Groupe d'Etats contre la corruption
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

Strasbourg, 10 March 2006

Public
Greco Eval I-II Rep (2005) 2E

Joint First and Second Evaluation Round

Evaluation Report on Armenia

Adopted by GRECO
at its 27th Plenary Meeting
(Strasbourg, 6-10 March 2006)

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INTRODUCTION

1. Armenia joined GRECO on 20 January 2004, i.e. after the close of the First Evaluation Round. Consequently, Armenia was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds (cf paragraph 3 below). The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Cezary MICHALCZUK, Prosecutor, Department of International Cooperation and European Law, Ministry of Justice (Poland), Mr Flemming DENKER, Deputy Director, The Public Prosecutor for Serious Economic Crime, Copenhagen (Denmark), Mr Dimitar KUMURDJIEV, Legal Adviser, Former Member of the Commission on Protection of Competition, Sofia (Bulgaria) and Mr Jan VIDRNA, Director, Department of the General Inspection, Ministry of Justice, Prague (Czech Republic). This GET, accompanied by a member of the Council of Europe Secretariat, visited Armenia from 30 May to 3 June 2005. Prior to the visit the GET was provided with replies to the Evaluation questionnaires (documents Greco Eval I-II (2004) 3E Eval I – Part 1 and Greco Eval I-II (2004) 3E Eval II – Part 2), copies of relevant legislation, and other documentation.

2. The GET met with the Ministers of Foreign Affairs, Interior, Justice and Finance, and officials from the following governmental organisations: Council for Fighting Corruption, Monitoring Committee on the Implementation of the Anti-corruption Strategy, the Adviser of the President of Armenia on anti-corruption issues, Standing Committee of the National Assembly on State and Legal Issues, Control Chamber of the National Assembly, Ministry of Justice, Civil Service Council, Central Bank, Police, Prosecutor General's Office, Ministry of Finance and Economy, State Tax Service, Courts, Ombudsperson, State Procurement Agency, State Customs Service. Moreover, the GET met with members of the following non-governmental institutions: Association of Accountants and Auditors, Chamber of Commerce, Union of Entrepreneurs, Armenian Chapter of Transparency International, Union of Armenian State Civil servants, Union of Protection of Customers' Interests, Media.

3. It is recalled that GRECO, in accordance with Article 10.3 of its Statute, agreed that:

   - the First Evaluation Round would deal with the following themes:

     - **Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption[1]:** Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities[2]:** Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption); and .

   - the Second Evaluation Round would deal with the following themes:

     - **Proceeds of corruption[3]:** 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 paragraph 3, 13 and 23 of the Convention;

[1] Themes I and II of the First Evaluation Round
[2] Theme III of the First Evaluation Round
[3] Theme I of the Second Evaluation Round

- **Public administration and corruption[4]:** Guiding Principles 9 (public administration) and 10 (public officials);
- **Legal persons and corruption[5]:** 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, paragraph 2 of the Convention.

Armenia has ratified the Criminal Law Convention on Corruption.

4. The present report was prepared on the basis of the replies to the questionnaires and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Armenian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report presents – for each theme - a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Armenia in order to improve its level of compliance with the provisions under consideration.

I - OVERVIEW OF ANTI-CORRUPTION POLICY IN ARMENIA

a. Description of the situation

Perception of corruption

5. According to the findings of a survey conducted in 2002 by the Armenian chapter of Transparency International, corruption, in its broadest sense, is perceived as a major problem in Armenia. The Anti-Corruption Strategy, which was adopted in 2003 (cf paragraph 9), describes two different dimensions of corruption in Armenia: "upper" corruption, i.e. abuse of political or public authority that "takes place when politicians or senior public officials[6] abuse the political authority vested in them in the enactment of political decisions in pursuit of a personal gain or interest"; and "lower" corruption, i.e. "administrative corruption that is typical of middle and lower-level public officials who interact with the wider public on a daily basis". The latter form of corruption often materialises in "a fee paid to expedite the delivery of services". Corruption is perceived as being widespread in the following spheres: privatisation of state property; administration of public finances; service sector monopolies (such as energy, utilities, telecommunications, etc.); institutional and other monopolies (especially importation of oil, wheat, flour and other basic foodstuffs), and law enforcement agencies abusing the powers vested in them by law.

6. The low level of salaries is considered to be one of the causes of corruption within the civil service. The Armenian authorities report that in some areas of public administration the risk of corruption is higher than in others (i.e. those public services that imply frequent contact with the public at large, and areas where civil servant influence on certain decisions of an economic nature is relatively high). They also underline that specific anti-corruption measures are required within the tax and customs services, the law enforcement system, the judiciary, as well as in the education and healthcare sectors. According to the Armenian authorities, there are grounds to believe that connections exist between corruption and organised crime. Statistics provided by the

[4] Theme II of the Second Evaluation Round
[5] Theme III of the Second Evaluation Round
[6] The term "public officials" includes "civil servants" as defined by the Law on Civil Service (see paragraph 81) and all other persons serving in the state administration who may not enjoy a permanent status (i.e., according to the Law on Civil Service, "political position" and "discretionary position"- see paragraph 81 *in fine*).

Armenian authorities indicate that 274 cases of corruption were prosecuted in 2001 and 463 in 2002 (no more recent figures exist). Armenia, according to Transparency International's corruption perception index 2005, was ranked 88 out of 158 countries (rating 2.9 out of 10).

Criminal Law

7. Corruption and related offences are criminalised in separate provisions of the Criminal Code (hereinafter CC): "commercial bribe" (Article 200), "bribing the participants and organisers of professional and commercial sports competitions or shows" (Article 201); "abuse of official authority" (Article 308), "exceeding official authorities" (Article 309), "illegal participation in entrepreneurial activity" (Article 310); "taking bribes" (Article 311), "giving a bribe" (Article 312), "bribery mediation" (Article 313), "official forgery" (Article 314); and "squandering or embezzlement" (Article 179). Active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies and officials of international courts are subject to criminal liability pursuant to Articles 311, 312 and 313 (Article 308). The Armenian authorities underlined their willingness to include a separate provision in the CC covering the case of trading in influence in the future.

8. Armenia has signed and ratified the Council of Europe's Civil and Criminal Law Conventions on Corruption (ETS 174 and 173). An international treaty is required by Armenian law for the granting of mutual legal assistance in criminal matters. Armenia does not extradite its own nationals (Article 16, paragraph 1 of the CC). Citizens of Armenia, as well as stateless persons permanently residing in Armenia, who commit a criminal act outside the territory of Armenia are subject to criminal liability under the Armenian CC if the act committed is recognised as a crime in the legislation of the state where the offence was committed (Article 15, paragraph 1 of the CC),except for some specific offences (not for corruption) provided for in paragraph 2.

Major initiatives

9. On 6 November 2003, Armenia adopted a Government Anti-Corruption Strategy and Implementation Action Plan. The Strategy states that "the danger posed to society by corruption is extremely high" and that corruption has permeated virtually every area of life. It provides for organisational and legal measures aimed at preventing corruption within the following fields: banking, tax, customs, health care, education, environment, licensing, public procurement, public administration, and the judiciary. A special post of Advisor to the President on Anti-Corruption Policy was established to co-ordinate all anti-corruption activities and to initiate new activities at a high level. Moreover, pursuant to a Presidential Decree of June 2004, a Council for Fighting Corruption was established whose main objectives are to compare activities of the relevant bodies during the elaboration of measures to prevent corruption, to implement measures provided for in the Anti-Corruption Strategy and international obligations assumed by Armenia and to maintain co-operation with regional and international organisations in the process of fighting corruption[7].

[7] The Council for Fighting Corruption is composed of the Prime Minister, the deputy chairman of the National Assembly, the chairman of the Control Chamber of the National Assembly, the prosecutor general, the advisor to the President of the Republic on anti-corruption policy, the chief of the Government staff, the Minister of justice, the chairman of the Central Bank, the chairman of the Commission on the Protection of Economic Competition and the head of the Control Service under the President of the Republic.

10. In conformity with the same Decree, a Monitoring Committee[8] was established to assess the implementation of the Anti-Corruption Strategy. The Committee is entrusted with the responsibility to observe performance with respect to Armenia's international obligations; to implement proposals by international organisations; to monitor implementation of the Anti-Corruption Strategy and departmental anti-corruption programmes; to examine experience of public authorities and international organisations in the anti-corruption field; and to make proposals concerning the improvement of anti-corruption mechanisms. In order to carry out its activities and to comply with the procedure prescribed by law, the Committee is entitled to request - and to obtain access to - information and documents in the possession of state and local self-government bodies and to form permanent and ad hoc working (expert) groups. The Committee submits activity reports to the Council[9]. The top level governmental representatives of the Monitoring Committee met during the on-site visit informed the GET that the Committee had elaborated "a very comprehensive developed system to review the Strategy as a whole and, in particular, the legislative actions taken following the Strategy's plan".

b. Analysis

11. In the course of its transition to a market economy, Armenia has been faced with a number of serious economic and social problems, including the emergence of huge "grey" economy areas, high levels of tax evasion and illegal trafficking. In Armenia, both public authorities and civil society consider corruption as a major problem that affects many sectors of the public service. The sectors usually mentioned as being worst affected are the judiciary, the police, the customs service, the tax inspectorate, education, healthcare, licensing and privatisations. Perception of the level of corruption in the country is high (see paragraph 6 above).

12. Against the background of this challenging situation, there are no official studies that provide a clear insight into the scale of corruption in the country, the forms it takes, the areas mainly affected or its causes. The GET notes that some international as well as non-governmental organisations have conducted research and studies on the phenomenon of corruption in Armenia. Nevertheless, the GET is of the view that a study carried out on the basis of official information and/or data collected by those organisations directly involved in the prevention of/fight against corruption could be used to draw up more appropriate and hence more effective anti-corruption policies. This is all the more urgent since corruption is regarded as one of the main obstacles to the country's economic and social development. Therefore, **the GET recommends that the authorities of Armenia carry out the necessary studies in order to gain a clearer insight into the scale of corruption and its various features so that anti-corruption initiatives and plans can be targeted more effectively.**

13. During the evaluation visit, the GET was repeatedly told by the representatives of different Armenian authorities that fighting corruption was one of the top priorities for the government. On the other hand, the GET heard from the representatives of the civil society that citizens are not sufficiently informed about the government policies aiming at curbing corruption or about measures taken (or to be taken) in the anti-corruption area. The GET considers that it would be beneficial if the Armenian authorities more directly involved in the anti-corruption policies regularly informed the public and civil society about the anti-corruption measures taken and the results achieved. This practice should go hand in hand with raising public awareness of the

[8] The Monitoring Committee is composed of 7 MPs (the GET was informed during the on-site visit that opposition parties had declined to appoint their representatives), representatives of the executive branches, representatives of 7 NGOs and 5 representatives of international organisations such as the Council of Europe and OCSE.

[9] During the on-site visit, the GET was informed that in the last 2004 report, the Monitoring Committee had presented the results achieved and, in particular, that out of 92 "tasks" (actions to be implemented) over 60 had already been monitored.

dangers of corruption, the penalties that apply and are applied and the importance of co-operating with the bodies responsible for combating corruption, in particular by reporting suspicions of corruption. Therefore, **the GET recommends that all Armenian authorities involved in anti-corruption policies/activities inform, on a regular basis, the general public, civil society and the media of the measures taken and the results achieved. It also recommends that the public be informed about the avenues for reporting suspicions of corruption.**

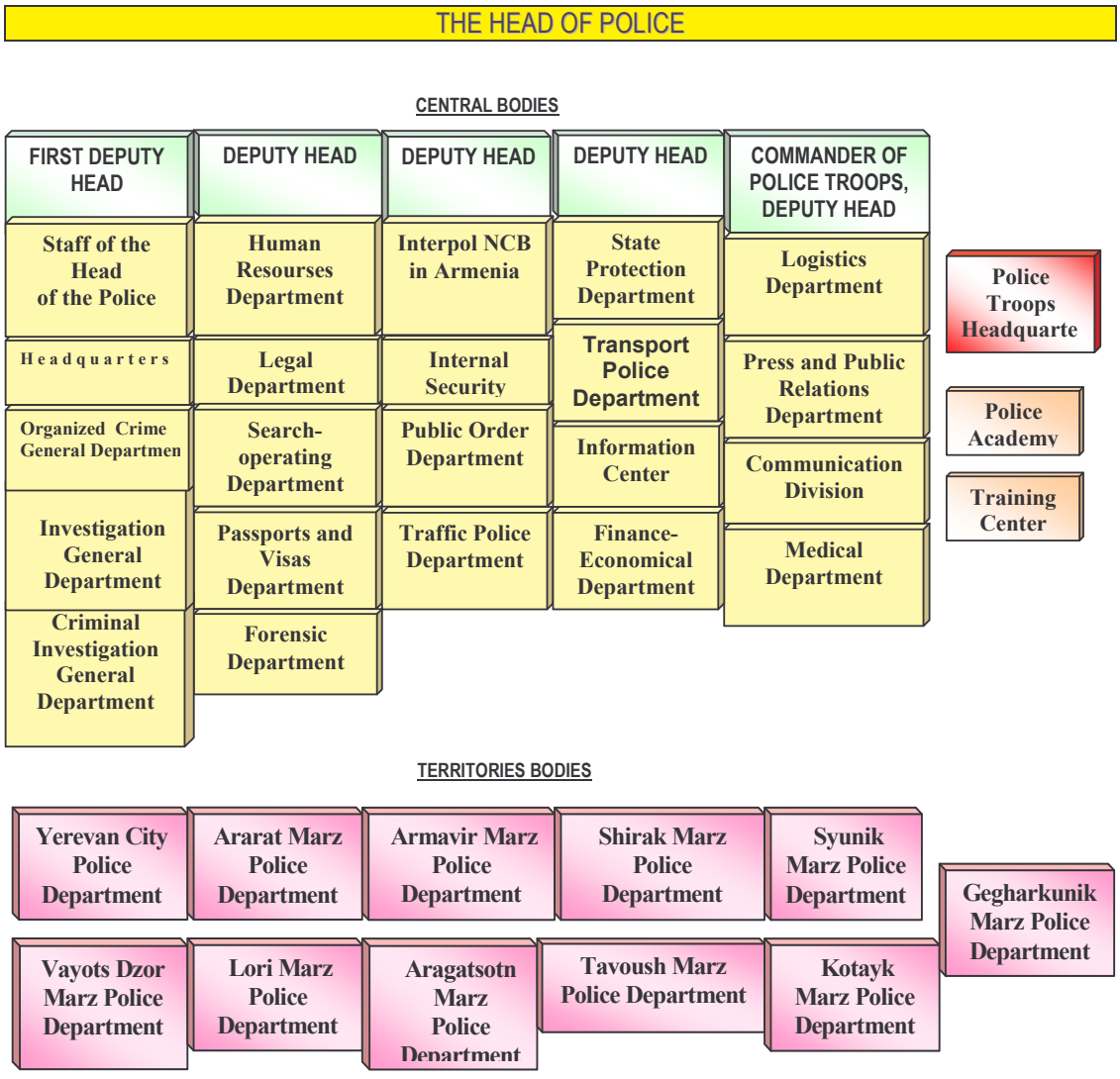
II – INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION AND FIGHT AGAINST CORRUPTION

a. Description of the situation

The Police

14. The Police are one of several investigative bodies and are responsible for maintaining public order and security and for ensuring respect of the legal and social order. The Police have both preventive and investigative responsibilities in the criminal field, preparing criminal cases for prosecution.

15. The following chart provides information on the structure of the police in Armenia



16. A special Department for Combating Organised Crime was established within the Police in September 1991. In conformity with the Head of the Police's Order of 2003, a separate Unit for Fighting Corruption and Economic Crime was set up as a sub-structure of the above Department. The main function of this Unit is the fight against corruption and abuse of office in the civil service, turnover in the "grey" sector of the economy, crimes in the financial and credit systems, money-laundering, economic crimes, money and securities forgery, illicit turnover of precious metals. During the visit, the GET was informed that the Unit was staffed by 42 police officers.

17. The Department for Internal Security was established as a sub-division of the Police in January 2003 with the objective to prevent and to investigate internal corruption cases. The Department is composed of the Division for Service Investigations, the Division for Operative Security, as well as the Records and Analysis Division. Within the scope of authority assigned to it, the Department supervises the activities of police staff by ensuring legitimacy in the operations of the police subdivisions, protecting the constitutional rights of citizens, as well as detecting and preventing abuse of office, bribery and other violations committed within the Police.

18. The procedure for instituting criminal cases is common for all crimes. Corruption cases are no exception in this regard.

Criminal investigation of corruption: special investigative means and witness protection

19. When carrying out investigations into criminal cases, including corruption, the Police may have recourse to special investigative means (hereafter SIMs), i.e. interception of communications. The relevant legal framework is provided by Articles 239 – 241 ("Monitoring of correspondence, mail, telegrams and other communications") of the Criminal Procedure Code (hereafter CPC). The authorities of Armenia state that once the Law on Operational Search Activity is in force[10], the issue of SIMs will be further regulated. No information was provided as regards other types of SIMs but it seems that their use is not provided for in the Armenian legislation.

20. No specific programme for the protection of witnesses and victims in criminal cases was available at the time of the visit.

Banking secrecy

21. Access to information protected by banking secrecy is a matter of special concern in Armenia and banking secrecy is considered as a legal obstacle to the criminal investigation of corruption offences. The current Law on Banking Secrecy, adopted in 1996, impedes the process of collecting and evaluating evidence as access to bank information is denied to investigation bodies except in the context of a criminal case when a charge is formally brought against a person (Article 10). In addition, the procedure for accessing such information is prescribed by Article 16 which states that the bank is obliged to deny requests for waiving banking secrecy if the request is not in consistency with the provisions of this Law. The authorities of Armenia believe that the only way to remedy the aforementioned shortcomings is to make amendments to the Law on Banking Secrecy by including the issue of banking secrecy with regard to investigation and adjudication of criminal cases within the scope of regulation of the CPC.

[10] During the on-site visit, the GET was informed that this bill was before the Parliament for examination/adoption.

The Prosecution Office

22. The main functions of the Prosecution Office are defined in Article 103 of the Constitution: "The Office of the Prosecutor General of the Republic of Armenia represents a unified system, headed by the Prosecutor General. The Office of the Prosecutor General shall: I) initiate criminal prosecutions in cases prescribed by law and in accordance with procedures provided for by law; 2) oversee the legality of preliminary inquiries and investigations; 3) present the case for the prosecution in court; 4) bring actions in court to defend the interests of the state; 5) appeal the judgments, verdicts and decisions of the courts; 6) oversee the execution of sentences and other sanctions. The Office of the Prosecutor General shall operate within the powers granted to it by the Constitution and on the basis of the law on the Office of the Prosecutor General".

23. Article 55.9 of the Constitution states: "The President of the Republic shall appoint and remove the Prosecutor General upon the recommendation of the Prime Minister"[11]. During the on-site visit, the GET was told that in practice the President can appoint and dismiss the Prosecutor General "in a completely discretional way". Within Chapter 6 (Judicial power) of the Constitution, Article 95 provides for the main Council of Justice's tasks[12]. With regard to the procedure for the appointment of prosecutors, Article 95.2 states that the Council of Justice "shall, upon the recommendation of the Prosecutor General, draft and submit for the approval by the President of the Republic the annual list of prosecutors, taking into account their competence and professional advancement, which shall be used as the basis for appointments"; and Article 95.4: the Council of Justice "shall make recommendations regarding the candidates for Deputy Prosecutor proposed by the Prosecutor General, and the candidates for prosecutors heading operational divisions in the Office of the Prosecutor".[13]

24. The national criminal system is based on the principle of mandatory prosecution[14]. According to information provided by the Armenian authorities in their replies to GRECO's questionnaire, the Criminal Procedure Code provides for specific cases where the criminal prosecution may not be instituted on the basis of the prosecutor's decision if he/she deems it groundless depending on the following:

"- the conduct of the person has caused no significant damage;
- the action committed is compensated by means of fine, restriction of rights and other deprivations that the person has been subjected to in connection with the action committed;
- the incurable, serious illness of the defendant".

Article 6 n° 18 of the CPC defines the "initiation of criminal prosecution" as a decision by a prosecuting body "to prosecute a person as an accused, to arrest the person or to take measures to secure his appearance in court". If the prosecutor refuses to conduct criminal prosecution, the decision can be appealed to a superior prosecutor or to the court. The superior prosecutor is also empowered to annul an illegal and groundless decision of a prosecutor by suspending the criminal prosecution on his/her own initiative with no prior application.

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[11] After the on-site visit, the Constitution was amended following a referendum held on 27 November 2005. Article 55.9 currently states : "The President of the Republic shall recommend to the National Assembly the candidacy of the Prosecutor General (…)" and "shall upon the recommendation of the Prosecutor General appoint and release the deputies of the Prosecutor General.".

[12] As for the Council of Justice's structure and functions, see paragraph 36.

[13] These two provisions are not in the Constitution anymore after the amendments introduced in November 2005.

[14] Cases of "private" prosecution are strictly limited to four types of crime: Infliction of wilful damage to health, battering, defamation and insult.

25. The Prosecution Office directs and supervises the investigative activities during the pre-trial proceedings. In this respect the work of the Prosecution Office includes mainly the following :

"1) to institute and carry out criminal prosecution ;
2) to investigate personally the criminal case in its full volume, taking necessary decisions during the preliminary investigation and implementing investigatory and other procedural actions ;
3) in case of a crime, to instruct the body of inquiry and the investigator to prepare the materials for the institution of a criminal case;
4) to instruct the body of inquiry and the investigator to conduct urgent investigatory measures or conduct them personally."

26. In accordance with Article 4 of the Law on the Prosecution Office and Article 53 of the CPC, when initiating criminal prosecution and implementing control over the lawfulness of preliminary investigation or further investigation, prosecutors must secure the co-operation and co-ordination of the appropriate law enforcement bodies. As far as criminal prosecution of cases related to corruption offences is concerned, according to the Armenian authorities, this may imply establishing investigation teams, developing joint plans for investigative and operative measures, planning the implementation of joint operations, exchanging the investigative and operative information, and overseeing the implementation of the directives of the prosecutors by the investigating bodies. The results of such activities are discussed and assessed during meetings held by the prosecutors.

27. In April 2004, by Order of the Prosecutor General, a Department for the Fight against Corruption was created within the structure of the Prosecutor General's Office. At the time of the on-site visit, the Department was staffed by 8 prosecutors. The primary objective of the Department is to concentrate all the means directed at the fight against corruption from the various areas of the prosecution system. Prosecutors working within the Department for the Fight against Corruption are entitled to receive all information related to corruption cases from all Armenian law enforcement agencies and are also empowered to carry out investigations in respect of these cases. The Department implements exclusively the operations envisaged by the Constitution, the Law on the Prosecution Office and other laws. No new, specific operational responsibilities or powers were bestowed upon it. No specific structure designed to fight internal corruption has been established within the prosecution system.

28. The Law on the Prosecution Office and the CPC contain provisions aimed at protecting prosecutors when discharging their responsibilities. In particular, Article 52 of the CPC provides that "during the exercise of his/her duties in connection with a criminal case, the prosecutor is independent and submitted only to law". A senior prosecutor has the right to dismiss a lower rank prosecutor from prosecuting a specific case if the prosecutor has breached the law during investigation of the case. Prosecutors are under the obligation to execute the legitimate instructions of a superior prosecutor. However, if the subordinate prosecutor considers the instruction illegitimate, s/he must appeal against it to a superior prosecutor without the instruction. During the on-site visit, the GET was informed that if the lower rank prosecutor does not agree with an instruction received by his/her superior related to a specific case, s/he can either ask to be "relieved" from prosecuting the case or can refuse to continue prosecuting the case. In these situations, the case is assigned to another prosecutor.

29. As regards disciplinary measures, Article 39 of the Law on the Prosecution Office states: "The following disciplinary penalties are applied to prosecutors (…): reprimand and dismissal from job". The procedure for dismissing a prosecutor is initiated by the Prosecutor General who makes a motion in this regard to the Council of Justice. The latter examines the Prosecutor General's

proposal and "presents a conclusion to the President of the Republic" (Article 29 paragraph 4).[15] A prosecutor's term of office may be terminated following his/her own request; on reaching the age of retirement (65 years); if the prosecutor has been found guilty of a criminal offence; and when considered unable to carry out his/her functions (including dismissal following a disciplinary procedure and for health reasons).

30. After the on-site visit, the GET was provided with information on prosecutors' training on corruption and other corruption-related matters. In particular, the General Prosecutor's Office reported that in 2004, the Research and Training Centre of the General Prosecutor's Office had organised seminars and training courses on : "Provisions of the Anti-corruption Strategy of the Republic of Armenia and the Project concerning Anti-corruption Strategy Implementation Measures"; "The concept of corruption and the necessity to prepare an anti-corruption strategy"; "International documents and international practice on fighting corruption"; "Anti-corruption strategy and national legislation"; and during the first half of 2005: "The methods and specifications of the investigation of economic and official crimes"; (28 prosecutor's office staff participated); "The main features of the legalisation relating to crime assets: crime particularities and methods of investigation" (27 participants); "The legal definition of the corruption, main paths of it's manifestation and methods of disclosure" (34 participants).

31. During the on-site visit, the GET was informed that a code of conduct for prosecutors had been recently adopted.

The Judiciary

32. The Courts which exercise jurisdiction in criminal matters in Armenia are the following:

- the court of first instance: Article 13 of the Law on the Judicial System states : " a court of first instance is a court which shall consider all cases concerning civil, criminal, military and administrative offences, as well as solve problems connected with taking into custody, with permission for carrying out searches, as well as with the restriction of the right for secrecy of correspondence, telephone conversations, postal, telegraphic and other means of communication in the order established by law". Seventeen courts of first instance exist, 7 of which in the city of Yerevan.

- the court of appeal: it hears appeals from the court of first instance. There is one appellate court dealing with criminal and military cases.

- the Court of Cassation: it carries out judicial review of all decisions of subordinate courts. Article 22 of the Law on the Judicial System establishes: "The grounds to submit an appeal for cassation shall be: violation of a substantive or procedural right of a person involved in a case during civil proceedings, violation of a substantive or court procedural right of persons involved in criminal proceedings, emergence of new circumstances.".

33. The general principle establishing the independence of the courts is provided by the Constitution (Article 97, paragraph 1): "All Judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the Law" and by the Law on the Status of Judges (Article 5): "During administration of justice judges shall be independent and subordinate only to law. During administration of justice judges shall not be accountable to any state body or

[15] After the on-site visit, the GET was informed that following the Constitutional changes, the Council of Justice does not have the authority to present the conclusions to the President as was the case before.

official. The grounds and procedure for determining professional responsibility of judges shall be prescribed by law."

34. The requirements for appointment as a judge are laid down in Article 13 of the Law on the Council of Justice: at least 25 years old, higher legal education, at least three years experience as a lawyer. Judges are appointed until the age of retirement, i.e. 65, and "may be removed only in accordance with the Constitution and the laws". According to 55, paragraph 11 of the Constitution, "the President of the Republic shall appoint (…) the president and judges of the Court of Cassation and its chambers, the courts of appeal, the courts of first instance and other courts (…); may remove from office any judge, confirm the arrest of a judge and through the judicial process, authorise the initiation of administrative or criminal proceedings against a judge (…)."[16] Article 95 of the Constitution lays down: "The Council of Justice shall, upon the recommendation of the Minister of Justice, draft and submit for the approval of the President of the Republic the annual list of judges, taking into account their competence and professional advancement, which shall be used as the basis for appointments".[17]

35. The general rules governing disciplinary procedures in respect of judges are set out in Article 95, paragraph 7 of the Constitution: "The Council of Justice shall take disciplinary action against judges. The president of the court of appeal shall chair the meetings of the Council of Justice when the Council is considering disciplinary action against a judge. The President of the Republic, the Minister of Justice and the Prosecutor General shall not take part in these meetings."[18] The Law on the Status of Judges (Articles 31 – Grounds for disciplinary responsibility of a judge, and 32 – Types of disciplinary responsibility) contains specific provisions with regard to the procedure to be followed. In particular, Article 31 states that the "disciplinary responsibility of a judge" is "imposed by the Council of Justice" and that the Minister of Justice is the person who "has the right to commence disciplinary proceedings against a judge".[19] A Code of Conduct for judges was adopted on 27 December 2001.

36. The Law on the Council of Justice lays down the structure and functions of this judicial body. Chapter 1 deals with the composition of the Council: the President of the Republic (chairperson), the Minister of Justice and the Prosecutor General (vice-chairpersons), 14 other members (two legal scholars, nine judges, and three prosecutors, appointed for a term of five years by the President of the Republic). According to Chapter 4 of the Law the functions carried out by the Council are *inter alia*:

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[16] For further details on the judges' immunities, see paragraph 51.

[17] Paragraphs 1, 2 and 3 of Article 95 of the Constitution amended in November 2005 state: "In conformity with the procedure stipulated in the law the Council of Justice shall: 1) form and present for approval by the President of the Republic the list of candidates of judges and the lists of their professional advancement, which shall be used as a basis for appointments; 2) give a conclusion on the submitted candidacies of judges; 3) nominate the candidates for the chairman of the court of cassation, chairmen and members of its chambers and candidates for the chairmanship of the appeal courts, first instance courts and specialised courts."

[18] This provision of the Constitution was amended after the on-site visit. Article 95 paragraph 5 reads as follows: "The Council of Justice shall (…) subject the judges to disciplinary responsibility, submit recommendation to the President of the Republic on terminating the powers of a judge, detaining him/her, on agreeing to involve him/her as an accused or instituting a court proceeding to subject him/her to administrative liability." In addition, Article 55 paragraph 11 states: "The President of the Republic (…) upon the recommendation of the Council of Justice shall appoint the chairmen and the judges of the Court of Cassation and its chambers, the appeal, first instance and specialised courts; shall terminate their powers; give consent to involve them as accused, detain them or initiate administrative proceedings against them through judicial process; upon the conclusion of the Council of Justice appoint judges of the appeal, first instance and professional courts."

[19] The reasons are: "violation of law during administration of justice, violation of an employment discipline, performing an action dishonourable for a judge, and violation of requirements of Articles 14 and 15 of this law" (duties of a judge).

- to prepare and submit to the President of the Republic the list of judges (upon recommendation of the Minister of Justice) and of prosecutors (upon recommendation of the Prosecutor General) for appointments and promotions;
- to "present recommendations" to the President of the Republic with regard to the career path of judges and prosecutors;
- to carry out disciplinary procedures with regard to judges and prosecutors[20]

The National Security Service

37. Corruption offences may also be investigated by the National Security Service. A special Department for Economic Security Provision has been functioning since 1999, which mainly focuses on corruption offences, in particular bribery in the sphere of management of the economy and privatisation. The activities of the Department are regulated by the relevant normative legal acts.

b. Analysis

Bodies and institutions responsible for combating corruption

38. The analysis of the Armenian anti-corruption system indicates that most of the institutional tools aimed at guaranteeing an effective fight against corruption are already in place and others (such as an anti-money laundering legislative framework and regime) are soon to be adopted and made operational. Nevertheless, the system still suffers from several shortcomings both in the areas of legislation, of implementation of existing anti-corruption measures/legislation, and with regard to the organisation of the justice system. Firstly, the GET noted that some of the existing organisational provisions place the executive in a position superior to the judiciary and therefore the independence of the latter seems to be at risk. Furthermore, the GET noted the existence of some serious obstacles to collecting evidence and to depriving offenders of the proceeds of corruption. With regard to these two latter issues, problem areas identified by the GET include legislation on banking secrecy, special investigative techniques, training for members of the law enforcement agencies, witness protection, assets declaration of judicial authorities and the anti-money laundering regime.

39. As indicated in the descriptive part of the present report, the Council of Justice plays a significant role in nomination and dismissal procedures as well as in disciplinary proceedings regarding judges. Nevertheless, the GET's view is that considerable power is vested in the members of the executive with regard to selection, career progress and dismissal procedures of judges and prosecutors. As to the nomination of judges, the Council submits to the President three candidacies and it is up to the President to choose one out of those three. It is also the President who consents to the arrest of a judge and the Council only submits its recommendation on that matter. Concerning appointment of prosecutors, the President makes a proposal to the National Assembly as to the appointment of the Prosecutor General and, upon a recommendation of the latter, appoints and dismisses the Prosecutor General's deputies. As regards disciplinary measures against prosecutors, at the time of the visit, the proceedings were initiated by the

[20] Following the Constitutional reform of November 2005, the general provisions regulating the structure and functions of the Council of Justice are set out in the Constitution: Article 94.1 states: "The Constitution and the law shall define the procedure for the formation and activities of the Council of Justice. The Council of Justice shall consist of up to nine judges elected by secret ballot for a period of five years by the General Assembly of Judges of the Republic of Armenia in conformity with the procedure defined by the law, two legal scholars appointed by the President of the Republic and two legal scholars appointed by the National Assembly. The sittings of the Justice Council shall be chaired by the Chairman of the Court of Cassation without the right to vote". As for the Council of Justice's functions see Article 95, (footnotes n° 17 and 18).

Prosecutor General who made a motion to the Council of Justice. Based on this motion, the Council of Justice presented a "conclusion" to the President of the Republic who finally took the decision. After the visit, the GET was informed by the Armenian authorities that following the Constitutional reform of November 2005, the Council of Justice does not have the power to present its conclusions to the President in disciplinary proceedings against prosecutors. This creates the impression that the independence and autonomy of members of the Judiciary is not fully guaranteed and "appropriate to their functions" as requested by Guiding Principle n° 3 for the fight against corruption. Therefore, the GET **recommends that the rules dealing with the organisation of the judicial system be reviewed in order to secure full independence of the judiciary vis-à-vis the executive power.**

40. Judges and prosecutors are required to submit periodic assets declarations to the tax authorities. The latter collect these declarations but they are not in a position to check their correctness and reliability. This is because there is no legal provision that grants such powers to the tax authorities. During the on-site visit, the GET was told that fiscal services have the appropriate tools to carry out such a duty if it was vested in them by the law. The issue of establishing a proper system of review of civil servants' asset declarations (and those of members of the judiciary) is dealt with in greater detail in paragraph 113.

Training

41. In spite of the fact that, after the on-site visit, the authorities of Armenia provided the GET with a detailed list of activities (mainly seminars) organised by the Research and Training Centre of the Prosecution Office on corruption and some other related crimes, both prosecutors and judges met during the visit complained about the inadequacy of training devoted to fighting corruption and money laundering. The absence of specialised training for these categories of professionals (including members of the police) appears to be a genuine shortcoming of the Armenian system and contributes to the low level of professional knowledge of corruption and money laundering offences as well as to the ineffectiveness in combating such crime. In the GET's opinion, this state of affairs is not in line with the requirements set out in Guiding Principle 7 (i.e. specialisation and training of persons in charge of fighting corruption). Consequently, **the GET recommends to establish a model for systematic training of police officers, prosecutors and judges on issues of corruption and money laundering.**

Criminal investigation of corruption, bank secrecy, special investigative means and witness protection

42. In order to ensure that the police and the Public Prosecution Office's investigative activities are efficient and effective, there is a need to clearly define the structure of the police forces operating in the country and, above all, to clarify the police and prosecutor office's respective roles, functions and specific tasks during the preliminary stage of the investigations with regard to any criminal offence and in particular to corruption. During the on-site visit, the GET was repeatedly told that since corruption offences are relatively recent "in their new formulation" [21], there was "no clear division of tasks between the different law enforcement agencies, notably the police and the public prosecution office". In order to concentrate all the means directed at fighting corruption, a specific department was created in April 2004 within the general prosecution office. At the time of the on-site visit, this department was staffed by only eight prosecutors. The GET was informed that the ordinary police normally takes the preliminary investigation steps in corruption cases. The cases are then handed over to the special department for the fight against corruption.

[21] The new Criminal Code was adopted on 18 April 2003.

Therefore, **the GET recommends that the Armenian authorities streamline the work of the anti-corruption investigative bodies by clearly defining their responsibilities, above all to ensure more effective cooperation between the police and the prosecutors during the initial stage of corruption investigations.**

43. According to Articles 10, 13 and 16 of the Law on Banking Secrecy of 1996, banks are not allowed to reveal to the law enforcement authorities any account holder information nor information on any person authorised to effect transactions, unless a court order is issued and only when the holder has been formally charged with an offence. In this context, it can be difficult to charge the suspect without prior, detailed information both on his account and on transactions carried out. It is of the utmost importance for the success of an investigation as well as the further stages of criminal proceedings (especially for the purposes of evidence gathering) that investigating authorities are granted full, justified access to such information and data. This power is deemed indispensable in cases of money laundering but also in most corruption cases. The absence of appropriate legal solutions may hamper not only domestic but also international investigations. Therefore, **the GET recommends to amend the legislation on banking secrecy to enable the law enforcement authorities to obtain all relevant information on account holders and operations on bank accounts even before formal charges are brought.**

44. Moreover, even if a court order on banking information is issued, offenders may still easily slip through the net, e.g. by destroying evidence and/or removing/transferring assets and investing them at home or abroad. This is because, by virtue of Article 11 of the Law on Banking Secrecy, banks are obliged to inform their customers of any judicial request for information concerning their accounts. This situation calls for immediate improvement as, in cases of corruption, the interests of the customer should not take precedence over the interests of justice. There is no doubt that, in practice, Article 11 hampers all investigative efforts and unreasonably favours the offenders. Consequently**, the GET recommends that the Law on Banking Secrecy is amended to prevent banks from disclosing judicial requests for information to their customers.**

45. During the on-site visit, the GET examined the use in practice of the existing special investigative techniques (SITs) such as provided for by Articles 239-241 of the Criminal Code and held thorough discussions with the representatives of the different bodies involved in investigative activities. The GET concluded that the Armenian legislation does not embrace the modern concept of SITs and that, in practice, only the security services make use of a limited number of SITs, mainly telephone tapping. No statute envisages the use of other SITs, i.e. controlled purchase on delivery, undercover operations, undercover agents, anonymous witnesses etc. The absence of a comprehensive legislative framework on SITs does not facilitate the law enforcement bodies' work when conducting investigations on corruption offences, notably during the preliminary stage of criminal proceedings. This state of affairs is not in line with Guiding Principle 3, which provides that those in charge of the investigation of corruption offences "should have effective means for gathering evidence". Therefore, **the GET recommends to adopt legislative and other measures to establish an efficient system of special investigative techniques and to provide the competent agencies with appropriate means and training in order to make this system work efficiently in practice.**

46. In Armenia, there is no Witness Protection Programme. Even though the law stipulates that the Police, the Prosecution Office and the courts are responsible for the protection of vulnerable participants in investigation and criminal proceedings (i.e. Articles 98 and 99 of the Criminal Procedure Code), there are no detailed regulations on how such protection could be ensured in a

systematic way. There is no mention of permanent changes of location or identity, protection of relatives, international co-operation, financial aspects of protection etc. The absence of a proper legislative framework makes it impossible to apply, if necessary, any systematic and effective protection of witnesses and collaborators of justice (and their relatives). The GET is well aware that making a witness protection programme operational would require a considerable financial outlay but is of the opinion that the costs may be substantially reduced, i.e. if the programme is applied only in the most serious cases. Consequently, **the GET recommends to adopt legislative measures to ensure that appropriate witness protection programmes can be introduced in practice.**

III - EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

47. "The President of the Republic may be removed from office for treason or other serious crimes" (Constitution, Article 57), which according to the Armenian authorities includes also corruption. In order to institute criminal proceedings against the President, an impeachment process must be initiated, whereby the National Assembly must appeal to the Constitutional Court by a resolution adopted by the majority of its members. Based on the decision of the Constitutional Court, the National Assembly must then adopt a decision to remove the President from office by a minimum of two thirds majority.

48. Members of the National Assembly, while exercising their functions and thereafter, may not be prosecuted or held liable for actions arising from their status and for opinions expressed in the National Assembly, unless these opinions are insulting or defamatory. Deprivation of liberty and initiation of criminal or administrative proceedings against MPs are not possible without the National Assembly's consent given in accordance with the procedure defined by law (Constitution, Article 66, Law on the Rules of Procedure of the National Assembly, Article 9). Candidates running for election to the National Assembly may be detained, and administrative or criminal charges brought against them with the consent of the Central Electoral Committee only (Article 111, the Electoral Code).

49. Members of the Constitutional Court cannot be detained nor can criminal or administrative proceedings be instituted against them without the determination of the Constitutional Court and the consent of the body having appointed that member, i.e. either the National Assembly or the President[22] (Article 97 of the Constitution and Article 12 of the Law on the Constitutional Court).

50. The Human Rights Defender (Ombudsman) enjoys immunity from criminal prosecution over the entire period of exercising his/her powers, nor can s/he be detained or arrested (Article 19 of the Law on Human Rights Defender). The Defender and his/her place of residence cannot be searched without the Consent of the National Assembly. Exemptions are also extended to the Defender's luggage, correspondence, means of communication and documents. If the Defender is caught in the act of committing a crime, the official person executing the arrest must immediately inform the National Assembly thereof so that a decision can be made on granting consent to allow further enforcement of the arrest. If such consent is not obtained within 24 hours, the Defender must be released. The Defender has the right to refuse to testify as a witness in a criminal or a civil case on circumstances which became known to him/her in the course of performing his/her responsibilities.[23]

[22] Five judges of the Constitutional Court are appointed by the National Assembly and four members by the President.
[23] Following the Constitutional reform of November 2005, Article 83.1 has been introduced, which provides, among others, that "the Human Rights Defender shall be endowed with the immunity envisaged for the Deputy".

51. Judges cannot be taken into custody, and criminal or administrative charges cannot be brought against them without the consent of the President of the Republic based on a recommendation of the Council of Justice[24] (Articles 55, paragraph 11 and 95 paragraph 6 of the Constitution. Article 11 of the Law on the Status of Judges). Only the Prosecutor General may commence a criminal prosecution against a judge and oversee the legality of the conduct of investigation of the case. In case of arrest or detention of a judge, his/her personal or his/her home search, the President of the Republic and the Council of Justice must be immediately informed.

52. Criminal proceedings against prosecutors and investigators may only be instituted by the Prosecutor General (Article 37 of the Law on the Prosecution Office). The examination of statements and reports concerning the commission of a crime by a prosecutor fall within the exclusive competence of the Prosecutor General's Office.

53. Members of Central, Regional and Local Electoral Commissions may not be detained and administrative and criminal charges may be brought against them only with the consent of the Central Electoral Committee (Article 33 of the Electoral Code). The same principle applies to members of the electoral commissions in electoral districts and precincts in the course of elections.

54. Candidates for local self government bodies may be detained only with the consent of the electoral committee of electoral districts (Article 127 of the Electoral Code).

55. If there are strong presumptions that an Armenian diplomat has committed an act of corruption in the country in which s/he benefits from diplomatic immunity, the Armenian authorities may lift the immunity.

b. Analysis

56. The GET was concerned about the rather wide scope of immunities. Ten categories of persons enjoy immunities. These categories comprise not only a justifiable range of holders of public office. Parliamentary candidates, members of the central electoral commission, members of regional and local electoral commissions and even candidate mayors and candidates for membership of the council of elders (local council) can also benefit from immunity from prosecution under the Electoral Code. The GET is of the opinion that the immunity for the categories of persons mentioned above is incompatible with Guiding Principle 6 because such immunities constitute a privilege and are not related to the status and activities of the holders of public office concerned. Accordingly, the GET welcomed the expressed desire of the Armenian authorities to restrict the categories of persons enjoying immunity and, **therefore recommends to consider reducing the categories of persons enjoying immunity from prosecution and to abolish, in particular, the immunity provided for parliamentary candidates, members of the central electoral commission, members of regional and local electoral commissions, candidate mayors and local council candidates.**

57. The GET was also concerned about the complexity of the rules dealing with procedures for lifting immunity. In particular, as regards judges' immunity the proposal of the Prosecutor General to withdraw immunity can not be discussed in the Council of Justice without the consent of the President of Armenia (a political figure)[25] as well as the Chairman of the Council (Article 1 of Law

[24] As modified following the Constitutional reform (see footnotes n°17 and 18).

[25] Following the Constitutional changes of November 2005, the President of the Republic is no longer the Chair of the Council of Justice.

on the Council of Justice; Article 11 of Law on Status of Judges). The Council can only make a recommendation to the President regarding the removal from office and the arrest of a judge, and the initiation of criminal proceedings against a judge. The discretionary power belongs to the President who is not bound by the recommendation of the Council. In the GET's opinion, the procedure for lifting judges' immunity is rather complicated, involving different bodies. However, the President of the Republic and the Prosecutor General, whose appointment/position depends on the President himself, play a clearly predominant role. The GET was informed that only two judges had been subject to this procedure. By contrast, the withdrawal of prosecutors' immunity can be initiated and finally decided on by the Prosecutor General without any decision/recommendation by the Council of Justice. Consequently, **the GET recommends to reconsider the procedures for lifting immunities of prosecutors and judges by reducing the involvement of predominant individual decision makers (i.e. the President of the Republic/Prosecutor General).**

IV – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

58. In the Armenian legal system, confiscation and forfeiture are two distinct mechanisms used for the deprivation of instrumentalities and proceeds of crime. Confiscation is a supplementary sanction, the imposition of which depends on the criminal responsibility of the offender and is ordered only in cases provided for by the Special Part of the Criminal code and "for grave and particularly grave criminal offences committed with mercenary motives" (Articles 50 (3) and 55 (3) of the CC)[26]. It may not be imposed on certain types of property necessary for the convicted person or the persons under his/her care, in conformity with the list established by law (Article 55(4) of the CC)[27]. Forfeiture is a mandatory measure applied notwithstanding penal responsibility (CPC, Article 119) and it is ordered by the court to deprive the offender of anything that was used in the commission of the offence.

59. The current legislation does not provide for value confiscation. In their replies to GRECO's questionnaires, the authorities of Armenia made a reference to a 1953 Decision of the USSR Supreme Court "On Judicial Practice regarding Confiscation"[28], which expressly prohibits substituting property subject to confiscation with the amount equalling its value.[29] The CPC does not generally differentiate between primary and secondary proceeds. According to the Armenian authorities, this might imply that the legal provisions on confiscation are applicable to any proceeds of crime regardless of whether or not they are primary or secondary.

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[26] Grave crimes are those punishable by imprisonment for a term not exceeding 10 years, and particularly grave crimes for a term of more than 10 years.

[27] Article 55. Confiscation of property.

1. Confiscation of property is the enforced and uncompensated seizure of the property considered to be the convict's property or part thereof in favour of the state.
2. The amount of confiscation is determined by the court, taking into consideration the damage to property inflicted by the crime, as well as amount of criminally acquired property. The amount of confiscation can not exceed the amount of criminally acquired property or profit.
3. Confiscation of property can be assigned in cases envisaged in the Special Part of this Code and for grave and particularly grave crimes committed with mercenary motives.
4. The property necessary for the convict or the persons under his care is not subject to confiscation, in accordance with the list envisaged by law.

[28] After the on-site visit, the Armenian authorities informed the GET that this decision had been abolished in December 2005.

[29] At the same time, the Armenian authorities noted that the value of special categories of property may be assessed when it is subject to the imposition of interim measures (i.e. arrest of property).

60. Instrumentalities of crime, as well as certain other objects which are "subject to withdrawal from circulation", must be forfeited (Article 119 (1) of the CPC).

61. Neither the CC nor the CPC contain any provisions relating to the confiscation of proceeds and instrumentalities of crime from natural persons in their capacity as third parties. Nevertheless, according to the Armenian authorities, property transferred to a third party may be confiscated pursuant to the aforementioned 1953 Decision "On Judicial Practice regarding Confiscation", which stipulates that if the verdict of a criminal court establishes that the property included in the confiscation list has, through fictitious transactions, been registered as property owned by others with the aim of hindering its confiscation, these transactions must be considered void.[30]

62. In cases of confiscation, the burden of proof always lies with the prosecutor and cannot be reversed.

63. Compensation for damages suffered by the victim is a usual judicial practice. In particular, if the court's decision involves the confiscation of property, the victim has the right to first obtain compensation for the damage suffered and then the rest of the assets must be confiscated. In cases where the person who had suffered the damage is unknown, the funds will accrue to the state budget (Article 119.4 of the CPC). Advantages obtained through crime are normally removed by mechanisms provided for by the Civil Code in the form of consequences of invalid transactions.

Interim measures: seizure of material evidence and "arrest" of property

64. As far as the imposition of interim measures is concerned, the general principle is that seizure serves as a precondition for securing future confiscation of the instrumentalities and proceeds of crime. The established legal approach is that, since the instrumentalities and proceeds of crime are qualified as material evidence within the meaning of Article 115 of the CPC, they are subject to mandatory seizure. Depending on their nature and size, seized items are kept either by "the body which carries out the criminal case" or by the private company, owner or manager of the property. Precious stones and metals, foreign currency, money, cheques, and securities seized in the course of a criminal investigation may be sent "to enterprises of the State Bank for maintenance as long as their individual characteristics have no evidential value" (Article 116 paragraphs 1 and 2 of the CPC).

65. "Arrest" of property is a measure specifically designed to guarantee the execution of "civil claims, to prevent possible seizure and to cover court expenses" (Article 232 of the CPC). Article 233 of the CPC states: "Arrest of property can be applied by the bodies conducting criminal proceedings only in the case when the materials collected for the case provide sufficient grounds to assume that the suspect, the accused or other person who has the property, can hide, spoil or consume the property, which is liable to seizure." It is carried out by the "investigating body" and "must indicate the property subject to seizure, the value of the property based on which it is sufficient to impose arrest to secure the civil claim and court expenses."

66. As far as the management of seized/confiscated property is concerned, with the exception of real estate and large-sized items, "other property, as a rule, is taken away" (Article 236 paragraph 1 of the CPC). Precious metals and stones, foreign currency, cheques, securities and lottery tickets are handed over to the Treasury for safekeeping, whereas other items are sealed and kept at the

[30] See footnote n° 28.

body which made a decision on seizure or are given for safekeeping to the state property office or local self-government representatives (Article 236 paragraph 2 of the CPC). Property that has not been taken away is sealed and kept with the owner or manager of the property or adult members of his/her family who are advised as to their legal responsibility for damage or alienation of this property (Article 236 paragraph 3).

Statistics

67. The authorities of Armenia provided the following information/statistics :

	Article 185 Accepting a bribe		Article 185.1 Mediation for a bribe		Article 186 Giving a bribe	
	Nb of convicted individuals	Confiscations of property	Nb of convicted individuals	Confiscations of property	Nb of convicted individuals	Confiscations of property
2000	28	0	0	0	16	0
2001	19	7	2	0	6	1
2002	9	2	0	0	1	0

	Prosecution of cases of corruption (and corruption related) offences initiated[31]	Arrest on property to ensure confiscation	
		Drams	Euros
2000	217	152 399 400	284 585,81
2001	274	117 121 557	218 709,08
2002[32]	463	1 759 471 864	3 285 581,98

[31] According to the authorities of Armenia, "these are mainly cases of appropriation of state property and official crimes".
[32] As far as the data for 2003-2004 are concerned, they are yet to be summarized on the basis of new statistical criteria developed and approved following the entry into force of the new Criminal code on 1 August 2003.

Money laundering

68. Article 190 of the CC criminalises money laundering : "Financial or other transactions with obviously illegally obtained financial resources or other property for the purpose of using such funds or property for entrepreneurial or other economic activity, to conceal or to distort the essence, origin and whereabouts of these assets or rights pertaining to them, their placement, movement or actual identity, is sanctioned by a fine of 300 to 500 minimum salaries, or by imprisonment for a term of up to 4 years with or without a fine of up to 50 minimum salaries". The authorities of Armenia stated that all corruption offences are predicate offences to money laundering, even if committed outside Armenian jurisdiction (subject to double criminality).

69. A "Law on the Fight against Legalisation of Proceeds from Crime and Financing of Terrorism" (hereafter LCP/FT) was adopted on 14 December 2004. According to the Law, "The Central Bank is the body authorised to combat LCP/FT". In April 2005, the Financial Monitoring Center – a separate subdivision responsible for coordination of Anti-Money Laundering activities – was established within the Central Bank. The Center is the national financial intelligence unit (FIU). The goal, objectives, functions and structure of the FIU are defined in its statute :
    - development and maintenance of an Anti-Money Laundering/Financing Terrorism (hereafter AML/FT) database,
    - processing and analysis of AML/FT data,
    - information exchange and cooperation with the Armenian state bodies, including law enforcement agencies,
    - information exchange and cooperation with international organisations and foreign financial intelligence units,
    - reforming the AML/FT standards,
    - ensuring (supervising) compliance with the requirements of AML/FT laws,
    - consultation and training on AML/FT issues.

70. At the time of the on-site visit, in order to make the Center operational, the Board of the Central Bank had approved and published the Center's three-year strategy and the 2005 schedule of activities. The three-year strategy comprises the following priority directions for the Center's activities:
    - formation of the Center's institutional and functional capacity,
    - enhancing public awareness on AML/CFT issues,
    - domestic cooperation on AML/CFT,
    - international cooperation on AML/CFT,
    - ensuring implementation of the mandatory requirements of AML/CFT legislation.

71. Articles 3 d) and 5, paragraph 1 of the Law on the Fight against Legalisation of Proceeds from Crime and Financing of Terrorism contains a detailed list of institutions that are obliged to report "suspicious transactions connected with legalisation of criminal proceeds and financing of terrorism, and other transactions, stipulated by this Law, to the Authorised body" (FIU)[33]. During the on-site visit, the GET was informed that the FIU was in the process of setting up its database. The GET was also told that during the first four months of 2005 no suspicious transaction reports had been sent to the newly established FIU.

[33] Banks, credit organizations; dealer traders of foreign currency, foreign currency traders; entities performing money transfers; organizations involved in processing and clearing of payment instruments and payment documents; entities specialized in securities market; pawnshops; authorities registering property rights; entities verifying transactions according to the procedure and in cases, determined by the law; entities, organizing prize games and lotteries; casinos; trust managers; entities engaged in insurance; entities engaged in investing; non-trading organizations giving gifts (also organizations extending grants), according to the law of the Republic of Armenia.

72. Following the adoption of the AML/CFT law, the law on bank secrecy was amended. The amendment states that if the Central Bank, after the analysis of information under the AML/CFT law, finds that there has been a case of money laundering or terrorism financing, it has to report to the competent prosecuting agency. This implies that:
- legal provisions on the protection of bank secrecy must not obstruct banks in reporting any money laundering or terrorism financing case to the Central Bank,
- the Central Bank has to report to the prosecuting agencies any information that, as a result of analysis by the Financial Monitoring Center, indicates cases of money laundering or terrorism financing, even if such information is covered by bank secrecy.

Mutual legal assistance: provisional measures and confiscation

73. The Prosecution Office and other law enforcement bodies of Armenia may request legal assistance from foreign law enforcement agencies on any criminal case, including corruption, on the basis of international agreements and the provisions of Chapter 54 of the CPC ("The relationship between courts, prosecutors and investigation agencies with the respective agencies and officials of foreign states in the framework of legal assistance in criminal cases"). When Armenia is the requesting state, the request to conduct investigative operations (including seizure) is sent by the Prosecutor General and the request to carry out procedural acts by the Ministry of Justice or his/her deputies (Article 474). When Armenia is the requested state, the courts, the prosecutors or investigators execute a foreign state's instruction in accordance with the CPC (Article 477). Requests are not implemented when doing so could affect the independence or security of Armenia or when they contradict its legislation.

74. In addition to the above, the Law on Compulsory Execution of Court Decisions (adopted on 5 May 1998) provides for the compulsory execution of judgments and decisions by foreign and arbitration courts, in conformity with the provisions of the international agreements concluded.

75. According to statistical information provided by the Armenian authorities, from January 1999 to September 2004, 607 foreign requests for legal assistance were received by the General Prosecutor's Office, of which 45 concerned corruption-related offences. During the same period, 45 requests (none of them relating to corruption offences) were addressed by the Armenian law enforcement bodies to foreign countries.

b. Analysis

76. The representatives of different investigative bodies met by the GET during the on-site visit stated that confiscation of proceeds of crime can vary in nature and that it can only be applied in respect of a part of the assets belonging to the accused person. In cases where the amount of the proceeds cannot be clearly determined, the court can make an estimate of the value of property to be arrested (confiscated) at market prices, pursuant to Article 234 (1) CPC. The GET understood that this judicial estimate of assets is possible only when their value can be precisely calculated. Moreover, the Decision "On judicial practice concerning confiscation" (adopted by the Supreme Court of the USSR in 1953 and still in force, according to the Armenian authorities) clearly spells out that "when passing a sentence envisaging confiscation as a supplementary punishment the court shall in unambiguous terms state the volume of confiscation to avoid vagueness or doubts during execution. In particular, the court shall state the exact proportion (1/2, 1/3, etc) of property or the list of items subject to confiscation should a decision on partial

confiscation be taken." The same decision adds that "substituting the property subject to confiscation with the amount equalling its value is prohibited"[34].

77. In addition, the GET is of the opinion that there are serious loopholes in the Armenian legislative system which may hinder the practical application of confiscation when proceeds are held by third parties. In particular, the investigating/prosecuting authorities met by the GET during the on-site visit were not able to identify the legal provisions that apply when carrying out confiscation of proceeds transferred to third parties. Some interlocutors mentioned Article 119 of the Criminal Procedure Code but at the same time indicated that this provision is not at all clear. On the other hand, in the replies to GRECO's questionnaire, Article 232 of the Criminal Procedure Code was indicated as containing the main provisions dealing with confiscation of proceeds transferred to third parties. However, the GET notes that in Article 119 of the Criminal Procedure Code no specific reference is made to third parties and that Article 232 of the Criminal Procedure Code deals with provisional measures (see further details in paragraph 65 above). In the GET's view, there is considerable uncertainty with regard to the issue of the grounds on which value confiscation can be decided and to whether proceeds or instrumentalities of crime can be confiscated from third parties. During the on-site visit, it was also clearly stated that the burden of proof always lies with the prosecutor and cannot be reversed. Therefore, **the GET recommends that legal provisions be introduced allowing 1) the confiscation of assets of an equivalent value to the proceeds of corruption offences and 2) the effective confiscation of assets held by third parties.**

78. To conduct a search at the preliminary stages of proceedings, the police or the prosecutor have to obtain a prior court order. There are no exceptions to this rule even in cases of immediate urgency, where the search has to be conducted in view of collecting evidence or proceeds that could be lost. In such urgent situations, there may well be problems in obtaining the requisite court order speedily; in the GET's view, this procedure clearly slows down the pace of the investigation and may result in irreversible loss of evidence. In view of the above, **the GET recommends to simplify (and speed up) the system for authorising a search in cases of immediate urgency.**

79. The GET is of the opinion that the anti-money laundering system is, in general, comprehensive and in line with widely recognised international standards (well-defined reporting criteria and obligations, a wide range of entities having an obligation to report, the establishment of an FIU etc.). Nevertheless, the GET considers that the real challenge for the newly designed system is to become fully operational and effective in practice. The GET met with the nine staff of the newly created[35] Armenian Financial Monitoring Centre (FIU), operating within the Central Bank. It was informed, *inter alia,* that the FIU was about to start setting up its database and establishing its internal regulations in order to make it operational. It was also told that no STRs had been received by the Unit during the first four months of 2005. The GET considers that officials of the FIU need to be provided with all the tools and knowledge/training necessary for carrying out their delicate and important functions in the most effective way possible. Therefore, **the GET recommends to ensure that the new anti-money laundering system becomes operational as soon as possible and to rapidly provide the Financial Monitoring Centre's staff with training on how to implement the new rules and regulations in the most effective manner, including information to the entities having an obligation to report suspicious transactions.**

[34] See footnote 28.
[35] At the time of the visit, the body had been operational for one month.

V – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

80. There is neither a legal nor a constitutional definition of the concept of public administration. The Law on the Civil Service, adopted on 4 December 2001, (hereinafter LCS) provides that "public service is the exercise of the powers vested in the State by legislation, which includes implementing policy by State and local self-government bodies, the State service and the service in local self-government bodies, as well as the civil work in the State and local self-government bodies" (Article 1.1). The LCS further specifies that "State service is a professional activity directed at the implementation of objectives and functions reserved to the state bodies by law", which "includes the Civil Service, the Judicial Service and special services, namely the Republican Executive Bodies of Defence, National Security, Internal Affairs, Tax and Customs" (Article 1.3). The LCS also defines, in its Article 4 paragraph 1, the persons (civil servants) subject to its provisions :

> "The operation of this law shall extend to the persons occupying positions referred to in the Roster of Civil Service Positions in the following bodies:
> a) The staff of the President of the Republic of Armenia;
> b) The staff of the Government of the Republic of Armenia;
> c) The staffs of the Republican Executive Bodies of the Republic of Armenia;
> d) The staffs of the *Marzpetarans* [Regional Governor's Offices] of the Republic of Armenia and of the Municipality of Yerevan;
> e) The staffs of the standing commissions (services, councils, including the Civil Service Council) created by the laws of the Republic of Armenia, with the exception of the Central Bank."
>
> Paragraph 2 of the same Article states: "Persons occupying political and discretionary positions, as well as the persons providing technical support in the bodies referred to under Clause 1 of this Article shall not be considered civil servants."[36]

81. The fundamental principles of public administration are enshrined in the Constitution. Article 5 stipulates that "State power shall be exercised in accordance with the Constitution and laws based on the principle of the separation of legislative, executive and judicial powers" and that "state and local self-government bodies and public officials may execute only such acts as authorised by legislation." Apart from the Constitution, various laws regulate the competence, organisation and activities of public authorities. These include the Law on Public Administration Institutions, the Law on Basic Principles of Administration and Administrative Proceedings, the Law on State Non-Commercial Organisations and some others, including the above-mentioned Law on the Civil Service.

[36] Persons occupying political positions are: the President of the Republic, deputies of the National Assembly, the Prime minister, ministers and the "leaders of communities". Persons occupying discretionary positions are : the chief of staff of the President of the Republic, the chief of staff of the Government, the heads of the state administrative bodies attached to the Government, the deputy ministers, the regional governors and the deputy regional governors, the mayor of the city of Yerevan and his/her deputies, the advisers, the press secretaries and the assistants of the President of the Republic, of the Prime minister, of the ministers, and of the "leaders of the communities" of the Republic of Armenia.

Anti-corruption policy

82. As already indicated above (paragraphs 9 and 10), the main anti-corruption document targeting public administration is the Anti-Corruption Strategy and the Implementation Plan related thereto, as adopted by the Government on 6 November 2003. In addition, the Council for Fighting Corruption, composed of top ranking public officials, plays a leading position in implementing the Strategy and a special Monitoring Committee, established on 1 July 2004 and chaired by the Advisor to the President on Anti-Corruption Policy, monitors the progress of the anti-corruption programmes designed by the Government and other public agencies involved in the implementation of the Strategy.

83. Among the measures envisaged in the area of public administration are: streamlining the functions of the overseeing authorities, distributing and regulating functions assigned to various authorities, and developing a reporting system for the activities of ministries, regional authorities and other public administration bodies. The implementation plan covers a time span of three years (2004 -2006).

Transparency

84. The Law on Freedom of Information of 22 October 2003 regulates access to administrative information. According to Article 6 of the Law, everyone has the right to have access to information and to apply to entities possessing and processing information, in conformity with the procedure prescribed by law. Information may be requested either orally or in writing. Response to an oral request is to be provided either immediately or within the shortest possible time limit. Response to a written request is normally to be provided in writing within 5 days, or within 30 days if the provision of information requires additional work. Responses - not exceeding 10 printed pages - to oral requests, requests delivered via Internet (e-mail) and written requests are provided free of charge. Fees may be charged in all other cases, on condition that they do not exceed the costs incurred by the organisation concerned. Refusal to provide information is only permitted in exceptional cases as defined by Article 10 of the Law, if such information:
    - contains a state, service, banking, or commercial secret;
    - violates the right to personal and family privacy, as well as the secrecy of correspondence, telephone conversations, postal, telegraphic and other communications;
    - contains data concerning a preliminary investigation, which should not be made public;
    - discloses information subject to non-disclosure depending on the nature of professional activity (for physicians, notaries, defence attorneys, etc);
    - violates copyright and/or adjacent rights.

    Moreover, the Law on Civil Status Acts and the Law on Public Services, both adopted in 2005, also contain rules on transparency of the public administration system.

85. With regard to public consultation, the Law on Legal Acts (Article 27.1) stipulates that any state or local self-government body, or state or community entity drafting a legal act may invite representatives of academic organisations, stakeholder entities and organisations to participate in the drafting process. Drafts of laws and decisions submitted to the National Assembly for debate may be publicised in the press or other media outlets, as well as made available for the purposes of public discussion (Article 29.1). At local and regional level, discussions are organised prior to decisions being taken on issues of regional or local significance. In addition, the legislation also envisages the possibility of holding a local referendum. In general, the public authority decision-making processes are public, and anyone having an interest in the matter concerned can present his/her oral or written opinion. In principle, all sittings of collegial bodies are open to the public, with some exceptions.

86. Public awareness of legal acts is regulated by Government Decision N-1146 on Approving the Procedures for Notifying the Public of the Legal Acts and Registration thereof. Pursuant to the Decision, the public is notified of legal acts by official releases, conferences and meetings with media entities, interviews, publication of articles and other information in the press as well as TV and radio broadcasts. The decisions of the National Assembly, the Constitutional Court, the Government, as well as decrees and orders of the President and the Prime Minister are publicised in the Official Bulletin within 10 days of receipt, in conformity with Article 62 of the Law on Legal Acts. Official data and information may be accessed via Internet.

87. According to the Armenian authorities, analysis of contemporary internet resources (state/government, state councils and commissions, local government and municipal offices, legislative and executive bodies) carried out in 2003 indicated that 94% of the resources provide full contact information, 90% include on-line publications/databases, 30% provide "questions and answers" tools and 26% on-line services. Regional web-sites have been developed in 6 of the 10 *Marzes* (regions) presenting core information on the activities of public agencies, including in English. The Judiciary has established a special link, enabling access to information on how to apply to a court and providing information on judges in each region.

Control of public administration

88. Public administration decisions may be appealed through either administrative or judicial procedure. According to Article 8 of the Law on the Procedure for Reviewing Citizen's Proposals, Applications and Complaints, "a citizen or a legal person disagreeing with the decision taken in response to their proposals, applications or complaints shall be entitled to appeal against it to the superior authority, which shall review the application within 15 days"[37]. Furthermore, every citizen or legal person has the right to appeal to the court if they believe their rights and freedoms have been violated as a result of an unlawful action (decision) by state or local self-government bodies (Article 11). Procedures for appeals to the courts are regulated by the Civil Procedure Code. On 1 January 2005, the Law on Basic Principles of Administration and Administrative Proceedings entered into force. It provides *inter alia* for the appeal of administrative acts to the administrative body that adopted the act or to a superior body, within 6 months following the act's adoption.

89. Control of public administration is also exercised by the Human Rights Defender (Ombudsman), in conformity with the Law on the Human Rights Defender of 21 October 2003. Inquiries made by the Defender are based on complaints by individuals regarding violations of human rights and fundamental freedoms provided by the Constitution, laws and international treaties to which Armenia is a party. In the exercise of his/her duties, the Defender is authorised *inter alia* to have unrestricted access to any state institution or organisation, to require and receive information and documentation relating to the complaint from any state or local self-governing body or their officials. Based on the findings of the complaint under consideration, the Defender may recommend to the competent state agencies to execute disciplinary or administrative penalties or to file criminal charges against the official whose decision or action/inaction has violated human rights and fundamental freedoms. S/he may also propose to the state or local self-governing body, or the official, whose decision or action/inaction has been qualified as violating human rights and freedoms, to remedy the committed violations. The first annual report concerning the Human Rights Defender's activities was released during the first quarter of 2005. From March to December 2004, the Defender had received more than 1,200 written complaints; the Defender's

[37] After the on-site visit, the Armenian authorities informed the GET that this provision is no longer in force with regard to applications and complaints.

staff had personal contacts with more than 1,300 citizens and answered more than 2,300 telephone calls. Most of the complaints were related to: civil law and management of assets (256), criminal law (218) and social security (189). Out of the 471 cases examined, the Defender made 93 suggestions and the final number of solved cases was 85.

90. Other checks are carried out on public authorities. The Control Chamber of the National Assembly, the Department for Financial Oversight of the Ministry of Finance and Economy, as well as the internal audit structures within the bodies of public administration and local self-government are responsible for overseeing the management of public funds. Concerning relevant civil society organisations, Transparency International Armenia in particular contributes to improving the public administration policies through its own projects.

91. The Control Chamber is the only body recognised by the Constitution in charge of overseeing "the use of the budget resources and the state and community property". The Chamber conducts controls through audits and other measures provided for by law, in particular by requesting, reviewing and analysing the statements and other documentation provided by public administration and local self-government organisations and on-site reviewing of the financial and economic documentation and responding to situations as needed. These oversight activities result in a report on infringements and illegalities detected, as well as proposals for redress. Following its approval by the Board of the Control Chamber, a copy of the report is sent to: the National Assembly, the Government and the audited institution. Attached to the copy of the report intended for the audited institution is a request to submit information, within a month, on the measures taken to remedy detected infringements, compensate the damage caused to the State and hold relevant officials liable for their misconduct. If necessary, the evidence concerning detected infringements and illegitimate operations is handed over to the Prosecutor General's Office, in conformity with the procedure prescribed by law.

92. Transparency in the activities of the Control Chamber is achieved through the approval of both the annual action plan and the annual report by Parliament. Relations between the Control Chamber and the media are regulated by the Law on the Press and Other Mass Media Organisations, which forms the basis for the public nature of the Control Chamber's operation.

93. The Department for Financial Oversight under the Ministry of Finance and Economy is in charge of overseeing a) the execution of the state budget through inspections of effective and targeted use of the funds allocated in the budget and the loans advanced by foreign countries and international organisations, b) the provision and management of extra-budgetary funds, c) accurate and lawful observance of the requirements contained in the relevant legislation.

Recruitment, career and preventive measures

94. Competitions for appointments to chief and higher civil service positions are held by the Civil Service Council, while competitions held by the relevant state bodies serve as a basis for appointments to lower and junior civil service positions. During the period from October 2002 to October 2004, a total of 1,534 competitions were held. Appointments are made by the competent officials on the basis of competition results, except for political appointments and appointments to all categories of positions in the Police, the National Security Service, Customs, Tax, Military and Penitentiary bodies, as well as the Ministry of Foreign Affairs. Appointments in these bodies are based on competitions held by commissions established by the Government.

95. Persons convicted of a crime cannot be appointed to civil service positions. There is a legally established procedure for checking the criminal records of individuals during selection and

recruitment procedures. Procedures for the selection and recruitment of public officials (recruitment, career and the relevant legislation) are advertised on the official web-site of the Civil Service Council (www.csc.am). The site also includes information about the Council itself (structure, activities, etc.), legislation, job vacancies/competitions, training, the Public Administration Academy, the weekly newspaper, etc.

Training

96. As a rule, all civil servants undergo training at least once every three or five years, in conformity with the procedures provided for by law. For example, the Law on the Civil Service (Article 20.2) prescribes obligatory training for all civil servants at least once every three years. The provision of specific training for civil servants is regulated by Decision 21-N of the Civil Service Council on the Procedure for Providing Training to Civil Servants of 20 June 2002. The first (induction) training is organised on the basis of programmes developed by the Public Administration Academy. For subsequent in-service training, the Civil Service Council approves the list of educational institutions used together with the training curricula. The training of civil servants mainly covers three areas: the Constitution, the Civil Service and Governance Techniques. The training also includes a course on ethics. Additional training may be provided at the initiative of the civil servant concerned or his/her chief of staff.

Conflicts of interest

97. The Law on the Civil Service (LCS) establishes a general framework for preventing conflicts of interest and incompatibilities between professional functions in the civil service. According to Article 24 of the LCS, a civil servant does not have the right to:
- perform paid work, except for scientific, pedagogical or creative purposes;
- be personally engaged in entrepreneurial activity;
- be the representative of third persons in their relations with the body where s/he is employed, or which is immediately subordinate to or supervised by himself/herself;
- use his/her position in the interests of political parties, non-governmental organisations, including religious associations;
- conclude, as state representatives, property transactions with close relatives; and/or
- work together with close relatives (parent, spouse, child, brother, sister; spouse's parent, child, brother, sister), in case of direct subordination or supervision over one another.

Within a period of one month following appointment to the civil service, a civil servant possessing 10% or more of the statutory capital of a commercial organisation, is under the obligation to hand his/her share over to the entrusted management, according to the procedure prescribed by law (the civil servant, however, has the right to receive income from the transferred property).

98. A wide range of public officials are obliged to declare their properties and income under the Law on the Disclosure of Assets and Income of Senior Officials of Authorities in the Republic of Armenia. Article 2 of the Law enumerates persons who are required to submit annual declarations[38]. A violation of the property and income declaration procedures can result in an

[38] The President of Armenia, deputies of the National Assembly, the Prime Minister, ministers, heads of local self-government bodies, highest and chief post-holders in civil service,
Chairman of the Central Bank, deputies, Board members, chief of staff of the Board and heads of subdivisions, heads of subdivisions of the main office and territorial subdivisions,
Chairman, members and chief of staff of the Constitutional Court, judges,
Prosecutor General, his/her deputies, prosecutors heading the structural subdivisions of the General Prosecution Office,
Officials in the executive Tax and Customs bodies, the Police,
Heads of subdivisions of the state executive bodies of Defence, National Security, Foreign Affairs and Emergencies,
Chairman of the Social Security Fund, deputies, heads of the structural and territorial subdivisions,

administrative fine (Article 8). In conformity with a number of other laws – namely the Law on Civil Servants (Article 33), the Law on Service in the Police (Article 45), the Law on the Customs Service, the Law on the Tax Service (Article 26), and the Law on the Penitentiary Service, (Article 41), failure to submit a declaration constitutes a ground for dismissal. Moreover, Article 8 of the Law on Declaring Property and Income provides for administrative liability measures - mainly penalties - for disrespect of the declaration procedure. The GET was informed that the requirement to submit property and income and property declarations will be extended to all civil servants.

99. Individuals leaving the civil service are subject to a one year ban on accepting employment with an employer or organisation over which s/he had exercised immediate control during the last year of holding his/her civil service position (Article 24 of the Law on the Civil Service). For tax officials, pursuant to the Law on the Tax Service (Article 13), this restriction extends to a period of three years.

Rotation

100. The principle of regular, periodic rotation of staff within the public administration is considered as one of the measures to prevent corruption. Rotation is prescribed for tax officials, in conformity with the Law on the Tax Service (Article 7).

Gifts

101. Article 24 of the LCS provides for a general prohibition for civil servants of receiving gifts, money or services for their duties from other persons, except in cases specified by law. Receipt of gifts or other advantages by public officials is regulated by Government Decision N-48 on Handing over the Gifts Received by Virtue of Service to the State of 17 February 1993. The Decision stipulates that gifts received by public officials in connection with their service or position must be handed over to the State if the value of such gifts exceeds five times the official's monthly salary[39]. The value of the gift is calculated on the basis of its average market price. In accordance with the Code of Administrative Violations, civil servants who fail to transfer to the state valuable gifts in conformity with the procedure prescribed by law are subject to a penalty equal to the amount of one minimum salary and the gift is confiscated. In the event that the gift has not been found, a fine of four minimum salaries is imposed.

102. According to Article 45, paragraph 1 of the Law on Service in the Police, the receipt of gifts, money or services from other persons leads to dismissal from the police service. In the event that the value of the gift exceeds five times the minimum monthly salary, the police officer will not only be dismissed but he will also be subjected to criminal liability under the relevant provisions of the Criminal Code, which provides for penalties from 300 to 500 times the minimum monthly salary[40] or maximum of a five years' imprisonment with the deprivation of the right to be assigned to any job or engage in any special activity for a minimum of 3 years.

Chairman of the Control Chamber,
Chairman, deputies and members of permanent committees (services and councils),
Persons related to the above-mentioned officials (spouses, parent(s) or adult and single children, sisters and brothers living with them).

[39] According to the information provided by the Armenian authorities, the average monthly salary is approximately 85 euros.

[40] The Armenian authorities reported that the minimum monthly salary established for such penalties is 1 000 AMD (approximately 2 euros).

Code of ethics

103. No specific Code of Ethics has been elaborated for civil servants. At the time of the on-site visit, drafting such a code was being considered following an evaluation of the existing rules on the matter. The Rules of Ethics for Civil Servants, adopted by the Civil Service Council Decree of 31 May 2002, require a civil servant to be fair, impartial, discreet, exemplary and modest. They also underline and promote such core values as benevolence, efficiency and non-protectionism. Pursuant to Article 23 of the LCS, all civil servants are bound to respect the Rules of Ethics. The Rules do not specifically state that a civil servant may be disciplined for violating the Rules. Disciplinary sanctions are established under Article 32 of the LCS.

104. There are rules on conduct and discipline for tax officials that contain standards anchored in the universal principles of ethics governing the conduct and relations of tax officials. These rules are in conformity with the tax administration procedures and the Law on the Tax Service. The Law on the Tax Service stipulates that the violation of the rules of conduct by a tax official constitutes grounds for disciplinary sanctions, including dismissal.

105. Moreover, separate Rules of Ethics for Police Officials were issued by the Head of the Police in December 2003 and as from 11 April 2005 are regulated by the law on the Police Disciplinary Code. The Implementation Action Plan of the Anti-Corruption Strategy envisages the drafting of a Law on a Code of Conduct for law enforcement personnel in 2004-2005.

106. There is no special body empowered to centralise information on breaches of the codes of conduct/rules of ethics and the penalties imposed. The GET was told that information on breaches is maintained by the individual authorities responsible for the supervision of the observance of the codes of ethics.

Reporting corruption

107. Current legislation does not contain any provision requiring the reporting of suspicions of misconduct/suspected corruption/breaches of duties and/or of code, of ethics by public officials. The reporting requirement in the LCS deals with situations where an assignment contrary to the Constitution or the law or which goes beyond the authority of the issuer or the receiver of the assignment is given to the civil servant (Article 25). However, all public officials are under a civic obligation to report the commission of certain categories of grave and particularly grave crimes including corruption, as provided for by Articles 334 and 335 of the CC. No specific protection is afforded to public officials (including civil servants) who report on instances of corruption within public administration (whistleblowers).

Disciplinary proceedings

108. In each agency, internal investigations are conducted on the basis of alleged violations of legal requirements. Based on the findings of internal investigations, the disciplinary committee applies to the head of the relevant body to impose disciplinary penalties where appropriate. The LCS (Article 32) provides for the following disciplinary penalties for civil servants: preliminary warning; reprimand; severe reprimand; salary reduction; and removal from a position with the agreement of the Civil Service Council. Civil servants are entitled to appeal such penalties, including through the courts.

109. The Civil Service Council is a permanent independent commission authorised to carry out service investigation in cases where: (1) a civil servant submits an appropriate written application stating

his/her disagreement with the disciplinary penalties imposed on him/her and a request to revoke these penalties; (2) when penalties such as "severe reprimand" and/or "salary reduction" have been imposed repeatedly on the civil servant within a period of one year; and (3) when the official authorised to impose disciplinary penalties submits an application to the Council to approve the disciplinary penalty of dismissal (Article 37). After the service investigation has been completed, the Civil Service Council adopts a decision, which is binding on the civil servant and the administrative bodies concerned. Similar service investigation procedures are envisaged for tax officials under the Law on the Tax Service, for customs staff under the Law on the Customs Service, and police officers under the Law on the Police Service.

110. Should service investigations reveal that the action committed by the public official breaches a standard conduct and involves a *corpus delicti*, the official in charge of investigation must submit the evidence collected to the Prosecution Office for further criminal investigation in conformity with the provisions of the Criminal Procedure Code.

b. Analysis

111. In the GET's view, the Law on the Civil Service, adopted in 2001, is a modern law containing the main principles regulating the functioning of the civil service, its organisation and structure, as well as the legal status of civil servants. Article 24 of this law sets forth certain restrictions applicable to civil servants. These restrictions (for example to not perform other paid work, etc.; see paragraph 98) apply to all civil servants regardless of the type or level of position they hold. There is currently no general mechanism to adjust or complement these restrictions in the light of a position's level of exposure to - and opportunity for - corruption, nor is there a general conflicts of interest standard applicable to the official actions of civil servants in relation to their outside interests and activities. In addition, the Law on the Civil Service does not apply to a large number of individuals[41] holding important positions within the state administration. A new code of conduct could provide for fair, but targeted flexibility in these restrictions and for a general conflict standard focused on official acts. Further, it would be useful to introduce (and extend) the practice of rotation in those areas of the public administration which are especially vulnerable to corruption. Therefore, **the GET recommends to issue guidelines for use by all categories of public officials when confronted with situations where personal/financial interests or activities may raise issues of conflict or partiality with regard to public officials' duties and responsibilities. It also recommends toconsider making wider use of rotation in sectors of public administration particularly exposed to a risk of corruption.**

112. A large number of public officials in Armenia are required to file a declaration of property and income. This requirement is based on the Law on the Disclosure of Assets and Income of Senior Officials of Authorities in the Republic of Armenia. Within the public administration, this duty, which is set forth in Article 23 of the Law on Civil Service, is one of the principal obligations of a civil servant. At the time of the visit, approximately 35 % of civil servants were obliged to submit declarations of property and income. However, the GET was told that it was expected that during the next two years the requirement to file declarations of property and income would be extended to all civil servants. Failure to meet the declaration requirements is a punishable act. The GET was informed that refusing to submit the declaration is a sufficient reason for dismissing a civil servant. The GET was also informed that the accuracy of the information provided is not checked by the Civil Service Council, or by any other body within public administration, but by the tax authorities. However, during the meeting with representatives of the Tax Service, the GET was informed that the tax authorities were unable to review/check the declarations of property and

[41] See paragraph 81 *in fine.*

and, in particular, that they lacked an appropriate methodology for doing so. Under these circumstances and in view of the fact that Armenia intends to extend the requirement to possibly all civil servants, the GET is of the opinion that the current system does not meet its intended purpose and may well foster a cynicism that could undermine efforts to deal with conflicts of interest in a credible manner. Consequently, **the GET recommends introducing an effective system for verifying declarations of property and income in respect of all public officials whose service duties could be affected by conflicts of interest.**

113. As indicated in the descriptive part of this report, the general rule with regard to gifts is contained in Article 24 of the Law on the Civil Service, which states that civil servants do not have the right to "receive gifts, amounts of money or services for his/her service duties, with the exception of the cases envisaged by the legislation".[42] The main exception is provided by the "Government Decision N-48 on Handing over the Gifts Received by Virtue of Service to the State of 17 February 1993", which stipulates that gifts received by public officials by virtue of service or position must be handed over to the State if the value of such gifts exceeds five times the official's monthly salary. The GET considers this minimum value to be far too high and therefore **recommends to lower the value of any gifts that may be accepted by civil servants, employees or other officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage and that a reporting obligation in respect of gifts of any value be introduced.**

114. A civil servant's duty to follow the rules of ethics, approved by the Civil Service Council, is based directly on the Law on Civil Service. The concrete contents of these rules, including the system of control in practice, appear to be quite satisfactory. The GET was informed about the attention given both to assessment and observance of ethical rules in practice within the public administration. The GET considers this question to be important, from the point of view of all citizens, for providing transparent solutions to situations which fall within the "grey zone" (i.e. behaviour that is not strictly off limits but which is generally undesirable). The GET welcomes the plan of the Civil Service Council to prepare a Code of Ethics/Conduct for public administration in the future, which will be based on the Rules of Ethics for Civil Servants, adopted in 2002 and on experience gained in practice. The GET considers that it is in the interest of the public administration to improve these rules in the near future, to make best use of international experience and well-established standards, and to ensure that public awareness is raised regarding these matters. Therefore, **the GET recommends to give high priority to the planned preparation of a code of ethics for public administration and to ensure that all public officials receive appropriate training and that the code is accessible to the public.**

115. Public officials (as all citizens in Armenia) are obliged to report on "known grave or particularly grave crimes" (Articles 334-335 of the Criminal Code). Nevertheless, this general duty does not solve the problem of information, especially concerning corruption or any other unethical behaviour within public administration: public officials are not subject to any special obligation to report misconduct (such as suspected corruption), breaches of duties or ethical rules encountered when performing their duties. This important question is not covered by the Law on the Civil Service, which only deals with situations which arise as a result of an assignment that contradicts the law or the Constitution or which goes beyond the authority of the issuer or the receiver of the assignment, being given to a civil servant (Article 25). The scope of this obligation appears therefore very limited. Transparency in public administration requires wider obligations and duties of the public officials, notably those covering the reporting of other kinds of improper

[42] This was confirmed during the on-site visit by representatives of the civil service institutions met by the GET who said that "taking gifts is strictly prohibited by law and that the existing exceptions are also strictly regulated".

behaviour committed in a wide range of situations, particularly in cases of "grave or particularly grave crimes". Therefore, **the GET recommends to introduce clear rules/guidelines and training for public officials to report instances of corruption, or suspicions thereof, which they come across in their duty and, to establish adequate protection for public officials who report instances of corruption (whistleblowers) in good faith.**

116. The GET is aware that many new pieces of legislation dealing with public administration have been introduced over recent years in Armenia. It therefore acknowledges that practical experience with the new legislation is, as yet, limited. The GET therefore highlights the importance of collecting and reviewing all necessary information concerning the performance of activities within this system. The GET is of the opinion that it is necessary to gather and examine (at central level) all complaints made regarding the functioning of the public administration, the results of disciplinary proceedings, the reporting of breaches of rules of ethics etc., in order to assess the process of implementation of the new legislation. The outcome of this assessment should help further improve the existing legislation and may lead to the adoption of any necessary supplementary measures. Only comprehensive data will enable an effective analysis of the overall system to be carried out in a more objective and precise manner, detecting weaknesses, identifying problems and determining at which level and in which concrete spheres of the public administration they exist. Consequently, **the GET recommends to systematically collect and evaluate - at central level - information on complaints about breaches of ethical rules within the public administration as well as on the outcome of disciplinary proceedings in order to identify shortcomings in concrete areas of the public administration and, based on this evaluation, to take measures to make the necessary changes for improvement.**

VI – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition

117. Article 50 of the Civil Code provides for the following definition of a legal person: "A legal person is an organisation with a separate property which is liable for its obligations with that property, and which may in its own name acquire and exercise property and non-property rights, bear duties and be a plaintiff and defendant in court". Both organisations aimed at achieving profit (i.e. commercial organisations) and those which do not aim at achieving this objective and which do not distribute profit made among their participants (i.e. non-commercial organisations) may be legal persons (Article 51 of the Civil Code).

118. Pursuant to Article 72 of the Civil Code, business partnerships and companies are commercial organisations with charter (or investment) capital divided into founders' (or participants') shares. Definitions of the most important types of business partnerships and companies are as follows:

- Joint stock company : a commercial organisation with charter capital divided into shares (Article 2, Law on Joint Stock Companies). A joint stock company whose participants can put on the market the shares belonging to them without consent of the other stockholders is an open joint stock company. It has the right to conduct open subscription to shares and to sell them under conditions established by a statute and other legal acts. A joint stock company whose shares are distributed only among its founders or other previously determined group of persons is a closed joint stock company. Such a company does not

have the right to conduct an open subscription to shares, nor to propose them for acquisition to an unlimited group of persons (Article 8);

- Full partnership : a company where participants (general partners) are engaged, in accordance with the charter, in entrepreneurial activity in the name of the partnership and have liability for its obligations with the property belonging to them (Article 77 of the Civil Code).

- Limited partnership : partnership including both participants conducting entrepreneurial activity in the name of the partnership and liable for its obligations with their property (general partners) and one or more investors-participants (limited partners), who bear the risks of losses connected with the activity of the partnership within the amount of their investments and who do not take part in the conduct of entrepreneurial activity; and

- Co-operative : a voluntary association of citizens and legal persons on the basis of membership with the purpose of satisfying material and other needs of the participants and which is formed by combining property share contributions by its members (Article 117 of the Civil Code).

Establishment

119. Requirements for establishing legal persons depend on the form of legal entity. According to the Law on Joint Stock Companies, the statutory capital of a joint stock company must be at least 1,000,000 Drams (approximately 1,500 Euros), for an open joint stock company, and 100,000 Drams for a closed one. As general rule, the number of shareholders cannot exceed 49. The charter capital of limited liability companies should not be less than 50,000 drams at the time of registration (Article 28 of the Law on Limited Liability Companies).

120. The applicable legislation does not involve any limitations on the grounds of nationality or citizenship of the founder of a legal person. Legal persons may be founded by physical persons, including citizens of foreign countries, as well as by legal persons, including non-commercial legal persons. Moreover, irrespective of the nationality of legal persons, they may establish commercial companies in Armenia enjoying civil legal capacity equally with citizens of Armenia, maintaining the procedures provided by domestic legislation (Article 1263 of the Civil Code), except for cases provided by law.

Registration and transparency measures

121. The registration of legal persons is performed by the State Registration Office of Legal Persons attached to the Ministry of Justice. For registration of a legal person (except for banks, whose registration is the responsibility of the Central Bank), the founders must submit the following documents to the local department of the State registration body: an application from the person authorised by the founder(s) of the legal person, the protocol of the founder(s)' assembly (or other body defined by law), at least two copies of the charter, and a receipt of the duty paid for registration. If the founder (member) is a legal person of a foreign state, in addition to the above-mentioned documents it must also submit an extract from the commercial register of that state or another equivalent document confirming the status of foreign investor and its foundation documents or appropriate extracts, translated into Armenian and duly certified. For conducting a licensed activity, legal persons are, moreover, obliged to obtain the prior permission from the competent state authority. The maximum term for state registration is five days from the moment of submission of all these documents. Officials of the competent state bodies who have failed to

register an individual entrepreneur or an enterprise in the time frame set by legislation and or who have refused without valid grounds the registration incur administrative liability (Article 107 of the Code on Administrative Violations), whereas malevolent evasion or obviously groundless refusal to register lead to criminal liability in conformity with Article 187 of the Criminal Code.

122. The rights of legal persons to join other legal persons or become members of other legal persons are not limited under the current legislation. The Civil Code establishes definitions of a "Subsidiary Business Company" and "Dependent Business Company" and lay down conditions for participation of one legal person in the activities of another.

123. The legislation does not establish any limitations for legal persons on the rights to open bank accounts.

Limitations on exercising functions in legal persons

124. Article 49 n° 2 of the Criminal Code envisages as a sanction a "prohibition to hold certain posts or practise certain professions" in state or local self-government bodies and organisations (whether private or public). If the sanction is prescribed as a main penalty, the person may be deprived of the appropriate right for a term of 2 to 7 years for an intentional offence, and for a term of 1 to 5 years for a negligent offence. If the sanction is prescribed as a supplementary penalty, the term of deprivation can range from 1 to 3 years.

Legislation on the liability of legal persons

125. Legal persons are subject to civil liability. According to Article 67 paragraph 2 of the Civil Code "A legal person may be dissolved: (…) 3) by a decision of a court in case of conduct of an activity without appropriate permission (or license) or of an activity prohibited by a statute, or with other multiple or gross violations of a statute or other legal acts, or in case of systematic conduct by a societal organisation or fund of an activity contradicting its charter purposes, and also in other cases." If a legal person is involved in a criminal activity, only the officials and other employees having any relation with the offence (organiser, direct perpetrator, and accomplice) may be subject to criminal liability for the commission of the offence.

Sanctions and other measures

126. Apart from the case of dissolution mentioned in the paragraph above, no other sanctions for legal persons involved in cases of corruption are envisaged in Armenian legislation.

Tax deductibility

127. In conformity with Article 10 of the Law on Profit Tax, in order to calculate a legal person's profit tax, expenses relating to the generation of income, which must be substantiated (invoice or other accounting documentation), are deducted from gross income. In their replies to GRECO's questionnaire, the Armenian authorities stated that since bribes or other corruption-related expenses cannot normally be supported by any documentation and are not necessary for the generation of income, the tax deductibility of such expenses is not covered by the law.

Tax authorities

128. Even though the detection of corruption or money laundering cases is not one of the tasks of the tax authorities, they are involved in the prevention and/or detection of such crimes while

exercising their functions of control and detection under tax legislation. Failure to submit tax statements in the time limits set results in the imposition of a fine, the amount of which depends on the consequences of such a violation. Article 24 of the Law on Taxes, for example, states that when tax statements are submitted with a delay exceeding two months, a fine is imposed for each additional 15 days period to the amount of 5% of the total value of unpaid tax, which must not exceed the total amount of the tax. The above-mentioned violations, when made for tax evasion purposes, may also give rise to criminal liability for natural persons, as stipulated in Article 206 of the Criminal Code.

Accounting Rules

129. In conformity with Article 19 paragraphs 1 and 3 of the Law on Financial Accounting, all financial accounting documentation as well as information in electronic form (such as initial accounting documentation, financial statements, documents on financial accounting policy, accounting software) must be kept by the legal person in conformity with the procedure and time limits prescribed and in any case for no less than 5 years. The responsibility for keeping the accounting documentation rests with the management of the legal person.

130. Both administrative and criminal responsibility can be incurred for negligent accounting. Pursuant to the Code on Administrative Violations, failure to preserve financial accounting information and documents can be sanctioned with a fine. The same Code provides that violations in financial accounting records or failure to submit declarations within the set time limit entails a fine the amount of which is prescribed by law. Criminal liability is envisaged for false entrepreneurial activity ("Establishment of a commercial enterprise without intention to conduct entrepreneurial or banking activity, aimed at obtaining loans, evading from taxes, obtaining other property benefits or hiding prohibited activities") and "Submission of false documents without supplying goods or without providing services, compilation and submission of false documents on expenses or income, which caused large damage (…)" (Article 189 of the Criminal Code). The destruction or dissimulation of accounting records is subject to sanctions if carried out for the purpose of tax evasion.

Role of auditors and other professionals

131. Article 335 of the Criminal Code places a general obligation on citizens to inform law enforcement bodies of "surely known grave or particularly grave crime."[43] Non-reporting of such crimes entails criminal liability under Articles 334 and 335 of the Criminal Code. However, as far as accountants, auditors and other advising professionals are concerned, neither the Law on Accounting nor the Law on Auditing contain an explicit obligation for them to report suspicions of offences to law enforcement authorities.

132. Certified auditors issue recommendations for remedying violations revealed when auditing accounting records and financial statements. Recommendations are addressed to the management of the organisation concerned. Clause "c", paragraph 2 of Article 18 of the Law on Auditing, in particular, lays down the responsibility of the management to eliminate the shortcomings and violations revealed by the audits.

133. As far as respect for ethical norms is concerned, certain professionals have adopted codes of conduct/ethics, including the Code of Ethics for Lawyers, the Code of Professional Conduct of

[43] The list of the types of crime considered "grave or particularly grave" is set out in Article 19 of the Criminal Code.

the International Union of Armenian Advocates, the Code of Professional Conduct of the Union of Advocates and the Rules of Conduct for Auditors.

b. Analysis

134. In Armenia, the general legal framework dealing with legal persons (establishing *inter alia* the definition and foundation of different types of legal persons) is included in Chapter V of the Civil Code. There is also a registration system in place according to which all legal persons (with the exception of cooperatives) are to be entered into the register which is operated by the State Registration Office. Registration of commercial organisations takes place in the appropriate regional divisions of the State Registration Office while registration of non commercial organisations-funds, NGOs, unions of non-commercial organisations is performed only by the Central Registration Office in Yerevan. Registration of commercial organisations – joint stock companies, limited liability companies, etc. - is a legal obligation. The information in the register is public but not available on Internet. The Armenian authorities informed the GET that during the process of computerisation started within the Ministry of Justice, appropriate measures would be taken to facilitate public access to information on legal persons but no time table was mentioned.

135. The State Registration Office, does not check whether the information provided by a legal person (e.g. a corporation) is correct, and is empowered only to make a formal/documentary control. The GET took note that the current system for registration of legal persons does not envisage any possibilities for the registering authority to refuse registration of a company, in cases for example where persons holding managerial positions within the company have been convicted of criminal offences, including corruption and/or have been professionally disqualified. Therefore, **the GET recommends to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records or professional disqualifications.**

136. Civil and administrative liability of legal persons are established in Article 67 of the Civil Code. The Criminal Code does not provide for criminal responsibility for offences committed by legal persons. According to the Armenian penal system, only natural persons can be perpetrators of a criminal offence and therefore criminally liable for giving, accepting and negotiating bribes. The Armenian authorities met during the on-site visit informed the GET that there was no intention to prepare legislation introducing corporate criminal liability. The GET is of the opinion that the existing legislation dealing with responsibility of legal persons does not meet the requirements established in the Criminal Law Convention on Corruption with regard to corporate liability and sanctions for legal persons involved in corruption. The provisions contained in Article 67 of the Civil Code, which relate to the liquidation of a company, seem to mainly apply to the violation of commercial legislation. Therefore, **the GET recommends to establish liability of legal persons for offences of bribery and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption.**

137. Tax legislation does not explicitly prohibit the deductibility of "facilitation" payments, bribes and other expenses related to corruption offences. Although the Armenian authorities argue that because of the secret nature of corruption offences - not supported by documentation - such expenses cannot be deducted from the gross income of the company, the GET is of the opinion that the current fiscal legislation does not prohibit tax deduction of incomes which may be a result of activities related to contracts concluded in a corrupt environment. The GET also noted that there is no legal obligation under the substantive and procedural tax laws for the tax authority to report suspicious financial activities and accounting recordings which may conceal corruption

offences to the relevant law enforcement bodies. The general obligation of any citizen to report serious crimes to the police or prosecutor's office (Article 335 of the Criminal Code) does not appear to be a sufficient basis for reporting by tax officers. The GET strongly believes that the role of the tax authorities in respect of operational anti-corruption activities could be strengthened. In particular, the GET noted the lack of appropriate training or guidelines provided to tax officials to improve interaction and cooperation among the competent law enforcement authorities during their investigations aimed at detecting corruption. Therefore, **the GET recommends to establish guidelines and provide special training for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies.**

138. In the GET's opinion, existing legislation provides for effective responses to infringements of accounting obligations, e.g. through appropriate sanctions for tax evasion (Article 189 of Criminal Code), failure to submit tax and income declarations (Article 205 of the Criminal Code) and false accounting records which may result in the reduction of taxes and social insurance payments (Article 169.11 of the Code of Administrative Violations). The Law on Accounting and the Law on Auditing do not establish a specific obligation for auditors and accountants to report suspicions of crimes, including corruption, to the law enforcement agencies. Such an obligation does not exist either in the Code of Conduct of Auditors which, at the time of the on-site visit, had been recently adopted. The GET was informed during the meeting with the Executive Board of the Association of Auditors and Accountants that an auditor may face disciplinary and criminal liability if s/he deliberately certifies a false balance sheet or other officially required documents. In this respect, the GET was also told that some cases of disciplinary sanctions imposed on auditors had occurred. The auditors expressed the view that sometimes the obligation to maintain professional secrecy, which "is very important for our work", may be at variance with the general rule to report suspicions of crimes. The GET acknowledges that the establishment of independent audit and accountancy is a very important feature of the enforcement of market economy principles in a country in transition but it also wishes to stress that the information provided by auditors, accountants and their associations may significantly facilitate the evidence gathering process and in this respect contribute to the efficient detection of corruption. The GET welcomes the training courses on money laundering for auditors and accountants which had just started at the time of the on-site visit; however, it would also like to highlight the importance of providing appropriate training for the said professions on detecting and reporting corruption offences. For this reason,**. the GET recommends that the Armenian authorities encourage the auditors' representative bodies to issue directives and organise training on the detection and reporting of corruption.**

CONCLUSIONS

139. In Armenia, corruption is considered as a major problem that affects many sectors of the public service. The sectors usually mentioned as being worst affected are the judiciary, the police, the customs service, the tax inspectorate, education, healthcare, licensing and privatisations. Despite the fact that a number of anti-corruption measures have been taken, and others are to be adopted, the system still suffers from several shortcomings both in the areas of legislation, of implementation of existing anti-corruption measures/legislation, and with regard to the organisation of the justice and law enforcement systems. Furthermore, the existence of some serious obstacles to collecting evidence, to depriving offenders of the proceeds of corruption together with the almost total absence of significant results in prosecuting and indicting individuals involved in serious cases of corruption call for substantial efforts in the anti-corruption field. In this respect, problem areas include legislation on banking secrecy, special investigative means, training for members of the law enforcement agencies, witness protection, assets

declaration and the anti-money laundering regime. Immunity from prosecution enjoyed by not only a justifiable range of holders of public office, but also by judges, prosecutors, parliamentary candidates, members of the central electoral commission, members of regional and local electoral commissions and even candidate mayors and candidates for membership of the council of elders (local council) is also a matter of concern.

140. As far as public administration is concerned, there is an urgent need for implementing accurate measures that deal with situations where personal/financial interests or activities may raise issues of conflict or partiality with regard to public officials' duties and responsibilities. In addition, issues such as a system for verifying declarations of property and incomeand gifts that may be accepted need to be addressed in respect of all public officials whose service duties could be affected by conflicts of interest, including individuals holding important positions within the state administration. It is also necessary that public officials be informed and, above all, trained on how and when to report instances of corruption, or suspicions thereof, which they come across in their duty and, to establish adequate protection for public officials who report instances of corruption (whistleblowers) in good faith. As regards legal persons and corruption, the Armenian legal system does not provide for corporate liability. Therefore, there is a need to establish liability of legal persons for offences of bribery and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption.

141. In view of the above, GRECO addresses the following recommendations to Armenia:

i. **that the authorities of Armenia carry out the necessary studies in order to gain a clearer insight into the scale of corruption and its various features so that anti-corruption initiatives and plans can be targeted more effectively** (paragraph 12) **;**

ii. **that all Armenian authorities involved in anti-corruption policies/activities inform, on a regular basis, the general public, civil society and the media of the measures taken and the results achieved. It also recommends that the public be informed about the avenues for reporting suspicions of corruption** (paragraph 13) ;

iii. **that the rules dealing with the organisation of the judicial system be reviewed in order to secure full independence of the judiciary vis-à-vis the executive power** (paragraph 39) **;**

iv. **to establish a model for systematic training of police officers, prosecutors and judges on issues of corruption and money laundering** (paragraph 41) **;**

v. **that the Armenian authorities streamline the work of the anti-corruption investigative bodies by clearly defining their responsibilities, above all to ensure more effective cooperation between the police and the prosecutors during the initial stage of corruption investigations** (paragraph 42) **;**

vi. **to amend the legislation on banking secrecy to enable the law enforcement authorities to obtain all relevant information on account holders and operations on bank accounts even before formal charges are brought** (paragraph 43) **;**

vii. **that the Law on Banking Secrecy is amended to prevent banks from disclosing judicial requests for information to their customers** (paragraph 44) **;**

viii. **to adopt legislative and other measures to establish an efficient system of special investigative means and to provide the competent agencies with appropriate means and training in order to make this system work efficiently in practice** (paragraph 45);

ix. **to adopt legislative measures to ensure that appropriate witness protection programmes can be introduced in practice** (paragraph 46) ;

x. **to consider reducing the categories of persons enjoying immunity from prosecution and to abolish, in particular, the immunity provided for parliamentary candidates, members of the central electoral commission, members of regional and local electoral commissions, candidate mayors and local council candidates** (paragraph 56) ;

xi. **to reconsider the procedures for lifting immunities of prosecutors and judges by reducing the involvement of predominant individual decision makers (i.e. the President of the Republic/Prosecutor General)** (paragraph 57) ;

xii. **that legal provisions be introduced allowing 1) the confiscation of assets of an equivalent value to the proceeds of corruption offences and 2) the effective confiscation of assets held by third parties** (paragraph 77) ;

xiii. **to simplify (and speed up) the system for authorising a search in cases of immediate urgency** (paragraph 78) ;

xiv. **to ensure that the new anti-money laundering system becomes operational as soon as possible and to rapidly provide the Financial Monitoring Centre's staff with training on how to implement the new rules and regulations in the most effective manner, including information to the entities having an obligation to report suspicious transactions** (paragraph 79) ;

xv. **to issue guidelines for use by all categories of public officials when confronted with situations where personal/financial interests or activities may raise issues of conflict or partiality with regard to public officials' duties and responsibilities. It also recommends to consider making wider use of rotation in sectors of public administration particularly exposed to a risk of corruption** (paragraph 111) ;

xvi. **to introduce an effective system for verifying declarations of property and assets in respect of all public officials whose service duties could be affected by conflicts of interest** (paragraph 112) ;

xvii. **to lower the value of any gifts that may be accepted by civil servants, employees or other officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage and that a reporting obligation in respect of gifts of any value be introduced** (paragraph 113) ;

xviii. **to give high priority to the planned preparation of a code of ethics for public administration and to ensure that all public officials receive appropriate training and that the code is accessible to the public** (paragraph 114) ;

xix. **to introduce clear rules/guidelines and training for public officials to report instances of corruption, or suspicions thereof, which they come across in their duty**

and, to establish adequate protection for public officials who report instances of corruption (whistleblowers) in good faith (paragraph 115) **;**

xx. **to systematically collect and evaluate - at central level - information on complaints about breaches of ethical rules within the public administration as well as on the outcome of disciplinary proceedings in order to identify shortcomings in concrete areas of the public administration and, based on this evaluation, to take measures to make the necessary changes for improvement** (paragraph 116) **;**

xxi. **to ensure that both natural and legal persons establishing companies be checked and monitored with respect to possible criminal records or professional disqualifications** (paragraph 135) **;**

xxii. **to establish liability of legal persons for offences of bribery and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption** (paragraph 136) **;**

xxiii. **to establish guidelines and provide special training for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies** (paragraph 137);

xxiv. **that the Armenian authorities encourage the auditors' representative bodies to issue directives and organise training on the detection and reporting of corruption** (paragraph 138)**.**

142. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Armenian authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2007.