Groupe d'Etats contre la corruption
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Joint First and Second Evaluation Round

Evaluation Report on Turkey

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INTRODUCTION

1. Turkey joined GRECO on 1 January 2004, i.e. after the close of GRECO's First Evaluation Round, but during the Second Round. Consequently, Turkey was submitted to a joint evaluation procedure covering the themes of both the First and the Second Evaluation Rounds (cf. paragraph 3 below). The GRECO evaluation team (hereafter referred to as the "GET") was composed of Dr Richard JARVIS, Assistant Secretary to the Committee on Standards in Public Life, United Kingdom, Ms Ana NIKOLIC, Legal advisor, Anti-Corruption Initiative Agency, Serbia and Montenegro, Mr Georgi RUPCHEV, Head of the Department of International Legal Co-operation, Ministry of Justice, Bulgaria and Ms Isabelle VAN HEERS, Magistrate, Belgium. This GET, accompanied by a member of the Council of Europe Secretariat, visited Turkey on 23 – 27 May 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaires (documents Greco Eval I/II (2004) 2E REV, Parts 1 and 2), copies of relevant legislation and other documentation.

2. The GET met with officials from the following governmental organisations: the Prime Ministry (various departments, including the Inspection Board, the Ethics Council and the Council for Access to Information), the Ministry of Justice (various departments, including the Justice Academy), the Public Prosecution, the Supreme Court of Appeal, the Constitutional Court, the Council of State, the Ministry of the Interior (various departments, including the Police Academy and the Turkish International Academy against Drugs and Organised Crime (TADOC)), the National Police, the Gendarmerie, the Ministry of Finance (various departments, including the Financial Crimes Investigation Bureau (MASAK)), the Ministry of Industry and Commerce, the Parliamentary Committee on Immunities, the Public Procurement Authority, the Banking Regulatory and Supervision Agency, the Court of Accounts. Moreover, the GET met with members of the following non-governmental institutions: the Ankara Bar Association, the Turkish Economic and Social Studies Foundation, the Istanbul Chamber of Commerce and the Turkish Chapter of Transparency International.

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

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

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

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

     - **Proceeds of corruption[3]:** Guiding Principles 4 (hereafter "GPC 4": seizure and confiscation of proceeds of corruption) and 19 (hereafter "GPC 19": connections between corruption and money laundering/organised crime), as completed, for

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

members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;

- **Public administration and corruption[4]:** Guiding Principles 9 (hereafter "GPC 9": public administration) and 10 (hereafter "GPC 10": public officials);
- **Legal persons and corruption[5]:** Guiding Principles 5 (hereafter "GPC 5": legal persons) and 8 (hereafter "GPC 8": fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

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

I. OVERVIEW OF ANTI-CORRUPTION POLICY IN TURKEY

a. Description of the situation

Perception of corruption

5. Corruption is considered among the most important problems to be resolved in Turkey, according to a survey on corruption carried out by the Turkish Economic and Social Studies Foundation (TESEV)[6] for the year 2001. The Survey indicates that corruption is widespread in the public sector, at central as well as local level. Particular areas of concern are the general privatisation programmes and public procurement. Corruption is seen as a main obstacle to foreign investment in Turkey.

6. Representatives of civil society claim that corruption in the large sense - including nepotism and similar phenomena - is well rooted in Turkey. Several corruption scandals in recent years suggest that corruption exists at the highest political level, throughout public administration as well as in the judiciary. Representatives of civil society also claim that few suspicions lead to investigation/prosecution and virtually none to criminal adjudication. This has been contested by the Government.

7. The described perception of corruption in Turkey is confirmed by most leading international organisations involved in the monitoring of corruption in the Country.

8. Turkey recognises that there is a connection between organised crime and corruption in the country. Criminal investigations in Turkey have revealed such links. Corruption investigations are always linked to public officials in Turkey as private corruption (between private entities) is not criminalised. The new Criminal Code introduces, however, some limited form of private corruption with regard to public companies, see paragraph 21.

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[4] Theme II of the Second Evaluation Round.

[5] Theme III of the Second Evaluation Round.

[6] The Turkish Economic and Social Studies Foundation is an independent non-governmental research institute analysing social and economic policy issues facing Turkey. Based in Istanbul, TESEV was founded in 1961 to serve as a bridge between academic research and policy-making. By opening new channels for policy-oriented dialogue and research, TESEV aims to promote the role of civil society in the democratic process.

9. The World Bank and the European Bank of Reconstruction and Development (EBRD) concluded in 2005 that the level of organised crime and corruption is high in the business sector in Turkey.

10. According to the Transparency International (TI) Corruption Perceptions Index for 2004, Turkey is ranked 77 (out of 145) with a score of 3,2 (out of 10). Similar figures were presented for the years 2001-2003. Turkey was according to the TI Corruption Index for 2005 ranked 65 (out of 159) with a score of 3,5 (out of 10) This places Turkey among the group of countries perceived as most corrupt in Europe. In 1997 a Chapter of TI was opened in Turkey.

Anti-corruption measures

11. Turkish authorities met by the GET acknowledged that corruption in Turkey is a serious problem, which threatens the proper functioning of the administration. The fight against corruption has been given priority in recent years. Moreover, the fight against corruption is also a matter of priority in Turkey's accession negotiations with the European Union.

12. In 2001 an Anti-Corruption Steering Committee composed of the Prime Ministry Inspection Board, the Under-Secretariat of the Treasury, the Ministry of Justice, the Ministry of the Interior and the Financial Crime Investigation Board of the Ministry of Finance (MASAK) as well as a Working Group to assist the Committee were established for the purposes of increasing transparency and improving efficiency in public administration. Moreover, a Steering Committee for the Public Expenditure Management Reform, consisting of representatives of the Ministry of Finance, the Under-Secretariat of Treasury, the Under-Secretariat of the State Planning Organisation and the Turkish Court of Accounts was also established.

13. The GET was informed that these Committees, in co-operation with representatives of professional organisations, media, non-governmental organisations, small and medium scale enterprises, academics and public administrators had prepared the ground for a nationwide policy against corruption. An international conference held in September 2001 on "Enhancing Transparency and Good Governance of Turkey's Public Sector" was yet another impetus behind a National strategy against corruption.

14. In January 2002, the Council of Ministers adopted – in the form of a decree – the *"Action Plan on increasing transparency and enhancing good governance in the public sector"*. The fundamental objectives of the Plan are wide, covering areas such as discretionary powers of civil servants, public payment regimes, efficiency of the enforcement of preventive, disciplinary and criminal sanctions against civil servants involved in corruption, modernisation of the system of auditing public administration, reduction of the administrative formalities upon investors and private enterprises and, more generally, enhancing trust in the public sector and the political system.

15. More particularly, the Action Plan gave priority to establishing performance standards for public service delivery; improving the regulatory relationship between the public agencies and public foundations and associations; improving the human resource system of public administration, improving the transparency of public administration, increasing access to information, strengthening the inspection and audit system; improving the judicial system; strengthening the fight against money laundering; improving accountability and transparency in election campaign financing; improving accountability in financial disclosure statements; and strengthening local administrations. The Action Plan includes the creation of an inter-ministerial Commission to co-ordinate its implementation.

16. The Anti-Corruption Steering Committee, referred to above, ceased to exist in 2002 when the Action Plan was adopted. In January 2003, the Action Plan was followed by the Emergency Action Plan (EAP) as proclaimed by the 58th Government, which had been elected in November 2002. The EAP includes a separate section devoted to the fight against corruption from which the Government - in co-operation with the European Union - has identified three priority areas for technical co-operation: improving public services, strengthening specialised anti-corruption units and enhancing public awareness. The overall responsibility of the implementation of the EAP is given to the Under-Secretary of State Planning in the Prime Minister's Office. Moreover, a Ministerial Committee as foreseen in the 2002 Action Plan to coordinate the implementation of the EAP was first established in May 2002 through Prime Ministerial decree No. 2002/56. It consists of four Government ministers; the Ministers of Justice and Finance and two State Ministers. This Ministerial Committee is assisted by a technical commission, chaired by the Head of the Prime Ministry Inspection Board.

17. In January 2003, a *Parliamentary Investigation Committee* was established to analyse the reasons and economic and social dimensions of corruption in the country and to identify necessary measures to fight effectively against corruption. The Committee issued its report in July 2003, *inter alia*, proposing to investigate a large number of politicians and former ministers, including a former prime minister and civil servants suspected of involvement in a series of corruption cases in public tenders, privatisation operations and other areas. The Parliamentary Committee suggests, *inter alia*, that immunities for top officials be limited and that some corruption investigations be reviewed by the Prime Ministry Inspection Board, which through a number of taskforces has carried out 29 such investigations in total.

18. The described variety of efforts to fight corruption have resulted in a number of new laws and amended legislation in Turkey in recent years, for example, the Law on Public Procurement (2003), the Law on Public Financial Management and Control (2003), the Law Amending the Banks Act (2003) and the Law on the Establishment of the Public Servants' Ethics Board (2004). Transparency and the freedom of the press are areas of particular concern and Turkey has in this respect adopted new legislation, such as the Public Information Act (2003), the Press Law (2004) as well as amendments to the Constitution. Legal reform has also focused on criminal legislation and a new Criminal Code, a new Code of Criminal Procedure and a Code of Misdemeanours were adopted in 2005.

19. The Government has indicated that the general involvement of non-governmental organisations in the fight against corruption and public awareness in this field are on the rise and that these are considered as some of the basic tools in the fight against corruption. NGO representatives met by the GET claimed that the authorities, with few exceptions (among them the Ministry of Justice), do not seriously involve NGO's in the fight against corruption. Moreover, NGO representatives also indicated that the measures established against corruption are not sufficiently co-ordinated and are not long-term oriented. Moreover, according to the EC 2004 Report on Turkey's accession to the EU, the country is encouraged to strengthen the dialogue with civil society and to establish an independent anti-corruption body. The 2005 EC report, which also states that institutions relevant to the fight against corruption should be strengthened and that, in particular, an overhaul of the inspection system is necessary to increase efficiency in the fight against corruption

20. Turkey is active in various international organisations involved in the fight against corruption. This has provided important input for the establishment of domestic projects to fight corruption. Turkey is an applicant state to the European Union and, as already mentioned, corruption is dealt with in the preparatory process for membership in the EU. Turkey ratified the Council of Europe Criminal

Law Convention on Corruption (ETS 173) in 2003 and became a member of the Group of States against Corruption (GRECO) in 2004. Turkey has ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141). Turkey is a member of the Financial Action Task Force (FATF) and a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and is a member of the OECD Working Group on Bribery. Turkey has signed the United Nations Convention against Corruption.

Criminal legislation

21. *Active and passive bribery* in the public sector is regulated in Article 252 Criminal Code, which reads:

"(1) A public official who accepts a bribe shall be sentenced to imprisonment for a term of four to twelve years. The person who offers a bribe shall be punished as though s/he is a public official. In case of an agreement on bribe, sentence shall be given as if the offence has been accomplished
(2) If the person who accepts a bribe or agrees on bribe has a judicial task, arbitrator, notary, or sworn financial adviser, punishment given in accordance with the first paragraph shall be increased by one-third to a half.
(3) Bribe is taking advantage of a public official within the frame of an agreement which s/he makes with another person for doing or refraining from doing something contrary to his/her duties.
(4) Provisions of paragraph (1) shall also be applied to persons who are acting on behalf of legal persons during establishment of legal relations or continuation of the established legal relations with professional organisations qualified as public institutions, companies founded with the participation of public institutions, bodies or professional organisations qualified as public institutions, foundations carrying out activities under these organisations, societies functioning for public good, cooperatives or corporations which are open to the public.
(5) The direct or indirect proposal or promise or gift of the benefits made to the public official or employees of public institutions and bodies performing a legislative or administrative or judicial function who are elected or appointed in a foreign country or to persons performing international duties in the same country in order to have something done or to ensure that it is not done for reasons of international trading transactions or to obtain or retain undue benefit shall also be deemed to be a bribe."

22. *Trading in influence* was regulated as a separate offence in the previous Criminal Code. However, in the new Criminal Code (2005) it is regulated as a qualified form of fraud. Paragraph 2 of Article 158 provides that a person who secures an unjust benefit claiming influence over or intimacy with public officials due to his/her intimacy with them, and deceives others by promising that a particular act will be done, will be sentenced to between two and seven years' imprisonment and with a judicial fine of up to 5,000 days.

23. *Money laundering* is regulated in Article 282 of the Criminal Code which reads:

"(1) To transfer abroad the proceeds derived from the offence whose minimum imprisonment penalty is one year or more constitutes a money laundering offence. In addition, to make such proceeds subject of any operations and transactions in order to disguise the illicit origin of them or to give an impression as if they were derived from legal sources is also a money laundering offence. Persons committing the laundering the values of assets shall be sentenced to imprisonment for a term of two years to five years and fine up to 20.000 days.[7]
(2) In the event that this crime is committed by a public official or by a person with a specific profession in the course of this profession, the sentence for imprisonment shall be increased by one half.
(3) In the event that this offence is committed within the activities of a criminal organisation established for committing crime, the sentence for imprisonment shall be increased by one fold.
(4) With regard to legal persons involved in this offence, security measures pertinent to them are taken.
(5) Before initiating the prosecution, whoever enables competent authorities to seize the assets subject of an offence or facilitates the seizure of these assets by informing the competent authorities on where these assets are shall not be sentenced for the offence defined in this Article."

[7] Article 52 CC: Day fines which correspond to number of days of imprisonment. Each day fine is decided on the basis of the offender's economic conditions.

24. The establishment of, and the participation in, an *organised crime group* is criminalised pursuant to Article 220 of the Criminal Code, which reads:

> *"(1) Persons founding or leading an organisation to commit acts punishable by the law shall be sentenced to imprisonment of 2 to 6 years where the structure of the organisation, the number of members and the materials and equipment it possesses are sufficient to commit the crimes aimed. An organisation shall be deemed to exist where there are at least three members.*
> *(2) Those who become members of the organisations established to commit crimes shall be sentenced to imprisonment of 1 to 3 years.*
> *(3) If the organisation is armed, the punishment under the foregoing paragraphs shall be increased by one fourth to one half.*
> *(4) If any crimes are actually committed during the activities of the organisation, punishment shall also be imposed for the crimes in question.*
> *(5) The leaders of the organisation shall also be sentenced as the perpetrators of all crimes committed within the framework of the activities of the organisation.*
> *(6) The person who commits a crime on behalf of the organisation although he is not a member of the organisation shall also be punished for being a member of the organisation.*
> *(7) A person who aids and abets the organisation knowingly and intentionally although he does not belong to the hierarchical structure of the organisation shall be punished as a member of the organisation.*
> *(8) A person who makes propaganda for the organisation or its objective shall be punished with imprisonment for one year to three years. Where this crime is committed through the press and publication, the punishment shall be increased by half.*

b. Analysis

25. Information collected by the GET indicates that Turkey has, for a long time, been extensively affected by corruption and that the problem appears to be widespread throughout the country and its public institutions, including the judiciary. Moreover, corruption at political level appears to be perceived by the public as a matter of concern.

26. The Government of Turkey has stated that it is determined to combat corruption which, according to the 2001 survey by the Turkish Economic and Social Studies Foundation (TESEV), is considered the third most important problem to be addressed in Turkey. That survey showed that the government sector was where most respondents thought corruption was "high" (80%). This rather pessimistic description is supported by other international surveys and reports gathered by the GET. However, the GET noted that much has been done to improve the situation in recent years and that the accession process to the EU plays an important role in this respect.

27. The principle achievement of the Government towards combating corruption was the 2002 Council of Ministers' decree for the "Action Plan on increasing transparency and enhancing good governance in the public sector", followed by the Emergency Action Plan (EAP) in 2003. Underneath the broad envelope of the Action Plans there have been a number of potentially significant legislative changes which, subject to effective implementation, should in time assist in combating corruption (e.g. the Law on Right to Access Information, Law on Public Procurement and the Law on Public Finance and Management).

28. The Government should be commended for its efforts. The full impact of some of these measures cannot be evaluated until the more recent legislation has been implemented and had time to take effect. The GET was of the opinion that it would be important to measure the results of the structural changes, preferably through evaluations in two to three years' time, in order to assess their efficiency to fight corruption. **The GET recommends to develop systems for monitoring the impact of anti-corruption measures for the various sectors concerned.**

29. The GET notes that the continuity of anti-corruption programmes, which appears promising, may be negatively affected when the measures taken are closely connected to the governments in power and individual ministries, without sufficient independent implementation and supervision. Moreover, the GET takes seriously the situation that civil society may not be as closely involved in the reforms as preferable.

30. The 2002 Action Plan, which had been elaborated by an Anti-corruption Steering Committee, foresees the creation of an inter-ministerial Commission to oversee and co-ordinate the implementation of the Plan. This Plan had subsequently been followed by the Emergency Action Plan (EAP) and at the same time the Steering Group ceased to exist and was replaced by the Ministerial Committee. The overall implementation and monitoring has since been in the hands of the Government (Ministerial Committee).

31. Given the importance ascribed to tackling corruption by the Government, how widespread corruption appears to be and the complexity of the public sector, the absence of a central co-ordinating/oversight body for anti-corruption policy appears to be a significant gap in the system. The Turkish authorities have - since the visit - contested this situation, claiming that the Government, through a Ministerial Committee already has this function. The GET had no meeting with the said Committee during its visit and understands in any event that it is closely connected to the Government. The advantage with the creation of a co-ordinating oversight mechanism, with the necessary level of independence would, in the view of the GET, be an important move in order to provide continuity in anti-corruption strategies over a longer period of time. Moreover, such a body should consist not only of public officials, but also of representatives of civil society, which would provide a broad expertise to the body as well as an important signal to the public with regard to the commitment of the Government to involve civil society in the fight against corruption. **The GET recommends to entrust a body with the responsibility of overseeing the implementation of national anti-corruption strategies as well as proposing new strategies against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence in its monitoring function.**

32. The GET notes with concern that corruption between private entities is not a criminal offence in Turkey and it was informed that private corruption was not foreseen to be criminalised. The new Criminal Code does, however, introduce a limited criminalisation in this respect, see paragraph 21. The GET was of the opinion that a situation where all forms of corruption - in the public as well as in the private sector – would give additional weight to the fight against corruption. It would also provide a clear signal to the public as a preventive measure. However, criminalisation is not dealt with in detail in GRECO's First and Second Evaluation Rounds.

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

a. Description of the situation

33. There is no specific police body devoted solely to the fight against corruption. Instead, there are a number of various State bodies which, in addition to other functions, have the authority to detect corruption within their respective fields of competence.

34. As described in Chapter V, concerning public administration, every Ministry and State agency has its own internal inspection system (Inspection Board). Crime, such as fraud, misuse and negligence is to a large extent investigated by these bodies and the main (Constitutional) rule is that the police/prosecution is involved only after the permission of the Head of the administration

concerned is granted. With respect to corruption and some other similar offences, however, there is an exception to this rule in Law No. 3628, which states that corruption offences should be reported directly to the prosecution, without the permission of the Minister/Head of the agency. Also in respect of organised crime and smuggling there is direct prosecution. It should be noted that the exceptions to the system of permission are the results of modernisation of a century-old legislation on investigation of civil servants.

35. The present Chapter is limited to the external law enforcement system, prosecution and the judiciary.

Law Enforcement bodies

36. The Ministry of the Interior is responsible for the maintenance of internal security and public order in Turkey. This function is fulfilled through the Directorate General of the National Police which is responsible for urban areas, and the General Command of Gendarmerie which is responsible for the rural areas. Both these bodies have preventive as well as detective police authority and they have units dealing with corruption, however, no units dealing exclusively with corruption.

The National Police

37. The National Police is headed by a Director General and five Deputies. The staff is 194 000. The Directorate General has two organisational parts, the Central and the Local Branch. The Central Branch is divided into 27 Departments with various tasks. To the Central Branch is also connected the Police Academy, which provides training for higher grades and the Police College for basic training. Moreover, as in all public administrations in Turkey, the Police has its own inspection board, for internal investigations, for example concerning malpractice and corruption within the Police.

38. The provincial organisation is divided into 81 Police Directorates, one in each Province of the Country, 749 town police units, 21 border units, 9 free zone police stations, 898 police centres and 285 police stations.

39. The Department of Anti Smuggling and Organised Crime of the National Police (*KOM*), deals with serious offences when these are related to organised crime, such as drug trafficking, counterfeiting, forgery, illicit trafficking of cultural and natural assets, smuggling of organs and tissues, human trafficking, cyber crime, illicit profit-oriented criminal organisations, smuggling of arms, ammunition and nuclear substances and financial crimes, including money laundering and corruption. The Department has a staff of more than 4000 out of which some 400 are in the Headquarters and the others placed in the 81 Police Directorates. According to statistics provided to the GET, the KOM, in 2002-2004, dealt with 38 cases concerning embezzlement, bribery, etc relating to areas, such as customs, banking, agriculture, taxes.

40. When corruption offences are un-related to organised crime, they were dealt with by the ordinary police branches, normally the Public Order Police. The GET was informed that during the years 2002-2004 there had been some 150-160 investigations concerning bribery every year (in 2005, 44 cases). These cases are normally dealt with by the Public Order Police at the regional level, without any intervention from the headquarters.

Training of the Police

41. New recruits are expected to have completed secondary school. Training consists of a two-year educational and training period at one of the Police Colleges. Candidates for higher ranks start at one of the police colleges after secondary school and continue at the *Police Academy*, from which students graduate after a four-year course. The first three years follow a general curriculum for police and the fourth year is devoted to specialist themes. The GET was informed that corruption as an offence is part of the training on money laundering, organised crime as well as in relation to criminal investigation techniques. The GET was also informed that during the fourth year there is a specialised course called "Corruption and Financial Crime". There was no information that the Police Academy had carried out any scientific research on the particular problems relating to the detection/investigation of corruption.

42. In-service training is normally carried out within the various police departments when there is a need, for example, to train officers on how to apply new legislation.

43. In addition to the ordinary National police education, the Turkish International Academy against Drugs and Organised crime (*TADOC*), was established by Turkey and the United Nations in 2000. This training centre, also co-funded by the EU (Phare), is aimed at the Turkish Police as well as police of other countries of the region and beyond, to a large extent CIS countries. TADOC, which has the objective to sustain and improve the conditions of the fight against organised crime groups, has developed a basis for co-operation by integrating trainees from different agencies of various countries. Thousands of law enforcement officers, have participated in the training organised by TADOC.

The Gendarmerie

44. The General Command of Gendarmerie is a paramilitary security force; during wartime or in areas placed under martial law, it functions under the Army. In peace time, however, the Gendarmerie is responsible for policing the rural areas of Turkey and is for this purpose under the responsibility of the Ministry of the Interior. There are approximately 40 000 employed in the Gendarmerie.

45. The introductory training provided to the gendarmes (Gendarmerie Training Centre, Ankara) is a combination of military training and training in criminal law and procedure. There is no regular in-service training after that, except for ad hoc seminars and courses when necessary, for example, on the application of new legislation.

46. The Department of Anti-Smuggling and Organised Crime within the Central Command of the Gendarmerie (the equivalent of the KOM in the Police) deals with smuggling and similar offences relating to organised crime and in this context is also specialised in corruption. The GET was informed that this Department has some 800 employees.

Customs

47. Since 1993, the Customs were separated from the Ministry of Finance and organised as an Under-Secretariat of the Prime Ministry. In addition, the Customs are organised in 18 regional Directorates and, within these there are 143 offices in the country. The Customs have a wide variety of different tasks as provided for in the Customs Law and other related legislation, such as to establish a customs policy, to collect customs taxes, to control and inspect goods, to protect goods, etc. The Customs also have the duty to prevent, inspect and investigate smuggling across

territorial borders and to prosecute such cases. In carrying out their tasks, the Under-Secretariat comprises a number of service units, such as the General Directorates of Customs Enforcement, Customs Control, EC and External Relations, etc and sub units, such as the Inspection Board, Research Planning and Co-ordination.

48. The Investigation Board of the Customs is the highest level investigation unit in the Under-Secretariat. It consists of 102 Customs Investigators, has law enforcement powers and deals with complicated cases in which many people and organisations are involved. There are also Controller Units of the Directorate General, with the authority to prevent, detect and investigate customs related crime. The GET was informed that the Customs have attached great importance to fighting corruption*, inter alia,* through training of the staff with investigative powers. Training courses on integrity have been carried out. Furthermore, all customs staff have signed an ethics declaration. All Customs officers are required to submit declarations of property periodically.

MASAK

49. The Financial Crimes Investigation Board (MASAK) is the FIU in Turkey. It was established in 1997 (Law No. 4208) as a multidisciplinary body in charge of prevention and investigation of money laundering. It consists of Ministry of Finance inspectors, auditors, revenue comptrollers, sworn bank auditors, treasury comptrollers and capital market board experts. MASAK has the function and the power of searching and investigating money laundering offences. MASAK collects information concerning suspicious transactions (STR), analyses the data and co-ordinates money laundering investigations and may come across cases involving corruption, although corruption is not its main target. When MASAK concludes that a crime has been committed, the case is submitted to the Prosecution Service. The GET was informed that MASAK had received 3792 STR's since its establishment in 1997.

50. The GET was also informed that several twinning projects had been carried out by the Ministry of the Interior and MASAK with the aim of strengthening the fight against organised crime, in particular, to enhance the capacity of law enforcement institutions.

<u>The Judiciary (prosecution and adjudication)</u>

Public prosecution

51. The Prosecution Service is organised regionally in 81 districts (52 towns and 133 centres), each headed by a Chief Prosecutor. There are Chief Prosecutor Offices in all provinces and towns where there is a court. Smaller districts may have only one prosecutor. In the Ankara district there were 172 prosecutors and 491 in Istanbul. Prosecutors are attached to the Ministry of Justice as far as their administrative functions are concerned. There were no particular organisations to provide for specialised prosecutors in corruption cases, however, in cities like Ankara and Istanbul there were prosecutors specialised in offences committed by public officials.

Courts

52. The Court System of Turkey has been and is undergoing major change. For example, the previous State Security Courts had been abolished and replaced by Regional Serious Felony Courts which deal particularly with organised crime. Intermediate courts of appeal (which did not exist in the past) were established in 2004 and new specialised courts; in areas such as family disputes, commercial law and juvenile justice have been set up. Following these changes, the Court system in Turkey consisted of the Constitutional Court, the Court of Jurisdictional Disputes,

Military Courts, Administrative Courts (described in Chapter V) and the General Courts. The General Courts at first instance consisted of district courts (civil and criminal); new legislation on the establishment of a new system of second instance appeal courts was about to materialise as part of the on-going justice reform programme, which was carried out in close co-operation with the European Union. The highest court was the Court of Cassation (Supreme Court).

Judges and prosecutors

53. Turkey has a system of career judges, to which able young lawyers are selected by a recruitment panel following extensive written and oral exams. The GET was told that for some 400 posts in 2004 there had been 4000 applications. Newly recruited judges undergo training for two years. Five years following their recruitment, judges (as well as prosecutors) may be appointed to the Ministry of Justice as rapporteur judges, but this is not automatic. Judges may also serve in the President's Office and in the Prime Ministry. There are four grades of judges (as well as of prosecutors), third degree, second degree, pre-first degree and first degree.

54. On the one hand, the Constitution states that judges shall be independent in the discharge of their duties, that they shall give judgments according to law and their conviction, without interference from any organ, authority, office or individual (Article 138); that appointments, promotions and benefits etc of judges and public prosecutors shall be regulated by law in accordance with the principles of the independence of the Courts (Article 140); and that judges cannot be dismissed, or retired before the age prescribed by the Constitution; nor can they be deprived of their salaries, allowances or other rights relating to their status (Article 139). On the other hand, the Constitution (Article 140) provides that judges are administratively attached to the Ministry of Justice.

55. The Supreme Council of Judges and Public Prosecutors (Article 159 of the Constitution) is responsible for all appointments of judges and prosecutors. This body is chaired by the Minister of Justice and the Under-Secretary of the Ministry of Justice is also a member as well as five senior judges (three from the Court of Cassation and two from the Council of State and their substitutes) appointed by the President of the Republic. The Secretariat is provided by the Ministry of Justice.

56. According to the Law on Judges and Prosecutors No. 2802, there is an Inspection Board of the Ministry of Justice, the President of which is attached to the Minister and a number of judiciary inspectors. The latter supervises the judges and prosecutors in the performance of their duties, skills etc, based on the quality of their decisions/judgments, ethics and professional conduct, for example, their working pace. Judges and prosecutors receive marks on a scale of 0-100 (weak, average, good and excellent) which are important for their grades and career. The Ministry of Justice inspects the judges' and prosecutors' courts bi-annually and when necessary, as a kind of performance appraisal (judges' sentences are not assessed). The inspection submits a report to the Inspection Board (consisting of judges and prosecutors employed in the Ministry); however the ultimate responsibility for the Inspection Board lies with the Minister of Justice. Inspections may lead to recommendations on individual judges to the respective court. Disciplinary matters are only dealt with by the Supreme Council of Judges and Prosecutors.

57. Investigations into whether judges and prosecutors have committed criminal offences in the course of their duties can only be made with the permission of the Minister of Justice. According to Law No. 2802 and Law No. 3628, judges and prosecutors charged with an offence will be tried upon the permission of the Minister of Justice. This is aimed at guaranteeing the independence of the judges and prosecutors during the exercise of their duties.

Training

58. As part of the Government's commitment to strengthen the Judiciary, the Justice Academy was established by law in 2003, with the aim of providing independent training to judges and prosecutors. At the time of the visit by the GET, the training was shared by the Ministry of Justice, dealing with in-service training, and the Academy, dealing with in-service and initial training. For example, the training department of the Ministry managed the training of all judges/prosecutors in relation to the new Criminal Code (CC) and the Code of Criminal Procedure (CCP). The GET was informed that the Justice Academy, which had not yet been made fully operational, was expected to carry out training also for serving judges/prosecutors in the future. (New building facilities for the Justice Academy in Incek were provided in August 2005.)

59. The GET was informed that the Justice Academy had developed some training courses relating to the CC (bribery, etc) and the CCP (the use of special investigative techniques) and in relation to ethics and codes of conduct (2004).

Criminal investigation and adjudication of corruption

60. In principle, the Criminal Justice System is based on the principle of mandatory prosecution (CCP, Article 160). However, a public prosecutor may not initiate a case if there are conditions requiring the implementation of effective remorse provisions which lift the punishment or there are grounds for personal impunity (Article. 171).

61. Regarding their judicial functions, public prosecutors are empowered to oversee the investigation, indictment and prosecution of any case. The law gives prosecutors authority to collect and present evidence and safeguard the rights of defendants, including those detained for pre-trial interrogation (Article 160/2). The prosecutor is expressly empowered to conduct the preliminary investigation, determine the jurisdiction for the case and supervise the judicial police during the pre-trial investigation period (Article 161).

62. The system of preliminary investigation operates as follows: the public prosecutor, upon being informed of the occurrence of an alleged offence, makes a preparatory investigation in order to ascertain the identity of the offender and to decide whether it is necessary to institute a public prosecution (Article160). If the investigation reveals sufficient evidence against an identifiable individual, then a public action is usually deemed necessary and an indictment will be instituted before a competent court (Article 170).

63. The public prosecutor may, for the purpose of his/her enquiry, demand any information from any public employee (Article 161/4). S/he is authorised to make the investigation either directly or through judicial police officers. The judicial police are obliged to inform the public prosecutor immediately of events, detainees and measures taken, and to execute orders of the prosecutor concerning legal procedures (Article 161/2). If necessary, according to the law the prosecutor may request permission to use a special investigative measure from a district judge (Article 162).

64. In cases where a report from a private person is submitted to the public prosecutor, and the prosecutor finds no reason for prosecution or decides not to prosecute after a preparatory investigation, s/he informs the victim and the suspect previously interrogated of his/her decision (Article 172/1). The aggrieved party may then, within 15 days, appeal to the Chief Justice of the nearest Aggravated Felony Court, which may, if the petition is well founded, order the prosecutor

to initiate the case. If not, the court refuses the petition, and after such an action a public case may be opened only upon production of newly discovered evidence (Article 173/6).

65. Having examined all the documents relating to the investigation stage within seven days of transmission of the indictment and all the investigation documents, if the court determines that the indictment does not cover the elements in Article 170, it returns the indictment to the office of public prosecutor by stating the deficiencies (Article 174/1). The prosecutor may object to the decision of return. After removing the deficiencies the public prosecutor resends the indictment to the court (Article 174/3).

66. The final investigation or trial begins when the indictment is sent by the public prosecutor to the court which will try the case (Article 175). The final investigation has two stages: the preparation for trial and the trial itself. Its object is to examine all the evidence before the court, and to reach a judgment with respect to the guilt of the accused. During this process, the public prosecutor presents the case on behalf of the public. The person injured by an offence may intervene in any public prosecution (Article 234) or public case (Article 234) thus he becomes a party to the action by virtue of his intervention.

67. There is no *actio popularis* in the Turkish legal system, and Turkish law envisages public prosecutors having ultimate responsibility for conducting the investigation of any case.

Special investigative techniques

68. The Act on Combating Organisations Pursuing Illicit Gain (No. 4422) provides for the use of special investigation techniques, such as interception of communications, secret surveillance and undercover agents. However, these were only applicable to corruption when it was part of organised crime. These measures are used by bodies such as the KOM.

69. The GET was informed that as from 1 June 2005, the CCP (replacing Law No. 4422) introduced special investigative techniques, such as identification, interception and recording of communications (Article 103) and surveillance by technical devices (Article 139), etc which could be applied in any type of bribery case. Secret investigations could only be applied for corruption as part of organised crime.

Witness protection

70. The law provides for witness protection measures (CCP (Article 58), such as disguising identity, addresses etc; however these means only apply with regard to corruption as part of organised crime. The GET was told that the Government is in the process of drafting a new law on witness protection. Moreover, a unit for witness protection etc was established within the KOM in 2001; its work was limited to witness protection in relation to investigations of organised crime.

b. Analysis

71. The Law Enforcement system of Turkey consists of a number of actors. As corruption offences under Turkish law are linked to public officials, the investigation of cases of corruption often has its starting point in the administration concerned. As described in Chapter V, all ministries and agencies have their own investigation systems, usually carried out through the inspection boards, a kind of "internal police", which is equipped with similar authority and power as the ordinary police bodies. In principle, criminal offences in public administration are therefore "pre-investigated" internally before the head of the service concerned gives permission to submit the

case to prosecution. It is true that there are exceptions to this rule contained in Law No. 3628, in that suspicions of corruption and similar offences should be submitted to prosecution without any permission from the head of the service, whereas other offences (such as misuse of powers and negligence, etc) are covered by the permission system.

72. It should be recalled that the internal inspections and the permission system belong to a century-old system, which may have investigative advantages, but it provides a kind of immunity (further described in Chapter III) for public officials and, furthermore, gives the prosecution and the police a secondary role in investigating crime in the public sector as investigations pass through the internal inspections. The exceptions introduced already in 1990 in Law No. 3628, are in the right direction, however, an exception of certain offences, such as corruption, could possibly lead to difficult interpretations in practice, in particular, as corruption in itself is an offence which is hard to detect at the preliminary stages.

73. Moreover, the system of administrations being investigated by internal investigation boards is likely to be perceived as "administrations investigating themselves" from the public's point of view and, even more so, when the head of the agency may decide ultimately whether a case should be dealt with as a disciplinary matter or a criminal case. Such a situation may in itself give rise to speculation about corruption within the administration. The GET was of the opinion that all cases where there is substantiated suspicion that a criminal offence has been committed (in contrast to a disciplinary matter) should, as a rule, be submitted to prosecution/police for investigation, without being subject to permission of the head of the administration concerned. This matter is also discussed elsewhere in this report (Chapters III (immunity) and V (public administration)).

74. The GET noted that the law enforcement structure had a high degree of specialisation within the various agencies (Police, Gendarmerie and Customs, etc) to investigate organised crime, trafficking and smuggling. There are specialised departments established for these types of crime. Moreover, specialist training is provided in these areas by TADOC, which also aims at connecting and training specialist law enforcement officials in the international fight against organised crime, etc. Corruption, as part of organised crime, is also included in this specialisation.

75. The level of specialisation of the law enforcement bodies regarding corruption not linked to organised crime, is less developed. The GET learned that there was no specialised body of the police or within the prosecution service dedicated to corruption investigations alone. It was told that in some districts and/or large cities, such as Ankara and Istanbul, there were prosecutors with some specialisation in corruption. However, there is no centralised unit of the prosecution service nor within the police, particularly responsible for dealing with corruption offences. This situation is understandable as corruption, as defined in Turkey, is generally connected to public officials and the pre-investigations are carried out by the inspection boards. However considering the magnitude of the problem of corruption in Turkey and the limited introduction of criminalisation of corruption in the private sector, the GET was of the opinion that a multidisciplinary centralised unit for corruption offences in general would provide a necessary law enforcement platform for the detection of corruption and also contribute to a better overview of the problem of corruption. Such a body would also have the potential of better co-ordinating the sharing of information and data between the various law enforcement agencies, for example, the police and the Gendarmerie, which at present do not use the same data bases. Consequently, **the GET recommends to establish or assign a specialised unit with investigative powers in cases of corruption, for the sharing of information between law enforcement agencies and to provide advice to law enforcement agencies on preventive and investigative measures.**

76. Both in the National Police and in the Gendarmerie, staff receive comprehensive initial training which has a bearing on all forms of crime, including corruption offences. The GET was not in a position to assess whether the training, particularly devoted to corruption, was sufficient or not. The GET welcomed that the training curriculum of the fourth year at the Police Academy, contains a course on corruption. Moreover, it noted that corruption as part of international organised crime was dealt with by the TADOC; however, the focus appeared to be more on smuggling and trafficking than on corruption as such. The GET was of the opinion that more specialised training should be provided to law enforcement officials dealing with corruption offences, in particular, the investigation methodology taught to the Police and the Gendarmerie should, to the extent possible, be co-ordinated[8]. As a complement to the previous recommendation, **the GET recommends to enhance/establish co-ordinated training on corruption detection and investigation for all law enforcement officers specialised in corruption cases**.

77. The GET recognises that the Constitution clearly states that the Judiciary is independent from the Executive and the Legislative powers; judges in performing their duties must take into account only the Constitution, the law and their personal conviction. At the same time, judges are administratively attached to the Ministry of Justice. The appointment and promotion of all judges are carried out by the Supreme Council of Judges and Prosecutors to provide for independence. However, there is still a link to the Ministry of Justice, as two of the seven members of the Supreme Council belong to the Ministry and among them, the Minister, who chairs the Council. Moreover, in-service training of judges is *de facto* under the Ministry of Justice. At the time of the visit, the Justice Academy - which after two years of existence was not yet fully operational - was dealing only with the induction training of judges. The GET also noted that judges were under constant supervision and evaluation with regard to their performance by the Ministry of Justice judiciary inspectors, the outcome of which was important for careers. The GET was fully aware that the judicial independence must be balanced with the necessary administrative links to the Executive. It was of the opinion, however, that the independence of the judiciary could be further improved if the influence from the Ministry of Justice was reduced, for example, concerning the supervision and promotion of judges. **The GET recommends to further enhance the independence of judges *vis-à-vis* the Ministry of Justice, concerning their supervision and appointment.**

78. The Justice Academy, which has been in existence for two years, is a body independent of the Executive. At present it only delivers probationer training but is expected in the years ahead to add the further training of serving judges and prosecutors to its responsibilities. According to the information provided during the visit, the Justice Academy is not in a position to ensure full training provision as it is not yet fully operational and only recently has its own premises.

79. The GET was of the opinion that the independence of the judiciary would benefit from providing training outside the Ministry of Justice. The establishment of the Justice Academy was therefore an important step and its full operation should be ensured as soon as possible. It understood that the on-going important large scale training on new legislation (CC and CCP), as provided by the Ministry of Justice, was of a temporary character awaiting the full operational capacity of the Justice Academy. The GET learned that the level of specialisation of prosecutors and judges, in areas such as financial crime and money laundering, should be improved and that new forms of training should be provided to prosecutors and judges, who at the time acquired a lot of their "training" through personal studies. The Justice Academy could, for example, establish

[8] The GET was informed, after the visit, that co-ordinated training between police and gendarmerie had started in the Autumn 2005.

alternatives to "school training", using networks of judges and prosecutors, electronic information tools, etc. **The GET recommends to further promote the full establishment of the Justice Academy as an exclusive training institution for judges and prosecutors and to enhance their on-going training on specialised topics such as economics and finances relevant to the prosecution and adjudication of corruption offences.**

III. EXTENT AND SCOPE OF IMMUNITIES

a. Description of the situation

80. According to the Constitution, the following categories of high-ranking officials benefit from immunity in criminal proceedings:
- the President
- Members of Parliament
- Prime Minister and ministers.

81. Moreover, investigations into whether judges and prosecutors have committed criminal offences in the course of their duties can only be initiated with the permission of the Minister of Justice.

82. In addition, civil servants and other public employees cannot be prosecuted for a criminal offence (except for corruption, etc), without permission from the relevant minister/head of service. Permission is still required for corruption offences in respect of under-secretaries, governors and university rectors.

83. The President of the Republic may neither be arrested nor charged with criminal proceedings, while in Office**.** The President may only be impeached for high treason on the proposal of at least one-third of the total number of members of Parliament and by the decision of at least three-quarters of the total number of members of Parliament (Article 105).

84. Parliamentary Immunity is regulated in Article 83 of the Constitution. Members of Parliament shall not be liable for their votes and statements concerning parliamentary functions, for the views they express before the Assembly, or unless the Assembly decides otherwise on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly (Article 83 (1)).

85. Moreover, a Member of Parliament who is suspected of having committed an offence before or after election, cannot be arrested, interrogated, detained or tried unless the Assembly decides to lift the immunity. This provision does not apply in cases where a member is caught in the act of committing a crime punishable by a heavy penalty[9], nor does it apply if an investigation has been initiated before the parliamentary election. However, in such situations the competent authority shall notify Parliament immediately (Article 83(2)).

86. The execution of a criminal sentence imposed on a member of Parliament either before or after his/her election is to be suspended until s/he ceases to be a member; the statute of limitations does not apply during the term of membership (Article 83(3)). Investigation and prosecution of a re-elected deputy shall be subject to whether or not the Assembly lifts his/her immunity (Article 83(4)).

87. Parliamentary investigation in respect of the Prime Minister or other ministers appointed from Parliament, may be requested through a motion tabled by at least one-tenth of the total number

[9] "Heavy penalty": more than ten years of imprisonment imposed by an Aggravated Felony Court.

of members of Parliament. The Assembly shall consider and decide on this request by secret ballot within one month at the latest. In the event of a decision to initiate an investigation, this investigation is to be conducted by a Commission of fifteen members chosen by lot on behalf of each party from among three times the number of members the party is entitled to have on the Commission, representation being proportional to the parliamentary membership of the party. The Commission has to submit its report on the result of the investigation to the Assembly within two months. If the investigation is not completed within the time allotted, the Commission must be granted a further and final period of two months. At the end of this period, the report is to be submitted to the Office of the Speaker of Parliament. Following this submission the report shall be distributed to the members within ten days and debated within ten days of its distribution. The decision to bring a person before the Supreme Court is taken by secret ballot only by an absolute majority of the total number of members (Article 100).

88. Political party groups in Parliament shall not hold discussions or take decisions regarding parliamentary immunity (Article 83(5)), nor concerning parliamentary investigations (Article 100(4)).

89. According to Article 148 of the Constitution, the President of the Republic, members of the Council of Ministers, Presidents and members of the Constitutional Court, of the High Court of Appeal, of the Council of State, of the Military High Court of Appeal, of the High Military Administrative Court of Appeal, their Chief Public Prosecutors, Deputy Public Prosecutors of the Republic, and the President and members of the Supreme Council of Judges and Public Prosecutors, and of the Court of Accounts shall be tried for offences relating to their functions by the Constitutional Court in its capacity as the Supreme Court. The judgments of the Supreme Court are final.

90. Article 144 of the Constitution deals with the supervision of judges and prosecutors. Investigation into whether they have committed offences in connection with their duties, is carried out by judiciary inspectors with the permission of the Ministry of Justice. The Minister of Justice may request the investigation or inquiry to be conducted by a judge or prosecutor who is senior to the judge or prosecutor to be investigated. These rules are reflected in the Law on the Judges and Prosecutors *(*Articles 82-98).

91. Prosecution of all civil servants and other public employees for alleged offences shall be subject, except in cases prescribed by law, to permission of the administrative authority designated by law (Constitution, Article 129). Apart from the Constitution, there exist special provisions in Law No. 4483 on the prosecution of civil servants and other public officials. According to Articles 3 and 5 of the Law the authority to which the civil servant belongs carries out a preliminary inquiry and then gives an opinion on prosecuting within 30 days. The regional administrative court which has jurisdiction or, in some cases, the Council of State, normally decides at last instance on objections by the persons concerned to opinions recommending prosecution or by the public prosecutor to opinions recommending that no proceedings be brought. Any proceedings are brought in the criminal courts.

92. Civil servants and other public employees cannot benefit from the privileges brought by Law No. 4483 in corruption cases. It is established that where civil servants and other persons covered fail to declare their assets or are suspected of corruption or similar offences they will be subject to direct prosecution by the public prosecutor, according to Law No. 3628 (see also Chapters II and V).

b. Analysis

93. The GET was concerned about the extensive list of officials who benefit from different types of immunity in Turkey. It should be noted that parliamentary immunity in the form of "inviolability" is substantially debated and challenged by civil society. The scope of parliamentary immunity has been identified as one of the problem areas in the context of corruption.

94. The circle of high ranking officials who enjoy immunity (inviolability) in *stricto sensu* under the Constitution is limited to the President of the Republic, members of Parliament, Prime Minister and ministers who in principle are also members of Parliament.

95. The Constitution (Article100) and the Regulation of the National Assembly (Articles 107-113) provide a detailed procedure for and guidelines on the Parliamentary investigation of the Prime Minister or ministers.

96. In the view of the GET, the regulation of the lifting of immunity of the members of Parliament (Article 83 of the Constitution and Articles 131-134 of the Regulation of the National Assembly) does not establish adequate conditions for objective considerations within the relevant parliamentary committees. A request by the prosecutor for the lifting of immunity is submitted to the Minister of Justice. After that, the request is transferred to the Office of the Prime Minister. The Office of the Prime Minister finally submits the request to the relevant parliamentary committee, which may delegate to sub-committees further consideration before the parliamentary committee brings the case to the Plenary for decision. No objective criteria have been established as regards the conditions for lifting immunity and the considerations would therefore appear to be political. Moreover, the GET was informed that the procedure may be lengthy, more than a month.

97. Since 2002, 206 requests to lift the immunity of 115 Members of Parliament had been submitted; 50 of these cases had related to abuse of function. There was no case where the Parliamentary immunity had been lifted. It seems that the established system of Parliamentary immunity and its application in practice constitutes an insuperable obstacle to the investigation, prosecution and adjudication of corruption offences. **Therefore, the GET recommends to reconsider the system of immunities of members of Parliament in such a way as to establish specific and objective criteria to be applied when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and are based on the merits of the request submitted by the prosecutor.**

98. Moreover, the Constitution and Law No. 4483 on the Prosecution of Civil Servants and other Public Employees provide a system of preliminary investigation and permission for prosecution by the relevant administration in respect of the persons concerned. According to Article 129, paragraph 5 of the Constitution, the prosecution of civil servants and other public employees for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority (head of service). It should be remembered that the internal inspections and the permission system belongs to a century-old system, which provides a kind of immunity for public officials. The exceptions introduced in 1990 in Law No. 3628, are in the right direction and with the introduction of Law No. 4483, the permission system has been limited as a number of offences fall outside its purview.

99. In the view of the GET, the system of administrative consent for prosecution constitutes a *de facto* immunity from criminal proceedings applied to all categories of civil servants, with the exception of cases of corruption and similar offences. Law No. 3628 on the Declaration of

Properties on the Fight with Bribe and Malversation states that cases of corruption etc. should be submitted directly to prosecution (Article 18) and that the public prosecutor should initiate investigation without the consent of the respective administration (Article 19).

100. The GET noted that the system of direct prosecution for corruption offences established by Law No. 3628 is not applicable to a number of officials, such as under-secretaries, governors, governors of counties (Article17, paragraph 2 of the Law), the President of the High Education Board and rectors of the universities.

101. As already mentioned, the investigation of judges and prosecutors suspected of criminal offences is carried out by judiciary inspectors with the permission of the Ministry of Justice (Constitution, Article 144).

102. The GET found that the system of administrative preliminary investigation and permission for prosecution, although in theory not applied in corruption cases, in principle could affect the capacity of the law enforcement and prosecutorial authorities to investigate and prosecute criminal offences which may be committed in connection with corruption. **Therefore, the GET recommends to analyse the effects of the administrative authorisation for prosecution on the effectiveness of the criminal proceedings and to consider reforming the system of preliminary administrative investigation and administrative authorisation for prosecution, in order to reduce the categories of public officials who *de facto* benefit from immunities from criminal proceedings.**

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

103. The Penal Code (hereinafter CC) provides that confiscation is a security measure. The use of confiscation is regulated in Articles 54 and 55 of the CC and to some extent in special legislation. Articles 54 and 55 deal with the concepts of "Confiscation of Property" and "Confiscation of Benefits" respectively. Confiscation may be used with regard to any crime, including corruption.

104. Article 54 of the CC states that property used in or allocated for commission of a deliberate offence (instrumentality of a crime) or derived from crime (proceeds of crime) shall be confiscated provided it does not belong to *bona fide* third parties. The property intended to be used in the commission of crime is confiscated in case it poses a threat to public security, public health or public morals (1). Where the property falling within the scope of the first paragraph has been removed, disposed of or consumed, or the confiscation thereof in another way was rendered impossible, money the value of which corresponds to that of such property shall be confiscated (2). If it is considered that the confiscation of property used in committing the offence generates more serious results in comparison to this offence and for this reason it is understood that confiscation of the property violates equity, then the confiscation may not be ordered (3). Moreover, the property whose production, disposal, usage, transportation, purchase or sale constitutes a crime shall also be confiscated (4). Partial confiscation of property is possible provided the property can be separated without any harm to the whole of it (5). With regard to property belonging to several joint owners, only the share of the person participating in the crime may be confiscated.

105. Article 55 of the Criminal Code states that material benefits derived from or provided for the commission of constituting the subject of crime (proceeds of crime) as well as economic profits arising from the exploitation or conversion (including economic earnings) thereof shall be confiscated. Giving a confiscation order in accordance with this paragraph requires that material benefits can not be returned to the victims of crime (1). When the property or material benefits can not be seized or submitted to the competent authorities, the equivalent value of these assets shall be confiscated. The court assesses the value.

106. According to Article 1/4 of the Law on Benefit Oriented Criminal Organisations (Law No. 4422, from 1 June 2005 replaced by the CC, Articles 54 and 55) values or products or their substitutes, which are kept for committing an offence (in the future) or used in committing an offence and incomes derived from any goods, or the value thereof, which require confiscation, or any gain generated from offences, shall be confiscated. There is no provision stipulating deductibility of expenditures for gaining of the proceeds in calculation of the value that shall be confiscated.

107. Confiscation of secondary criminal proceeds (transferred or converted into other property) or instrumentalities is also possible.

108. Confiscation is not possible if there is no conviction (*in rem* confiscation).

109. Confiscation of property held by a third party is possible if the holder is not in good faith.

110. The burden of proof lies with the prosecutor and the level of proof required for confiscation is the same as for conviction (beyond reasonable doubt). However, Article 4 of the Law on Declaration of Properties on the Fight with Bribe and Malversation (Law No. 3628) provides for the reversal of the burden of proof in specific situations, for example, when a person possesses property which is disproportionate to his/her income. In such a case the possession of such properties may be considered unlawful and, in accordance with Article 14 of the same Code, be confiscated unless the possessor can prove its legitimacy. Value confiscation is also possible in such a case.

111. The legislation on confiscation was adopted in 2005 and entered into force on 1 June 2005. Consequently, there were no statistics available on the use of confiscation according to these rules.

Interim measures

112. Seizure as an interim measure is provided for in the new Code of Criminal Procedure (entered into force on 1 June 2005, hereinafter CCP), Articles 123 – 134. Seizure may be used in relation to any crime, including corruption, and with regard to any property, documents, bank or financial records.

113. Article 123 provides that an object deemed useful as a means of evidence, or subject to property or asset confiscation is kept in security and, in case the person holding the property refuses to surrender it voluntarily, it may be seized. Article 124 provides that a person possessing the above-mentioned object is obliged to present and submit it upon request. If the possessor refuses to surrender the item, disciplinary detention shall apply. (However, this provision shall not apply to suspects, accused persons or those entitled to refrain from testifying as witnesses.)

114. According to Article 127 CCP, law enforcement officials may carry out the seizure upon the order of a judge or in cases where delay would be detrimental, the seizure may be executed following a written decision by a public prosecutor. The detailed identity of the law enforcement officials shall

be included in the seizure records (2). The written order given by a public prosecutor must be submitted to a judge for approval within 24 hours. The judge must give his/her decision within 48 hours of the seizure; otherwise there is no legal validity of the seizure. The person who had the seized items in his/her possession before the seizure, may ask the judge to give an order on this issue at any time. When seizure is no longer necessary, the property shall immediately be given back (Articles 129 and 130).

115. According to Article 128 CCP, a decision may be taken during investigation in order to seize moveable and immovable assets (including real estate, vehicles, bank accounts, rights and claims in companies, shares, stocks, contents of safe-deposit boxes and other valuable assets) of persons who are "strongly suspected" to have acquired their assets through various offences (including corruption).

116. There are some rules on the management of seized property, contained in Articles 132 and 133 of the CCP; such property shall be protected. There is no special institution for the management of seized property, however, there is a possibility to appoint a "curator" for the management of a company. The costs of the curator should be covered by the company.

117. Search copying and seizure of computers, computer programmes and archives is provided for in Article 134, according to which investigations concerning crimes where there are no other means of obtaining evidence, a judge may decide to search, copy, seize and transcribe the computers and computer programmes at the request of a prosecutor.

118. There are no statistics on the use of seizure.

International co-operation

119. Article 90 of the Constitution provides that all international instruments which Turkey has ratified and approved carry the force of law. As a result - since Turkey does not have a specific law on international legal assistance – multilateral and bilateral agreements are directly applicable in the execution of requests relating to confiscation or interim measures in relation to international corruption cases.

120. Turkey is party to several multilateral and bilateral agreements concerning general mutual assistance in criminal matters, dealing with judicial and police co-operation in general criminal matters, including corruption. Turkey is a contracting party to the European Convention on Mutual Assistance in Criminal Matters (ETS 030), to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) and to the European Convention on the International Validity of Criminal Judgments (ETS 070). Turkey has also concluded a number of bilateral agreements in the field of judicial co-operation, including neighbouring countries.

121. Mutual assistance requests by Turkey are prepared by the competent Turkish judicial bodies and transmitted to the concerned states via the Ministry of Justice, which is the Central Authority. When Turkey is the requested State concerning confiscation/interim measures, the Central Authority assesses the eligibility of the request in the light of the relevant international agreements to which the requesting State and Turkey are party.

Money Laundering

122. Money laundering was a criminal offence in Article 2/b of Law No. 4208 on Prevention of Money Laundering. With the amendment (No. 5237) of the Turkish Criminal Code in 2005, money laundering is an offence contained in Article 282 of the Criminal Code with a sentence of up to 5 years (with regard to public officials up to 7.5 years). All forms of bribery offences are predicate offences for money laundering.

123. A suspicious transaction is at stake when there is information, suspicion or a suspicious situation that money or convertible assets used in transactions stem from illegal activities (Law No. 4208). The following institutions are obliged to report suspicious transactions: Banks and finance institutions, institutions which export credit cards, money lenders, insurance and reinsurance companies, the Istanbul Stock Exchange (ISE), the Settlement and Custody Bank Inc. capital market intermediaries and portfolio management companies, mutual funds, investment companies, precious metal intermediaries, stone and jewellery dealers, authorised institutions operating within the framework of exchange legislation, postal services and cargo companies including the General Directorate of Post, financial leasing companies, real estate agencies, lottery operators, ship, aircraft and vehicle dealers, collectors of historical artefacts, antique dealers or auctioneers, sports clubs, public notaries, the General Directorate of National Lottery, the Directorate of Land Register and the Turkish Jockey Club.

124. Liable parties fulfil their obligation of reporting by submitting the information to the FIU, MASAK (described in Chapter II). When delays may cause inconveniences, the suspicious transaction and the parties relating to the transaction should be reported directly to the Public Prosecutor in addition to MASAK.

b. Analysis

125. At the time of the visit by the GET, the provisions of the new CC and CCP had not entered into force (1 June 2005). The GET did not consider it appropriate to analyse the old provisions, which were in force at the time of the visit. The GET therefore decided to comment on the new provisions, leaving aside matters related to practice.

126. The GET was of the opinion that Turkey has established a solid legal framework for the use of confiscation and seizure and it appears to be fully applicable to cases of corruption, in particular when corruption is connected to organised crime. The use of confiscation is compulsory. Value confiscation is possible and property may be confiscated from a third party.

127. The burden of proof lies normally with the prosecutor. However, it may be shifted to the suspect, in relation to his/her declarations of assets. Confiscation is only possible when there is a crime established and the offender has been convicted. There are no possibilities to use confiscation when there is no conviction (*in rem*). This may be seen as a weak point of the system. However, in the present situation where the new legislation has not been tested, the GET refrained from making a recommendation in this respect.

128. The GET noted that Article 127 CCP provides that seizure presupposes a court warrant or, where any delay could be deleterious, a written decision by a prosecutor. In no circumstances may law enforcement officials go ahead with a seizure on their own initiative. While this provision is intended to prevent arbitrary seizure, it may in certain cases be desirable to carry out a seizure by verbal permission of the prosecutor, *proprio motu,* on the understanding that the decision has to be confirmed.

129. The GET was of the opinion that the recent legislation must be complemented with follow-up measures to promote its use in practice. The development of guidelines and training appears to be necessary for, in particular, the law-enforcement bodies and the prosecution but also with regard to the judiciary. Moreover, the GET took the view that an in-depth evaluation of how the new legislation works in practice would be necessary. To prepare for this it would be beneficial to systematically collect information, including statistics, on the use of confiscation and seizure - as well as to collect information on situations where the use of these measures did not work - and to analyse the efficiency of the system in the not too distant future. Consequently, **the GET recommends to establish guidelines and thorough training for the officials, who apply the new rules on confiscation and seizure (law enforcement, prosecutors and judges), and to collect detailed information on the use, and failure to use, confiscation and interim measures in order to be able to assess how the system operates in practice.**

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

130. The Public administration is based on certain fundamental political and legal principles contained in the Constitution of 1982, such as the separation of powers, supremacy of law, constitutional government and, more particularly, the integrity of administration (Article 123), judicial review through both general and administrative courts (Article 125) and legality of the administration (Article 126).

131. According to the structure of the Constitution and the principles of the administrative system, the "Administration" is not a satellite of the Executive; it is within the Executive branch, but still a separate entity. It operates closely with the Executive branch as well as under the supervision of the executive, legislative and judicial branches. The purely political acts of the Ministers and the Cabinet do not fall within the scope of public administration.

132. The Public administration is divided between the central and local administrations. Article 126 of the Constitution states that the country is divided into provinces and the provinces into smaller divisions according to geographic and economic conditions as well as the need for public services. In relation to this, Article 127 prescribes that, according to collective local needs, the provinces, municipalities and villages are to be administered by units of local government established by law as legal public entities and governed in accordance with the principle of self-government. Article 123 of the Constitution states that national, provincial, urban and rural administrations should function in unity and coherence.

Anti-Corruption Policy

133. Fighting corruption in public administration is an integral part of many programmes and several dedicated projects in Turkey, in particular, the 2002 Council of Ministers decree for the "Action Plan on increasing transparency and enhancing good governance in the public sector" and, subsequently, the 2003 Emergency Action Plan (EAP) as described above (Chapter I, "Overview of Anti-Corruption Policy in Turkey").

134. Reform of the Turkish Public Administration has to a large extent been focusing on good governance in general and transparency in particular.

135. The Action Plan is targeted to tackle the lack of efficiency and transparency in the public sector which were seen as major causes of corruption. Strategic goals of the Action Plan include

minimising risks of corruption in the delivery of public services, enforcing disciplinary measures and criminal sanctions against corrupt officials, establishing auditing and control mechanisms in the public administration, reducing bureaucracy and simplifying procedures for businesses and investments, enhancing trust in the public sector and in the political system. At the operational level these goals have been translated into a list of precise objectives. One of the priority areas of the EAP is to improve public services.

136. In this continuing process of reforms, new legislation and amendments to existing legislation are continuously being adopted, for example, concerning public procurement, financial management and control, legislation concerning access to public documents, ethics of public officials, etc. Moreover, existing institutions are being modernised and new bodies, such as the Ethics Council, have been established.

137. The overall co-ordination of the implementation has been given to the Under-Secretary of State Planning in the Prime Minister's Office and to a Ministerial Committee, assisted by the Prime Ministry Inspection Board (see also Chapter I.).

Transparency

138. Transparency is considered one of the most important areas of reform of the public administration and the adoption, in 2003, of the Public Information Act (No. 4982) was a main achievement in this respect. The GET was informed that all institutions have established separate units to deal with requests for information. Moreover, regulations on the right of access to information stipulates that every public institution shall have a web page and most of the agencies in central government and several local governments have their own web pages. The State Organisation Database provides information concerning the organisational structure and internet addresses of all ministries and other public agencies (http://proje.basbakanlik.gov.tr/dtvt/).

139. The Public Information Act provides the basis for all public authorities (central and local) when responding to requests for information. The main principle of the Act is that everyone (citizens and foreigners) has the right to any information, except for information which, according to the same Law, is restricted. Cases dealt with by the judiciary, information subject to national security, economic interests of the country, civilian or military intelligence, judicial and administrative inquiry, personal privacy, privacy of correspondence, commercial secrets, internal regulations and memoranda, and consultation requests are the exemptions of the right to receive information. Also, information already available to the public (internet, leaflets, etc) is not within the scope of the Law. Should some part of the information requested be confidential, it is removed and the requester is informed of its removal in writing.

140. Applications to receive information must be made in writing and the requested information should be indicated in detail in the petition. There is also an obligation to indicate the name and address of the petitioner, but no obligation to state the reason for the request. Applications via electronic mail are accepted in accordance with the Electronic Signature Law (Law No. 5070), adopted in 2004.

141. Public institutions are required to apply administrative and technical measures to provide every kind of information and document to applicants and to review and decide on the applications promptly, effectively and correctly. The public body is obliged to process the request within 15 working days. Such a term may be extended to 30 working days if the content concerns more than one public body or consultation of another public body is required or another unit of the

public body holds the information. If the information requested is not described clearly or more detail is required, the requester may be asked for further information. Also, the application may be directed to another public body which holds the information requested (Article 7). All situations should be notified to the requester. The public body should state the legitimate grounds for refusing to disclose information requested (Article 9).

142. The costs arising from providing the information are collected by the relevant public body as an additional income to the body. The GET was informed that costs should be reasonable; however, no guidelines in this respect were shown.

143. A decision to reject a demand for information may be appealed within 15 days to *the Board of Review of Access to Information* and, ultimately, before an administrative court. The Board comprises nine members assigned by the Council of Ministers and the Secretariat of the Board is provided by the Prime Ministry. Public institutions may ask the Board for its opinion in specific cases. The GET was informed that, since its establishment in 2004, the Board had received 749 appeals, of which 362 had led to changed decisions. There had been 52 requests for opinions by public authorities.

144. Each public body shall submit an annual report on statistics, such as the number of applications received, accepted and refused by the Board, which in turn provides this information annually to Parliament. In 2004, there had been 395 556 applications for access to information and 20 474 of them had been refused.

145. The GET was informed that the *e-Transformation Turkey Project*, covers partnerships of the public and private sectors. The Project aims at accelerating citizens' transactions with the Government, bringing the public services closer to the citizen in parallel with developments in information technology, preventing "red tape" in these services and ensuring transparency and speed. A Prime Ministry circular on the aims, stages and institutional aspects of the e-Transformation Project had been issued. The Information Society Department had been established within the SPO to carry out the activities foreseen in the Project. Moreover, work towards the establishment of an Advisory Board with the task of high level steering and monitoring of the project had been completed. An Action Plan was about to be completed with the contributions of various working groups. There were reported e-government projects in almost every sector of public administration, in the Government, Ministries, law enforcement (police, customs), social security, etc.

146. There is no obligation to use public consultation in Turkey, although the draft laws are usually sent to NGO's, universities and professional associations for opinion. When necessary, members or representatives of the mentioned organisations are allowed to express their opinions at the commissions in Parliament. The President of the Republic may submit the laws relating to the Constitutional amendment to referendum. If the Assembly adopts a draft law with less than a two-thirds majority, the draft law has to be submitted to a referendum. Laws related to Constitutional amendment which are submitted to referendum, shall require the approval of more than half of the valid votes cast. The legislation on local administrations does not provide for public consultation. There are possibilities to use referendum and to establish city councils, consisting of NGO's, universities, trade unions etc.

Challenging administrative decisions

147. Decisions by the public administration can be challenged by the party concerned through an administrative appeal. The decision making institution or the hierarchically higher administrative body may reconsider the decision. Ultimately, an appeal may be submitted to an administrative court. The procedure to challenge administrative decisions is regulated in the Administrative Trial Procedure Act (Law No. 2577). Before bringing an appeal, the abolition, withdrawal, alteration of the administrative act by a superior authority may be requested. If there is no superior authority, this can be requested before the decision making authority. If no response is given within sixty days, the request shall be deemed to have been dismissed. If the application is dismissed or deemed to be dismissed, the time limit shall re-run and the period leading to the application date shall also be taken into account (Article 11 § 2).

148. Persons concerned may also request the administrative authorities to implement an act or take an action in the form of a lawsuit (Article 10 §). If there is no reply to the request within sixty days, it shall be considered dismissed. The persons concerned may also bring an action to the Council of State, administrative and tax courts, depending on the subject of the case, within the time limit running from the end of the sixty-day period.

149. The administrative justice system consists of *administrative courts* (60) and *tax courts* (48) at the first instance. *District administrative courts* act as second instance in minor cases and are sometimes first instance courts. The *Council of State* is the supreme administrative court of Turkey. The Council of State also has other functions, *inter alia*, as a counselling body to the President and the Government.

Control bodies engaged *inter alia* in the fight against corruption

Inspection Boards

150. Turkey has a strong tradition of internal agency inspections which dates back to the 19th century. There is an inspection board in every ministry/agency as well as in some independent under-secretariats and in state enterprises. The inspection boards, which are closely attached to the minister/head of the agency, carry out audits and investigations with similar powers as the police. The inspection boards also work to prevent crime within the agency and review rules and regulations to that end. The inspection boards are closely attached to, and report to, the minister/head of agency and, at the same time, they have to co-ordinate with the Prime Ministry Inspection Board, for example, submitting annual reports and carrying out investigations upon request from the Prime Ministry Investigation Board.

151. Any inspection Board that comes across instances of corruption, is obliged to report directly to the Prosecution, in accordance with Articles 17 and 18 of Law No. 3628 (and does not need the approval of the head of service, which is the main rule).

Inspection Board of the Ministry of Finance

152. As is the case in all ministries, there is an Inspection Board in the Ministry of Finance. However, this Board is not entirely limited to the Ministry of Finance. The Board carries out investigations and audits of any ministry/agency as all accounts are linked to the Ministry of Finance. Although the Prime Ministry Inspection Board is hierarchically superior to the Inspection Board of the Ministry of Finance and there are no organisational links between any of the various inspection boards, there is sometimes co-operation between them.

153. The GET was informed that this Board, in addition to its main functions of financial and tax audit, has a specific mandate to fight corruption. According to statistics provided by the Board for the years of 2000-2002, "corruption operations" appear to be most frequent in the fields of tax evasion, customs and in the Banking sector.

Prime Ministry Inspection Board

154. The Prime Ministry Inspection Board is hierarchically superior to the other inspection boards, being closely attached to the Prime Minister. It may inspect both central and local administrations. The scope of the control goes so far as to the conduct of all types of investigations, inspections auditing and inquiries and it has the widest legal authority and power to carry out its tasks. The Board establishes general principles of investigation and auditing for the entire inspection system, except with regard to the judiciary. It supervises the agency inspection boards and carries out multi-agency investigations.

155. The GET was informed that the Prime Ministry Inspection Board had a co-ordinating function in the implementation of anti-corruption policies in public administration.

Ethics Council of Public Officials

156. The Ethics Council of Public Officials (see also below) was established, in 2004, by Law No. 5176 within the Prime Ministry. The Council does not have the status of a distinct public institution and is staffed by the Prime Ministry. The Ethics Council is composed of retired persons, such as former ambassadors, judges and professors. Its overall objective is to create ethical standards for the executive branch of the public sector, at central as well as local level. A set of ethical guidelines in the public sector in the form of an Ethical Code, drafted by the Council, was adopted by the Prime Ministry in April 2005.

157. The Ethics Council has no authority to investigate disciplinary matters nor to use disciplinary measures. The Council can, however, investigate violations of the Ethics Code and its findings may be published in the Official Gazette by the Prime Ministry. The GET was told that the Council was planning to provide ethics training to public officials.

The Court of Accounts

158. The Court of Accounts (TCA), which is established under the Constitution (Articles 160 and 164) is a collegiate body with judicial functions. The TCA carries out its audit operations on behalf of, and is accountable to, Parliament. It has a large degree of independence; prepares and manages its own budget, decides on its audit programme as well as the timing and content of its reports to Parliament. It is charged with external auditing of all the revenues, expenditure and property of the social security institutions and the public administrations within the scope of the general government budget. Furthermore, TCA audits the revenues and expenditures of the local administrations.

159. The TCA, which has been modernised in recent years, performs compliance audits on the basis of all transactions and their supporting documents. Since 1996, the TCA also has the task of examining the extent to which public institutions use their resources with due regard to economic efficiency and effectiveness (performance audit). According to 2005 official data, 6723 public sector accounts were within the scope of the audit mandate of TCA. Among them 942 were audited in 2005.

160. The TCA's audit mandate is discharged in two phases: the audit of accounts and the trial of the audited accounts, which ends with a legal document, called "Writ" dealing with the responsibility of the official/s concerned. Moreover, the TCA prepares *Statements of General Conformity* on the State accounts as well as reports of a more general purpose (different themes chosen by the TCA), which are communicated to Parliament. Finally, the TCA renders advisory opinions on the financial regulations prepared by the institutions falling under its jurisdiction. Such regulations do not take effect before obtaining the TCA's opinion. A 2003 amendment to the TCA Law stipulates that at the request of Parliament, the TCA shall examine, confined to the subject demanded, the accounts and transactions of entities, irrespective of whether they fall within its jurisdiction or not, including the practices of privatisations, incentives, loans and credits.

161. The GET learned that the TCA does not have any co-operation with the Inspection Boards, which carry out the internal audits in the ministries/agencies without interference from the TCA. Moreover, the GET understood that the TCA, in the past, could not easily access the audits of the Inspection Boards, but that improvements in this respect were expected as from 2006 with Law No. 5018, which regulates that TCA have access to reports prepared by the internal audit. If the TCA needs an in-depth investigation it requests the relevant inspection board for assistance and conclusion. The TCA does not have investigative powers and whenever it comes across suspicions of a criminal offence, it either reports to the administration or to the public prosecutor. The GET was told that some 20-30 reports had been submitted to the public prosecutor every year since 2000.

The State Supervisory Council

162. According to Article 108 of the Constitution, the State Supervisory Council (established in 1984) is attached to the Office of the Presidency of the Republic with the purpose of performing and furthering the regular and efficient functioning of the administration and its observance of law. It was empowered to conduct - upon request of the President of the Republic - all inquiries, investigations and inspections of all public bodies and organisations, all enterprises in which those public bodies and organisations share more than half of the capital from the State; public professional organisations, employers' associations and labour unions at all levels, public welfare associations and foundations.

The Public Procurement Authority

163. In 2002, a new Law on Public Procurement (Law No. 4734) was adopted with the aim of enhancing transparency and curbing corruption in the procurement sector. The Law establishes the Public Procurement Authority (PPA), which is linked to the Ministry of Finance, however, independent in the fulfilment of its duties. Board members can normally not be discharged before the duty period is over. No organ, office, entity or person can issue orders or instructions for the purpose of influencing the decisions of the Authority. The duties and authorities of the PPA with respect to the tender procedures are to 1) evaluate and conclude any complaints concerning the legality of the procurement proceedings ; 2) to prepare, develop and guide the implementation of all the legislation concerning public procurement; 3) to provide training on procurement legislation and to provide national and international coordination; 4) to gather information relating to the contracts and tender proceedings carried out as specified by the Authority and to compile and publish statistics relating to quantity, price and other issues; 5) to keep records of those who are prohibited from participating in tenders and 6) to carry out research activities, etc.

164. Prior to approval of a successful tenderer, the contracting entity must make sure that the tenderer is not prohibited from participating in tenders. Such confirmation has to be given by the PPA in every case.

165. The PPA is also the appeal instance for complaints by unsuccessful tenderers; however, a complaint must first be submitted to the contracting institution. The Authority may, in its reviewing role, request documents, information and comments from any public or private entity or person before bringing a case to conclusion. There were 1892 applications submitted to the PPA in the year 2004 (two per cent of the total number of procurements). An appeal may ultimately be submitted to an administrative court.

Banking Regulation and Supervision Agency

166. The Banking Regulation and Supervision Agency has the status of an independent public legal entity with administrative and financial autonomy. It grants various licences in the banking sector. It was established in 2000 in order to ensure that bank savings are protected. The Agency is obliged and authorised to take and implement any decision and measure in order to prevent any transaction or action which could jeopardise rights of bank depositors and to ensure efficient functioning of the credit system. The Banking Regulation and Supervision Agency has undertaken an important mission as regards the prevention of corruption and developed a code of ethics.

Ombudsman

167. There is no Ombudsman (Parliamentary Ombudsman type) in Turkey. However, a draft Ombudsman Act was prepared by the Ministry of Justice and sent to the Prime Ministry on 2 June 2004[10].

Recruitment, career and preventive measures

168. Legislation for human resources consists of numerous laws and their relevant sub-laws, varying according to the status of public employees. Civil Servants (Article 4-A of Law No. 657/1965) are defined as state employees to carry out public services of primary and continuous nature. Those who work on policy development, research, planning and control are also considered civil servants. They are employed without any time limit. They have the right to organise trade unions, but not to collectively bargain or strike. Temporary Personnel are employed for less than one year or in seasonal jobs. Their employment is recommended by their respective organisations pending the approval of the State Personnel Presidency and the Ministry of Finance; however, the Cabinet makes the final decision. Contracted Personnel are employed according to Article 4-B of Law No. 657, when exceptional circumstances call for people with professional knowledge. Their employment is recommended by the employing agency pending the approval of the State Personnel Directorate and the Ministry of Finance and the final decision by the Cabinet. The aim of this personnel is to enable the employment of qualified people at satisfactory wages. Workers are defined as not being civil servants, contracted personnel or temporary personnel. They are subject to Labour Law No. 4857. They have the right to organise trade unions, engage in collective bargaining and strike. Public employees have various kinds of fringe benefits. These benefits include paid vacations, paid leave and subsidised lunches. It may also include free or subsidised transportation and housing.

[10] A draft Law on the Ombudsman was submitted to Parliament in December 2005.

169. Public officials must fulfil the following general requirements (Cod. Civ. Ser. Article 48):
- Turkish citizenship;
- Not be deprived of public rights;
- Not be sentenced to imprisonment for more than 6 months;
- Not have any ongoing relation with the military service;
- As a rule, not be under the age of 18;
- As a rule, have graduated from secondary school.

170. A new general entrance exam system for public employees both for civil servants and public workers came into being in 1999. The examinations are organised by the Centre for Student Selection and Placement (OSYM), which is an independent institution working under the authority of the Department of the Higher Education Board (YOK).

171. The career system starts with the recruitment through a special examination to a certain post, following the general examination mentioned above. New recruited staff have to undergo a probationary and training period for a certain time. Only after having passed this process successfully, do they become career civil servants. Appointment to the civil service is followed by an oath promising loyalty to the Constitution and faithful compliance to the laws of the Republic.

172. The basic requirements for promotion to a higher post are that the civil servant has served at least one year with good marks. Promotion to certain posts may require exams. Recruitment to the senior levels of public administration is carried out without exams.

173. In December 2005, there were 2.341.245 public employees, of which 1.678.865 were civil servants, 32.365 contract employees, 70.486 workers, 211.576 temporary workers and 347.953 employees in State run enterprises.

Training

174. All training of civil servants is normally carried out by the respective employing agencies and the contents of the training decided by them. The GET was informed that there should be *initial training* during the probationary period covering the fundamental principles of public administration as contained in the Constitution and other basic legislation and regulations. The in-service training is also carried out by the authorities concerned, which have to report every year to the Prime Ministry on this. The GET was informed that there was no practice to co-ordinate the training, for example, through the State Planning Presidency.

175. The GET was told that intensive training courses on corruption were organised for staff of the various inspection boards.

176. The Public Administration Institute for Turkey and the Middle East also provides training to civil servants (since 1956); short term and long-term training programmes. Short-term training programmes are open at the request of the ministries or public agencies. The conditions and the criteria are determined by the public authority in question. To attend long-term programmes, which run for one and a half years, there are requirements which must be fulfilled by the public sector employees, such as having served as a civil servant for a certain period of time, being proposed as a candidate of the public authority and obtaining good marks in the entrance exam. The successful completion of the programme is rewarded (salary increase and promotion incentives).

177. Wider use of objective criteria is, since 1999, a practice whereby staff promotions are made only after the candidates attend certain in-service training courses and pass subsequent examinations.

Conflicts of interest

178. The Law on the Declaration of Properties on the Fight with Bribe and Malversation (No. 3628) aims at curbing corruption, *inter alia,* in the civil service. Turkey has for the purpose of preventing corruption among civil servants, made it obligatory for all civil servants to declare their assets. However, the requirement to declare goes far beyond civil servants, primarily it concerns elected public officials. According to this law, public officials should make a statement of personal capital and property every 5 years. The declaration of assets is made on a special form and must list movable and immovable property, as well as sums owing and owed. Property found not to be in accordance with the income of the relevant person is considered to be held unlawfully unless reasonable explanations are provided by the person (Article 4). Also the new Ethical Code for public officials has a series of provisions dealing with how to avoid conflicts of interest (Article 13 and seq).

179. With regard to the phenomenon of public officials moving to the private sector, Law No. 2531 states that civil servants cannot take up employment in an entity that has relations with the public organisation in which they have served for two years following departure from the service and cannot represent the firm for a period of 3 years (Article 2). Furthermore, Law No. 657 states that civil servants cannot reveal secret information concerning the public service, even after their retirement without the authorisation of the competent Minister (Article 31).

180. There are systems of rotation of staff within the public administration, for example concerning the police, tax officers, accountants and local auditors. However, these are not primarily used as tools to combat corruption.

Gifts

181. According to Article 29 of the Civil Servants Act as well as according to the Ethical Principles of Public Officials, Article 15, civil servants may as a general rule not accept gifts or benefits. However, Law No. 3628 stipulates (Article 3) that gifts in the context of international relations, can be accepted, but if the gift exceeds a certain value (more than ten monthly minimum wages,10 x 250 Euros), the gift has to be submitted to the authority. Gifts below this value still have to be reported to the Ethics Council. Determining the scope of the prohibition of receiving gifts and requiring the list of gifts taken by the high level officials was one of the first tasks of the Ethics Council.

Codes of conduct/ethics

182. The Public Administration has operated with some formal rules of conduct which have been in place since 1965 (Law No. 657). This Law identifies the principles of legality, loyalty (Article 2), impartiality and political neutrality (Article 7), responsibility (Articles 10 and 11), respect for superiors and the service, etc (Article 8).

183. The increasing complexity of modem government as well as the less stringent border line between public and private matters has called for further standards. As a result, the *Ethics Council of Public Officials* was established in 2004 (Law No. 5176). Its aim is to highlight rules that must be adhered to by all public servants as well as to examine their implementation. Higher

public servants, including those who work at public sector enterprises, institutes, funds and all other state institutions, are under the authority of the Council (See description of the Council above).

184. As already mentioned, the Ethics Council has drafted an Ethical Code. The Code was adopted by the Prime Minister and published in the Official Gazette in April 2005. The Code covers the whole working staff in the public administration. It contains 42 Articles dealing with principles of ethical behaviour and their implementation concerning integrity, impartiality, respect, conflicts of interest, gifts and transparency. It also deals with declaration of property, training etc.

Reporting corruption

185. Pursuant to Article 279 of the Criminal Code, civil servants shall be liable to denounce the offences that come to their knowledge during the performance of their duty: *"If a public official fails or neglects to report to his/her superior and/or competent authority the occurrence of an offence pertinent to his/her duty which requires investigation or prosecution on behalf of the public s/he shall be imprisoned from 6 months to 2 years"*. General guidelines on reporting of unethical behaviour are also included in the new Ethical Code.

186. The new Code of Ethics contains some protection for those who report corruption, in addition to the general provisions contained in Law No. 3628.

187. A particularity of the Turkish system is that prosecution of public employees for alleged criminal offences shall be subject to the permission of the administrative authority as a main rule (Constitution, Article 129), unless otherwise prescribed in law. In accordance with the Law on the Declaration of Properties on the Fight with Bribe and Malversation (No. 3628) offences such as bribery, smuggling etc are excluded (Article 17) and should be submitted to prosecution without permission of the employing administrative authority (Article 18).

Disciplinary proceedings/prosecution

188. The use of disciplinary proceedings as well as criminal prosecution in the public sector is regulated in the Constitution, Article 129. Public employees and members of public professional organisations may be subject to disciplinary penalties. Almost all disciplinary proceedings are initiated by the internal inspectorates.

189. The department where the civil servant is employed has the primary responsibility for disciplinary measures. Disciplinary sanctions are decided by superiors appointed in accordance with the Bi-law on Disciplinary Superiors and Discipline Boards. The ministers, ultimately the Prime Minister, are the highest disciplinary instances, followed by the Under-Secretary of the Prime Ministry, Under-Secretary of ministries, director generals, etc. In the provinces, there is a similar hierarchy; governors, regional directors and mayors.

190. There are also High Disciplinary Boards and Disciplinary Boards at the centre of each organisation, and Disciplinary Boards in every province, or at the centre of regions if an organisation works at regional level. Both High Disciplinary Boards and Disciplinary Boards are composed of five members.

191. In accordance with Article 125 of Law No. 657, the disciplinary sanctions are warning, reprimand, salary cut, suspension of promotion from one to three years and dismissal. Public employees have the right to defence and disciplinary decisions shall be subject to judicial review, with the

exception of warnings and reprimands, which may be appealed to the higher disciplinary superior or to the disciplinary board. All disciplinary sanctions may be appealed in the administrative courts.

192. A disciplinary procedure does not prevent the initiation of a criminal process for the same facts (Law No. 657, Article 125). Facts in the criminal process, as declared in the verdict, can be taken as evidence in the disciplinary procedure. If the outcome of a penal process is a conviction, a disciplinary sanction is often applied in addition, and if the outcome of the penal process is acquittal, a disciplinary sanction is still possible.

193. It should be added that investigations made by the Ethics Council do not prevent the initiation of criminal prosecution in accordance with general provisions or disciplinary investigation, according to Law No. 5176 on the Ethics Council.

Analysis

194. The overall impression of the GET was that the Turkish public administration is based on a solid legal framework and is well defined in the Constitution and relevant legislation. Over the last few years public administration has been undergoing a tremendous modernisation process, mainly as a result of the Country's efforts to become a member of the European Union. Information gathered by the GET suggests that public administration is seriously affected by corruption and that the Government is committed to fight against this phenomenon through extensive reforms. An anti-corruption strategy is in place since 2002 which, to a large extent, focuses on public administration the implementation of which is underway. The GET could not assess to what degree the strategy is kept fully updated. But it was pleased to see that a large number of measures had been introduced, mostly in the form of new legislation.

195. Although the strategy against corruption may have been developed with the input of civil society, the implementation process appeared to be rather closed and restricted to Government circles. There may be good reasons for this, however, considering the hierarchical structure of Turkish public administration where the links and control are ultimately in the hands of the Prime Ministry, the GET would argue that this approach may be seen as unnecessarily limited in its scope in terms of the content of the reforms. Such an approach may also have a negative impact with regard to the awareness of the reforms by the public as well as to their support for the reforms in public administration. The GET has already commented upon the lack of a broader mechanism for the implementation and supervision of the reforms (Chapter I, "Overview of Anti-Corruption Policy in Turkey" above).

196. The Law on the Right to Access to Information, passed in 2003, is a significant step forward to increase the transparency of public administration. The GET was pleased to note that much of the Law was already implemented and that this appeared to have encouraged a more positive approach by the public administration to proactive release of information (e.g. via the Internet). The GET did, however, note that there appeared to be a lack of clarity in the legal definitions of what information can be withheld under the Act and was concerned that this may be leading to an unnecessarily conservative approach by ministries to information requests. In this context the GET was pleased to be informed that legislation to clarify these areas (national security, personal privacy and commercial secrecy) was to be sent to Parliament shortly. The GET noted with some concern that there did not appear to be a clear policy as to the fees for requesting information, other than that they should be reasonable and furthermore, the income from fees appeared to be dealt with by each agency, without clear instructions. In order to provide for a fair and uniform

system throughout Turkey[11], **the GET recommends to implement guidelines at central level for all public administrations as to the fees to be charged when information is requested under the Law on Right to Access to Information**.

197. The GET was also pleased to note the successful establishment of the Board of Review of Access to Information to hear and determine appeals made against decisions under the Act. The Board, which has a membership that should generate public confidence, has been active in considering appeals and has also taken a proactive role in advising public institutions on the interpretation of the Act, and in setting out its views on some of the definitional ambiguities in the law on what should and should not be released. In terms of independence, however, the GET noted that the Board's formal status was somewhat unclear and that it had neither its own budget nor permanently assigned staff (the Secretariat is provided by the Prime Minister's Office). Given the importance of this Board the GET was of the opinion that its independence from the Government should be more articulated to the effective implementation and public confidence in the Act. **The GET recommends to strengthen the independence of the Board of Review of Access to Information; that it be given a dedicated budget and dedicated staff sufficient for it to undertake its role in hearing and determining appeals and to act as the authoritative source of advice and guidance to public bodies in their application of the Law on Right to Access to Information.**

198. Although the GET received information about many different legal obligations and rules relating to civil servants and public employees, some specific to particular roles and some general, there appeared (until the Ethics Council had issued the Code of Ethics) to be a lack of common well understood expected ethical behaviour. An exception to this general observation was the ethics framework developed by the Banking Supervision Agency, a relatively new Agency created following a number of high profile failures in banking regulation. This code of conduct clearly set out the expected behaviour of officials involved in banking supervision and the consequences of failure to comply.

199. The GET was pleased that the Ethics Council had been established and that it had drafted the Code of Ethics. The GET was concerned to learn that the Ethics Council had no dedicated staff, or forward work plan. Moreover, the inclusion in the Council's terms of reference of investigation of complaints made against senior officials (for breaches of the code of conduct) will be particularly difficult to manage in such circumstances where the independence from the Government may be put at stake. **The GET recommends to provide the Ethics Council with sufficient independence, providing it with an appropriate budget and staff that would enable it to promote and promulgate the new codes of ethics throughout the public administration; to properly investigate complaints made against senior officials and undertake proactive studies into particular areas of concern in respect of ethical behaviour and corruption in the public administration.**

200. The Code of Ethics is an important step towards embedding a culture of acceptable behaviour within the public administration in Turkey. In the view of the GET, however, much more will be required to ensure the effective implementation of such a code of ethics across the civil service. The effective promotion and promulgation of the new Code is an important first step in working to establish a culture of good conduct and anti-corruption within the public administration. The next step is to ensure that the training and development of civil servants, is devoted to ethical behaviour, including anti-corruption training as a core subject. The GET was pleased to note that law enforcement officers had received ethical training to a large extent and that some individual

[11] The GET was informed after the visit that regulation on fees were announced on 14 February 2006.

departments include ethical behaviour and anti-corruption in their training and development programmes for civil servants. However, the GET considers that all ministries and civil service bodies should be required to cover core aspects of the new Code of Ethics and anti-corruption policies in their training programmes for civil servants; and that it should form part of the core curriculum for new appointees, before they begin their career. The State Personnel Presidency in the Prime Ministry, working with the Ethics Board, would appear to be the body best placed to take this forward in order to provide for a uniform training by the individual ministries/agencies. **The GET recommends to develop training material to be used in the training of all civil servants on the new Code of Ethics and anti-corruption policies and to require all ministries and civil service bodies to include this training as part of their curriculum; it should be ensured that it forms a core part of the induction training for new civil servants as well as in the in-service training.**

201. The general prohibition of acceptance of gifts by public officials was welcomed by the GET. Although the monetary limit for the exemption for gifts in international relations was considered high, the GET refrained from a recommendation considering the narrowness of this exemption.

202. The primary exercise of internal control over the public administration is carried out through the system of overlapping inspection regimes which combine both audit and investigation functions and cover financial performance and management. In principle, this inspection system should provide the main internal mechanism to uncover corrupt practices and to recommend and implement the necessary enforcement and the preventative measures for the future. In addition, external audit is carried out by the Court of Auditors, which from 2006 will have full access to all relevant information, including the internal audits carried out by the inspection boards**.** However, more fundamentally the GET was concerned that the potential risk for overlapping between the internal inspection regimes (Ministry; Prime Ministry; Finance Ministry), a lack of clarity over who is responsible to investigate allegations of corruption (including the police and prosecutors) and the potential for political and other influence in the work of each inspection regime could reduce the effectiveness of measures to tackle corruption and increase the lack of public trust in the public administration. Consequently, the GET was of the opinion that the organisation, role and function of the inspection board system should, in the light of the general reforms of public administration and of the law enforcement, be re-defined to provide clearer demarcation, hierarchy and responsibility. **The GET recommends to consider reforming the system of Inspection Boards, in the light of the on-going overall reforms of public administration and of a more specialised law enforcement system.**

203. The GET encouraged the establishment of an Ombudsman institution. It appeared to the GET that such an institution would provide an important complement to the control mechanism over public administration already in place. The Ombudsman should, in the view of the GET, be given strict independence from the executive and a clear mandate as an institution available to the wider public and the area of competence should cover maladministration in general (which should not exclude complaints concerning corruption). The GET was informed that draft legislation had been submitted to Parliament, however, it was not made familiar with its content in detail. In the GET's view the implementation of such legislation must be well prepared, not least in terms of public awareness. **The GET recommends to give high priority to the establishment of an Ombudsman institution, independent from the Executive, with a wide mandate to deal with complaints from the public concerning maladministration; and to provide for an awareness campaign throughout Turkey once relevant legislation is adopted.**

204. There is a legal obligation for public officials to report the occurrence of an offence, according to the Criminal Code. Such an obligation may benefit from providing more detailed rules, for example, in the Code of Ethical Principles of public officials, and training in order to become effective as it is not always clear how a particular situation should be interpreted. Moreover, the reporting obligations should preferably be accompanied by protection for those who report suspicions of corruption. **The GET recommends to introduce guidelines and training on reporting of corruption and the proper handling of reports as well as to ensure that public officials who report suspicions of corruption in good faith (whistleblowers) are protected.**

205. In the absence of statistics concerning the use of disciplinary proceedings and measures, it was not possible to assess the efficiency of the existing system. **The GET recommends to establish statistics on the use of disciplinary proceedings and sanctions in public administration.**

206. Finally, the GET was concerned about the provision of the Constitution (Article 129) that prosecution of public officials for offences shall be subject to permission by the administrative authority concerned, despite the exceptions for certain offences, such as corruption. The GET was of the opinion that this rule, which has already been discussed earlier in the report is problematic, not only for the technical investigation of offences and immunities, but is contrary to modern principles of public administration.

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

207. There are a number of different forms of associations which enjoy legal personality in Turkey: societies, foundations and commercial companies, including public companies. Commercial companies (Commercial Code, Article 136) are either collective, "commandite", limited, joint stock, co-operative, general or limited partnerships (ordinary partnerships have no legal personality). The legal persons are either public or private. Private enterprises are normally organised as an ordinary partnership or a commercial company.

a) **Societies** are legal persons formed by at least seven persons who unite their knowledge and activities continuously for a non-profit sharing purpose (Law of Societies, Article 1). Non profit-sharing purposes include charitable, political, scientific, artistic purposes and others. Although societies are non profit-sharing, that is to say they are not formed to earn profits for their members, they may operate commercial enterprises. Societies which operate a commercial enterprise are subject to the laws governing merchants. They must fulfil the obligations of a merchant (Commercial Code (ComC), Article 18; Civil Code, Article 54 II) and must register their enterprise in the commercial register. The formation of a society, as opposed to some other form of legal personality, is rather easy and free from formal requirements. The founders need merely to prepare the society's by-law, sign the same and submit it to the highest local authority for the society to acquire legal personality (ComC, Article 45, Law of Societies., Article 9).

b) **Foundations:** Unlike a society or association, a foundation is a legal person to which a fund has been granted for a specific purpose (ComC, Article 73). Therefore, in a foundation, it is the property that is important; there are no members, partners or shareholders. Foundations may be formed by physical or legal persons. The purpose of a foundation may be economic or non-economic; it must, however be specific. Property, money or credits must be set apart

for the purposes of the foundation, and the amount allocated must be sufficient to achieve the purpose (ComC, Article 80 A). In order to acquire legal personality the foundation must be registered by the Court (ComC, Articles 45 and 74). There is also a central registry at the Directorate General of Foundations.

c) **Public companies** are formed with State participation by special enactments, but which are partly subject to the provisions of private law. These businesses are founded according to the rules laid down by general provisions of law or through special legislation. They are called State Economic Enterprises (SEE) and are subject to the general provisions of the Civil Code, Code of Obligations and the ComC when they are involved in business. They are considered merchants. Law No. 2929 distinguishes between SEEs operating for profit according to commercial principals and those oriented toward public service which are called Public Economic Institutions (PEI). PEIs are to produce both market necessities and State monopoly goods. Article 34 of the Privatisation Law of 1994 defines PEI as a "fully state-owned enterprise for production and marketing of goods and services having a monopolistic nature with an eye to public interest and, as a result of such public service, whose goods and services are in the nature of concessions."

d) (**Ordinary Partnership**: The simplest form of association is the ordinary partnership. It does not have a legal personality separate from the partners.)

e) **General Partnership** (Collective company) is an advanced form of the ordinary partnership, regulated in the ComC. Like an ordinary partnership, it is formed between two or more persons who undertake to contribute capital or labour to achieve a common purpose. Although a general partnership has legal personality and has its own separate assets, the partners are also liable for partnership debts. This liability is unlimited and joint among the partners, but it is secondary to the partnership assets. The creditors of the partnership must first demand what they are owed from the partnership. They can turn to the partners when partnership assets are not sufficient to cover the debts of the partnership (ComC, Article 178). Only physical persons may create a general partnership (ComC, Article 153). Legal persons, such as other general partnerships or corporations, may not be founders or become partners in a general partnership. The law requires that general partnerships be formed only to operate a commercial enterprise (ComC, Article 153).

f) **Limited Partnership**s ("Commandite companies") are composed of general partners and limited partners. General partners administer and represent the limited partnership and have unlimited liability. The liability of limited partners is, as a rule, limited to the amount of capital they promise to contribute to the partnership under the partnership agreement. However, if their names are included in the trade name of the partnership they may incur unlimited liability. Normally limited partners are not entitled to represent the partnership and their participation in the administration of the partnership is restricted. They have, however, the right of review on the affairs of the partnership. Provisions of law which apply to general partnership are, generally, also applicable to the general partners of a limited partnership (ComC, Articles 247, 256, 267).

g) **Limited liability companies** (ComC 503-556) which have legal personality are business associations of at least two, at most 50 partners having natural or legal personality. These companies should have a fixed capital of at least 5 000 YTL (New Turkish Liras – approximately 3 063 Euros) and must register to acquire existence. Liabilities of the partners are limited only their promised capital shares. The promised capital can be 25 YTL or folds in limited companies. These companies cannot issue securities or bonds. Allocation of at least

one auditor is compulsory for limited companies having more than 20 partners. Banks, private finance institutions, insurance companies, financial leasing companies, factoring companies, holding companies, companies operating foreign currency exchange offices, companies dealing in public warehousing, publicly held companies subject to the Capital Markets Law and companies that are founders and operators of free zones cannot be established as limited companies.

h) **Joint Stock Companies** are business associations with legal personality. A corporation has a fixed capital. The agreement to incorporate must state a legally required minimum capital (at least 50 000 YTL – approximately 30 631 Euros). The amount of this stated capital reflects the initial financial strength of the corporation and is divided into shares on which share (stock) certificates are issued. Persons, either physical or legal, contribute or promise to contribute a certain amount of capital to the corporation in return for shares. Those corporations which have more than 250 shareholders or those which offer their shares or bonds to the public are subject to the Capital Market Law, Law No. 2499 of 1981. A corporation is formed between at least five persons and must be registered to acquire its existence. Corporations may be incorporators of other corporations.

i) **Co-operative companies** also have legal personality and are composed of at least (7) seven partners for the provision and protection of certain economic benefits and especially professional or domestic needs with their labour or financial contributions and mutual help, cooperation or bail. Cooperatives have a variable number of legal and natural persons and variable capital. The establishment of a co-operative is subject to prior permission by the Ministry of Industry and Trade. The Statutory must be signed by at least 7 partners whose signatures are verified by the notary and submitted to the Ministry of Industry and Trade. A cooperative is registered in the trade registry and announced in the trade registry gazette upon permission by the Ministry.

Registration

208. There are three types of registries kept for legal persons: the Commercial Registry (maintained by the State and kept by the Chambers of Commerce), the Central Registry for Foundations (Directorate of Foundations) and a Registry for Societies (Ministry of the Interior). Data kept in the three registries are open to the public. At the time of the visit by the GET, none of the registers were available on the Internet.

209. All merchant and branch offices (whether or not legal persons) are obliged to register in a commercial registry. Changes in the nature of the financial condition of a business must also be registered. For example, the bankruptcy of a merchant must be registered in the commercial registry. The registry is a public record. All persons may examine the contents of the commercial registry and all documents and certificates kept in the registry office, and demand certified copies (ComC, Article 37 II). The purpose of registration is to inform the public and to provide evidence of, among other facts, the existence of a business association, the names of the persons who are authorised to represent a merchant, and the manner of representation. In situations where registration is legally required, registration and publication are duties of the person concerned (ComC, Article 29). The law may allow non-compulsory data to be included in the register. There are sanctions (fines and imprisonment) in case the obligation to register is not fulfilled on time or if data submitted is inaccurate (ComC, Article 40).

210. A physical person merchant, as opposed to a legal person, such as a corporation, who meets the conditions of being a merchant, assumes the status of merchant even without registration. A

responsibility will arise for his/her torts against *bona fide* third parties, covering all his/her assets. For a physical person, registration has only a declaratory effect. It makes certain facts public, for example, a trade name. In some situations, however, registration has a creative effect. It becomes the basis for the validity of certain transactions. If a fact has been properly registered and the registration has been published, third persons are presumed to be aware of such facts.

Limitations on exercising functions in legal persons

211. Article 53 of the Criminal Code provides disqualification to perform certain professions as a legal consequence of a conviction for an intentional crime. In such a case the person may be deprived of, *inter alia,* being the administrator or inspector of the legal entities of foundations, associations, companies and co-operatives.

212. There are no regulations concerning trading prohibition or similar restrictions.

Liability and sanctions of legal persons

213. Under Turkish law only natural persons can commit crime. Article 38 of the Constitution, states that criminal responsibility "shall be personal". Nevertheless, there is a possibility to sanction legal persons through "special security measures" in cases of bribery (Article 253 of the Criminal Code), trading in influence (Article 169) and money laundering (Article 282/4), committed for the benefit or on behalf of the legal person. The measures are administrative "withdrawal of licence" and confiscation of property (Article 60, Criminal Code). Such a measure may be used even if the benefit was only potential.

214. Special security measures cannot be used when no natural person has been convicted or identified. Conviction of a physical person and the special measure against the legal person would be decided in the same proceedings.

215. There is civil liability of legal persons. According to the Turkish Commercial Code (Articles 321 and 542) a corporation is liable for torts committed by its representatives during the performance of their duties. Moreover, responsibility of the legal person arising from the action of its bodies or representatives is regulated in Article 8 of the Code of Misdemeanours. A legal person is administratively liable for the misdemeanours of its bodies or representatives or any staff acting within the framework of its activities. A physical person is also liable for the action of his/her representatives. Administrative sanctions are fines and measures such as confiscation.

216. There are no registries kept with regard to liability or measures/sanctions of legal persons (except with regard to public procurement, see Chapter V).

Tax deductibility

217. According to the authorities, "facilitation" payments, bribes and other expenses linked to corruption offences cannot be deducted for tax purposes, since there is no provision to allow for this. Articles 40 and 41 of the Law on Income Tax (No. 193) lists the payments that are deductible.

Tax authorities

218. Pursuant to Article 279 of the Criminal Code, civil servants shall be liable to denounce the offences that come to their knowledge during the performance of their duty. Under Article 367 of

the Tax Procedure Code No. 213, tax authorities involved in the detection and reporting of tax evasion, after taking the opinion of revenue office, have to inform the prosecutor of the situation. Moreover, they are obliged to report instances of money laundering to MASAK.

219. The GET was informed that the prosecutor and the police have full access to tax records that may be needed for criminal investigations.

Accounting rules

220. As a main rule all legal persons and business associations[12] are obliged to maintain accounting records. Several different legal sources provide guidance on the accounting standards. The basic requirement that book-keeping must be maintained by business activities is derived from the ComC, last revised in 1956. Chapter V of Book One provides for a minimum level of book-keeping. In 1994 the Ministry of Finance introduced a Uniform Chart of Accounts with the purpose of regulating the basic concepts and principles of accounting and for the preparation of financial statements. The purpose of the Chart of Accounts is to provide for a true and fair reflection of company operations and results. The Tax Procedures Code provides extensive rules and requirements for businesses regarding the recording of financial information including sanctions for the failure to properly record financial information. The Tax Law represents the source for how and what information must be recorded and maintained. General accounting rules and their implementation are guided by the General Communiqué on the Implementation of the Accountancy System, promulgated in the Official Gazette in 1992.

Account offences

221. All forms of fraudulent acts in accounting documents, altering, hiding or destruction of such documents are criminalised under the Tax Procedure Code (No. 213), Article 359. The sentence is six months to three years' imprisonment. Additional sanctions for tax evasion are possible.

Role of accountants, auditors and legal professions

222. Article 43 of the Independent Accountancy Law prohibits accounting professionals and their employees from disclosing information acquired in the course of performing their duties. However, according to the same provision, information about offences should be disclosed to the competent authorities. In addition, this Law provides an exception to the confidentiality requirement regarding the investigations or inquiries performed by judicial and tax authorities.

223. Although accountants and auditors are not liable parties in the scope of Law No. 4208 on Prevention of Money Laundering, the GET was informed that steps have been taken to extend the scope of liable parties and to involve accountants and auditors as liable parties.

b. Analysis

224. The Commercial Code recognises various types of legal persons, private and public, who are in principle subject to registration. The GET recalls that it is important that the information available in a company registry is correct and reliable if the registry should serve as a tool to prevent legal persons from being used to shield the persons behind the legal person and/or inappropriate activities, such as corruption. However, over burdensome controls of data submitted put an efficient registration system at risk. The GET was informed that it is required in the registration

[12] Some small business owners are exempted, such as artisans and farmers, non profit associations, etc.

process that a verification by a notary of the Article of Association of the company and of all the signatures of the partners and authorised persons is required in the registration process. Moreover, it is also mandatory to provide the National Identification number of each relevant person to the Registry.

225. The information held in the registries of legal persons are in principle open to the public. However, in practice access to the information is relatively difficult as there are three different types of registries kept by different bodies and, moreover, the Company Registries are kept by the various Chambers of Commerce. The GET was of the opinion that access to the various registries should preferably be co-ordinated to the extent possible and be accessible via the Internet[13]. **The GET recommends to take appropriate measures in order to facilitate access to registration information on the various forms of legal persons.**

226. Article 20, paragraph 2 of the Criminal Code (CC) stipulates that, in case of participation in criminal offences, legal persons may be subject to security measures. There are two types of security measures which could be applied in relation to *private* legal persons: withdrawal of permission and confiscation (Article 60 of the CC). The security measures may be applied in cases of active bribery (Article 253), fraud/trading in influence (Article 169) and money laundering (Article 282, paragraph 4). In spite of the fact that Article 60 refers only to "private legal persons", the Turkish authorities informed the GET that public enterprises could also be subject to security measures under the CC, i.e. that the scope of the application of the measures with regard to the categories of legal persons which may be liable for offences is in conformity with the standards of the Criminal Law Convention on Corruption. On the other hand, the GET noted that the CC does not provide explicitly for the application of security measures in case of lack of supervision or control by the representatives or organs which have made possible the commission of the respective offence by a natural person under their authority. Finally, the GET found that no monetary sanctions were provided for as a security measure which could be applied in relation to legal persons who participate in corruption offences. Bearing in mind the recent entry into force of the CC (1 June 2005) and the fact that there have been no criminal proceedings against legal persons instituted so far under this law, the GET could not assess the effectiveness and practical application of security measures for legal persons. Nevertheless, the GET was of the view that the provisions of the CC only partially meet the standards of Articles 18 and 19, paragraph 2 of the Criminal Law Convention on Corruption. Consequently, **the GET recommends to ensure that the provisions of the Criminal Code on the application of security measures in relation to legal persons fully comply with the standards of the Criminal Law Convention on Corruption (ETS173) concerning the liability of legal persons**.

227. Moreover, the GET noticed that no special training dealing with the respective provisions on the liability of legal persons had been provided to prosecutors and judges.

228. The Turkish tax legislation, i.e. the Income Tax Law No. 193 and Corporate Tax Law No. 5422, does not expressly prohibit deductibility for "facilitation" payments, bribes and other expenses linked to corruption offences. The Turkish authorities informed the GET that since there is no provision permitting deduction of the bribe and corruption related expenses, these cannot be deducted for tax purposes. Both the Income Tax Law (Articles 40 and 41) and the Corporate Tax Law (Articles 14-15) contain lists of expenses/payments which are allowed and not allowed to be deducted.

[13] The GET was informed after the visit of an ongoing project aiming at providing registry information on the Internet.

229. The GET noted the established legal obligation (Tax Procedure Code, Article 367) and criminal liability for civil servants (including tax officers) for not reporting criminal offences, including corruption offences (Article 279, paragraph 1 of the Criminal Code). At the same time, the GET found that there was a lack of appropriate training or guidelines for tax officials aimed at improving the detection of corruption offences as well as the interaction with the competent law enforcement and judicial authorities. During the visit, the GET was informed that guidelines on detection of corruption-related expenses were in the process of being elaborated on the basis of the OECD Bribery Awareness Handbook For Tax Examiners. The GET considers that the lack of appropriate training/guidelines prevent the tax authorities from contributing effectively to the fight against corruption and would like to encourage the authorities to undertake the relevant measures in order to improve conditions for fulfillment of their reporting obligations. Therefore, **the GET recommends to establish special guidelines and training for the tax authorities concerning the detection of corruption offences and the effective fulfillment of reporting obligations.**

230. In the GET's view, infringements of the accounting obligations are satisfactorily dealt with in the Tax Procedure Code which appears to provide effective, proportionate and dissuasive sanctions, including deprivation of liberty for account offences.

231. For independent accountants, the obligation to report suspicions of offences arises from the obligation established by the Independent Accountancy Law (Article 43). The GET recalls that records and books can be important sources of information leading to the detection of corruption and money laundering and emphasises the importance of an awareness of detecting corruption offences in the course of exercising accounting and auditing duties. In this context, the GET noted that the accountants and auditors were not covered by Law No. 4208 on Prevention of Money Laundering, i.e. they are not mentioned in the list of "liable parties" in Article 3 of the Regulation on the Implementation of Law No. 4208. The Turkish authorities informed the GET that in practice independent accountants, financial advisers and sworn-in financial advisers are liable to denounce offences that come to their knowledge just as civil servants, according to the CC, Article 279. During the visit, the GET was informed that amendments were under preparation aimed at involving accountants and auditors (but not lawyers) as liable parties in the scope of the above-mentioned law. **The GET recommends to take adequate measures, including of a legal/regulatory nature, in order to involve accountants and auditors in the policies aimed at detecting/reporting money laundering offences**.

CONCLUSIONS

232. Corruption is a major problem in Turkey, which is said to be present throughout the public sector, the administration and the judiciary[14]. The situation is acknowledged by the Turkish authorities, and a variety of measures are being implemented in order to counteract the causes of corruption as well as investigating and prosecuting cases of corruption. To this end various anti-corruption strategies have been adopted. The implementation of the strategies is the exclusive responsibility of the Government. In this connection, a broader implementation/monitoring mechanism, including input from the civil society would be useful, not least for raising overall awareness of the on-going reforms.

233. A large number of new fundamental laws have currently been enacted, such as the Criminal Code and the Code of Criminal Procedure. These need to be fully implemented before a proper assessment of their efficiency can be made. In relation to access to information, the new

[14] Corruption in the private sector (between private parties) is not fully criminalised in Turkey.

legislation and its complementary appeal system appear to be particularly promising. Moreover, the creation of the Ethics Council is another important achievement. This body should, however, be given a stronger legal status with more independence. Training on ethics should be given high priority in the future and an Ombudsman institution – the establishment of which has been delayed - could well be a strong control mechanism for the public with regard to maladministration in the public sector.

234. The number of officials enjoying some form of immunity from prosecution is significant. The procedure for lifting immunity of Parliamentarians, which is highly controversial in Turkey, should be guided by objective criteria. Moreover, the procedure according to which a minister or a head of a public agency must give his/her permission before a public servant can be prosecuted for a criminal offence should be reconsidered. It should be noted that concerning corruption offences, legislation has been in place for several years to provide for direct prosecution (i.e. without a formal authorisation).

235. Much has been done with regard to the independence of the Judiciary. Further efforts to this end should be considered, in particular, as regards the supervision of judges.

236. The preliminary investigation of all offences in the public sector is largely carried out by internal inspection boards and not by the ordinary law enforcement bodies. Although cases of corruption are to be submitted as soon as possible to the prosecution for investigation, it appears that the level of specialisation and co-ordination within the law enforcement and the prosecution services could be much improved with regard to corruption. The system of confiscation and seizure of the proceeds of corruption, contained in the new Criminal Code, appears to be effective in law, but has yet to be tried in practice before an assessment can be made.

237. Legal persons are well defined in law and all of them are obliged to register. Although legal persons cannot be held criminally liable for offences, there are sanctions/security measures available for legal persons. Their full compliance with the Criminal Law Convention on Corruption must be ensured.

238. In view of the above, GRECO addresses the following recommendations to Turkey:

i) **to develop systems for monitoring the impact of anti-corruption measures for the various sectors concerned** (paragraph 28);

ii) **to entrust a body with the responsibility of overseeing the implementation of national anti-corruption strategies as well as proposing new strategies against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence in its monitoring function** (paragraph 31);

iii) **to establish or assign a specialised unit with investigative powers in cases of corruption, for the sharing of information between law enforcement agencies and to provide advice to law enforcement agencies on preventive and investigative measures** (paragraph 75);

iv) **to enhance/establish co-ordinated training on corruption detection and investigation for all law enforcement officers specialised in corruption cases** (paragraph 76);

v) **to further enhance the independence of judges *vis-à-vis* the Ministry of Justice, concerning their supervision and appointment** (paragraph 77);

vi) **to further promote the full establishment of the Justice Academy as an exclusive training institution for judges and prosecutors and to enhance their on-going training on specialised topics such as economics and finances relevant to the prosecution and adjudication of corruption offences** (paragraph 79);

vii) **to reconsider the system of immunities of members of Parliament in such a way as to establish specific and objective criteria to be applied when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and are based on the merits of the request submitted by the prosecutor** (paragraph 97);

viii) **to analyse the effects of the administrative authorisation for prosecution on the effectiveness of the criminal proceedings and to consider reforming the system of preliminary administrative investigation and administrative authorisation for prosecution, in order to reduce the categories of public officials who *de facto* benefit from immunities from criminal proceedings** (paragraph 102)**;**

ix) **to establish guidelines and thorough training for the officials, who apply the new rules on confiscation and seizure (law enforcement, prosecutors and judges), and to collect detailed information on the use, and failure to use, confiscation and interim measures in order to be able to assess how the system operates in practice** (paragraph 129);

x) **to implement guidelines at central level for all public administrations as to the fees to be charged when information is requested under the Law on Right to Access to Information** (paragraph 196)**;**

xi) **to strengthen the independence of the Board of Review of Access to Information; that it be given a dedicated budget and dedicated staff sufficient for it to undertake its role in hearing and determining appeals and to act as the authoritative source of advice and guidance to public bodies in their application of the Law on Right to Access to Information** (paragraph 197);

xii) **to provide the Ethics Council with sufficient independence, providing it with an appropriate budget and staff that would enable it to promote and promulgate the new codes of ethics throughout the public administration; to properly investigate complaints made against senior officials and undertake proactive studies into particular areas of concern in respect of ethical behaviour and corruption in the public administration** (paragraph 199);

xiii) **to develop training material to be used in the training of all civil servants on the new Code of Ethics and anti-corruption policies and to require all ministries and civil service bodies to include this training as part of their curriculum; it should be ensured that it forms a core part of the induction training for new civil servants as well as in the in-service training** (paragraph 200);

xiv) **to consider reforming the system of Inspection Boards - in the light of the on-going overall reforms of public administration and of a more specialised law enforcement system** (paragraph 202);

xv) **to give high priority to the establishment of an Ombudsman institution, independent from the Executive, with a wide mandate to deal with complaints from the public concerning maladministration; and to provide for an awareness campaign throughout Turkey once relevant legislation is adopted** (paragraph 203);

xvi) **to introduce guidelines and training on reporting of corruption and the proper handling of reports as well as to ensure that public officials who report suspicions of corruption in good faith (whistleblowers) are protected** (paragraph 204);

xvii) **to establish statistics on the use of disciplinary proceedings and sanctions in public administration** (paragraph 205);

xviii) **to take appropriate measures in order to facilitate access to registration information on the various forms of legal persons** (paragraph 225);

xix) **to ensure that the provisions of the Criminal Code on the application of security measures in relation to legal persons fully comply with the standards of the Criminal Law Convention on Corruption (ETS173) concerning the liability of legal persons** (paragraph 226);

xx) **to establish special guidelines and training for the tax authorities concerning the detection of corruption offences and the effective fulfillment of reporting obligations** (paragraph 229);

xxi) **to take adequate measures, including of a legal/regulatory nature, in order to involve accountants and auditors in the policies aimed at detecting/reporting money laundering offences** (paragraph 231).

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