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First Evaluation Round

Evaluation Report on “the former Yugoslav Republic of Macedonia”

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

I. INTRODUCTION

1. "The former Yugoslav Republic of Macedonia" was the twenty-sixth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter, "GET") was composed of Mr Jorn Gravesen, Detective Chief Superintendent, The Public Prosecutor for Serious Economic Crime (Denmark, law enforcement expert); Mr Vladimir Turan, Prosecutor, Unit of Fight against Corruption Crime, General Prosecutor's Office (Slovakia, criminal justice expert) and Mr Jean-Pierre Bueb, Adviser to the Central Bureau for the Prevention of Corruption, Interdepartmental Service working within the Ministry of Justice (France, general policy expert). This GET, accompanied by a member of the Council of Europe Secretariat, visited Skopje from 18 to 21 mars 2002. Prior to the visit the GET experts were provided by authorities of "the former Yugoslav Republic of Macedonia" with a reply to the Evaluation questionnaire (document Greco Eval I (2001) 24E).
2. The GET met with officials from the following Governmental organisations of "the former Yugoslav Republic of Macedonia": Ministry of Justice; Public Prosecution Office; Supreme Court; the Courts; Ministry of Finance (Public Revenue Office, Customs, Central Internal Department, Tax policy Department, Internal Audit Department, specialists in public procurement and money-laundering matters); Ministry of Interior and Police; Parliamentary Committee on Immunities; Investment and Development Agency; Ombudsman.
3. Moreover, the GET met with representatives of Transparency International and a representative of the media.
4. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001¹, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
 - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
 - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. Following the meetings indicated in paragraphs 2 and 3 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the authorities of "the former Yugoslav Republic of Macedonia", and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in "the former Yugoslav Republic of Macedonia", the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, powers, expertise, means and specialisation - and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to "the former Yugoslav Republic of

¹ At its 7th Plenary Meeting (December 2001) GRECO decided to extend the First Evaluation Round until 31 December 2002.

Macedonia" in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

6. "The former Yugoslav Republic of Macedonia" has a surface of 25,713 km² and a total population of about 2,000,000 inhabitants. It has a land border with Albania, Bulgaria, Greece and the Former Republic of Yugoslavia. According to the National Bank of "the former Yugoslav Republic of Macedonia", gross domestic product (GDP) declined by 4.6 % in 2001 after 5 years continuous increase from 1.2 in 1996 to 4.3 in 2000. Due to the economic impact of the Kosovo crisis, GDP per capita (1,848 USD, in 1999) has weakened too from + 3.9 % in 2000 to – 5.1 % in 2001. The average inflation rate in the January – November 2001 period was 5.7% and the average rate of industrial output declined by 8.8 %. The unemployment rate (30/32%) is one of the highest in Europe with approximately 700,000 persons out of labour market.

a. The phenomenon of corruption and its perception in "the former Yugoslav Republic of Macedonia"

i) Legislation

7. The Criminal Code provides for provisions under which definition of corruption and corruption-related offences is given: active bribery ("Bribe giving") is defined in article 358 and occurs when "A person who gives or promises an official person² a present or other benefit, so that he would perform an official act within the framework of his official authorisation which he should not perform, or not to perform an official act which he should perform, or a person who mediates for this, shall be punished with imprisonment of six months to five years.". Article 357 defines passive bribery ("Bribe taking") as "An official who requests or accepts a present or other benefit, or accepts a promise for a present or other benefit, in order to perform an official act within the framework of his official authorisation which he should not perform, or in order to fail to act in his official capacity which he otherwise must do, shall be punished with imprisonment from one to ten years". The Criminal Code provides also for the offences of "Bribery in elections and voting" (article 162), "Unauthorised acceptance of presents" (article 253), "Illegal mediation" (article 359), "Misuse of official position and powers" (article 353), "Forgery or destruction of business books" (article 280), "Forging an official document" (article 361), "Fraud in the service" (article 355)³. Furthermore, it should be mentioned that codes of conduct exist, or are in the pipeline, for civil

² According to article 122 of the Criminal Code, "An official person", when marked as perpetrator of a crime, is considered to be:

- a) an elected or appointed officer in the Parliament, in the Government of the "former Yugoslav Republic of Macedonia", in the State administration agencies, in the courts and in other agencies and administrations which perform certain professional, administration or other matters within the framework of the rights and duties of the Republic, in the local selfgovernment as well as persons who permanently or periodically perform an official duty in these agencies and organizations ;
- b) an authorized person in a legal entity which by law or by some other regulation enacted based on the law is entrusted with performing public authority, when he performs the duty within the framework of that authority ;
- c) a person performing certain official duties, based on the authorisation given by the law or by some other regulations enacted based on the law ;
- d) a military person, when considering crimes in which an official person is pointed out as offender and
- e) a representative of a foreign country or an international organization in the "former Yugoslav Republic of Macedonia".

³ A set of the relevant legislation is included in Appendix I to this report.

servants and public-sector employees⁴, police officers, members of the judiciary and finance ministry staff.

8. According to the provisions of the Criminal Code of "the former Yugoslav Republic of Macedonia", perpetrators of the criminal offences of "bribe giving" and "bribe taking" can be: official persons, "responsible persons", responsible persons in a foreign legal entity, foreign official persons, and persons performing matters of public interest. Pursuant to Article 7 item 11 of the Law on Amending and Supplementing the Criminal Code, the notion "persons performing matters of public interest" means persons performing functions, duties or matters of public, that is, common interest, such as a teacher, educator, doctor, social worker, journalist, notary public, lawyer or any other person who carries out these matters.
9. In the context of corruption, there are no differences between "responsible persons" in the public and private sectors.⁵ Following the legal definition of "responsible persons" there is no distinction made between legal entities in the public and private sectors. This means that responsible persons in legal entities in the private sector may also be perpetrators of the criminal offences of active and passive bribery.
10. In "the former Yugoslav Republic of Macedonia" legal system, legal persons cannot be held liable for the criminal offences, including corruption offences⁶.
11. According to the information provided to the GET before and during the visit, there are reasons to believe that in some specific areas there is a connection between organised crime and corruption and that this connection includes quite a strong international element. In this context, during the meeting with the Minister of Justice, the GET was told that stronger regional cooperation would be required to counter the scourge of corruption, taking account notably of the country's location.
12. In "the former Yugoslav Republic of Macedonia" legal system, there are no special measures to protect victims, including damaged parties. The police may provide physical protection of a damaged party or of someone close to him/her only upon his/her request.
13. There is no special programme for witness protection, including in corruption cases. The police are responsible for the physical protection of witnesses upon their request. However, there are no cases where it has been used specifically for criminal offences of corruption. There are no agencies for witness protection. The GET noted that in the Law on Prevention of Corruption⁷, adopted after the visit, on 18 April 2002, witness protection for cases of corruption is regulated - in its general terms - in article 19 paragraph 2 which reads as follows: "A person who has given a statement or witnessed in a procedure for a corruption offence shall be protected. The person has the right for a compensation of damage which he or a member of his family may suffer owing to the statement given or to his appearance as a witness."⁸

⁴ The "Law on civil servants" was adopted on July 2000.

⁵ A "responsible person", pursuant to Article 122 item 9 of the CC, is considered to be a person working in a legal entity who, given his function or the special authorisation he has been given in the legal entity, has been entrusted with certain range of tasks relating to the execution of the legal regulations of the legal entity in the a) management, b) use and disposal of property, c) management of the production or d) some other economic process or supervision on them.

⁶ According to the information provided to the GET after the visit, the criminal liability of legal persons has been included and regulated in the new text of the Proposal of the new Criminal Code.

⁷ A copy of the Law on Prevention of Corruption figures in Appendix II

⁸ The GET was informed after the visit that a proposal to amend the Criminal Code and introduce a new article 292a on witness protection was under discussion.

14. As far as collaborators and whistle-blowers are concerned, Article 358 paragraph 3 of the Criminal Code ("Bribe giving") stipulates that "the offender who gave bribe upon the request from the official person, and who reports this before he finds out that the crime was discovered, shall be acquitted from punishment". In addition to that, article 19 paragraph 1 of the Law on Prevention of Corruption states that "criminal prosecution may not be initiated against a person who revealed data indicating the existence of corruption, and he may not be held responsible."
15. The main factor that contributes to the existence of money laundering in "the former Yugoslav Republic of Macedonia" is a large use of cash transactions, non-resident account transactions that are not subject to sufficient controls and the privatisation process where connections with a foreign exchange can be easily established and can lead to money laundering activities. The Law on money laundering prevention, which was adopted on August 2001 and entered into force on 1st march 2002, is mostly based on international experiences and standards in this area, including the 40 Recommendations of FATF, the Vienna Convention and the Council of Europe Convention. Only the Criminal Code and Law on money laundering prevention cover legal regulation pertaining to money laundering prevention. Article 273 of the Criminal Code refers to the criminal offence of money laundering⁹. The Law on money laundering prevention determines the entities, defines the measures and actions to be undertaken against money laundering and establishes how to control and implement these measures. It also provides for provisions setting up, within the Ministry of Finance, the Money Laundering Prevention Directorate, established in September 2001. It is an administrative body, responsible for collecting, analysing and storing data received from the entities obliged to undertake measures and actions for detecting and preventing money laundering. The Directorate, when performing the measures for money laundering detection and prevention, cooperates with the Ministry of Interior, the Public Prosecution, the Customs Administration, the National Bank and the other state bodies as well as with international institutions for combating money laundering. As a Financial Intelligence Unit, the Directorate receives information on two bases: a) Reports about regular transactions over 20.000 euros and (2) reports for suspicious transactions. Both types of reports are received from the financial institutions and other subjects that are obliged by law to undertake measures and activities for prevention of money laundering: natural persons and legal entities as well as officials and persons in charge within the legal entities to carry out activities connected with investing, crediting, conversion transfer and other money transaction. This refers to all financial institutions such as banks, saving houses, brokers, insurance companies, and stock exchange etc. According to the law, everyone, including lawyers, notaries public, chartered accountants and auditors, is obliged to send reports to the Directorate regarding the transaction considered as suspicious and with which money laundering can be performed.

⁹ (1) "A person who through banking, financial or other economic operation releases in circulation, accepts, takes over, exchanges or breaks into small change money for which he knows was acquired through trade in narcotics, trade in arms or through other punishable action, or in some other manner covers up that they originate from such sources, shall be punished with imprisonment of one to ten years. (2) The punishment from item 1 shall also apply for a person who releases in trade or in some other form of circulation property, objects of value or other goods for which he knows they have been acquired through trade in narcotics, trade in arms or through some other punishable action, or in some other manner covers up that they originate from such sources. (3) A person who commits the crime from items 1 and 2, and who was obliged to know and who could have known that the money and other goods were acquired through a punishable action, shall be punished with a fine, or with imprisonment of up to three years. (4) A person who commits the crime from items 1 and 2 as a member of group, gang or some other association dealing with laundering money and other property gain, shall be punished with imprisonment of at least five years. (5) The money and other direct and indirect property gain shall be confiscated and if confiscation is not possible because they were transferred abroad, other property of the offender that corresponds to their value shall be confiscated."

ii) *International co-operation*

16. "The former Yugoslav Republic of Macedonia" has ratified the Council of Europe's Criminal Law Convention and signed the Civil Law Convention on Corruption. The European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons have been ratified and entered into force. It has concluded bilateral agreements on judicial co-operation in criminal matters with Albania, Austria, Bulgaria, Belgium, Croatia, Cyprus, the Czech Republic, France, Greece, Iraq, Hungary, Mongolia, Germany, Poland, Romania, the Russian Federation, Slovakia Slovenia, Spain and Turkey.
17. Requests for legal assistance in criminal matters by domestic courts are furnished to foreign bodies via diplomatic channels. The requests for judicial assistance by foreign bodies are transmitted to domestic courts in the same manner. When the request refers to a criminal offence for which extradition is not allowed under the domestic regulations, the court asks the Ministry of Justice for an instruction. There are no factors that would limit or obstruct international legal assistance in cases of corruption. Extradition of foreign nationals for acts of corruption is allowed whereas extradition of a national for the offence of corruption or for any other criminal offence is not allowed.

iii) *Statistics*

18. According to the statistics provided to the GET, in 2001, 20 cases of passive bribery, 12 of active bribery and 513 of misuse of official position and power were reported to the law enforcement agencies; there were 7 convictions for bribe taking, 8 for bribe giving and 36 for misuse of official position and power.¹⁰
19. The GET noted that in "the former Yugoslav Republic of Macedonia", public perception is that corruption is a worrying phenomenon that affects the activities of some important State institutions and certainly undermines the democratic and, above all, economic development of the country.

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

b1. The Police

i) *Organisation*

20. According to the Law on Internal Affairs, adopted on 29 March 1995, the main task of police is to maintain public order and safety and to provide protection and assistance to the public. Article 1 of this Law gives general provisions as "protection of the life, the personal safety and the property of the citizens" etc. Article 8 describes the task of the Police: *"The Police is responsible for performing the tasks related to the immediate maintenance of the public peace and order, regulation and control of road traffic, control of crossing the state border, security of the lakes, as well as other tasks as in article 1 above, if their nature or conditions require they be performed by uniformed officers...."*
21. Article 12 describes the task of the Criminal Police: *"The Criminal Police of the Ministry is responsible for the tasks related to prevention of crimes, discovering and capturing criminal*

¹⁰ Complete charts on corruption and related offences are included in Appendix III

perpetrators, criminal technical operations, control of stay and residence of aliens, inspection and supervision of fire and explosives protection, as well as for other affairs as proscribed in article 1 above". According to article 9 of the aforementioned law, "At least one police station is established for each municipality to directly perform police and other interior related affairs".

22. The Government allocates the annual budget to the police. The police provide an Annual Report to the Government including budget data, extent and development of crime etc. The Parliament and Government can provide guidelines to the police regarding priority for the police work, but so far nobody was able to remember that this has happened at all, according to information given to GET.
23. The police is organised on a central, regional and local level. The police come under the Ministry of Interior. The total number of employees is approximately 10,000.
24. The central level consists of "Bureau for Public Security" and "Department on Security and Counterintelligence" headed by a director. Within the Bureau for Public Security in the Department for criminal police, there is a special section for "Organized crime" whose structure includes a Division on Economic and Financial Crimes, as well as a Unit in charge of corruption, tax-evasion, smuggling, money laundering, extortion, racket, money falsification, cyber-crime. Within this Unit, 2 inspectors work on corruption cases. Within the section for organised crime, there are many highly qualified people with sufficient experience in this field, which makes it possible for such divisions to deal with the above-mentioned criminal activities successfully.
25. There are 18 police districts including the capital, Skopje. Each police district has a police authority headed by a Head of Internal Affairs Section, who is responsible for police work in the region, including ordinary management decisions. Until 1991, the Head of Internal Affairs Section was responsible for hiring or dismissing police officers, but from 1991 these responsibilities were centralised to the Ministry of the Interior.
26. Cases of bribery fall under the competence of the Organized Crime Sector at the central level and on a regional level or the competence of the Head of Internal Affairs Section. For complicated, big or sensitive cases special *ad hoc* teams can be set up to conduct the investigation, and if needed also joint-teams from central and regional level.
27. There exists a Code of Conduct for police officers.

ii) Training

28. There is no central Police Academy in "the former Yugoslav Republic of Macedonia", but in 2000 the Government started preparing a new law that provides for creating a National Police Academy. The GET was informed that it is envisaged that the law will be adopted soon.
29. As a part of the basic training courses, police officers receive training in the field of corruption. The GET was told that there is a permanent continuity of professionalism and specialisation in police education aimed at improving the police officers' awareness of their tasks and obligations. Education is performed through various courses, seminars, workshops, instructive meetings, study visits in their own country and abroad, including other forms of professional specialisation and education.

30. Such activities are organised in co-operation with other services of the ministry or with the assistance and co-operation of various international organisations, foreign police forces and other specialised services on combating particular types of crime.

iii) Criminal Investigation of corruption

31. In the legal system of "the former Yugoslav Republic of Macedonia", there are no special bodies or institutions with a multidisciplinary character dealing exclusively or predominantly with the fight against corruption.

32. The police conduct preliminary investigations regarding cases of corruption and corrupt behaviour. However, as already mentioned above, within the police structures there is no "specialised" unit for the fight against corruption. According to information provided to the GET, investigations on corruption and corrupt behaviour cases are conducted by highly trained officers who have undergone a number of training courses in the field of the fight against corruption. Their chief individually appoints them. By "highly trained", the authorities of "the former Yugoslav Republic of Macedonia" mean specialists in the field of "bribe taking" and "bribe giving" (criminal offences under article 357 and 358). Furthermore, the GET was told that before being elected to this special task, the police officer has a long practical experience in the field of combating corruption, financial crimes and related laws.

33. There is 1 highly trained police officer dealing with corruption in each region; 6 in the Skopje region and 5 at central level (Organized Crime Sector). The GET was told that, particularly at the regional level, it is rather difficult for police officers to operate in the sensitive field of investigating bribery and corruption. The difficulties of the police officers' work at regional level mainly relate to the fact that they work in a context where almost all inhabitants know each other, are friends or relatives. This refers particularly to those people who occupy high positions in the civil service or have managing positions. The GET was also told that for that reason, the damaged persons hesitate to report cases of corruption to the law enforcement agencies and to collaborate with them. Therefore, it is standard practise to immediately inform the police headquarters on cases involving high-ranging officials in order to undertake the necessary investigation.

34. The Head of Internal Affairs Section decides to conduct an investigation regarding corruption. According to internal regulations, the Head of Internal Affairs Section has the obligation to inform the central institutions (Organized Crime Sector) about the investigation. According to the information provided to the GET during the visit, details of all investigations regarding corruption are updated in a centralised database.

35. In order to use overall police resources (professional and personal competency) in a specific field /task etc, the Head of Internal Affairs Section can decide to cooperate with other Regional chiefs of police and/or with the Director of police at the central level. Examples of areas where this co-operation already exists are investigation of corruption where the investigation at regional level can be handed over to central level (Organized Crime Sector at the Bureau for Public Security) or the central level can support the investigation at the regional level¹¹. Training in the field of corruption is another example of co-operation between the regional and central level police authorities.

¹¹ Heads of Internal Affairs Sections co-operate with each other in cases where the criminal activity takes place in different areas. In almost all such cases, the headquarter is informed and undertakes the co-ordination of the investigations.

36. Investigations of internal corruption cases within the police are carried out by the Section for Internal Audit. Its organisational structure is centralised and detached police officers from Sections of Internal Affairs work in it. When there are elements for a criminal offence, the Unit hands the case over to the criminal police for further investigations. If during its investigations, the Unit reaches the conclusion that a violation of professional duties has been committed, it drafts a report addressed to the Minister of Internal Affairs, i.e. the manager of the department to which the person belongs, in which disciplinary measures are proposed. The disciplinary procedure is conducted by an independent disciplinary commission of the Ministry of Internal Affairs. The GET was informed that last year the Section for Internal Audit was transformed into a Professional Standards Unit.¹²
37. Investigative techniques in corruption cases are the same as those that are used in other criminal investigations. In accordance with the Constitution, in any investigation of evidence gathering, including in cases of corruption, it is not permitted to use special means and techniques, such as recording, electronic surveillance, interception of communications, photography etc. The use of an agent provocateur and bugging also belong to the group of means and methods that may not be used either in investigation or in proving cases related to corruption.
38. At the time of the visit, the Parliament was in the process of considering amending article 17 of the Constitution¹³ (whose interpretation makes it impossible in practise to use special investigative means in criminal proceedings) in order to allow the use of wire-tapping and other forms of special means of investigation under certain conditions according to criminal law.
39. It is possible to use anonymous witnesses during an investigation, but their statements are not accepted as evidence.
40. The GET was informed that it is not unusual in "the former Yugoslav Republic of Macedonia" for a criminal investigation on corruption to be initiated on the basis of information received from the public or from the police. At the same time, the GET was informed that some other public institutions were somewhat less helpful with information regarding corruption. No specific public institution was mentioned.

b2. The Public Prosecution Office

41. The status and competence of the Public Prosecution Office (hereafter "PPO"), the status and powers of the Prosecutor General (hereafter "PG"), competence of other prosecutors as well as organisation and control of the PPO are governed and regulated by the Constitution, the Code of Criminal Procedure and the Law on the Public Prosecution Office. According to article 2 of this Law, "the Public Prosecution is a unique and independent State body, that prosecutes those who have committed crimes and other criminal offences established by law (...)". Article 3 provides that the PPO carries out functions based on and within the framework of the Constitution and the Law¹⁴.

¹² These changes were made as a result of the United States ICITAP (International Criminal Investigative Training Assistance Programme) project.

¹³ "The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence , in cases where it is indispensable to a criminal investigation or required in the interests of the defence of the Republic."

¹⁴ Article 42 of CCP establishes that:

"(1) The public prosecutor's general right and duty is to prosecute criminals.

(2) Of crimes which are prosecuted ex officio, the public prosecutor is competent:

1) to take all necessary measures aimed at discovering crimes and criminals and to direct the preliminary procedure;

42. According to article 106 of the Constitution and article 5 of the Law on the PPO, the PG and his/her deputies are elected for 6 years (renewable) by the Assembly (hereafter "Parliament") on proposal of the Government (Minister of Justice). They can be dismissed by the Parliament. All other prosecutors are also appointed by Parliament – but on a permanent basis - following the same procedure but the PG gives advice on those nominations¹⁵. The number of Deputies in the Public Prosecution Offices at all levels is determined by the Government.
43. According to Article 31 of the Law on PPO, a Public Prosecutor may only be dismissed:
- *if s/he so requests;*
 - *if s/he permanently loses the capability of carrying out the office in the Public Prosecution, which is determined by the Government of "the former Yugoslav Republic of Macedonia", on the basis of documented findings and the opinion of a competent medical commission;*
 - *if s/he fulfils the conditions for retirement;*
 - *if s/he is sentenced for a criminal offence to a prison term of at least six months;*
 - *if it has been established that s/he has committed a serious disciplinary offence*
 - *owing to unprofessional and unethical performance of his/her function in the Public Prosecution Office, as decided by the Government of "the former Yugoslav Republic of Macedonia", following a proposal by the Public Prosecutor."*
44. Under Article 35 of the same Law, a serious disciplinary offence is considered to be the misuse of office, undermining his/her reputation and the title of the PPO, or when performing duties and responsibilities which may influence his/her integrity.
45. The disciplinary procedure against a Public Prosecutor owing to unprofessional and unethical performance of his/her function is conducted by the Government through a First Instance Disciplinary Commission. The Public Prosecutor or Deputy Public Prosecutor responsible for disciplinary matters, and the person submitting the proposal for disciplinary liability, are entitled to lodge an appeal against the first instance decision to the Second Instance Disciplinary Commission of the Government. The Public Prosecutor or Deputy Public Prosecutor responsible for disciplinary matters may ask for court protection before the Supreme Court.
46. At the time of the visit, 198 public prosecutors worked on the whole territory of "the former Yugoslav Republic of Macedonia". The Public Prosecution Offices are established at 3 levels corresponding to the Court levels: 27 Primary Public Prosecution Offices which correspond to the 27 courts of first instance; 3 High Public Prosecution Offices which correspond to the 3 Courts of Appeal (Skopje, Bitola and Stip) and the Public Prosecution of "the former Yugoslav Republic of Macedonia" established for the whole territory, located in Skopje and headed by the PG.
47. There are no special units dealing with organised crime, corruption or any other serious form of criminality within the PPO.

2) to demand investigation;

3) to enforce and present the prosecution act i.e. prosecution proposal before the competent court;

4) to appeal against court decisions which are not final and to propose extraordinary remedies against final court decisions.

(3) The public prosecutor conducts other activities determined by this Code."

¹⁵ All candidates for a post of prosecutor are obliged to pass examination in law after two years of practical legal experiences in the State or private sector. After that the candidate has to work for the PPO for at least three years to get needed knowledge and skills to be appointed as a prosecutor.

48. The posts of Public Prosecutors and Deputy Public Prosecutors at all different levels of Prosecution Offices are advertised in national newspapers upon decision of the Parliament - no later than 15 days from the decision fixing the number of posts available - specifying the nature of the post and the qualification required: i.e. for a post of Deputy Public Prosecutor, candidates must be citizens of "the former Yugoslav Republic of Macedonia" who fulfil common conditions established by law for an employment in State institutions, be a bachelor of Law, and have a "respected opinion of a Public Prosecutor" (article 25 of the Law on PPO).
49. Candidates to Primary Public Prosecution Offices should have working experience with confirmed positive results and with five years of practice in a judiciary branch, and nine years for candidates for a post in a High Public Prosecution Office. As regards candidates for a post of Public Prosecutor or Deputy Public Prosecutor of "the former Yugoslav Republic of Macedonia", besides conditions mentioned above, they must be distinguished experts in law with at least 12 years' working experience.
50. The PG is responsible to Parliament. Neither the Government nor the Parliament or any other State or political authorities are allowed to give instructions or to influence prosecutors on how to conduct investigations and to prosecute offenders in concrete cases; instructions on a concrete case can only be given by a senior prosecutor to a subordinate prosecutor in written form. Copy of every such instruction is to be sent to the PPO. Those instructions usually contain both the legal opinion of the senior prosecutor on how to deal with the concrete case and suggestions or instructions about appropriate measures to be taken in order to terminate investigations or prosecutions successfully.
51. At the time of the visit, the PPO had not been preparing any special training programme on corruption matters and other forms of organized crime. Nevertheless, prosecutors take part quite regularly in international seminars on these topics. The GET was told that information gathered by participants during such seminars and training sessions are subsequently transferred to subordinate prosecutors.
52. The GET was told that the Association of Public Prosecutors, established in 1999, provides some educational and training activities for prosecutors. Nonetheless, the Association is poorly funded and most training activities for prosecutors are still provided by some NGO's.
53. There is no Code of Conduct for prosecutors. The GET was told that a code of this type is under preparation¹⁶.

b3. The Courts

54. Corruption cases are adjudicated by the courts. According to article 21 of the Code of Criminal Procedure, "courts in criminal cases judge in the limits of their actual competence determined by law". The Constitution and Law on the Courts govern the organisation of the judicial system. According to the Law on the Courts (articles 24 to 35), the Judicial system is organised into three levels of courts and "judicial power is exercised by courts of the first instance (27), courts of appeal (3) and the Supreme Court".
55. In criminal matters, the courts of first instance are competent to decide all kinds of criminal cases, including corruption cases. According to article 33 of the aforementioned law "The courts of

¹⁶ The GET was informed after the visit that a "Code of Ethics for Public Prosecutors" was adopted on 25 May 2002 by the Assembly of the Association of Public Prosecutors.

appeal are competent to (1) decide on appeal against the verdicts of the courts of the first instance, (2) to decide on conflicts of competence among the courts of first instance within their territory and (3) exercise other duties determined by law".

56. According to article 101 of the Constitution, the Supreme Court is the highest court, "providing uniformity in the implementation of the laws by the courts". It exercises the judicial power on the whole territory and is competent, *inter alia*, to decide in the third and final instance on appeals against the decisions of the courts of appeal, decide in first and second instance on administrative matters and perform other duties determined by law.
57. Finally, the Constitutional Court decides, among others, on the conformity of laws with the Constitution, on the conformity of collective agreements and other regulations with the Constitution and laws and on other issues determined by the Constitution (article 110 of the Constitution).
58. No special jurisdictions dealing with corruption and serious economic crime cases exist in "the former Yugoslav Republic of Macedonia".
59. As are prosecutors, judges are elected by Parliament. However, there is a major difference between the 2 systems of appointment: prosecutors are appointed upon proposal made by the Minister of Justice (see paragraph 46), whereas judges are elected, for a permanent mandate, upon proposal of the Republican Judicial Council (hereafter "the RJC"). Article 104 of the Constitution provides that the RJC is composed of 7 members, elected by the Parliament "(...)" from the ranks of outstanding members of the legal profession "(...)" for a period of six years renewable. According to article 105, "the RJC (1) proposes to the Assembly the election and discharge of judges and determines proposals for the discharge of a judge's office in cases laid down in the Constitution, (2) decides on the disciplinary answerability of judges, (3) assesses the competence and ethics of judges in performance of their office and (4) proposes two judges to sit on the Constitutional Court".
60. A judge cannot be transferred or removed from office against his will, except as a result of a criminal or a disciplinary sanction. According to Article 99 of the Constitution "A judge is elected without restriction of his term of office". The RJC is competent to examine a request for discharging a judge that is submitted to the Parliament. Under Article 19 of the Law on the RJC, the grounds for discharging a judge are as follows:
 - if s/he permanently loses the psychophysical capability of carrying out a judge's office;
 - owing to unprofessional and unethical performance of a judge's office; and
 - owing to a serious disciplinary offence defined by law¹⁷, which makes him/her unsuitable to perform a judge's office.
61. The determination of the unprofessional and unethical carrying out of a judge's function is made by the RJC on the basis of the documented data and insight into of the judge's work. This procedure is initiated *ex officio* by the RJC itself. In addition to the *ex officio* procedure, proposals

¹⁷ According to the Law on the Courts, serious disciplinary violations for which a procedure may be initiated are considered to be:

- serious disturbance of the public law and order violating his/her reputation and the title of the court,
- party and political activities,
- performance of a public office or profession and
- serious breach of the rights of parties and other participants in a procedure whereby the title of the court and of the judge's function are infringed.

to initiate a procedure in order to determine a judge's disciplinary responsibility may be made by the President of the Court, the President of the Higher Court and the General Session of the Supreme Court. They are communicated to the CRJ which sets up a Commission for Determining Disciplinary Responsibility, composed of three members of the Council. After conducting the procedure the Commission takes a decision. The judge and the submitter of the proposal may lodge an appeal against that decision.

62. After a defined disciplinary responsibility of a judge, the Council may pronounce a disciplinary measure 'written reprimand' or 'temporary reduction of the salary' which may not exceed 15% of the monthly pay of the judge for a period of one to six months. Following the disciplinary procedure conducted against a judge, there may be a proposal for his/her discharge, having obtained the opinion of the court where the judge is working and of the general session of the Supreme Court.
63. According to article 51 of the Law on the Courts "a judge has a right and obligation to a continuous professional training during his term of judicial office". The professional training of judges is provided by the Centrum for Continuing Education, which has been established by the RJC. The Centrum prepares annual educational programmes¹⁸. The Centrum's financial resources are mostly gathered from NGO's, international foundations, western European countries etc.
64. There exists a code of conduct for judges.

b4. Criminal investigation in preliminary procedure

65. According to article 141 of the CCP "everyone may report a crime which is prosecuted *ex officio*" to the competent prosecutor, in written form or orally. The State agencies and institutions which perform public authorisation, and all employees working in those bodies and institutions, are obliged to report crimes which are prosecuted *ex officio* including corruption and corruption related cases and undertake measures to prevent traces of the crime (or objects upon which or with which the crime has been committed) being lost or destroyed and to gather other evidence (art. 140 CCP).
66. As soon as a criminal charge is reported to the police or any other law enforcement agency, they have to immediately inform the competent public prosecutor and hand the report over to him. During the preliminary stage of the criminal procedure, the police can take all those urgent acts and necessary measures to preserve traces and things relevant to the offence, to find offenders and to prevent their escape. They can ask suspects to make statements which may be useful for the criminal procedure to be conducted successfully. However, statements made by the suspect and certain other categories of persons (witnesses, damaged persons etc.) to the police cannot be used as evidence during the trial, because, according to article 339 of the CCP, the court reaches its verdict only on the basis of facts and evidence produced in the main hearing¹⁹.

¹⁸ See the 2002 curriculum in Appendix IV.

¹⁹ The only exception is provided by article 325 para. 2 of the CCP according to which minutes with the statements given by witnesses, co-defendants, or accomplices already convicted, and the minutes and other writs concerning the findings and opinion of the experts may be used only in cases where the accused person has deceased, has become mentally ill, or cannot be found, or his presence in court is not possible or is significantly difficult due to his old age, illness, or other important reasons; and witnesses or experts without legal reasons refuse to give a statement in the main hearing.

67. The public prosecutor is legally competent to take all the measures needed to gather evidence that a crime has been committed, to direct the preliminary procedure, to ask the police to make investigative acts in order to find evidence and data necessary for the investigating judge to take a decision on whether or not to start an investigation. All the information gathered during this preliminary phase of the criminal procedure have only informative authority and cannot be used as evidence during the proceedings before the courts apart from the urgent acts. Article 17 of the Criminal Code of Procedure provides as follows: "The public prosecutor is obliged to initiate a criminal investigation if there are evidence that a crime which is initiated *ox officio*, has been committed". On the basis of information gathered by police, the Public Prosecutor can:
- a) submit the case to the investigating judge with a request to start investigation ;
 - b) ask the police to make additional investigations and then to submit the case to the investigating judge with a request to start investigation;
 - c) decide that information gathered during preliminary procedure is not sufficient to start investigation against a clearly identified person and dismiss the case;
 - d) with the agreement of the damaged person, to terminate the proceeding when the offence is punished by a fine or a prison sentence of three years and if the suspect has agreed to fulfil certain commitments by which the harmful consequences of the offence will be reduced or removed.
68. If the prosecutor finds that information gathered during the preliminary procedure are sufficient to start investigation against a well identified person for a definite offence, he submits the case to the investigating judge with a request to start investigation. The public prosecutor is also competent to demand investigation to the investigating judge, to ask him to perform certain acts, to be present when investigative acts are carried out and be informed about measures taken by an investigating judge during the investigation.
69. "The former Yugoslav Republic of Macedonia" has the institution of the investigating judge to whom the public prosecutor has to address a request for an investigation to be conducted. Therefore, the investigating judge can 1) start the investigation or 2) if he does not agree with the prosecutor's request for investigation, can ask the court ("Chamber") to take the relevant decision. The prosecutor and the accused person have the right to appeal against the court's decision. "Investigation is initiated against a person when there is justified suspicion that he has committed a crime" (art. 150 CCP). The investigation is therefore carried out by the competent investigating judge (judge of first instance court, responsible for criminal cases). He is also responsible for authorising all investigative measures that could affect the exercise of fundamental rights and freedoms of the suspect. Only information and data obtained through the intervention of the investigating judge can be used as evidence before the court. In order to carry out the acts necessary to gather evidence (i.e. search of premises or persons or temporary confiscation of objects – art. 155 para. 3 of CCP), the investigating judge may require the assistance of the police.
70. According to article 167 of the CCP, "the investigating judge completes the investigation when he finds that the conditions of the issues in the investigation are sufficiently elucidated". After completing an investigation, the investigating judge submits the records to the public prosecutor who is obliged to make a proposal for the investigation to be completed or to initiate a prosecution act or to state that he withdraws from prosecution.
71. In "the former Yugoslav Republic of Macedonia", there is not special co-ordinating institution and the relations between the police, the PPO and the courts are laid down, within the framework of

their respective spheres of competence, in the Code of Criminal Procedure, the Law on Internal Affairs and the Law on the Public Prosecutor Office. There are no special rules governing the relations between the Police, the PPO and investigating judges when proceeding and dealing with cases of corruption. However, police officers, prosecutors and investigating judges met by the GET confirmed that daily co-operation between them is highly successful and there are no personal or professional problems.

b5. Other bodies and institutions

72. There are other authorities in "the former Yugoslav Republic of Macedonia", which, although not directly involved in the criminal law area, play an important role in the prevention and disclosure of corruption. In this regard, it is essential to refer to the Ministry of Finance and the Ombudsman.

i) The Ministry of Finance

73. The GET met representatives of different departments of the Ministry of Finance. The Ministry is particularly active in the fight against corruption and can conduct investigations in government departments and other authorities, in particular with regard to public procurement, as well as in companies. The checks made cover public expenditure, transfers of funds and movements of goods, etc., with a view to detecting fraud, corruption, money-laundering and so on.

74. A financial police unit is being set up with staff from the Ministry of Finance assisted notably by officials from the Customs Service as well as from the Ministry of the Interior.

75. After the visit, the GET was informed that the Law on the Financial Police had been adopted on 16 July 2002 with a view to being implemented as of 1 September 2002. Under this law, the financial police is a body of the State administration within the Ministry of Finance which functions uniformly on the territory of "the former Yugoslav Republic of Macedonia" and whose work is managed by a Director. The financial police perform the following tasks:

- control for the correct implementation of tax and customs regulations;
- collection of information and data in co-operation and co-ordination with the other sections in the Ministry of Finance, Ministry of Interior, Public Prosecution Office and other State bodies with a view to finding out offences such as tax evasion, money laundering, smuggling, illicit trafficking in goods and products or other types of criminal offences involving larger and significant amounts of tax, customs or other proceeds;
- investigations against one or several persons for whom there is a founded suspicion of involvement in illegal financial activities;
- investigations involving natural persons or enterprises dealing with activities which are in contradiction with the existing regulations on money laundering, taxes or other types of financial crime;
- investigations on financial crime which cannot be proved directly with existing evidence and involve methods of indirect proof, such as: expenses, evaluation of valuables or existence of bank accounts etc., which are used in cases when a part or the entire financial documentation of the tax payer does not exist, is destroyed or is unavailable;
- introduction of a database of potentially risky tax payers, that is persons who have already been sentenced for serious criminal offences or for some other reason are considered to present a risk and expert computer analysis of confiscated evidence in the form of computer data, from mobile phones or other electronic devices and media containing information.

76. In the performance of the tasks within its competence, the financial police is entitled, *inter alia*, to have an insight into and to examine business books and other documents and data relating to data and elements of persons under investigation; to take statements from a suspect and from witnesses; to search suspect's business premises with a court order²⁰. The tasks of the financial police are carried out by financial police officers who are appointed and discharged by the Minister of Finance upon a proposal of the Director of the Financial Police.
77. On November 2002, the GET was informed that the Unit of Financial Police had not yet been set up, and that the Director had not been appointed.
78. The Ministry of Finance recently set up a website to provide information for the public and answer their questions. This initiative, designed to ensure greater transparency in dealings between a traditionally "closed" ministry and the public, should be welcomed. Unfortunately, the GET was unable to test users' views of the service, as it had been established too recently.

Customs Service

79. Within the Customs Service, which belongs to the Ministry of Finance, a special investigating unit has been created. The role of this unit is to conduct preliminary investigations about Customs Service officials who are suspected to have committed a crime. Cases of corruption committed against or by officers are also included in its investigative duties. The Customs Investigative Unit co-operates with competent prosecutors as provided by provisions of the Chapter XV of the Code of Criminal Procedure in the same manner as the police. Information completed by the Customs Investigating Unit is submitted to the competent prosecutor, who may ask investigating judge to start investigation in concrete case.
80. The GET was informed that there have been cases within the Customs Service that have attended the courts' final stage and where officials from the Service have been sentenced to terms of imprisonment. Apparently, all these cases concerned petty cases of corruption (200/250 euros).

Public expenditure and public procurement

81. The Ministry of Finance monitors public expenditures, checks how the various public entities commit their expenditure and, above all, whether public procurement procedures are actually complied with. An internal audit conducted in October 2000 did not reveal any malpractice. If it had done so, the Ministry of Finance would have referred the matter to the judicial authorities for criminal procedure to be started.
82. Public procurement is governed by "the Law on Public Procurements" that entered into force on 20 June 1998. This Law was modified and amended by the Law on Modification and Amendments to the Law on Public Procurements adopted on 10 January 2002 and entered into force on 25 January 2002. The GET considered that the legislation of "the former Yugoslav Republic of Macedonia" on Public Procurement is fully in line with the relevant European Union directives. It provides for the setting up of procurement bodies ("Public Procurement Committee") in each entity (purchaser), which must include a representative of the Ministry of Finance and whose members are appointed for two years renewable. This system will therefore guarantee equal opportunities for all firms bidding for contracts and ensure that procurement procedures are

²⁰ The complete list of the Financial police's tasks figures in Appendix V (only in English)

transparent. The Ministry of Finance looks into any possible conflict of interest. Moreover, both the procedures implemented and the companies awarded contracts are subject to review by the Ministry of Finance's auditors. Articles 11 and 12 of the Law on Public Procurement deal with corruption²¹.

Companies

83. The Ministry does not have any special resources for conducting its inquiries and merely has "conventional" investigators and auditors (the Public Revenue Administration). Inspections are carried out regularly in all companies, including public firms (on average, once every four years). Ad hoc inspections are also carried out at the request of other ministries or following whistle-blowing or anonymous tip-offs. There is no requirement to inform firms of the purpose of the inspections. In addition, several successive inspections may be carried out if the requests made by various authorities cover different individual points. Lastly, the auditors perform checks on banks and the accounts that they are required to publish.
84. The inspectorate is divided into three sections that deal respectively with large firms, medium-sized firms and small and one-man businesses. The inspections cover the work done by the firms, transfers of funds and financial transactions (all foreign-exchange transactions exceeding 10 000 euros and all purchases and sales exceeding 20 000 euros must be declared to the authorities) and, indirectly, the staff employed.

Individuals

85. The Ministry performs checks on its own staff members, but they are not required to declare any interests they may hold in companies or other bodies. Specific measures are taken to reduce the risks of fraud and corruption in particularly sensitive posts. One example here is "the rotation" of Customs officials. The Ministry also performs checks on private individuals (in particular, their income), paying special attention to transactions between residents and non-residents and other expenditure by individual citizens with a view to detecting any illegal transfers of funds or laundering activities, etc.

ii) The Ombudsman

86. The Ombudsman's Office was set up in 1997 to protect "the rights of citizens when violated by bodies of the State Administration and other bodies and organisations with public mandates". It employs a staff of 30, half of which are engaged in examining the complaints received by the Office. These cover all Government services and may involve either the conduct of individual officials or procedural irregularities. Every day, some 10 people visit the Office in connection with complaints concerning town planning, health, education, police or the judicial system²².
87. If a case falls within the Ombudsman's competence, he examines the complaint, he "may: a) request additional information from organs and agencies concerned ; b) make a direct insight into

²¹ Article 11: "Members of the Public Procurement Committee and the responsible and managing authorities at the Purchaser as well as members of their closer family cannot apply as bidders".

Article 12: "The Purchaser shall revoke the decision for procurement, should the bidder give, directly or indirectly, a gift or any form or render any kind of service to the Committee which influence or could have influenced the adoption of the decision on procurement."

²² The Ombudsman has no power to deal with the substance of the judiciary decisions but can examine cases from the procedural aspects' point of view.

and investigate the competences of organs and agencies; c) summon an official or officer from the organ or agency, as well as any other person ; d) request the opinion of scientific or professional institutions" (Article 19 of the Law on the Ombudsman) If the Ombudsman considers that there is no violation, the application is rejected and a motivation is communicated to the parties. On the other hand, if a violation is found the Ombudsman makes a recommendation to the person or body concerned. If a criminal offence is discovered, including corruption, the file is sent to the PPO or a request to start disciplinary procedure (for petty offences) is sent to the competent administrative authority.

88. The value of the Ombudsman's Office lies in the fact that it does not merely respond to citizens' complaints by conducting inquiries but also makes proposals and recommendations to the bodies complained about to prevent any recurrence of the complaints. If the authority concerned does not take account of the Ombudsman's proposals and recommendations, the Government is informed and sanctions are taken against the officials responsible.

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

89. The following authorities benefit from immunities in "the former Yugoslav Republic of Macedonia":

- The President of the Republic,
- Deputies of the National Assembly,
- Head and Members of Government,
- Judges,
- Prosecutors,
- Members of the Republic Judicial Council and of the Constitutional Court.

90. According to article 83 of the Constitution "The President of the Republic is granted immunity. The Constitutional Court decides by a two-third majority of the total number of judges on any case for withdrawing immunity and approving the President of the Republic's detention". Moreover, according to article 87, the President of the Republic can be held accountable "for any violation of the Constitution" in the exercise of his/her duties: the procedure is initiated by the Parliament by a majority of two-thirds vote of all Representatives. The President may be subject to liability by a decision taken by the Constitutional Court by a majority of two-thirds vote of all judges. If the Court takes a decision where it "considers the President answerable for a violation", his/her mandate is withdrawn.

91. The legislation provides for two sorts of immunity for members of Parliament, members of Government, judges and prosecutors:

- firstly, "non-liability" in proceedings concerning votes cast, opinions expressed and decisions made during their Parliamentary term or their office, and
- secondly, "inviolability" ("immunity from arrest") for not being arrested, detained or prosecuted without the agreement of the relevant body.

92. The extent of inviolability is directly linked to the application of Guiding Principle 6.

93. According to article 64 paragraph 2 of the Constitution, a Member of Parliament "cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed". During the meeting with representative of the Parliamentary Committee on Immunities, the GET was told that according to

the generally accepted interpretation of this provision a Member of Parliament cannot be arrested and not be submitted to criminal investigations without the authorisation of the Parliament unless he is caught in *flagrante delicto* and when the offence in question is punishable by at least 5 years' imprisonment. In all other cases, he can be arrested (and criminal investigations can be initiated) only after the Parliament decides to lift his immunity by a two-third majority.

94. According to Article 89 item 3 of the Constitution and Article 14 of the Law on the Government, the president of the Government and the ministers enjoy immunity. The Government decides on its members' immunities. Moreover, under Article 15 of the Book of Procedures of the Government, a member of the Government may not be detained without the approval of the Government, unless found committing a criminal offence for which a prison sentence of more than five years is prescribed.
95. The GET was told that there had never been any request for lifting MP's or members of Government's immunity for cases of corruption.
96. According to articles 29 of the Law on the PPO and 65 of the Law on the courts, prosecutors and judges cannot be detained/arrested without the approval of the Parliament (with an opinion previously given by the Republican Judicial Council only for judges) unless caught committing a crime for which an imprisonment term of at least 5 years is prescribed.

III. ANALYSIS

a. **General policy on corruption**

97. In "the former Yugoslav Republic of Macedonia", the public is increasingly aware of the phenomenon of corruption, which is regarded as the country's most serious problem along with unemployment. During its visit, the GET was told that corruption is generally widespread in the health services (access to hospital care and diagnoses), the education system (notably examinations and university entrance), the customs authorities and the police. However, other fields are also affected, in particular capital expenditure and construction projects, where cost estimates are systematically inflated with a view to personal enrichment or funding of election campaigns. Moreover, the GET felt that donations from foreign countries and international institutions may create significant favourable opportunities for corruption in the country. Furthermore, as it has been expressed in the descriptive part of the present report, links between corruption and organised crime can be traced in some specific areas. In this regard, the GET considers that taking into consideration notably the location of the country, which makes it a point of transit for various international trafficking routes, whether trafficking in drugs or human beings, reinforced regional co-operation to counter corruption is needed.
98. "The former Yugoslav Republic of Macedonia" has adopted, or is in the progress of adopting, all the international standards in the field of combating corruption, but, for the moment, the effects of legislation already passed or under preparation are not yet perceptible. The GET felt that knowledge of corruption phenomena is based on a general conviction that corruption is rampant and widespread in the country, which may be linked to some visible, manifest forms of organised crime, including serious forms of organised crime. This is confirmed in public opinion polls that are quite relevant since the issue related to corruption cannot be defined precisely through statistics or other official data. Therefore, the research on real or potential victims of corruption is the most reliable one. Based on public opinion polls, their number is worryingly high.

99. The fact that combating corruption is the public's major concern would tend to show that corruption is widespread in "the former Yugoslav Republic of Macedonia". At the same time, it is very difficult to know which areas are the most vulnerable. For instance, some persons met during the visit told the GET that there were no particular problems with the public authorities and, at the same time, that corruption was a regular practice in all public procurement processes, with a view to personal enrichment or the funding of political parties. The GET was also told that the police and customs authorities were among the most corrupt. However, there is no means of confirming the truth of these statements. All this information must be verified and substantiated. **Therefore, the GET recommended to conduct regular studies to improve knowledge of the fields most affected by corruption with a view to developing a detailed corruption picture based on statistics and research to measure more clearly the extent of the corruption phenomenon in the country.**
100. "The former Yugoslav Republic of Macedonia" considers itself as a "country in transition". The authorities explain that the economic reform process is incomplete and this prevents fulfilment of the basic conditions for stamping out corruption. The GET considers that it is undeniable that reforms such as privatisation, liberalisation, deregulation, and establishment of a free market economy remain to be completed. Nevertheless, it has to be pointed out that these are not, in principle, measures designed to crack down on corruption and will in fact encourage it, if the necessary controls are not simultaneously put in place. These measures are intended to boost confidence among potential investors or donor countries, but offer no guarantee of stamping out corruption. Most of the persons met by the GET during its visit, both public officials and representatives of the civil society, agreed that the country is widely contaminated by corruption and corruption related offences, to an extent that endangers further political, economic and social development of the country. The GET was told by a high-ranking official that "the proceeds of corruption are no longer being transferred abroad, but the perpetrators now rather seek to invest their money in the country itself".
101. According to the data and information of reported cases of corruption received by the GET, areas most susceptible to corrupt behaviour in "the former Yugoslav Republic of Macedonia" are customs, police and employees in tax administration and health services. Their susceptibility to bribe taking may, to some extent, be explained by the low income and the fact that such behaviour derives from the type of work that they do and functions that they fulfil. The GET considers that if corruption and corrupt behaviour are to be defeated in "the former Yugoslav Republic of Macedonia", a comprehensive long term and pragmatic strategy is required, by which priorities for action are defined and all relevant agencies involved are associated. Public officials at all levels must receive information about anti-corruption measures to be introduced. At the same time, the public must be made aware of the measures undertaken and of the efforts made and results obtained. **Therefore, the GET recommended to adopt a comprehensive national anti-corruption strategy, as well as raise awareness among public officials and the public about the danger entailed by corruption.**
102. In the GET's opinion, a high degree of transparency and public accountability in the public administration could help to increase governmental efficiency and lead to reducing the public opinion towards the public administration regarding ongoing "rumours" about corruption. Some independent institutions informed the GET about the difficulties in obtaining information from some public administrations. **Therefore the GET recommended to develop stronger transparent and public accountability policies in the public administration to increase governmental efficiency.**

103. In the GET's view, in order to start achieving successful concrete results in "the former Yugoslav Republic of Macedonia", it is important to involve the public in the effort to combat corruption by making it play an active role in preventing corruption and corrupt behaviour and enabling and encouraging it to report suspicious cases of corruption to the relevant law enforcement bodies. ***Therefore, the GET recommended that the public should be able to identify those with whom they come in contact and to be well informed about procedures for making complaints.***
104. The GET underlined the fact that in preventing and combating corrupt behaviour all leaders and managers of State bodies and agencies must make clear their intention to maintain the highest level of integrity within their respective bodies and agencies. In the GET's view, it is also very important that those responsible for management and supervision ensure that a proper level of accountability at all stages of the civil servants' work be established and that ethical standards be followed. The GET recalled the importance of creating and maintaining within each of the State agency an environment where everyone feels confident in challenging inappropriate behaviour. The GET estimates that long periods of service in certain sensitive posts without effective management can breed corruption. ***For that reason, the GET recommended, in addition to what is already in place, to develop and implement procedures and policies to support managers of State bodies and agencies to identify, prevent, challenge and deal with corrupt, dishonest and unethical behaviour. Such procedures should include education, training and prevention.***

b. Legislation and preventive measures

105. Although co-ordinated criminalisation of national and international corruption (Guiding Principle 2) is not part of this evaluation, the GET nonetheless examined closely the legal framework within which the authorities of "the former Yugoslav Republic of Macedonia" realise their anti-corruption policies, insofar as this is directly linked to the scope of the standards set out in guiding principles 3, 6 and 7. As already emphasised, the GET was able to observe with satisfaction that over the last years the Parliament and the Government have adopted and brought into force quite a significant number of pieces of legislation related directly or indirectly to organized crime matters, including corruption, and that the authorities are still in the process of changing and updating the legislation in the field. "The former Yugoslav Republic of Macedonia" has subscribed to most of the existing international commitments in this field, and is incorporating these into its domestic law. The Law on Preventing Corruption has been recently adopted. Furthermore, codes of conduct exist, or are in the pipeline, for civil servants and public-sector employees, police officers, members of the judiciary and finance ministry staff. The legislation on public procurement contracts has recently been amended. In addition to that, various positive measures have been taken to prevent, detect, deter and penalise corruption:
- The Ministry of Finance implements a large number of controls on companies and, indirectly, employees, on fund transfers between residents and non-residents, on private expenditure, etc.;
 - Civil servants are encouraged to report persons suspected of fraud (to their line management or an independent authority);
 - Internal review of staff's decisions and behaviour, and rotation of staff working in sensitive areas (customs, in particular);
 - Evaluation of potential conflicts of interest in the case of public officials, codes of ethics, etc.;

- Establishment of the office of ombudsman to handle disputes between the authorities and the public.
106. However, the country is still at the initial stage, that of preparing legislation and regulations, and it remains to be seen what will happen when the new laws are implemented. In particular, the GET observed that in “the former Yugoslav Republic of Macedonia” there is no clear strategy for implementing new legislation and measures aimed at preventing and combating corruption. In the GET’s view, determining priorities is of fundamental importance to take effective action against corruption, since the task is vast and the State’s resources limited. The GET also observed a missing link and a clear lack of coordination between the different departments involved in prevention and the fight against corruption. In some sectors of the public administration there are no special departments, inspection bodies or persons responsible for the prevention and examination of internal cases of corruption. This situation in general clearly impairs the effectiveness of anti-corruption efforts. ***Therefore the GET recommended to create, or to strengthen where they already exist, special departments and/or inspection bodies responsible for the prevention and examination of internal cases of corruption.***
107. “The former Yugoslav Republic of Macedonia” has adopted the Law On Preventing Corruption. The Law indicates that in preventive respects the biggest role will have to be played by the National Commission. The role of this commission is also significant in detecting corrupt activities. According to the aforementioned Law (see Chapter V in Appendix II), the National Commission will consist of 7 experts elected by the Parliament. Nevertheless, in the GET’s view the functions and plan of action of the National Commission are not described in such a manner to make clear how it should achieve concrete results in the anti-corruption preventive activities. ***The GET recommended to swiftly implement all the measures provided by the Law On Preventing Corruption and, at same time, that the National Commission establishes a comprehensive and clear plan of action. The GET also recommended that the commission’s work be published in an annual report to the Parliament.***
108. Article 17 of the Constitution states: *“The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorise non-application of the principle of inviolability of the confidentiality of correspondence, in cases where it is indispensable to a criminal investigation or required in the interests of the defence of the Republic.”* Representatives of the Public Prosecution Office, of the Ministry of Justice and judges met by the GET confirmed that during the last 40 years there has been no court decision on the non-application of the principle of inviolability of the confidentiality of correspondence and other forms of communication. On the other hand, representatives of the Parliamentary Committee on Immunities declared that this rule had been broken by courts several times in order to make investigations of the most serious crimes possible and that courts had accepted evidence gathered by the wire tapping and some other special investigative means. According to information gathered by the GET, since 1994 the Ministry of Justice urges to change this article but there is no political will to do so. The GET found that the code of criminal procedure does not regulate the use of special investigative means (wire tapping, use of undercover agent, controlled delivery, freezing of bank account etc.) Only search of residence and person, and temporary confiscation of objects are allowed and regulated (articles 198 to 207 of CCP). This means that if a court should have permitted the use of special investigative means during the investigation of a criminal case, there are no legal conditions establishing how to carry them out and who is responsible for their use. This missed opportunity to use the special investigative means is a huge obstacle in criminal investigations and prosecution of all kind of crimes in “the former Yugoslav Republic of Macedonia”, including investigation on corruption offences where the use of

those special means is particularly worthwhile. **Therefore, the GET recommended to make the necessary amendments to article 17 of the Constitution and to the code of criminal procedure, notably by introducing new clear provisions making the use of special investigative means in criminal investigations of the most serious crimes, including corruption, possible. These legal measures have to be followed by concrete actions to provide both appropriate training and proper technical equipment for police officers, prosecutors, investigating judges and judges.**

109. According to article 339 of the code of criminal procedure the court reaches its verdict only on the basis of the facts and evidence produced in the main hearing. Statements by anonymous witnesses cannot be used as evidence; the existing provisions on witness protection have not been fully implemented: there are no cases of witness protection for corruption offences so far and no agencies for witness protection have been set up. In the GET's view, this leads to the fact that witnesses and damaged persons are not willing to bring their testimony to the courts and for that reason investigations of serious criminal cases including corruption are very often unsuccessful. The GET felt that measures for the better protection of identity of key witnesses are needed. **Therefore, the GET recommended to introduce and above all implement a comprehensive legal framework precisely defining measures to protect witnesses. The GET also recommended to consider the institution of a procedure for interviewing whistleblowers and other witnesses whose identity is known only to the competent judicial authority.**
110. The GET noted with satisfaction that a Code of Conduct referring to the Law on Internal Affairs was adopted already in 1995 and that a "Law on civil servants" was adopted in 2000. Nevertheless, in the GET's view, it is an essential element of any effective anti-corruption strategy that each State agency and department introduces adequate ethical standards and provides initial training, which familiarises officials with Codes of Conduct and Employment Regulations. Codes of conduct, ethical rules and procedures should be made known to public officials through continuous training courses. This will enable individuals to clearly identify inappropriate or corrupt practices and to subsequently make it impossible to use uncertainty with regard to correct procedures as an excuse for acts of corruption. **Therefore, the GET recommended that all public officials receive training on codes of conduct and applicable integrity / ethical rules and regulations relating to their employment.**

c. Policing and prosecuting institutions

i) Investigation and coordination

111. The GET considers that the authorities of "the former Yugoslav Republic of Macedonia" should undertake quite a significant number of measures to achieve a highly effective prevention and fight against corruption. In accordance with those measures related to Guiding Principles 3, 6 and 7, which form the scope of this evaluation, the GET noted that in "the former Yugoslav Republic of Macedonia" there are no special bodies or institutions with a multidisciplinary character dealing exclusively or predominantly with the fight against corruption. After the visit, the GET was informed that a "Law on the Financial Police" had been adopted in July 2002 (more details in paragraphs 75, 76, 77 and copy of the Law in Appendix V) with a view to creating a financial police within the Ministry of Finance. Nevertheless, the GET noted that in the description of this new police's tasks there is no reference to any activity related to prevention and combating corruption. **Therefore, the GET recommended to set up a specialised anti-corruption unit, either as a special unit integrated into the new financial police or as a separate body within**

another State agency. This unit should be responsible for dealing specifically with the prevention, detection and investigation of corruption cases. It also recommended that the unit produce an annual progress report of its activities to be made available to the public.

112. The GET also observed that this specialised unit should include specialised police officers, experts in the legal and financial and banking fields, experts from the tax administration, etc., and that it should possibly be established as a task force which experts from other fields can join whenever necessary. All law enforcement and other authorities should be required to report to this specialised unit any suspicion of corrupt behaviour. Cases of corruption, as soon as identified during a preliminary investigation should also be transmitted to the unit, which should continue and deepen the investigation. In the GET's opinion this specialised unit should also adopt a proactive attitude and have the authority to require information and assistance from all State and Governmental departments and bodies. The Law should govern cooperation between the specialised anti-corruption unit and other law enforcement bodies, Governmental departments and State agencies. In the GET's opinion, it would be imperative to ensure that the head and the staff of the specialised anti-corruption unit are of the highest integrity and that their appointment, activity and results are fully transparent and open to independent scrutiny..

ii) The Public Prosecution Office

113. The Public Prosecution Office has not created any specialised body dealing with corruption cases, because there are no legal conditions for such steps nor has any special policy establishing qualified training in this area been determined. The size of the country hardly justifies specialisation of prosecutors in all regional and local offices. It would seem much more effective to allocate to one unit within the Public Prosecution Office with adequate specialisation, training as well as material and human resources. A specialised unit should be set up dedicated especially to dealing with corruption and corruption-related cases that will consequently ensure a more active role of the prosecution in the anti-corruption strategy. During the visit, the GET was repeatedly told by representatives of the PPO that they believe that creating a specialised group of prosecutors dealing with corruption cases and working closely with other relevant institutions would be an essential step in the right direction towards an efficient policy to prevent and fight corruption. ***The GET consequently recommended to undertake the necessary measures to create, within the Public Prosecution Office, a special section/unit responsible for dealing with corruption and corruption related offences. It also recommended selecting specialised and well-trained prosecutors to deal exclusively with these forms of crimes and provide them with appropriate education, training and technical equipment. For this reason, the GET recommended preparing internal guidelines and annual education/training for prosecutors of all levels of the Public Prosecution Office.***

114. In spite of the fact that both the Constitution and the Law on the Public Prosecution Office clearly state that prosecutors are independent and that neither the Government nor Parliament or individual Ministers are allowed to give instructions or to influence prosecutors on how to proceed in individual cases (see paragraph 50), during the visit the GET heard allegations that some cases of political pressures on the leadership of Prosecutor's Office had occurred: the GET was told about an unsuccessful attempt by some political groups to dismiss the Prosecutor General . The GET considers that it was not able to obtain unquestionable information regarding political influence on the PPO and its activities. However, the GET observes that it seems necessary that the authorities of "the former Yugoslav Republic of Macedonia" adopt the legislative reforms so as to reduce the Parliament's possibility of inappropriate intervention vis-à-vis prosecutors and in particular its power to appoint and dismiss the Prosecutor General and its Deputies.

115. Insofar as the appointment procedures of prosecutors and judges are concerned, the GET noted that both are appointed by the Parliament (see paragraph 59). Nevertheless, there is a major difference between the two systems: in the judges' appointment procedure, the Republican Judicial Council plays an important role by giving its advice on the nomination, whereas in the case of prosecutors it is the Government (Minister of Justice) who makes the proposal for the appointment after presentation of reference by the PG. During the visit, representatives of the PPO informed the GET that some requests had been addressed to both the Parliament and the Government in order to change the system: they would like that prosecutors be appointed directly by the Republican Judicial Council which is a non-political body, composed only of professionals (judges, prosecutors, lawyers) so that the independence of prosecutors from inappropriate political influence would be ensured. The GET was also told that according to the current system, prosecutors are very much linked and dependent on political factions and that the composition of the PPO is modified at every important change that occurs in the political system. The GET considers that no clear conditions and precise rules are established for the appointment procedures of judges and prosecutors. According to the current system, nominations of prosecutors seem to be based more on personal opinion formulated by the PG and the Minister of Justice than on independent and professional criteria. **Therefore, the GET recommended creating clearly defined conditions and examination procedures for appointment of all new candidates to the Public Prosecution Office and to the Courts valid equally to both prosecutors and judges. The GET further recommended to undertake all necessary measures to reduce the risk of any interference in the process of nomination of prosecutors and judges.**

d. Public procurement

116. As already described in the descriptive part of the present report (see paragraph 82), "the former Yugoslav Republic of Macedonia" has updated and amended its legislation on public procurement which is nowadays fully in line with the European Union directives. In addition to that, the GET noted with satisfaction that the Ministry of Finance in the event of failure to comply with public procurement procedures might impose penalties. However, in the GET's view, the authorities' attention should be drawn to the important fact that, like the system created by the European Union, this is not a means of combating corruption. The Ministry of Finance's vigilance and checks should not therefore be reduced following the entry into force of the new legislation.

117. Victims may also report corruption offences to the Ministry of Finance and lodge appeals against the award of contracts with the ordinary courts. However, the GET does not consider such appeals to be sufficiently effective, since the judicial proceedings take too long: the procurement procedure will be completed before the appeal is decided in court. It is therefore necessary to provide that courts be able to suspend the procedure and to introduce an expedited procedure. **Therefore, the GET recommended that in public procurement matters, the courts should be able to pronounce interlocutory decisions that suspend the tender procedure in the event of an appeal by a bidder on grounds of unlawful exclusion from the consultation or adjudication procedure.**

e. Immunities

118. As already described above in the descriptive part of the present report, , Members of Parliament can be arrested (and criminal investigations can be started against them) without the authorisation of the Assembly only if they are caught in *flagrante delicto* and when the offence in question is punishable by at least 5 years' imprisonment. In all other cases, it is necessary the authorisation of the Parliament to lift the immunity by a two-third majority. The GET is of the opinion that the preconditions of a penalty of more than 5 years' imprisonment together with the fact that the person enjoying immunities is to be caught in *flagrante delicto* are quite high and make in practice almost impossible to arrest him/her - or to start investigations against him/her - for corruption offences without the authorisation of the Assembly. Moreover, the two-third votes required for lifting immunity is quite a high majority. Therefore, the GET observed that the authorities of "the former Yugoslav Republic of Macedonia" should consider the possibility to amend national legislation (notably articles 64 paragraph 2 of the Constitution) in order to reduce the scope of the immunities of Members of Parliament, and/or simplify the procedure for lifting their immunity.
119. Insofar as members of the Government are concerned, according to article 89 of the Constitution and other relevant legal provisions, the Government itself decides whether or not to lift immunities of its members. Moreover, no member of the Government can be detained without the authorisation of the Government. The GET considers that this procedure hinders the natural course of Justice insofar as investigations and prosecutions with regard to members of Government can be initiated only upon a decision of the Executive. In the GET's view, this is incompatible with the standards set out in guiding principle 6. **Accordingly, the GET recommended to amend the national legislation to ensure that the procedure for deciding on immunities of members of Government is not carried out by the Government itself.**
120. The GET noted that there are no clear guidelines for persons deciding on whether or not to lift the immunity, in particular members of Parliamentary Committee on Immunities. Although binding rules or criteria would not be compatible with the essence of the institution of procedural immunity, in the GET's view, such guidelines – contained, for example, in the rules of procedure – would be an useful tool to prevent it from being politically abused. Such guidelines should recall that, as a rule, immunity should be an exception and should not be maintained if there is evidence that the suspect used his official position to gain an undue advantage. **Accordingly, the GET recommended to establish guidelines for Deputies of the Assembly, and especially its Committee on Immunities, containing criteria to be applied when deciding on requests for lifting immunities.**
121. The GET was also concerned about the rather wide scope of immunities in "the former Republic of Macedonia". It was fully aware that the wide use of immunities in several countries in transition is considered an important tool for the protection of the independence of certain institutions. This situation prevailing in a young democracy like "the former Republic of Macedonia" could, however, lead to widespread impunity for offences committed in the exercise of public functions and have a negative impact on the fight against corruption. It is therefore necessary to strike a fair balance between the interests at stake. **Accordingly, the GET recommended to reduce the list of categories of officials covered by immunity to a minimum.**

IV. CONCLUSIONS

122. While it is difficult to quantify precisely the level of corruption in “the former Yugoslav Republic of Macedonia”, it can also be certified that public perception is that corruption is a worrying phenomenon that affects the activities of some important State institutions and certainly undermines the democratic and, above all, economic development of the country: the phenomenon of corruption is considered as the country's most serious problem along with unemployment. Both public officials and representatives of “the former Yugoslav Republic of Macedonia” society agree that the country is widely contaminated by corruption and corruption-related offences, to an extent that endangers further political, economic and social development of the country. “The former Yugoslav Republic of Macedonia” has adopted, or is in the progress of adopting, all the international standards in the field of combating corruption. Moreover, over the last years the Parliament and the Government have adopted and brought into force quite an important number of pieces of legislation related directly or indirectly to organized crime matters, including corruption and the authorities are still in the process of changing and updating the legislation in the field: the Law on Preventing Corruption; the codes of conduct for civil servants and public-sector employees, police officers, members of the judiciary and finance ministry staff; the legislation on public procurement contracts which has recently been amended as well as various positive measures that have been taken to prevent, detect, deter and penalise corruption.
123. Nevertheless for the moment, the effects of legislation already passed or under preparation are not yet perceptible. The country is still at the initial stage and it remains to be seen what will happen when the new laws are implemented. In particular, “the former Yugoslav Republic of Macedonia” needs a clear strategy for implementing new legislation and measures aimed at preventing and combating corruption and more coordinated policies and effective objectives in the daily work of the different departments involved in prevention and the fight against corruption.
124. In view of the above, GRECO addressed the following recommendations to “the former Yugoslav Republic of Macedonia”:
- i. to conduct regular studies to improve knowledge of the fields most affected by corruption with a view to developing a detailed corruption picture based on statistics and research to measure more clearly the extent of the corruption phenomenon in the country;*
 - ii. to adopt a comprehensive national anti-corruption strategy, as well as raise awareness among public officials and the public about the danger entailed by corruption;*
 - iii. to develop stronger transparent and public accountability policies in the public administration to increase governmental efficiency;*
 - iv. that the public should be able to identify those with whom they come in contact and to be well informed about procedures for making complaints;*
 - v. to develop and implement, in addition to what is already in place, procedures and policies to support managers of State bodies and agencies to identify, prevent, challenge and deal with corrupt, dishonest and unethical behaviour. Such procedures should include education, training and prevention;*

- vi. *to create, or to strengthen where they already exist, special departments and/or inspection bodies responsible for the prevention and examination of internal cases of corruption;*
- vii. *to swiftly implement all the measures provided by the Law On Preventing Corruption and, at the same time, that the National Commission establishes a comprehensive and clear plan of action. It also recommended that the commission's work be published in an annual report to the Parliament;*
- viii. *to make the necessary amendments to article 17 of the Constitution and to the code of criminal procedure notably by introducing new clear provisions making the use of special investigative means in criminal investigations of the most serious crimes, including corruption, possible. These legal measures have to be followed by concrete actions to provide both appropriate training and proper technical equipment for police officers, prosecutors, investigating judges and judges;*
- ix. *to introduce and above all implement a comprehensive legal framework precisely defining measures to protect witnesses and to consider the institution of a procedure for interviewing whistle-blowers and other witnesses whose identity is known only to the competent judicial authority;*
- x. *that all public officials receive training on codes of conduct and applicable integrity / ethical rules and regulations relating to their employment;*
- xi. *to set up a specialised anti-corruption unit, either as a special unit integrated into the new financial police or as a separate body within another State agency. This unit should be responsible for dealing specifically with the prevention, detection and investigation of corruption cases. It also recommended that the unit produce an annual progress report of its activities to be made available to the public;*
- xii. *to undertake the necessary measures to create, within the Public Prosecution Office, a special section/unit responsible for dealing with corruption and corruption-related offences. It also recommended selecting specialised and well-trained prosecutors to deal exclusively with these forms of crimes and provide them with appropriate education, training and technical equipment. For this reason, It also recommended preparing internal guidelines and annual education/training for prosecutors of all levels of the Public Prosecution Office;*
- xiii. *to create clearly defined conditions and examination procedures for appointment of all new candidates to the Public Prosecution Office and to the Courts valid equally to both prosecutors and judges. It further recommended to undertake all necessary measures to reduce the risk of any interference in the process of nomination of prosecutors and judges;*
- xiv. *that in public procurement matters, the courts should be able to pronounce interlocutory decisions that suspend the tender procedure in the event of an appeal by a bidder on grounds of unlawful exclusion from the consultation or adjudication procedure;*

- xv. to amend the national legislation to ensure that the procedure for deciding on immunities of members of Government is not be carried out by the Government itself;*
 - xvi. to establish guidelines for Deputies of the Assembly, and especially its Committee on Immunities, containing criteria to be applied when deciding on requests for lifting immunities;*
 - xvii. to reduce the list of categories of officials covered by immunity to a minimum.*
125. Moreover, GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” to take account of the observations made by the experts in the analytical part of this report.
126. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” to present a report on the implementation of the above-mentioned recommendations before 30 June 2004.

APPENDIX I

Criminal Code

Bribery at elections and voting

Article 162

- (1) A person who offers, gives or promises a present or some other personal benefit to a person with voting right, with the intention of attracting this person to perform or not to perform the voting right, or to perform it in a certain sense, shall be punished with a fine, or with imprisonment of up to three years.
- (2) The punishment from item 1 shall also apply to a person with a voting right who requests for himself a present or some other benefit, or who receives a present or some other benefit, in order to perform or not to perform the voting right, or to perform it in a certain sense.

Unauthorised reception of gifts

Article 253

- (1) A person who, by representing the property interests of some legal entity, requests or receives a reward, gift or some other benefit, in order to conclude or not to conclude an agreement, or to perform or not to perform some other action to the detriment of the legal entity, thus causing a larger property loss to the legal entity, shall be punished with a fine, or with imprisonment of one to three years.
- (2) The reward or gift shall be taken away.
- (3) Prosecution is undertaken upon proposal.

Falsifying or destruction of business books

Article 280

1. A person who enters false data or does not enter some important data in a business document, book or paper, which he is obliged to maintain based on a law or some other regulation, or who with his signature or stamp verifies a business document, book or paper with false contents, or who with his signature or stamp makes it possible to prepare a document, book or paper with false contents, shall be punished with a fine, or with imprisonment of up to three years.
2. The punishment from item 1 shall also apply to a person who uses a false business document, book or paper as if it were real, or who destroys, covers up, damages or in some other way makes unusable a business document, book or paper.

Misuse of official position and authorisation

Article 353

- (1) An official person who, by using his official position or authorisation, by exceeding the limits of his official authorisation, or by not performing his official duty, acquires for himself or for another some kind of benefit, or causes damage to another, shall be punished with imprisonment of six months to three years.
- (2) If the perpetrator of the crime from item 1 acquires a larger property gain, or causes a larger property damage, or violates the rights of another more severely, he shall be punished with imprisonment of six months to five years.
- (3) If the perpetrator of the crime from item 1 acquires a significant property gain or causes a significant damage, he shall be punished with imprisonment of one to ten years.

Defraud in the service

Article 355

- (1) An official person who, when performing his service, with the intention to acquire an unlawful property gain for himself or for another, by submitting false invoices or in some other way, deceives the authorised person to effect an unlawful payment, shall be punished with imprisonment of six months to five years.
- (2) If with the crime from item 1 a larger property gain was acquired, the offender shall be punished with imprisonment of one to ten years.
- (3) If with the crime from item 1 a significant property gain was acquired, the offender shall be punished with imprisonment of at least three years.

Receiving a bribe

Article 357

- (1) An official person who requests or receives a present or some other benefit, or receives a promise for a present or some other benefit, in order to perform an official act within the framework of his own official authorisation which he should not perform, or not to perform an official act which he otherwise must do, shall be punished with imprisonment of one to ten years.
- (2) An official person who requests or receives a present or some other benefit, or receives a promise for a present or some other benefit, in order to perform an official act within the framework of his own official authorisation which he must perform, or not to perform an official act which he otherwise should not perform, shall be punished with imprisonment of six months to five years.
- (3) An official person who, after the official act listed in item 1 and 2 of this article is committed or not committed, requests or receives a present or some other benefit in connection with this, shall be punished with imprisonment of three months to three years.
- (4) A responsible person in a legal entity, which disposes over state or social property, who commits a crime from item 1, 2 and 3 as well as a responsible person in some other legal entity, who commits the same crime in relation to attaining or realising rights determined by law – for the crime from item 1, shall be punished with imprisonment of one to ten years; for the crime from item 2, shall be punished with imprisonment of six months to five years; for the crime from item 3, shall be punished with imprisonment of three months to three years.
- (5) The received present or acquired property gains shall be confiscated.

Giving a bribe

Article 358

- (1) A person who gives or promises an official person a present or other benefit, so that he would perform an official act within the framework of his official authorization which he should not perform, or not to perform an official act which he should perform, or a person who mediates for this, shall be punished with imprisonment of six months to five years.
- (2) A person who gives or promises an official person a present or other benefit, so that he would perform an official act within the framework of his official authorization which he must perform, or not to perform an official act which he should not perform, or a person who mediates for this, shall be punished with a fine, or with imprisonment of up to three years.
- (3) The offender from items 1 and 2, who gave bribe upon the request from the official person, and who reports this before he finds out that the crime was discovered, shall be acquitted from punishment.
- (4) The provisions from items 1, 2 and 3 shall apply also when the bribe was given or promised to a responsible person, in connection with the crime from article 357.
- (5) The given present or property gain shall be confiscated, and in the case of item 3, they shall be returned to the person who gave the bribe.

Unlawful mediation

Article 359

- (1) A person who receives a reward or some other benefit by using his official or social position and influence, in order to mediate for some official act to be executed or not, shall be punished with a fine, or with imprisonment of up to three years.
- (2) A person who, by using his official or social position or influence, mediates for the performing of an official act which should not be performed, or not to perform an official act which otherwise should be performed, shall be punished with imprisonment of six months to five.
- (3) If the crime from item 2 was committed in connection with initiating or carrying on a criminal procedure (litigation) against a certain person, the offender shall be punished with imprisonment of one to five years.
- (4) If a reward or some other benefit was received for the mediation from items 2 and 3, the offender shall be punished with imprisonment of one to ten years.

Falsifying an official document

Article 361

- (1) An official person who in an official document, book, or paper, enters untruthful information, or does not enter some important data, or with his signature, respectively with an official stamp, verifies an official document, book or paper with untruthful contents, or with his signature, respectively an official stamp, enables the making of an official document, book or paper with untruthful contents, shall be punished with imprisonment of three months to five years.
- (2) The punishment from item 1 shall apply also to an official person who uses the documents from that item in the service as they were real, or destroys them, covers them up, or damages them to a larger extent or in some other way makes them useless.
- (3) A responsible person in a legal entity which disposes over state or social property, who commits the crimes from items 1 and 2, shall be punished with the punishment that is prescribed for those crimes.

APPENDIX II

Law on preventing Corruption

Chapter I GENERAL PROVISIONS

Aim of the Law

Article 1

- (1) This Law sets down the measures for preventing corruption in the exercise of power and in the carrying out of entrusted public mandates, the measures for preventing conflict of interests, as well as the measures for preventing corruption while exercising tasks of public interest to the legal entities related to the realisation of government.
- (2) For the implementation of the measures under Paragraph 1 of this Article, a State Commission for the Prevention of Corruption shall be established (hereinafter: State Commission).

Principle of legality

Article 2

- (1) No one may abuse his public office or duty by performing, or failing to perform an act which under law may not, that is, must be performed, or by subordinating the carrying out of a legal action to his personal interest, or to somebody else's interest.
- (2) No one may be held accountable for corruption except in the cases and conditions defined by this Law, by the Criminal Code and another law, and in a procedure stipulated by law.

Principle of trust

Article 3

- (1) No one may misuse the carrying out of authority and consigned special public mandates, or matters of public interest, for accomplishing personal or utilitarian goals.
- (2) The misuse of public position, the position of a responsible person in a legal entity, or of a person carrying out matters of public interest in order to accomplish any advantage for himself or for another person is considered to be corruption and brings about penal, civil-legal, and disciplinary responsibility.

Principle of equality

Article 4

- (1) Every citizen has the right to an equal approach in the performance of the matters of public interest and to an equal treatment on the part of persons carrying out public functions, without being the victim of corruption.
- (2) Every citizen has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behaviour, which is the result of corruption.
- (3) Every citizen is obliged to prevent or report any treatment representing misuse of the carrying out of public and other offices and duties, in order to effectuate personal advantage or cause damage to another, without suffering any detrimental consequences because of that.

Principle of publicity

Article 5

- (1) The exercise of the functions or duties in the government, of the special public mandates and of the matters of public interest is public and subject to public control.
- (2) No one can call upon to an application of a law or other regulation with which he will limit or exclude the public in order to cover a misuse of office or duty for the purpose of self interest.

Application of the Law

Article 6

- (1) When expressly stipulated, the provisions of this Law shall apply to legal persons.

- (2) A legal person shall be answerable for corruption when a body of administration, a responsible person, or person representing the legal person performs an act defined as an act of misuse, bribery, or unlawful intervention under the Criminal Code, or as an offence under the law.

Meaning of the terms used in this Law

Article 7

- (1) To establish the meaning of the terms: elected or appointed civil servant, official, legal person, responsible person in a legal person, and person performing tasks of public interest, the provisions under Article 122 of the Criminal Code shall apply.
- (2) A benefit, personal advantage, or self-interest means the realisation of any material or nonmaterial benefit in the form of a right or facility that does not belong to that person.
- (3) Family means the spouse, the children, the parents, brothers and sisters, the foster-parent or the foster-child with whom the person of Paragraph 1 of this Article lives in a family.

Chapter II

PREVENTION OF POLITICAL CORRUPTION

Financing political parties, trade unions and associations of citizens

Article 8

- (1) The financing of a political party, trade union, or association of citizens is public.
- (2) A political party, trade union, or association of citizens may not collect funds in cash from unidentified sources for financing its activity.

Performing economic and other profitable activities

Article 9

- (1) If a legal entity set up by a political party is allowed by law to perform economic or other profitable activities, they shall be reported to the National Commission.
- (2) All contracts and other deals that the legal person of Paragraph 1 concludes, that is, makes with a state body, body of the local self-government, public enterprise, or other legal person managing state capital shall be reported to the National Commission.

Prohibition to use budgetary resources

Article 10

In order to finance the activity of a political party, trade union, or association of citizens no payments shall be made from the budget of the Republic of Macedonia, from public funds or from resources of public enterprises and other legal entities managing state capital, except when payments are made on the basis of a law.

Ban on new investments and extraordinary payments

Article 11

- (1) Resources from the budget of the Republic of Macedonia, public funds, and resources of public enterprises or legal persons managing state capital may not be used for election campaigns, except when it is set down by law on financing political parties.
- (2) The building of new objects in the infrastructure, such as roads, plumbing, long-distance power lines, sewerage systems, and other facilities, or facilities of social services such as schools, kindergartens and other facilities with funds from the budget or public funds, or using resources of public enterprises or other legal persons managing state capital, may not begin during the pre-election campaign for President of the Republic, delegates, mayor or members of the council of a local self-government unit, except if funds from the budget have been provided for that purpose previously, that is if it is a realisation of a programme made on the basis of a law in the current year.
- (3) No extraordinary payment of salaries, pensions, public welfare or other payments from the budget or from the public funds, nor transfer of state capital may be done during the election campaign under Paragraph 2 of this Article.

Determining abuse of budgetary resources and resources from public funds

Article 12

- (1) When there are founded indications that budget resources or resources from public funds, or the funds of public enterprises or other legal entities managing state capital, are directly or indirectly, through investments or in some other

way, used to finance election campaign, or to finance election or other political activity in general, the National Commission shall consider such indications and in the shortest term possible shall prepare a report and submit it to the Assembly.

- (2) A question of misuse of budgetary resources or resources from public funds, that is state capital, may also be raised by twenty delegates in the Assembly of the Republic of Macedonia. In such a case the Assembly shall form a Poll Commission which acts in a way determined in Article 17 of this Law.
- (3) A special report for the possible misuses of budgetary resources, public funds, and the funds of the public enterprises and other legal persons managing state capital, shall be submitted to the Assembly of the Republic of Macedonia by the National Commission, within one month after the conclusion of the election procedure at the latest. The report shall be announced in the media.

Prohibition to use resources from illegal sources

Article 13

- (1) A political party and a candidate, in the elections, may not collect and use resources from abroad, from unidentified sources, or resources for which there is a ban on usage, stipulated by law.
- (2) If there is suspicion that a candidate at the elections used funds from illegal sources, the National Commission shall ask the competent authorities to check the influx and the usage of the funds. The check of the influx of funds from abroad, or other payments through a bank, does not constitute violation of the bank confidentiality.

Corruption of electors

Article 14

- (1) Giving or promising a gift, or any other personal advantage to a voter in the elections or voting at a referendum, in order to vote or not to vote, or to vote for a certain candidate or certain decision, is considered to be electoral corruption.
- (2) If the State Electoral Commission establishes the existence of grounds for suspicion of Paragraph 1 of this Article, during the elections or the voting at referendum, on the basis of indications from citizens, political parties, or candidates, and after their conclusion if there are founded indications for bribery, it is obliged to initiate a procedure before the Supreme Court of the Republic of Macedonia for invalidating the electoral result, that is, the voting.

Privileges or discrimination after elections

Article 15

- (1) The National Commission shall consider and have insight into all contracts, public procurements, and other profit-making deals, made, that is, executed in the period of one year after the ending of the elections for President of the Republic, elections for delegates in the Assembly of the Republic of Macedonia, or the local elections, between state bodies, local self-government bodies, public enterprises, and other legal entities managing state capital and domestic or foreign legal persons, as well as all permits, concessions, and other decisions recognising rights or privileges to legal entities as defined by law, or taking away or limiting such rights or privileges.
- (2) The National Commission is obliged to submit a report to the Assembly of the Republic of Macedonia for the insight carried out within 60 days. The report is announced in the media.

Influence over election, appointment and discharge to leading positions

Article 16

- (1) A political party or person acting on behalf of a political party may not exert pressure at election or appointment to, or discharge of a person from official, leading, or other socially important office or duty, except for the cases in which by law is determined that the President of the Republic, the Assembly and the Government of the Republic of Macedonia, or the bodies of local self-government units are competent to elect, to appoint or to give opinion or agreement.
- (2) A person discharged against the law under the pressure of a political party, as well as a candidate for election or appointment damaged by election or appointment carried out under such pressure, may with a lawsuit before a competent court demand annulment of the election, appointment, that is, discharge act.
- (3) The lawsuit of Paragraph 2 of this Article is made within thirty days from the passing of the act for election, appointment, or discharge, that is, from the moment of finding out that it has been done under the pressure of a political party, against the law, but no later than a year from the date of passing such an act. The proceeding is urgent and is conducted under the provisions of the Law on Contentious Procedure.

Poll Commission

Article 17

- (1) Twenty delegates in the Assembly of the Republic of Macedonia may raise a question to establish the corruption liability in which are involved elected or appointed civil servants, officials, responsible persons in public enterprises and in other legal persons managing state capital.
- (2) The Speaker of the Assembly of the Republic of Macedonia is required to put the question on the agenda at the first next session of the Assembly of the Republic of Macedonia, at which, after a preliminary debate, the delegates who have raised the question explain the violations of this Law or of the provisions of the Criminal Code, and a Poll Commission is set up (hereinafter: Commission).
- (3) The Commission is authorised to request from any body, public enterprise, or other legal person managing state capital, or a political party having its delegate, that is, delegates in the Assembly of the Republic of Macedonia, to submit to it all the necessary documents and other materials of importance for clearing the case, and to call to a hearing any elected or appointed civil servant, official, responsible person in a public enterprise, or in other legal person, or responsible person of a political party.
- (4) The decisions relating to undertaking certain actions in the examination of the matter shall be made with the majority votes.
- (5) The meetings of the Commission are public. The Commission is required to submit a report to the Assembly of the Republic of Macedonia within sixty days from its set-up at the latest. If no agreed opinions have been reached, the report shall contain all opinions of the members of the Commission.
- (6) The President of the Assembly of the Republic of Macedonia is obliged to put the Commission's report for consideration at the first session of the Assembly of the Republic of Macedonia, from the day it was submitted. The report is considered at a public session of the Assembly.
- (7) On the agenda of the Assembly of the Republic of Macedonia may not be put again the question of responsibility for the same case of the same person, body, public enterprise or other legal person or political party, until six months have expired from the closing of the debate for the question previously raised. Delegates that have raised the question of responsibility and have not succeeded in substantiating their statements by stating true facts or sufficient reasons to believe in the existence thereof, may not raise a question of responsibility again until six months have expired from the date of the formerly raised question.

Limitation of state or other secret

Article 18

A person who is obliged to keep a state, military or official secret may, upon the National Commission's request, be relieved from that obligation owing to the conduct of a penal or other procedure for a corruption offence.

Protection of associates of justice and witnesses

Article 19

- (1) Against a person who revealed data indicating the existence of corruption, may not be initiated penal prosecution and he may not be called upon any responsibility.
- (2) A person who has given a statement or witnessed in a procedure for corruption offence shall be protected. The person has the right to a compensation of damage which he or a member of his family may suffer owing to the statement given or appearance as a witness.
- (3) The compensation of Paragraph 2 of this Article shall be paid with funds from the Budget of the Republic of Macedonia.
- (4) The Minister of Justice shall adopt an act to establish the criteria for damage compensation.

Protection of persons involved in eradication of corruption

Article 20

- (1) Persons working in the bodies for detection and eradication of corruption shall be provided with full protection and independence, with a view to efficient execution of their authority and duty and no pressure whatsoever may be exerted on them in their work or in their undertaking of concrete actions.
- (2) The Government of the Republic of Macedonia, with a special programme, shall provide the personnel, educational, financial and other conditions for efficient exercise of the work on eradicating corruption.

Chapter III
PREVENTING CORRUPTION IN THE PERFORMANCE
OF PUBLIC MANDATES

Ban on performing other activities

Article 21

- (1) An elected or appointed civil servant during his/her mandate may not carry out any other office, duty or activity incompatible with his/her function.
- (2) An official may not perform any other activity related to realising profit and incompatible with his official duty. The official may do other work and activities only after prior approval by his/her immediate superior.
- (3) A responsible person in a public enterprise or in other legal person managing state capital may not carry out any other activity causing damage to the state capital.
- (4) An elected or appointed civil servant or official may not at the same time perform an office of a responsible person or member of an administrative body in a public enterprise. The former office of the person ceases in case of election or appointment, or acquisition of an official capacity.
- (5) An elected or appointed civil servant, official and responsible person in a public enterprise or other legal person managing state capital may not carry out the office of a member of a Board of Directors or of other administrative body in a trade company or in other legal person dealing with a profitable activity.

Restrictions in the co-operation with legal persons

Article 22

- (1) An elected or appointed civil servant, official person or responsible person in a public enterprise may not in the performance of his/her office, that is, service, establish business relations with a legal person founded by him or a member of his family, or in which the responsible person is a member of his family, and if they have been established earlier, he is obliged to exclude himself from any decision-making on them.
- (2) Concerning the business relations of the legal person of Paragraph 1 of this Article with a state body, body of a local self-government unit or public enterprise, the elected or appointed civil servant, official or responsible person in the public enterprise is obliged to inform the National Commission without delay, and within ten days at the latest after signing the contract or beginning other business cooperation.

Using state loans

Article 23

If a legal person, founded by an elected or appointed person, official or responsible person in a public enterprise, or by a member of his family, or in which a member of his family is a responsible person, appears as a user of state loans, credits for which the state gives guarantee, credits from the primary emission or from other state deposits and funds, the elected or appointed official and responsible person is obliged immediately to report it to the National Commission, and within ten days at the latest after obtaining the loan, credit.

Managing state property

Article 24

An elected or appointed civil servant, official or responsible person in a public enterprise and responsible person managing state capital is obliged, within thirty days from coming to office, to report to the National Commission every management with state property, over which he exercises control, with which enters a legal relation with a legal person founded by him or by a member of his family, or in which a responsible person is a member of his family.

Economical use of state funds

Article 25

- (1) An elected or appointed civil servant, official and responsible person in a public enterprise and other legal person managing state capital is obliged to keep the state resources entrusted to him and to dispose with them in the most economical way and for the previously set purposes. The use of the resources for private goals or giving them to another person to use is prohibited.
- (2) The amount of expenses for representation and their users are determined by law.

Notification for the use of foreign aid

Article 26

- (1) When state bodies appear as the users of donations and other foreign aid they are required to inform the National Commission of the way of their use.
- (2) The National Commission submits an annual report to the Assembly of the Republic of Macedonia about the utilisation of the funds and the aid under Paragraph 1 of this Article. The report is announced in the media.

Carrying out activities after the cessation of office

Article 27

An elected or appointed civil servant or an official who, within three years from the date his office terminated, establishes a trade company or begins to deal with a profitable activity in the field in which he worked, is obliged to inform the National Commission thereof.

Prohibition to acquire shareholding rights

Article 28

- (1) An elected or appointed civil servant, official and responsible person in a public enterprise, may not, during his term of office, that is, duty, and within five years after the cessation thereof, acquire on any ground and in any kind shareholder rights in a legal entity over which he or the body in which he works or worked exercises or exercised supervision, unless he acquires those rights by buying shares at the stock exchange or by way of inheritance.
- (2) The person of Paragraph 1 of this Article is obliged to report of the acquisition of shareholder rights during the term of office, that is, service, to the National Commission within thirty days after obtaining them.

Ban on exerting influence to employ close relatives

Article 29

- (1) An elected or appointed civil servant may not exert influence to employ or promote a member of his family in the body in which he is elected or appointed, or in other state body or public enterprise which is under the supervision of the body in which the civil servant is elected or appointed.
- (2) An elected or appointed civil servant, official or responsible person in a public enterprise and other legal person managing state capital is obligated to inform the National Commission of each election, appointment or employment promotion of a member of his family in a state body, body of local selfgovernment, public enterprise or other legal person managing state capital, within ten days of the election, appointment, promotion or employment.

Ban on receiving gifts

Article 30

An elected or appointed civil servant, official or responsible person in a public enterprise or other legal person managing state capital may not receive gifts or promise for a gift, except for gifts for a special occasion, such as books, souvenirs and similar objects of smaller value.

Misuse of official data

Article 31

- (1) An elected or appointed civil servant, official or responsible person in a public enterprise may not use the information at his disposal in order to accomplish advantage for himself or for somebody else.
- (2) The obligation of Paragraph 1 of this Article remains valid within three years from the date of termination of the office, that is, duty, unless otherwise stipulated by law.
- (3) The person of Paragraph 1 of this Article may not keep secret data which under his or other law must be announced, or ask for access to data for which he knows is not authorised to obtain, or act unethically in terms of keeping the data that are secret.

Misuse of public procurements

Article 32

- (1) Any influence of an elected or appointed civil servant, official or responsible person in a public enterprise or other legal person managing state capital, over the body or legal person deciding on the tenders received after a publicly announced competition, announcement or bidding for public procurements, or other public purchases and things, is forbidden.

- (2) If a legal person founded by an elected or appointed civil servant, or by a member of his family, or in which a responsible person is a member of his family, is among the bidders in the public announcement, announced by any body, public enterprise or other legal person managing state capital, the civil servant is obliged to inform the National Commission of its participation in the announcement within ten days.
- (3) An official or responsible person in a public enterprise or in another legal person managing state capital, is required to inform the National Commission within ten days of the participation of a legal person founded by him, or of a legal person in which a member of his family is a responsible person in a public announcement, announced in the body or legal person in which that person carries out his duty.
- (4) The provisions of Paragraphs 1 through 3 of this Article shall also apply when on the basis of a public competition, announcement or bidding it is decided on giving approvals, concessions, contingencies or permits to perform economic or other profitable activity.

Obligation to report property

Article 33

- (1) An elected or appointed civil servant, official or responsible person in a public enterprise or other legal person managing state capital, upon the election, that is, beginning his duty, and within thirty days at the latest, fills in a questionnaire with detailed description of real estate, movable objects of greater value, securities and claims and debts, as well as other property that he or the members of his family possess.
- (2) Upon the election, that is, beginning with his duty, and within thirty days at the latest, the person of Paragraph 1 of this Article deposits a statement, certified by a notary, whereby he waives from the protection of a bank secret in terms of all accounts in domestic and foreign banks.
- (3) The questionnaire and statement are submitted to the National Commission and the Public Incomes Administration.
- (4) The content and the form of the questionnaire shall be defined with an act by the Government of the Republic of Macedonia.

Reporting changes in the property situation

Article 34

- (1) An elected or appointed civil servant, official and responsible person in a public enterprise or other legal person managing state capital, shall be required to report of every increase in his property, that is, property of a member of his family, such as building a house or other facilities, buying real estates, securities, an automobile, or other movable objects worth more than the amount of twenty average salaries in the economy in the previous three-month period in the Republic.
- (2) A contract or other document being the ground for disposing with the property, as well as a document of the way of the payment made, shall be enclosed with the report that is submitted to the National Commission and the Public Incomes Administration.

Capacity of an official document

Article 35

The questionnaire, statement and report of Articles 33 and 34 of this Law are considered to be official documents and are treated as official secret, except in the cases decided otherwise by the National Commission.

Proceeding to examine a property situation

Article 36

- (1) Against an elected or appointed civil servant, official or responsible person in a public enterprise or other legal person managing state capital, a proceeding may be initiated to examine the property and property situation if the person in the questionnaire of Article 33 of this Law has not given data or has given false data, or has not reported a change in the property or in the report of Article 34 has given incorrect data, or if it has been established that his property or the property of a member of his family, during his term of office, that is, carrying out his duties, has been disproportionately increased in regard to the regular incomes in the form of salaries, dividends and other incomes deriving from an activity or property.
- (2) The proceeding is initiated by the Public Incomes Administration, after previously pointing out to the person the grounds for its initiation, contained in Paragraph 1 of this Article. A request to initiate a procedure may also be made by the National Commission. The proceeding is conducted under the provisions of the Law on Administrative Proceedings.

- (3) Along with the initiation of the procedure, the Public Incomes Administration submits a proposal to the competent basic court for the interim measure prohibiting him to dispose with the property.
- (4) If in the proceeding it is not proved that the property has been obtained, that is, increased as a result of regular incomes, which have been reported and taxed, the Administration will make a decision to impose a tax, taking as the basis of taxation the difference between the established regular, reported and taxed incomes of the person and the members of his family and the estimated market value of the property. The basis fixed in that way is taxed at a rate defined pursuant to the Law on Personal Income Tax.
- (5) An administrative dispute with a lawsuit may be initiated before the Supreme Court of the Republic of Macedonia against the final decision for imposing a tax. The procedure before the court is urgent.
- (6) The Incomes Administration submits a proposal for execution within eight days of the day the decision, that is, the judgment became effective, to the competent basic court, which orders the execution to be enforced immediately, and three days after receiving the proposal at the latest. No complaint is allowed against the decision for execution.
- (7) The effective decision, that is, judgement is enforced on the person's entire property, and on the property of the members of his family, and if the property since the beginning of the proceeding for its check has been transferred to third persons without compensation, or with compensation not corresponding with its established market value, it is enforced on the such transferred property. As to the complaint that the persons have given compensation for the transferred property that corresponds with the market value, the court decides only on the basis of authentic documents of the ground and way of payment, within three days of submitting the complaint. There may be an appeal against the complaint within eight days of receiving the decision. The second instance court decides on the appeal within three days of receiving the same.
- (8) During the court proceeding and the execution proceeding, the chairman of the competent court is required *ex officio* to pay attention to the observance of time limits, delivery of legal acts and expeditiousness of executing the effective decision.

Chapter IV PREVENTING CONFLICT OF INTERESTS

Basic responsibilities in performing an office

Article 37

- (1) An elected or appointed civil servant, official and responsible person in a public enterprise and other legal person managing state capital, is obliged to subordinate his carrying out of office of duty to the principles of legality, efficiency, trust, independence, autonomy, honesty and professionalism.
- (2) Persons of Paragraph 1 of this Article are obligated in the carrying out of their office or duty to act conscientiously, expertly, without discrimination or privileges towards anyone, with full respect for human freedoms and rights and human dignity and without any personal interest.

Conflict between personal and general interests

Article 38

- (1) In case of a conflict between personal and general interests, the elected or appointed civil servant, official and responsible person in a public enterprise or other legal person managing state capital is obliged to act according to the general interest.
- (2) There is a conflict between personal and general interests when by carrying out certain official or other activity the material or other interests of the person of Paragraph 1 of this Article or the interests of members of his family are being affected.

Disqualification

Article 39

- (1) When an elected or appointed civil servant, official or responsible person in a public enterprise or other legal entity managing state capital finds out about circumstances indicating a conflict of interests, he is obliged to ask for disqualification.
- (2) The person of Paragraph 1 of this Article shall be excluded from performing certain activity with a decision by the body where he is elected or appointed, or by his superior and without him requesting so, or contrary to his will, if it is evident that there is a personal interest in the specific case.

- (3) The concealing of the existence of a personal interest is serious violation of duty and a basis to initiate a political or disciplinary responsibility proceeding.

Unlawful requests by a superior

Article 40

- (1) An official from whom his superior, or an elected or appointed civil servant, asks in the performance of his office to act illegally, dishonestly and disloyally towards a state body, or to privilege or discriminate a citizen or legal person, is obliged to inform the competent state body and the National Commission thereof.
- (2) The official is required to inform his immediate superior in writing, if the latter after the oral opposition still insists on the requests of Paragraph 1 of this Article. After the written statement the official is relieved from the obligation to perform an illegal official activity, and may not be held answerable for its non-performance.

Failure to report penalty liable act

Article 41

An elected or appointed civil servant, official and responsible person in a public enterprise and other legal person managing state capital is required to report every punishable act, as well as each violation of the provisions of this Law, of which he has found out while performing his duty.

Ban on exercising influence on others

Article 42

- (1) An elected or appointed civil servant, official or responsible person in a public enterprise and other legal person managing state capital may not use his position to influence other person in a state body, public enterprise or other legal person, to make or not to make certain decision, to do or fail to do something, or to bear something, with a view to making profit or causing damage to somebody.
- (2) The person of Paragraph 1 of this Article may not participate as a mediator or representative in commercial or other deals between legal persons or citizens.
- (3) Every citizen is obliged to inform the National Commission of a violation of the provisions under Paragraphs 1 and 2 of this Article.

Carrying out discretionary powers

Article 43

- (1) In the performance of discretionary powers every elected or appointed civil servant or official is obliged to make his decisions conscientiously, taking into account all facts and circumstances in the concrete case and the principle of legality and equity.
- (2) A citizen or legal person dissatisfied by the decision made on the basis of discretionary power, and judging that it has been made due to corruption, may submit a petition with the National Commission.
- (3) The State Commission is obliged to consider the petition and to inform the citizen or legal person for its dealing with the petition within thirty days of receiving the same.

Bribe offer

Article 44

Should an elected or appointed civil servant, official or responsible person in a public enterprise and other legal person managing state capital be offered bribe, the person is obliged to take protection measures with a view to identifying and reporting the person who offered it to a competent body.

Procedure in case of accusation of corruption

Article 45

- (1) The person charged with corruption shall, without delay, inform the body in which he is elected or appointed, that, is his superior. An anonymous report shall not be considered an accusation.
- (2) The accusation of corruption is considered in a proceeding defined by law.

Invalidity of legal acts and damage compensation

Article 46

- (1) Legal acts resulting from corruption are invalid. Each person having a legal interest may demand invalidation of such acts, by submitting as evidence an effective court verdict establishing that there has been corruption.
- (2) The person damaged by a corruption act may request damage compensation (actual damage and lost profit) from the offender, qualified as a corruption act by an effective court verdict, as well as from the body or public enterprise and other legal person managing state capital, in which that person carried out his office or duty at the time of committing the act, according to the principles of joint and several liability.

Chapter V
NATIONAL COMMISSION FOR
PREVENTING CORRUPTION

Position and composition
Article 47

- (1) The National Commission is an autonomous and independent in the performance of its jobs defined by this Law.
- (2) The National Commission is composed of seven members.
- (3) Administrative, expert and technical matters of the National Commission shall be carried out by the Ministry of Justice.

Appointment of members of the National Commission
Article 48

- (1) The Assembly of the Republic of Macedonia shall appoint the members of the National Commission for a term of four years, without the right to reappointment.
- (2) The members of the National Commission shall be appointed from among the distinguished experts in the legal and economic field and who fit the profile for the office.
- (3) The National Commission shall elect a Chairman from among the members appointed under Paragraph 1 of this Article, for a term of one year, without the right to re-election.

Jurisdiction
Article 49

- (1) The National Commission shall have the following spheres of competence:
 - adopts a National Programme for corruption prevention and repression;
 - adopts annual programmes and plans for the realisation of the National Programme;
 - gives opinion of proposed laws important for corruption prevention;
 - raises an initiative before the competent bodies for the control of the financial and material work of the political parties, trade union and citizens' associations;
 - brings an initiative to conduct a proceeding before the competent bodies to discharge, replace, criminally prosecute or apply other measures of responsibility to elected or appointed civil servants, officials or responsible persons in public enterprises and other legal persons managing state capital;
 - considers cases of conflict of general and personal interests, determined by this Law;
 - makes evidence of, and follows the property situation, changes in property situation and additional profitable and other activities of elected and appointed civil servants, officials and responsible persons in public enterprises and other legal persons managing state capital, in a manner defined by this Law;
 - adopts a Book of Procedures for work;
 - proposes funds in the proposal for budget estimate of the Assembly of the Republic of Macedonia necessary for its work;

- prepares annual statements for its work and the measures and activities taken and submits them to the Speaker of the Assembly, the Assembly, the Government, and the Supreme Court of the Republic of Macedonia, and announces them in the media;
 - cooperates with other state bodies in the suppression of corruption;
 - cooperates with corresponding national bodies of other states, and with international agencies and bodies in the field of suppression of corruption;
 - undertakes activities in the area of education of the bodies competent to detect and prosecute corruption and other forms of crime; and
 - performs other tasks defined by this Law.
- (2) The National Commission shall inform the public of the measures and activities taken and of their results, through regular annual reports or when it judges that it is necessary to inform the public.

Duties, rights and responsibilities

Article 50

- (1) The member of the National Commission has the capacity of an appointed person.
- (2) The members of the National Commission are entitled to a monthly fee in the amount of two average monthly gross salaries determined by the Commission for Matters of Elections and Appointments of the Assembly of the Republic of Macedonia.
- (3) The members of the National Commission for their work are answerable to the Assembly of the Republic of Macedonia.

Manner of work

Article 51

- (1) The National Commission performs the tasks within its sphere of competence at a session, at which more than one half of the members are present.
- (2) Decisions are made with the majority of votes of the total number of members.
- (3) The Book of Procedures governs the manner of work of the National Commission.
- (4) For more systematic consideration of certain issues, eminent experts may be invited to take part at a session of the National Commission.

Summoning persons

Article 52

- (1) A person suspected of corruption may also be summoned to attend the session of the National Commission, with a view to clarifying certain issues important for the decision-making to initiate a procedure before other bodies.
- (2) If the person summoned refuses to attend the session, the National Commission shall consider the case on the basis of the other available evidence.
- (3) The preliminary procedure of Paragraph 1 of this Article is secret.

Request for informing

Article 53

- (1) The National Commission may request from an elected or appointed civil servant, official or responsible person in a public enterprise or in other legal entity managing state capital data about his property situation or the property situation of members of his family, about its changes, about the activity carried out by him or by a member of his family, the income realised, or other data relevant for the application of the provisions of this Law.
- (2) If the National Commission requests the data of Paragraph 1 of this Article from a competent body or legal person, the body or legal person is obliged without delay to submit the data requested and may not call upon a state, official or other secret.

Control over accounts of state bodies

Article 54

In the performance of the tasks of its competence, the National Commission may request to make direct inquiry into the spending of the funds of bodies and legal persons managing state capital.

Chapter VI PREVENTION OF CORRUPTION IN THE PERFORMANCE OF TASKS OF PUBLIC INTEREST AND OTHER ACTIVITIES OF LEGAL PERSONS

Misuse in performing tasks of public interest

Article 55

- (1) A person performing matters of public interest may not misuse his position to accomplish personal advantage.
- (2) If there is a well-founded suspicion that the property of the person of Paragraph 1 of this Article, or of a member of his family, during the performance of tasks of public interest has been disproportionately enlarged considering his regular income, or the income of his family members, the Public Incomes Administration may initiate a proceeding to investigate the property situation. The proceeding is conducted under Article 36 of this Law.
- (3) In addition to the activities which, by law, are defined to be of public interest, the activities performed within the framework of the activity of political parties, trade unions and other associations of citizens are considered to be matters of public interest.

Protection of the media

Article 56

- (1) Any force, prevention or influence in another way over the media to announce or not to announce information on cases of corruption is forbidden.
- (2) The journalist has the right to an unobstructed access to all sources of information. No one may exclude the public from the hearing for corruption before a competent body or legal person, except for a preliminary procedure proclaimed as secret.
- (3) No one may ask a journalist who has announced information on a corruption act to reveal the source of information, except in a procedure before a court.

Misuse of the media

Article 57

- (1) Anyone announcing information on somebody's corruption is obliged to respect the presumption of innocence and the principles of true, objective and impartial informing, as well as other principles of the code of professional ethics.
- (2) No one may use the media for false accusation of somebody of corruption.

Misuse in financial work

Article 58

- (1) Every person employed in a bank, savings bank, exchange office, insurance company, stock exchange or other financial institution is obliged to report a dubious transaction which is related to corruption. The report is made with the responsible person in that legal person or with bodies defined by law.
- (2) The organiser of a stock exchange is required to keep evidence and registry of all transactions at the stock exchange.

Preventing corruption in trade companies

Article 59

- (1) A responsible person in a trade company or other legal person may not receive a reward, or any other benefit, or promise for that, for himself or for another person, in order to take advantage of his position to create monopolistic position on the market, discrimination of other trade companies or legal persons, disintegration of the market, or to cause damage to another natural or legal person, which is not the result of the competition in business work and business risk.
- (2) Contracts and other legal acts resulting from corruption of a responsible person, as well as the contracts that are the result of corruption, that is, of accomplishing unlawful benefit of the legal person, are invalid.

- (3) The appearance of the consequence of Paragraph 1 of this Law is a basis for filing a lawsuit by the damaged party for damage compensation (actual damage and lost profit).
- (4) A responsible person in a trade company or other legal person may not have unreported accounts abroad, or make payments abroad to foreign officials or political parties.
- (5) If there is a well-founded suspicion in the truthfulness of the given final statement, submitted by the legal entity or of the other business books and financial documents, the Public Incomes Administration may initiate a proceeding to investigate the entity's property situation. The procedure is conducted under the provisions of Article 36 of this Law.

Chapter VII

Penal provisions

Article 60

- (1) A responsible person in a political party, trade union or other citizens' association shall be fined from 200,000 to 300,000 denars if he collects resources in cash or from unidentified sources, if he does not keep regular financial documents, or fails to report the performance of a profitable activity, contrary to Articles 8 and 9 of this Law.
- (2) A responsible person in a political party, trade union and association of citizens shall be fined from 20,000 to 50,000 denars for the offence of Paragraph 1 of this Article.
- (3) The funds from unidentified sources shall be confiscated.

Article 61

- (1) A candidate in elections who uses funds from abroad, from unidentified sources or funds for which there is a ban on use for election campaigns shall be fined for an offence with a fine from 20,000 to 50,000 denars.
- (2) Funds are confiscated.

Article 62

The person not observing the prohibitions of Articles 20, 21 and 27 of this Law shall be fined for an offence from 20,000 to 50,000 denars.

Article 63

The person not making an obligatory claim, that is, not reporting for a property, activity, employment or other data, stipulated in Articles 22, 23, 24, 26, 28, 29, 32, 33, and 34 of this Law shall be fined for an offence from 20,000 to 50,000 denars.

Article 64

A person who, contrary to Article 41, fails to report a penalty liable deed or other violation of the provisions of this Law, shall be fined for an offence from 20,000 to 50,000 denars, unless the failure to report is a criminal offence.

Article 65

The person who forces, or in any way forbids to announce or not to announce information about a case of corruption, unless the elements of a criminal offence have been fulfilled, as well as the one who obstructs the access to the sources of information, shall be fined for an offence from 20,000 to 50,000 denars.

Article 66

The person who fails to report a suspicious transaction contrary to Article 58 of this Law, shall be fined for an offence from 20,000 to 50,000 denars.

Article 67

- (1) A responsible person not reporting accounts abroad, or making payments abroad contrary to Article 59 paragraph 4 of this Law, unless the elements of a criminal offence have been fulfilled, shall be fined for an offence from 20,000 to 50,000 denars.
- (2) The legal person shall also be fined for the offence of Paragraph 1 of this Article from 200,000 to 300,000 denars.

Punishment of a legal entity

Article 68

- (1) If a responsible person commits a criminal offence under the Articles 353, 357, 358 and 359 of the Criminal Code on behalf of and for the benefit of a legal entity, or if that act has been committed by a government body, the legal entity shall be fined for an offence from 200,000 to 300,000 denars.
- (2) The property advantage shall be confiscated.

Ban on performing offices and duties

Article 69

A person sentenced with an effective court judgement for corruption, may not perform offices and duties of an elected or appointed civil servant, official or responsible person in a public enterprise, for a period of five years from the day the judgement became effective.

Chapter VIII

TRANSITIONAL AND FINAL PROVISIONS

Prohibition of exercising other activities

Article 70

The provisions for prohibition of performing other activities, except for the office of a delegate, in the sense of Article 21 of this Law, shall be applied after the appointment of the members to the National Commission.

Appointment of members to the National Commission

Article 71

The members to the National Commission shall be appointed six months at the latest after entering into force of this Law.

Passing of necessary acts

Article 72

The Government of the Republic of Macedonia shall establish the contents and the form of the questionnaire under Article 33 Paragraph 4 of this Law within six months from the date this Law has become effective.

Entry into force

Article 73

This Law shall enter into force on the eighth day from the day it was published in "the Official Gazette of the Republic of Macedonia."

APPENDIX III

REPORTS FOR CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

A review of the criminal offences from 01.01.1998 to 31.12.1998

Criminal offences and Article from the Criminal Code	Unresolved reports from previous year	New	Rejected	Submitted indictment proposals	Initiated immediate charges	Requests for conducting investigation	Charges
Misuse of official position and power under Art. 353	216	302	219	27	3	104	82
Bribe taking under Art. 357	5	20	15	1		8	8
Bribe giving under Art. 358	1	16	2	2	1	7	17

A review of the criminal offences from 01.01.1998 to 31.12.1998

FIRST INSTANCE VERDICTS ON CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

Criminal offences and Article from the Criminal Code	CONVICTING					Acquitting	Rejecting	Detention
	Prison	Fine	Parole	Total	Court reprimand			
Misuse of official position and power under Art. 353	18	4	16	38		18	5	2
Bribe taking under Art. 357	4	4	4	11	1	3	2	3
Bribe giving under Art. 358	1		6	7				2

REPORTS FOR CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

A review of the criminal offences from 01.01.1999 to 31.12.1999

Criminal offences and Article from the Criminal Code	Unresolved reports from previous year	New	Rejected	Submitted indictment proposals	Initiated immediate charges	Requests for conducting investigation	Charges
Misuse of official position and power under Art. 353	161	467	291	16	7	142	75
Bribe taking under Art. 357		16			1	13	13
Bribe giving under Art. 358	5	71	6	5	21	43	35

A review of the criminal offences from 01.01.1999 to 31.12.1999

FIRST INSTANCE VERDICTS ON CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

Criminal offences and Article from the Criminal Code	CONVICTING					Court reprimand	Acquitting	Rejecting	Detention
	Prison	Fine	Parole	Total					
Misuse of official position and power under Art. 353	16	9	26	51		4	3	20	
Bribe taking under Art. 357	3		4	7				8	
Bribe giving under Art. 358	16	2	29	47				45	

REPORTS FOR CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

A review of the criminal offences from 01.01.2000 to 31.12.2000

Criminal offences and Article from the Criminal Code	Unresolved reports from previous year	New	Rejected	Submitted indictment proposals	Initiated immediate charges	Requests for conducting investigation	Charges after completed investigation
Misuse of official position and power under Art. 353	164	443	256	18	3	87	63
Bribe taking under Art. 357	2	22	9	1		12	12
Bribe giving under Art. 358	1	30	4	7	6	14	15

A review of the criminal offences from 01.01.2000 to 31.12.2000

FIRST INSTANCE VERDICTS ON CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

Criminal offences and Article from the Criminal Code	CONVICTING					Acquitting	Rejecting	Detention
	Prison	Fine	Parole	Total	Court reprimand			
Misuse of official position and power under Art. 353	8	1	22	31		9	5	7
Bribe taking under Art. 357	3		4	7		4	2	4
Bribe giving under Art. 358	9		16	25				3

REPORTS FOR CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

A review of the criminal offences from 01.01.2001 to 31.12.2001

Criminal offences and Article from the Criminal Code	Unresolved reports from previous year	New	Rejected	Submitted indictment proposals	Initiated immediate charges	Requests for conducting investigation	Charges after completed investigation
Misuse of official position and power under Art. 353	239	513	345	34	5	103	
Bribe taking under Art. 357	2	20	7	1		14	81
Bribe giving under Art. 358		12					11
							5

A review of the criminal offences from 01.01.2001 to 31.12.2001
FIRST INSTANCE VERDICTS ON CRIMINAL OFFENCES AGAINST OFFICIAL POSITION

Criminal offences and Article from the Criminal Code	CONVICTING					Acquitting	Rejecting	Detention
	Prison	Fine	Parole	Total	Court reprimand			
Misuse of official position and power under Art. 353	4	7	25	36		12	11	11
Bribe taking under Art. 357	3		4	7		4	1	3
Bribe giving under Art. 358	3		5	8		1		2

APPENDIX IV

Curriculum for 2002

This Curriculum for 2002, **completely incorporates the topics identified and determined with the last year program, that were not realized in the course of 2001.**

All suggestions and recommendations given by the judges and sublimated in the final assessments on the programs that were realized in the past year or in the questionnaires for evaluation of the seminars organised in the framework of the education program for 2000, were also taken into consideration during the preparation of this Curriculum.

The **same methodological approach** is anticipated, according to which all topics and issues for each field of law, that are to become integral part of the curriculum should be planned yearly in advance, as well as to provide proportional and balanced coverage of various subjects and topics depending on judges' interest and field of work.

The Curriculum for 2002 is systematized according to two basic methodological criteria: target groups and legal areas.

According to the first criterion, the Curriculum has been divided in the following components:

- Education of judges
- Education of law clerks
- Education of administrative personnel
- Computer courses and foreign language courses

According to the second methodological criterion, the topics for education of judges have been systematized in the following legal areas:

- Criminal Law
- Civil Law
- Administrative Law
- Commercial Law
- Professional discussions
- European/International Law
- Regional cooperation

Ratification of the Ohrid Framework Agreement between the leaders of the four biggest political parties in Republic of Macedonia has imposed the necessity for implementation of actual issues related to the constitutional modifications in the Curriculum for 2002.

This year's program shall also concentrate on European/International Law topics, encompassing the most important international agreements ratified by the Republic of Macedonia, that according to the article 98 of the Constitution of the Republic of Macedonia represent a constituent part of the domestic legal system. Actually this was the main determination i.e.; the program should enable judges to gain knowledge about the main postulates and principles comprised in the most important conventions and provisions of the international law.

Creating and introducing a **special module for the European Union Law** is proposed, after the ratification of the Agreement for Association and Stabilization between the Republic of Macedonia and European Union. This module would encompass the main principles of the European Union Law, comprised in the international agreements, regulations, resolutions and directives of the European Committee, recommendations without mandatory power; the structure – EU bodies and organs; manner and mechanisms of decision-making process in the EU; the structure, role and jurisprudence of the European Court of Justice in Luxembourg. It is anticipated that the German Foundation would technically and financially support the realization of this project for International Legal Cooperation.

Furthermore, it is proposed to include another novelty in this year's program by introducing a **special part dedicated to the regional cooperation** – meetings on expert level and education seminars having participants from the South-East European

countries, but this segment shall depend in great extent on the disposable resources and CCE's capacities, as well as on the funds provided from various international associations and organizations.

Taking into consideration the aforementioned, the following methodological systematisation of the Curriculum for 2002 is proposed:

I. EDUCATION OF JUDGES

PENAL CODE

Investigation

- The role, rights and obligations of an investigative judge in the investigation; his relations with the Body for Internal Affairs and Public Prosecutor's Office;
(left over from the education program for 2000 and 2001)
- Expert testimony and technical possibilities in an investigation, with a special emphasis on the medical expert testimonies.
(left over from the education program for 1999, 2000 and 2001)
- Prosecution
(according to the suggestions made by the judges)

Criminal law

- Amendments and addenda to the Law on Criminal Procedure
(according to the suggestions made by the judges)
- Types of decisions and preparation of decisions in a criminal procedure before and after the main hearing;
(left over from the education program for 1999, 2000 and 2001)
- Limitations in reviewing first instance decisions
(in compliance with the judges' suggestions)
- Submission; provision of evidence procedure; regular and extraordinary legal remedies with emphasis on mistakes and advantages in the criminal procedure so as to be eliminated from the behaviour of the judges;
(according to the suggestions made by the judges)
- Legal grounds for pronouncing detention and its duration
(left over from the education program for 1999, 2000 and 2001)
- New types of criminal acts and foreign court practice for new acts specified in the new Criminal Code of the Republic of Macedonia
(according to the suggestions made by the judges)
- Anti-corruption
- Organized and trans-national crime, such as computer crime, money laundering, terrorism and people trafficking
- International war crimes tribunal for former Yugoslavia – Hague tribunal

Misdemeanours

- Misdemeanour procedure
(left over from the education program for 1999, 2000 and 2001)

Enforcement of criminal sanctions

- Implementation of the Law on Enforcement of Sanctions
(left over from the education program from 1999 and 2000)

- Types of measures and their enforcement in the juvenile procedure with emphasis on the juvenile imprisonment (including representatives from the prosecution bodies, centres for social work, educational, correctional and penitentiary institutions)

CIVIL LAW

- Law on Contractual mortgages
(according to the judges' suggestions as a new law)
- Law on Denationalization
(left over from the education program from 1999, 2000 and 2001)
- Draft Law on Ownership and other Property Rights
(according to the judges' suggestions as a new law)
- Law on Obligation in the Republic of Macedonia
(left over from the education program from 2000 and 2001 and according to the judges' suggestions)
- Law on Civil servants, with a special emphasis on the disciplinary accountability of civil servants
(following judges' suggestions)
- Labour disputes with a special emphasis on salaries, salary allowances, annual leave; consequences from failure to pay in payroll taxes, referral criteria for temporary compulsory leave, failure to observe rights arising from employment; compensation of all types of damages, following the annulment of the decision to terminate employment, traumas suffered, in the event of injury or death of a person carrying out business duties, damage inflicted by the security forces in their actions against the terrorists, reduction of the compensation for damage as a result of the engagement of the worker to prevent and reduce damage etc.
(according to judges' suggestions)
- Collective agreements and judicial practice in relation to their application; parallel with the law and regulations
(judges' suggestions)
- Elaboration of litigation procedure, with a special emphasis on the initial hearing in line with the LAP; content and declaration of judgment; costs of procedure and court taxes; complaints and other submissions made by the citizens of RM living abroad etc;
(taken over from the Program for education for 2001, 2000 following the suggestions made by the judges)
- The Law on executive procedure and especially sale on movables or real estate and sale of items seized in criminal proceedings, mortgages, exemption from execution, execution of judgements of injury compensation resulting from illegal termination of employment including other grounds relating to employment.
(taken from the Program for education for 2001 and according to judges' suggestions)
- Current issues and dilemma emerging from the implementation of the Law on Citizens' Associations and Foundations

ADMINISTRATIVE LAW

- Administrative-accountancy disputes – relations between courts and tax inspectors;
(workshop that should be organized in cooperation with the Public Revenue Office or with the Association of Tax Inspectors, taken from the Program for education for 2001 and according to judges' suggestions)
- Facts finding in administrative disputes;
(taken from the Program for education for 2001)
- Implications of the VAT -system.
(taken from the Program for education for 2001)

COMMERCIAL LAW

- Current and disputable issues related to the entrance into the Trade Registry
(according to the judges' suggestions)
- Status changes of stock companies, respecting decisions of the bodies of the joint stock companies on complaints made by stock holders, increase of fixed asset of trade companies by right, distribution of dividends, modus operandi of computer registrar
(according to the judges' suggestions)
- Shares, rights related to shares and other securities, practical application of the Law on securities, labour disputes concerning shares, sale, beneficial issuance and acquisition from employees of state agencies, realization of claims on shares as securities, brokerage, practice of the central depository of shares.
(according to the judges' suggestions)
- The position and the role of the Agency for privatisation in transformation of companies; privatisation
(according to judges' suggestions)
- Banking
(according to judges' suggestions)
- Anti trust association
(according to judges' suggestions)
- Bankruptcy, bankruptcy claims, employment termination in bankruptcy procedure
(according to judges' suggestions)

Special judges' proposals and suggestions

- Judicial management.
- Holding meetings of representatives of the three instances of all appeal areas in order to harmonize the judicial practice.
- Analysis of new proposals for amendments and addenda of laws relevant to the judicial system of the Republic of Macedonia.

EUROPEAN / INTERNATIONAL LAW

- Further elaboration of separate Articles of the European convention on Human Rights and its protocols as well as jurisprudence of the court in Strasbourg.
(in co-operation with the Council of Europe)
- Module for the European Union Law / structure, EU institutions; decision-making process and mechanisms
(in the framework of the European Union CARDS program)
- Realization of the new training program via Internet "Towards a Model for a European judge"

REGIONAL COOPERATION

(the topics shall be defined additionally, and the realization shall depend on the disposable resources and CCE's capacities, as well as on the funds provided from various international associations and organizations)

II. EDUCATION OF LAW CLERKS

- Civil and criminal law
(it is intended to continue the practice established so far, i.e. to involve law clerks as participants at the seminars that cover various topics of substantive and procedural law)
- Searching and using the legal database on the Internet

III. EXPERT TREATIES

- Realization of the recommendations from the conference "Judiciary-Media"
(taken from the Program for education for 2001 and 2000 and upon judges' suggestions)
- Judicial ethics and morality
(taken from the Program for education for 1999, 2000 and 2001 and upon judges' suggestions)
- The position of the judiciary in the system of division of power (constitutional position and practice)
(taken from the Program for education for 1999, 2000 and 2001 and upon judges' suggestions)
- The principal of impartial judiciary and adjudicating in practice
(taken from the Program for education for 1999, 2000 and 2001 and upon judges' suggestions)
- CCE's system of education
(taken from the Program for education for 1999, 2000 and 2001 and upon judges' suggestions)
- Professional ethics and comportment of lawyers, attorneys and prosecutors
(in cooperation with ABA/CEELI)

IV. EDUCATION OF ADMINISTRATIVE PERSONNEL

Appointment of a manager for this part of the Curriculum for 2002 is proposed, maybe a trial court judge, who will design and determine through direct and immediate communication with the administrative personnel, all possible issues and topics for organizing educational seminars, exclusively profiled in compliance with the necessities of the personnel, and especially for the chief's of court departments, bailiffs, delivery persons and the like.

V. COMPUTER COURSES AND FOREIGN LANGUAGE COURSES

Computer courses

Computer courses shall continue, and shall be carried out in three levels as follows;

- Courses for beginners (basic knowledge computer work)
- Courses designed for those who have a certain level of knowledge for computer work (textprocessing program MS WORD and tables-processing program MS EXCEL); and
- Courses for use of Internet.

Due to the limited available resources and capacities of the CCE, the courses shall continue to be carried out in several sessions, including groups of 5 people each, on the region of Skopje, and their duration shall be determined according to the level of the training.

English language courses

Strong efforts have been made to organise the English language courses with financial support of the Ministry of Justice of the Republic of Macedonia.

French languages courses

French language courses are being carried out, with a possibility to be continued in 2002 as well as to be expanded in several other cities throughout Macedonia, provided that the cooperation with the French Embassy continues.

Skopje, December 12th, 2001

Curriculum for 2002 was prepared by

The Executive Director of the Centre for Continuing Education of MJA

Tatijana Temelkoska-Milenkovic

The Program was approved by the CCE Board

at the Board meeting held on December 14, 2001

APPENDIX V

LAW ON FINANCIAL POLICE

I. GENERAL PROVISIONS

Article 1

This Law shall establish the financial police and regulate its structure, competencies and the manner of operations.

Article 2

- (1) The financial police shall be an agency of the state administration within the Ministry of Finance.
- (2) The head office of the financial police shall be in Skopje.
- (3) The financial police shall operate under the name Ministry of Finance – Financial police

STRUCTURE OF THE FINANCIAL POLICE

Article 3

- (1) The financial police shall operate only on the territory of the Republic of Macedonia.
- (2) The financial police shall execute its operations exclusively through the Main Office.

Article 4

- (1) Director shall manage the operations of the financial police.
- (2) The Director may have a Deputy.
- (3) The Director and his/her Deputy shall be appointed and discharged by the Government of the Republic of Macedonia upon proposal the Minister of Finance.

SCOPE OF OPERATIONS

Article 5

- (1) The financial police shall execute the following operations:
 - 1) Control over the correct appliance of tax and customs regulations;
 - 2) Collecting information and data, in cooperation and coordination with other departments of the Ministry of Finance, the Ministry of Interior, the Public Prosecution and other state agencies and other legal entities for the purpose of discovering the perpetrators engaged in certain activities connected with tax evasion, money laundering, smuggling, illegal trade in goods and products and other type of criminal acts that include larger and significant amounts of tax, customs or other revenues;
 - 3) Investigations against one or several persons for which there is reasonable doubt that they are involved in illegal financial activities which are against the economic interests of the country in general or of specific sectors of the economy, which are organized in the country or are of international character and are under the competence of the Ministry of Finance;
 - 4) Investigations that include natural persons or companies engaged in activities contrary to the existing regulations on money laundering, taxes and other types of financial crime.

- 5) Investigations of financial crime that can not be proved directly with the existing evidence and include methods of indirect proving like in: expenditures, value estimates or the existence of bank account and similar, used in cases when part of or the whole financial documentation of the tax payer does not exist, has been destroyed or due to any other reason is not available.
- 6) Investigations in cases where there is doubt that concluded agreements with suspicious character exist;
- 7) Establishment of data base on potentially risky taxpayers, i.e. persons that have been convicted for felonies or for some other reason are considered to be risky, for the purpose of protecting the employees in the Service from physical assault, i.e. from grievous bodily harm;
- 8) Expert computer analysis on confiscated evidence in a form of computer data, evidence from cell phones or other electronic devices and media containing information of interest for suppressing the financial crime.
 - (2) The Minister of Finance shall prescribe more detailed regulations by which he shall determine the criteria referred to in paragraph (1) Item 2) of this Article, and on the criteria for the indirect methods of providing evidence on revenues referred to in Paragraph (1) Item 5) of this Article.

FINANCIAL POLICE COMPETENCES

Article 6

- (1) When performing the operations of its competence, the financial police shall have the jurisdiction to:
 - 1) Control and investigate business books and other evidence, documents, records, memorandums and computer data and data received from other electronic media regarding data and elements of tax returns of persons under investigation;
 - 2) Take statement from suspects and witnesses regarding the business books, records and other documents in order to obtain the necessary information and evidence;
 - 3) Secure handwriting samples for comparison and proving the authenticity and the document origin;
 - 4) Execute search of the suspect's business premises and other premises, by its own estimate or upon request by the Public Prosecution;
 - 5) Execute search of the person's dwelling (flat, house, summer house and similar) upon search warrant;
 - 6) Take in custody persons under investigation or persons hindering or obstructing the investigation or the proceedings;
 - 7) Temporarily stop and search means of transport for which there is reasonable doubt that they are used for transportation of goods and people, as well as inspect warehouses and other storage facilities, regardless who the owner of these facilities is;
 - 8) Confiscate goods put in circulation or transported, when there is no evidence for paid taxes and origin documentation thereof;
 - 9) Temporary seize a vehicle and other means of transport in which the goods are transported, if the value of the goods is higher than one third from the value of the vehicle it is transported with.
 - 10) Temporary seize money, securities, objects and other documents from the beginning of the investigation till the end of the proceedings;

11) To seize electronic, mechanical and other kinds of apparatus, which may contain data, records, other documents or other kinds of information considered to be potential evidence;

12) To file a request to the court for imposing a temporary measure - prohibition on the disposal of property, equipment and funds on account from the beginning of the investigation till the end of the proceedings;

(2) The Minister of finance shall proscribe closer regulation for the manner and the procedure for applying the provisions form paragraph 1 of this Article.

Article 7

The financial police shall perform investigations on the basis of ex-officio, upon request by the Public Prosecutor, the Ministry of Finance, the Ministry of Interior, Public Revenue Office, Customs Administration, Money Laundering Prevention Directorate, and if it deems necessary, to take actions upon reports and information by other agencies or persons, in cases when there is a reasonable doubt that a felony has been committed.

II. FINANCIAL POLICE EMPLOYEES

Article 8

(1) The operations of the financial police shall be preformed by financial police officers.

(2) Financial police officers shall be appointed and dismissed by the Minister of finance upon proposal by the Financial Police Director.

Article 9

(1) The financial police shall have uniform, badge and identification card.

(2) The Minister of finance shall proscribe the design of the uniform, as well as the form and contents of the official identification card and the form of the badge.

Article 10

The financial police officers shall also possess firearms, which they can carry and use while performing official duties in order to:

1. To repel a direct attack endangering their life;
2. To prevent escape of means of transport.

Prior to the use of firearms, the financial police officers are obliged to warn the person against which they intend to use the weapon.

Article 11

1) In addition to the general conditions for employment in the agencies of the state administration, special conditions must be met by the financial police officers.

(2) Financial police officer can be a person who:

- 2) is a citizen of the Republic of Macedonia;
- 3) has not been convicted or has not received amnesty for any felony;
- 4) is not older than 35
- 5) is physically and mentally healthy and is capable of performing the operations of the financial police.
- 6) Also fulfils the remaining conditions proscribed with the organizing act on structural organization.

(2) The minister of finance shall proscribe detailed regulations according to which tests of capability and evaluations of the personal features of the persons for performing the operations of the financial police shall be conducted.

Article 12

Because of the specifics of the operations they perform, the financial police officers are entitled to receive salary increased by 30% of the salary base determined by the act on payment of salaries, as well as to an reduced years of service according to the regulation on pension and disability insurance.

Article 13

The financial police officers shall perform the operations they are authorized for every day without the limitation of working hours, where by these employees shall be provided with daily and weekly rest and annual vacation according to the Employment Relations Law.

Article 14

(1) The financial police officer is obliged to protect state, official and business secrets, which he/she has found out while performing operations of his/hers competence.

(2) Official secret, for the purpose of this Law, shall be:

- 7) Measures, actions, reports, documents, data and sources of data from within the scope of operations of the financial police designated as official secrets with an certain degree of confidentiality.
- 8) Measures, actions, reports, documents, data and sources of data referring to legal entities, state administration agencies as well as other state agencies, which, according to Law or other regulations, are designated as official secret.

OBLIGATONS OF LEGAL ENTETIES AND NATURAL PERSONS

Article 15

Legal entities and natural persons are obliged to provide data to the financial police and to submit for insight the necessary financial documents, business books and other documents necessary to establish the actual and legal condition and to provide the necessary conditions for performing of control.

OBLIGATIONS OF STATE AGENCIES AND OTHER AGENCIES

Article 16

State administration agencies, local self government bodies and other state agencies and organizations are obliged to provide data to the financial police and to submit documents and business books and other documents in connection with the subject to control as well as to enable insight into the data necessary for the control.

CO-OPERATION WITH OTHER AGENCIES

Article 17

(1) When performing its duties, the financial police shall cooperate with the Public Prosecution, the Ministry of Interior, Public Revenue Office, Customs Administration, the Money Laundering Prevention Directorate and other state agencies and other legal entities in charge of detection and prevention of punitive acts.

(2) The Ministry of Finance, the Ministry of Interior, the Public Prosecution, the Public Revenue Office, the Customs Administration, the Money Laundering Prevention Directorate and other state institutions and services are obliged, within their jurisdiction, to provide without delay assistance to the financial police in.

OFFICIAL NOTE AND REPORT

Article 18

(1) Report shall be compiled the undertaken actions in the proceedings carried out by the financial police. Official note shall be compiled for specific parts of the proceedings.

(2) Should the financial police establish presence of actions having features of felony it shall file criminal charges to the competent Public Prosecutor.

(3) Should the financial police establish presence of actions having features of a misdemeanour, it shall file a request for initiating of offence proceedings.

(4) The criminal charges or the request for initiating of offence proceedings referred to in paragraphs (2) and (3) of this Article shall be submitted along with the report for the conducted investigation and all the evidence and statements by witness collected in the course of the investigations.

(5) The criminal charges or the request for initiating of offence proceedings shall be filed within 15 days at the latest of the completion of the control i.e. investigation.

Article 19

If sufficient evidence for prosecution is not provided in the investigation conducted, the report shall state that there are no grounds for conducting judicial proceedings and the subject shall be closed.

Article 20

Should outstanding liabilities be determined in the control procedure, the financial police shall submit the report to the Public Revenue Office and the Customs Administration for further processing.

PENALTY PROVISIONS

Article 21

(1) Legal entity shall be fined from Denar 200,000 to 300,000 for offence if it fails to provide data to the financial police and to submit for insight the necessary financial documents, business books and other documents necessary to establish the actual and legal condition as well as the necessary conditions for performing of control. (Article 15)

(2) The responsible person at the legal entity shall be fined from Denar 40,000 to 50,000 for the offence referred to in paragraph (1) of this Article.

(3) A natural person shall also be fined from Denar 40,000 to 50,000 for the offence referred to in paragraph (1) of this Article.

Article 22

The authorized (official) person in the state administration agency, local self-government bodies and other state agencies and organizations shall be fined for an offence from Denar 40,000 to 50,000 if he/she fails to provide data and submit documents, business books and other documents in connection with the subject to control as well as to enable insight into the data necessary for the control. (Article 16)

Article 23

The financial police officer shall be fined for an offence from Denar 40,000 to 50,000 if he/she fails to protect a state, official or business secret that he/she has found out while performing operations of his/hers competence. (Article 14)

TRANSITIONAL AND FINAL PROVISIONS

Article 24

(1) For the purpose of initiating the operations of the financial police, professional personnel fulfilling the conditions proscribed in this Law shall be recruited from the rank of the inspectors of the Public Revenue Office, the Ministry for Interior (economic crimes service) and the Customs Administration.

(2) Under exception, persons from paragraph (1) of this Article may be older than 35.

Article 25

This Law shall enter into force on the eight day from the day it is published in the Official Gazette of the Republic of Macedonia, and shall be applied from 1st September 2002.