, resources, specialisation and training in this area should be increased** (paragraph 19);
  - ii. **to provide appropriate training for prosecutors and judges concerning the use of interim measures (preventive attachment) and confiscation, including value confiscation. The Albanian authorities should also consider establishing an appropriate apportionment of the burden of proof, in connection with a conviction, to assist the authorities in identifying corruption proceeds liable to confiscation in suitable cases** (paragraph 20);
  - iii. **the establishment of guidelines on detection of corruption to include typologies of operations that might involve corruption for persons and institutions with a duty to report suspicious transactions in the area of money laundering** (paragraph 22);
  - iv. **that the government promotes anti-corruption policies and measures at local and regional levels and monitors their implementation** (paragraph 44);
  - v. **to make sure that ethical rules apply to all public officials and collaborators of the public service including to situations where public officials move to the private sector** (paragraph 51);

- vi. **to provide proper training to all public officials regarding the existing rules on gifts by using, in particular, practical examples of potential conflict situations (paragraph 52);**
  - vii. **to encourage and facilitate the reporting of corruption in public administration and ensure protection of whistle-blowers (paragraph 53);**
  - viii. **to review the manner in which suspicions of corruption are being processed in public administration, in order to ensure the prompt initiation of criminal investigations, where appropriate (paragraph 54);**
  - ix. **to ensure that persons establishing companies are screened in respect of possible entries in their criminal record and/or limitations of rights to which they might be subjected (paragraph 69);**
  - x. **to adopt the necessary legislation to speedily implement liability of legal persons for offences of corruption, trading in influence and money laundering with sanctions that are effective, proportionate and dissuasive, including monetary sanctions, in accordance with the Criminal Law Convention on Corruption (ETS No 173) (paragraph 70);**
  - xi. **to review the system in place on accounting offences and to establish appropriate offences and sanctions in line with the Criminal Law Convention on Corruption (ETS No 173) (paragraph 71);**
  - xii. **that tax authorities pay particular attention to the problem of corruption, particularly through directives and specific training modules concerning the detection of corruption offences and the enforcement of the relevant legislation (paragraph 72);**
  - xiii. **that legislative developments be accompanied by guidelines and training for private accountants and auditors on how to identify signs of corruption and its proceeds as part of their professional activities and to report their findings (paragraph 75).**
78. Moreover, GRECO invites the Albanian authorities to take account of the *observations* made in the analytical part of this report (paragraphs 16, 18, 21, 23 and 50).
79. Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Albanian authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2006.