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

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Joint First and Second Evaluation Round

Evaluation Report on the Republic of Serbia

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INTRODUCTION

1. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003, i.e. after the close of the First Evaluation Round. Following the referendum organised in Montenegro on 21 May 2006 and the declaration of independence adopted by the National Assembly of Montenegro on 3 June 2006 and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the State Union of Serbia and Montenegro ceased to exist. Subsequently, the Republic of Serbia has become the successor state of Serbia and Montenegro. The Republic of Serbia was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds (cf paragraph 3 below). The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Kazimir ÄBERG, Director of International Affairs, Head of Director–General's Office, Economic Crimes Bureau (Sweden); Mr Jorn GRAVESEN, Detective Chief Superintendent, the Public Prosecutor for Serious Economic Crime (Denmark); Mrs Anca JURMA, Head Prosecutor, International Cooperation Service, National Anticorruption Prosecutor's Office (Romania), and Mr Kęstutis ZABORSKAS, Head of Analytical Organisational Division, Special Investigations Service (Lithuania). This GET, accompanied by a member of the Council of Europe Secretariat, visited the Republic of Serbia (hereafter Serbia) from 12 to 17 September 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (documents Greco Eval I-II (2004) 3E Eval I – Part 1 and Greco Eval I-II (2004) 3E Eval II – Part 2), copies of relevant legislation and other documentation.

2. During its visit to Belgrade, the GET met with officials from the following governmental organisations: a) State Union: State Union Assembly, Council of Ministers, Directorate for organisation and status of the Administration, Ministry of Human and Minority Rights, Ministry of Defence ; b) Republic of Serbia: Ministry of Justice, National Assembly, Government, Ministry of Interior, Inspector General Office (Ministry of Interior), Prosecutors, Judges, Ministry of Finance, Ministry for Public Administration and Local Self-Government, Republican Secretariat for Legislation, Executive Council of Vojvodina, City of Belgrade, Standing Conference of cities and municipalities, Ministry of Health, Ministry for Capital Investment, Ministry of Commerce, Agency for Privatisation, Republican Board for Conflicts of Interest, Customs Service, Public Procurement Office, Tax Service, Commissioner for Free Access to Public Information, Council for the fight against corruption, Agency for Commercial Register. Moreover, the GET met with members of the following non-governmental institutions: Chamber of Lawyers, Private Accountants Association, Chamber of Commerce, Association of Employers, media and Transparency Serbia.

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

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

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

  - **Proceeds of corruption[3]:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
  - **Public administration and corruption[4]:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Legal persons and corruption[5]:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

The Federal Republic of Yugoslavia ratified the Criminal Law Convention on Corruption on 18 December 2002, which entered into force on 1 April 2003.

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

Status of the criminal legislation in Serbia

5. On 4 February 2003, the State Union of Serbia and Montenegro was proclaimed and became the successor state to the Federal Republic of Yugoslavia. The State Union was based on the equality of its two member states, the Republic of Serbia and the Republic of Montenegro. The text establishing the constitutional principles of the State Union was the Constitutional Charter.

6. The Constitutional Charter of the State Union of Serbia and Montenegro introduced significant changes in the field of criminal legislation in the State Union and its member states. All criminal legislation of the former Federal Republic of Yugoslavia was integrated into the legal system of both member states of the State Union by virtue of the Constitutional Charter (Article 64, paragraph 2) and the Constitutional Charter Implementation Law (Article 20, paragraph 5). As regards Serbia, this means that the criminal legislation of the Federal Republic of Yugoslavia became the Basic Criminal Law and the Code of Criminal Procedure of Serbia. In addition, Serbia had its own separate criminal law, ie the Criminal Law of the Republic of Serbia. Therefore at the time of the on-site evaluation visit, the situation was that two criminal laws were in force in Serbia (the Basic Criminal Law and the Criminal Law) as well as the Code of Criminal Procedure. Moreover, a new Criminal Code was pending before the Parliament.[6]

[3] Theme I of the Second Evaluation Round
[4] Theme II of the Second Evaluation Round
[5] Theme III of the Second Evaluation Round
[6] After the on-site visit, the GET was informed that the new Criminal Code had been adopted by the Parliament (entry into force on 1st January 2006).

I. OVERVIEW OF ANTI-CORRUPTION POLICY IN THE REPUBLIC OF SERBIA

a. Description of the situation

Perception of corruption

7. The authorities of the Republic of Serbia consider corruption as "one of the most serious problems in the Republic of Serbia". In their replies to GRECO's questionnaire, they reported that in 2001, 109 organised criminal groups with 649 members were identified. Criminal investigations had revealed numerous connections between organised crime and corruption at all levels of the administration. According to data of the Special Prosecutor for Organised Crime for 2003, in 11 criminal cases 161 persons had been accused for criminal offences involving organised crime. In 2004, in 9 criminal cases involving 55 persons, charges were brought against 38 persons, and 31 persons were convicted. In 2005, in 11 criminal cases involving 97 persons, charges were brought against 89 and 4 persons were convicted. Serbia and Montenegro, according to Transparency International's corruption perception index 2005, was ranked 97 out of 158 countries (rating 2.8 out of 10).

Criminal Law

8. Serbia is party to the Criminal Law Convention on Corruption, to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and to the UN Convention Against Transnational Organized Crime. Serbia is also party to the European Convention on mutual legal assistance in criminal matters, ratified in 2001. As regards mutual legal assistance, see paragraph 64.

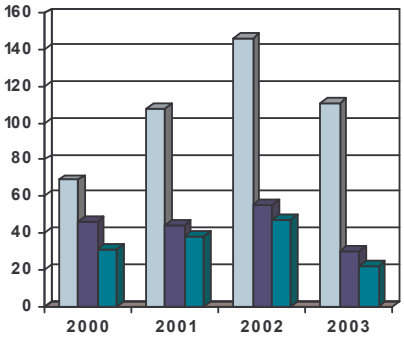
9. In Serbia, provisions on corruption are set out in the Criminal Law of the Republic of Serbia (hereafter CL). The CL criminalises active and passive bribery of domestic officials (Articles 254 and 255). It also contains provisions related to corruption offences committed in specific sectors : administrative bodies (Art. 255a), public procurement (255v), privatisation procedure (255g), the judiciary (255d), health services (255e), education system (255z). Illegal mediation, misuse of official position, embezzlement and fraud in the performance of duties are also covered by the CL. As regards sanctions, imprisonment of up to eight years is provided for in cases of passive bribery, and up to five years for active bribery.[7]

[7] The new criminal code criminalises active and passive bribery of domestic and foreign officials, active and passive bribery in the private sector (articles 367 and 368), with sanctions ranging from two to fifteen years imprisonment for passive bribery and from six months to five years for active bribery. The new Criminal Code, which entered into force on 1 January 2006 does not contain provisions related to corruption offences committed in specific sectors.

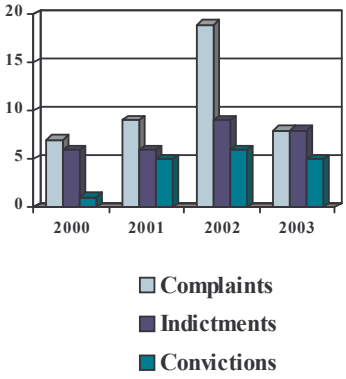
Statistics

10. The authorities of Serbia provided statistics on corruption related to the years 2000-2003:

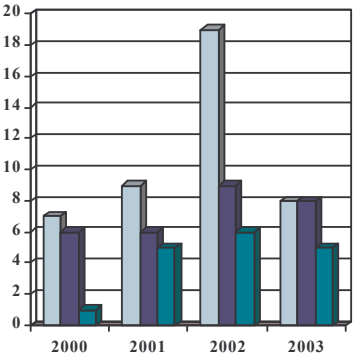
Receiving Bribes



Illegal mediation



Giving Bribes



Statistics for 2004 provided after the visit:

2004	Complaints	Indictments	Convictions
Receiving bribes	75	39	26
Illegal mediation	5	5	1
Giving bribes	37	39	32

	Corruption in Administrative Bodies (cases prosecuted)	Corruption in Judiciary (cases prosecuted)	Corruption in Health Services (cases prosecuted)
2000	**0**	**0**	**0**
2001	**0**	**0**	**0**
2002	**2**	**0**	**3**
2003	**18**	**11**	**13**
2004	**17**	**12**	**8**

Major initiatives

11. The draft National Anti-Corruption Strategy was finalised at the end of 2004, approved by the government in mid-May 2005 and sent to Parliament for adoption[8]. The "Decision on determining the National Strategy for combating corruption" which sets forth the Strategy states, *inter alia,* that the government "is obliged to draft an action plan for implementing" the Strategy, in particular through the setting up of "an independent and autonomous anti-corruption body". The Strategy is divided into three chapters (Introduction, systems and fields, strategy implementation) and each chapter in sub-chapters. Chapter II ("Systems and fields") is composed of seven sub-chapters - each dealing with a specific sector of institutional and public life (e.g. "the political system",

[8] The Decision on determining the National Strategy for the fight against corruption was adopted by the Parliament and entered into force on 17 December 2005.

"judiciary and police system", "media") - for which a set of recommendations for action has been prepared (see also paragraph 71)[9].

12. The authorities of Serbia state that the major initiatives to be taken in order to develop an efficient policy of reducing corruption in the country focus on the following aspects: reform of public administration; reform in economy/commerce; enhancing the participation of civil society; creation of an adequate political environment for fighting corruption. Serbia has taken some specific measures in the field of prevention of corruption: ratification of the Criminal Law Convention on Corruption of the Council of Europe, signature of the UN Convention against Corruption[10] and creation of the Council for the Fight against Corruption. In addition, some specialised institutions dealing with specific forms of criminality have been set up in past years: the Administration for the prevention of money laundering, the Section for fight against organised crime, the public procurement office as well as the special prosecutor's office and the special chamber of the district court in Belgrade for the suppression of organised crime. New legislation deals with different aspects of controls in areas vulnerable to corruption: Budget System Law, Law on Privatisation, Public Procurement Law, Law on Financing of Political Parties, Law on Prevention of Conflicts of Interest in Discharge of Public Office, and Law on Free Access to Information of Public Importance[11].

Public Procurement

13. At the time of the on-site visit, the GET was told that the major objective related to the public procurement system was to improve the implementation processes of the Public Procurement Law, adopted on 4 July 2004 and considered by the Serbian authorities as one of the most important pieces of legislation adopted in order to curb corruption. From the institutional aspect, the Public Procurement Office plays an important advisory and monitoring role and has the main responsibility for harmonising domestic regulations with EU directives. The Serbian authorities reported that "a still relatively high level of corruption in public procurement justifies restrictive regulation, the need for its strict implementation and for developing an efficient monitoring and control mechanism of public procurement processes".

14. The public procurement process comprises three steps: preparation, award of a contract to the most favourable bid and execution of the contract. Each step is managed by different institutions responsible for the effective implementation of the Law as well as for monitoring and controlling its implementation. The procurement process is based on free competition (i.e. offering the most economically favourable terms to the procuring entity) and equal treatment of all interested bidders. The main goal of the Public Procurement Office is to ensure that goods, services and works for the government bodies and public companies are procured through a transparent, competitive procedure which is intended to yield the best "value for money" i.e. in a most efficient use of taxpayers' money. The Commission for the Protection of Rights plays an important role in awarding contracts. It issues binding decisions on violations of the Law in procurement procedures. In 2003 the Commission received a total of 630 requests for the protection of bidders' rights amounting to 2.81% of all recorded public procurement contracts awarded in that period. Finally, control of the execution of public procurement contracts is one of the major

[9] The Serbian government adopted in March 2006 an "Information" on the necessity to establish the Commission for the implementation of the National Anti-corruption Strategy and Action Plan and for the implementation of GRECO recommendations. The Commission will consist of representatives of the most relevant ministries, the National Assembly, the judiciary, media and NGOs.

[10] Serbia ratified the United Nations Convention against Corruption in October 2005, after the on-site visit.

[11] After the visit, the Law on the Ombudsman entered into force on 24 September 2005 and the Law on the State Audit Institution entered into force on 29 November 2005.

responsibilities of the Supreme Audit Institution. However, since this body had not yet been established, at the time of the on-site visit the inspectorates and police were responsible for controlling (the execution of) public procurement contracts, particularly those of high value.

b. Analysis

15. At the time of the on-site visit, there were more than 140 draft laws pending before the Parliament. During meetings with representatives from different authorities, the GET was often told that relevant legislation on different areas was under discussion in the Parliament. However, the authorities were not always equipped with the necessary resources to implement the new legislation and in some areas the public was not aware of the content of the legislation. An extensive privatisation process was also ongoing in the Republic of Serbia. The GET is of the opinion that there are lacunas in the implementation phase of the privatisation. Besides the above-mentioned weaknesses, the GET would like to highlight two other areas where there is room for improvement. Firstly, the GET was told that the tax authorities could improve the collection of taxes. It is a well known fact that lacunas in the tax system favour corruption. Secondly, state owned companies are numerous in the Republic of Serbia and extensive parts of the sector are under privatisation. The GET was told by some representatives of civil society met during the visit that the implementation of the privatisation process especially suffered from weaknesses. These weaknesses contribute to an uncertainty among the citizens and are conducive to corruption.

16. During the on-site visit, the GET was told that corruption is a significant problem in the Republic of Serbia and that the problem occurs throughout society. There is a lack of public confidence in some of the authorities and in their work. The GET´s perception was based on the information provided that corrupt activities were most frequent among judges and prosecutors, within municipalities, customs, police and the health care system. The fight against corruption is among the Government's highest priorities.

17. The Public Procurement Law has been in force for just a few years. The GET is of the opinion that the Law is comprehensive. During the on-site visit, the GET was told that there were no major weaknesses in the Law, apart from the fact that the Government is empowered to make exceptions to the Public Procurement Law. As an example the Police is granted some exemptions from the Law (purchasing of weapons for example). Moreover, significant lacunas in the implementation of the Public Procurement Law were brought to the attention of the GET. Public officials responsible for calls for tenders were not familiar enough with the Law. Therefore, **the GET recommends that the implementation of the Public Procurement Law be enhanced, notably by providing training to civil servants involved in the procurement process.**

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

a. Description of the situation

The Council for the fight against corruption

18. The Council for the fight against corruption was established by Decision of the Government in December 2001. It is an advisory body whose most important aim is to provide support to the government in establishing and implementing anti-corruption policies. The Council's main tasks are to examine activities related to the fight against corruption, to propose measures to the

government that need to be undertaken for more efficient policies against corruption and follow their implementation. It makes proposals for new pieces of legislation, programmes and other activities and measures in this field. It has 13 members appointed by the Government. Even though it is prescribed by the Decision that the members are chosen among members of the Government and officials holding managerial positions in specialised organisations, it has never been the case.

The Police

19. In Serbia, the police come under the Ministry of the Interior and are organised into 26 districts, including the capital Belgrade. The police have the competence to carry out investigations, but have to inform the prosecuting authorities beforehand. Within the Ministry of the Interior, two organisations are competent for the fight against corruption: the criminal police and the section for the fight against organised crime (hereafter SFAOC). Criminal police has a general competence for discovering criminal offences, including corruption offences. The SFAOC was established in 2001 and is competent for discovering offences committed by organised criminal groups. Approximately 300 police officers work at the SFAOC, 25 of them dealing with corruption cases. A specific unit dealing with financial crime has been set up within the SFAOC with sections on money laundering, on forgery of money and other means of payments and on misuse of information technologies. Police officers working in the SFAOC are required to have at least five years' experience as criminal investigators (15 years for the Head). Other SFAOC's officials have specific professional skills from different areas, which may enhance a multidisciplinary approach to the section's activities.

20. In their replies to GRECO's questionnaire, the authorities of Serbia stated that they were in the process of reforming the structure of the police (and the relevant legislation). In particular, the section for fight against organised crime is intended to become a directorate within the criminal police (accountable directly to the Director of the criminal police and not to the Minister of the Interior) and a specialised section for the fight against corruption should be created within the Directorate for financial crime[12].

21. Within the Ministry of the Interior, the Inspector General started to be operational in June 2003[13]. At the time of the on-site visit, 48 police officers were employed by his office. The main task of the Inspector is to control the legality of police officers' work. He is empowered to conduct investigations on cases of corruption committed by members of the Ministry of the Interior. Citizens have a right to address the Inspector General and to submit complaints on the work of the police. The Inspector General is appointed by the government and has the same rank as an assistant minister. He is accountable directly to the Minister of the Interior. From April 2004 to September 2005, the Inspector General's office received 5,500 complaints, of which 3,560 were pursued (570 grounded, 2,520 ungrounded and 470 submitted to other competent agencies). Within the same period of time, the Inspector's office brought 91 criminal charges against 117 Ministry of Interior employees, 63 of which related to corruption offences.

22. Every police officer has to go through three months' training at the police academy. In addition, police officers receive specific training in different fields, including in corruption and financial crimes related to corruption.

[12] Under the new Law on Police which entered into force on 29 November 2005, SFAOC became a directorate within the criminal police and the section for the fight against corruption was set up.
[13] Under the new Law on Police, the Inspector General is replaced by the Sector for Internal Control.

Criminal investigation of corruption: special investigative techniques and witness protection

23. Article 232 of the Code of Criminal Procedure[14] regulates the use of special investigative techniques: "Upon the written motion containing a statement of reasons submitted by the public prosecutor, the investigating judge may order surveillance and recording of telephone and other conversations or communications by other technical means as well as optical recording of persons, against whom there are grounds for suspicion that they have committed themselves or with others a criminal offence". Active and passive bribery are included in the list of offences for which these techniques can be used. The investigating judge can issue a written order containing a statement of reasons authorising the use of special techniques, "the data related to the person against whom the measures are to be applied, grounds for suspicion, the manner of application, the scope and the term for their duration". The measures undertaken may last up to three months and may be extended for an additional three months. The application of the measure must be discontinued as soon as the reasons for its application cease to exist. Police officers are in charge of executing the order authorising the use of special investigative techniques.

24. Article 109 of the Code of Criminal Procedure (hereinafter CCP) lays down the general rules concerning the protection of witnesses during criminal proceedings[15]. Chapter XXIXa ("Special regulations concerning the procedure for organised crime offences") contains specific provisions aimed at regulating situations related to offences committed by criminal organised groups. These include rules on witness protection, special investigative techniques (further to those provided for in Article 232 CCP, i.e. undercover operations, controlled deliveries), access to financial institutions data[16].

25. There is no witness protection programme in Serbia. Nevertheless, during the on-site visit, the Serbian authorities reported that a Law on "Programme for the Protection of Participants in criminal procedure" was under consideration by the Parliament. This law would lay down rules establishing the conditions and procedures for providing protection and assistance to participants in criminal procedures and their close relatives: suspects, accused and injured persons as well as witnesses and collaborators of justice[17].

Public Prosecution Service

26. According to the provisions of Article 56 of the Law on the Public Prosecutor's Office (hereafter LPPO), prosecutors are appointed by the National Assembly upon a proposal made by the High Judicial Council. The Council is composed of five permanent members[18], six judges and two prosecutors (Article 2 of the Law on High Judicial Council). Article 106 of the Constitution of the Republic of Serbia states that the "Public prosecutor shall have a life tenure". By contrast, deputy public prosecutors are appointed for a period of eight years and may be re-elected. Prosecutors may be dismissed for the following reasons (Article 69 LPPO):

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[14] The new Code of Criminal Procedure was adopted in May 2006 and will take effect on 1 June 2007.

[15] "The Court is bound to protect a witness or victim from insult, threat and any other attack." and "At the proposal of the investigative judge or president of the court chamber, the president of the court or the State prosecutor may request from police authorities to undertake special measures regarding the protection of a witness or a victim".

[16] In the new CCP, rules concerning the protection of witnesses during criminal proceedings is regulated in more detail. (Articles 117-122) and this part of the Law entered into force on 10 June 2006.

[17] The Law on the "Programme for the protection of Participants in criminal procedure" was adopted by the Parliament and entered into force on 1 January 2006.

[18] "The permanent members of the High Judicial Council shall be the President of the Supreme Court of Serbia, Republic Public Prosecutor and the Minister in charge of judiciary, all *ex officio*, one member elected by the Bar Association of Serbia and one member elected by the National Assembly."

- conviction to a prison sentence of more than 6 months or for a criminal offence making him/her unworthy of office;
- acting with negligence or in an incompetent manner;
- permanent loss of capacity to perform their duty.

The procedure is conducted by the Republic Public Prosecutor. The public prosecutor or deputy public prosecutor can appeal to the High Judicial Council against the proposal for dismissal made by the Republic Public Prosecutor. The proposal of dismissal is presented to the National Assembly which decides.

27. The status of the Public Prosecutor's Office is regulated by the Constitution of the Republic of Serbia and the LPPO. The public prosecutor's office is an autonomous State body (Article 103 of the Constitution) and "No person outside the public prosecutor's office shall have the right to allocate tasks to public prosecutors and deputies, nor to direct the management of their case files" (Article 32 of the LPPO). As regards hierarchical relations within the Public Prosecutor's Office, Article 13 reads: "The Republic Public Prosecutor shall issue mandatory instructions to proceed to all public prosecutors. The purpose of such instructions is aimed at securing legality and consistency in proceedings"; and Article 11 states that "A higher-ranking public prosecutor may issue a lower-ranking public prosecutor mandatory written instructions to proceed".

28. Article 47 of the LPPO lays down the rules on incompatibility for public prosecutors and deputy public prosecutors. Accordingly, they may not:
- hold functions in bodies passing or executing regulations;
- be members of a political party;
- engage in any public or private paid work;
- offer legal service or advice for compensation.

29. Article 46 of the Code of Criminal Procedure lays down the basic powers and the main functions of public prosecutors[19] :
1) to conduct pre-trial proceedings;
2) to request that an investigation be carried out and direct pre-trial proceedings;
3) to issue an indictment before the competent court;
4) to appeal a court's decision and submit extraordinary judicial remedies against a final court's decision.

A Republic Public Prosecutor's Office, located in Belgrade, is established for the whole territory of Serbia. 30 district public prosecutor's offices are established for the territory of district courts and 109 municipal prosecutor's offices for the territory of one or more municipal courts. Lower public prosecutor's office are subordinated to higher public prosecutor's office and each public prosecutor's office to the Republic Public Prosecutor's Office. There are approximately 700 prosecutors in Serbia.

30. The Law on the Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime provides that the District Public Prosecutor's Office in Belgrade is competent for dealing with criminal cases with elements of organised crime for the whole territory of Serbia. Within the District, a Special Prosecutor's Office for the Suppression of Organised Crime has been established. The expertise of this special office may include investigations of corruption offences, but only when committed in an organised way. Upon becoming aware that a particular criminal case has elements of organised crime, the Special Prosecutor must contact the Republic Public Prosecutor in writing, requesting to confer or delegate jurisdiction to him/her. The office is

[19] According to the new Code of Criminal Procedure, the public prosecutor will be responsible for the criminal investigations instead of the investigative judge.

headed by the "special prosecutor" who is appointed by the Republic Public Prosecutor for a (renewable) period of two years. Article 8 of the same law lays down that "The Republic Public Prosecutor (…) may second a public prosecutor or deputy public prosecutor to the Special Prosecutor's Office" for a period of time that "may not exceed nine months and may be extended by decision of the Republic Public Prosecutor with written consent of the seconded person".

31. Article 19 of the Code of Criminal Procedure establishes that criminal proceedings are initiated "upon the request of the competent prosecutor." Article 20 states that the public prosecutor is bound to initiate the prosecution when there is a reasonable suspicion that a certain person committed a criminal offence which is prosecuted *ex officio*.

32. The Public Prosecutor's Office plays a leading role in conducting the pre-trial criminal procedure. Prosecutors can give instructions to all authorities concerned in order to gather evidence. Article 46 states that "all authorities taking part in pre-trial proceedings are bound to inform the competent Public Prosecutor about all actions that were undertaken. Police officers and other state authorities competent to discover the commission of criminal offences are bound to proceed upon any request of the competent Public Prosecutor"[20]. Besides, the Public Prosecutor's Office proposes and determines the modalities of cooperation between the different law enforcement bodies involved in criminal investigations, which requires comparative work, multi-experienced team work, constant consultations, engagement of experts before submission of criminal charges, efficient use of special investigative techniques. In Serbia, there is not a unique Public Prosecutor's Office database compatible with the information system of the Ministry of the Interior, there are no joint teams for the fight against different forms of crime (except for organised and war crimes) and there is no coordinating authority.

Courts

33. The Courts which exercise jurisdiction in criminal matters in the Republic of Serbia are the following:

- the Municipal Court (138 in Serbia): first instance court. Maximum sentencing: ten years.

- the District Court (30): first instance court for offences carrying a sentence of more than 10 years imprisonment. It also adjudicates specific offences prescribed by law, including active and passive bribery[21].

- the Court of Appeal (4): it hears appeals against decisions of municipal and district courts.

- the Supreme Court: it decides "on regular and extraordinary legal remedies instituted against decisions of all courts in the Republic of Serbia" and performs "other tasks prescribed by law" (Article 27 of the Law on Organisation of Courts).

There are a total number of approximately 2400 judges in Serbia.

34. Chapter II of the Law on Judges contains the main rules related to the appointment procedure of judges and Article 46 states that "The National Assembly may only elect a candidate (judge) nominated by the High Judicial Council. If the candidate is not elected, the High Judicial Council

[20] Under the new CCP, the Public Prosecutor has the authority to initiate disciplinary procedures against police officers and other state authorities competent to detect criminal offences.

[21] Under the new Law on Amendments to and Supplements of the Law on Organisation of Courts which will enter into force on 1 January 2007, both municipal and district courts will be competent to adjudicate offences of active and passive bribery.

shall reconsider the proposal." The independence of the courts is guaranteed by the Constitution and notably by Article 96 according to which "The courts of law are autonomous and independent in their work and shall adjudicate on the ground of the Constitution, law, and other general enactments". The Law on Judges (Article 48) lays down the text of the oath to be taken by all judges on appointment. Judges cannot be removed from office except in cases defined by law[22]. The reasons for dismissal of judges are the same as those laid down for the prosecutors (see paragraph 26). According to Article 56 of the Law on Judges, the High Personnel Council conducts the procedure for dismissal. The proposal for dismissal is presented to the National Assembly, which makes the final decision.

35. The rules on incompatibilities on judges (Article 27 of the Law on Judges) are the same as those laid down for prosecutors (see paragraph 28).

36. In December 2001, the government, together with the Association of Judges, established the Judicial Training Centre for professional training. Training of judges and public prosecutors is performed in order to improve their expertise and skills. According to the Serbian authorities, organised crime and anti-corruption issues are covered[23].

b. Analysis

Bodies and institutions responsible for combating corruption

37. In Serbia, the independence, integrity and functioning of the justice system appear to be issues of concern. During its on-site visit, the GET perceived that citizens and members of the business sector believe that some allegations of serious corruption cases are not given proper follow-up in the criminal justice system. Moreover, members of the judiciary remain subject to strong social pressure as a result of some cases/allegations of corruption in which prosecutors and judges had been involved[24]. Nevertheless, the GET considers that the efforts made by the Serbian government over recent years to identify problems in this area and to try to address them, to propose modern legislation on the status of judges and prosecutors, as well as to set up both an anti-corruption strategy and a judicial reform, are to be highlighted[25]. The GET notes also with satisfaction the efforts made by the Serbian authorities to identify and investigate corrupt behaviour of some of the members of the judiciary and of the public prosecution. In 2001, the Law on judges, the Law on public prosecutors and the Law on the High Judicial Council were adopted. They establish, *inter alia*, a mechanism of nomination of both judges and prosecutors based on selection and proposal of candidates by a professional body – the High Judicial Council – and election of the proposed candidates by the National Assembly. The procedure for selecting candidates for appointment (and promotion) as judges and presidents of courts is laid down in

[22] Article 101 of the Constitution: "A judge shall have a life tenure. A judge's tenure of office shall terminate at his own request or when he meets conditions for retirement as specified by law. A judge may not be dismissed against his will, except when he has been convicted of a criminal offence to an unconditional penalty of imprisonment for no less than six months, or of a criminal offence which makes him unsuitable to perform judicial function, or when he performs his judicial function unprofessionally and unconscientiously, or when he has permanently lost the working capacity for performing judicial function. The Supreme Court shall establish in accordance with law whether grounds exist for the termination of judge's tenure of office or for dismissal of a judge, and shall inform the National Assembly accordingly. A judge may not be transferred to another post against his will.".

[23] The Law on training of judges, public prosecutors, deputy public prosecutors and judges' and prosecutors' assistants was adopted by the Parliament and will take effect on 1 March 2007.

[24] At the time of the on-site visit, one deputy prosecutor from the Special Prosecutor's Office for Organized Crime and one judge from the Supreme Court of Justice were arrested for acts of corruption.

[25] The Decision on determining the National Judicial Strategy was adopted in May 2006 and entered into force on 3 June 2006.

writing. The first stage of the selection procedure is based on the opinion of the President of the court where the candidate works and on the candidate's file, or on the opinion received from the previous legal organisation where the candidate for the first appointment as a judge has worked. Once the candidate is selected, the proposal made to the Parliament needs to be accompanied by reasons. The proposals submitted can only be admitted or rejected by the Parliament. The GET was told that this procedure was satisfactory in principle, considering that it provides for some balance between the judicial and the legislative power. However, as the GET was able to notice, the confidence of some of the members of the civil society met by the GET, as regards the independence of the judges and prosecutors vis-à-vis the political environment and their impartiality, is still low. Therefore, **the GET recommends that ways should be found to render the procedure for appointing and promoting judges and prosecutors more transparent, in order to foster the public's confidence in the complete independence of prosecutors and judges from any improper political influence and their impartiality in exercising their functions.**

38. The Law on public prosecutors and the Law on the High Judicial Council were subject to several amendments, which mainly reflected the government's changing position regarding the career of public prosecutors and the role that the High Judicial Council plays in this respect. During the state of emergency[26], the independence of deputy public prosecutors was significantly reduced, their career development no longer depended on the High Judicial Council, but on the government. This situation was reversed in 2004. Public prosecutors enjoy the same life tenure as judges. By contrast, deputy public prosecutors are elected for a fixed term of eight years that can be renewed. The GET is of the opinion that this situation makes deputy prosecutors in Serbia particularly vulnerable to political pressure, since they could be tempted to act, especially when dealing with politically sensitive cases, in conformity with the prevailing political views in order to secure their position/career. Both members of the prosecution office and of other judicial bodies met by the GET agreed that the limited mandate of the deputy public prosecutors should be changed. According to Recommendation (2000) 19 of the Council of Europe on the role of the public prosecution in the criminal justice system, "the recruitment, the promotion and the transfer of public prosecutors [should be] carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interest of specific groups [….]". The same recommendation stresses that public prosecutors should have reasonable conditions of service, commensurate to their crucial role, tenure being one of them. Therefore, **the GET recommends that the conditions of tenure of deputy public prosecutors be reconsidered in order to give them a reasonable degree of stability.**

39. The structure of the prosecution service in Serbia is pyramidal, with the Republic Public Prosecutor heading the service and, lower in the hierarchy, the district public prosecutors and municipal public prosecutors. The authority vested in the public prosecutors can be transferred to a number of deputy prosecutors allocated to each public prosecutor's office. Between the higher and the lower ranking public prosecutors as well as between the public prosecutors and his/her deputies there are relations of subordination. The prosecution service is defined by Serbian legislation as an autonomous state body. The Ministry of Justice cannot give instructions in individual cases to prosecutors and does not have the right to allocate them tasks. However, s/he has the power to supervise the administration of the prosecutor's offices. Instructions given by the higher ranking to the lower ranking prosecutor, or by the public prosecutor to his/her deputy/deputies can be given in a formal way (written) or informally (consultation procedure). The law obliges the deputy prosecutor to appeal against an instruction considered to be unlawful to

[26] After the assassination of the Prime Minister Zoran Djindjic, in 2003, the state of emergency was declared in Serbia and lasted from 12 March to 1 July 2003.

the directly higher prosecutor. However, the prosecutors met by the GET were not aware of any case where that possibility had been used in practice.

40. In Serbia, there is no specialised prosecutor's office competent for dealing with corruption offences. There is a Special Prosecutor for Organised Crime appointed by the Republic Public Prosecutor for a fixed term of two years with the possibility of reappointment. His/her deputies are appointed for a term of nine months. In the GET's view, the terms of two years for the Special Prosecutor for Organised Crime and of nine months for his/her deputies are too short. A longer tenure would guarantee better results, through, especially, the attainment of a certain essential level of experience required for dealing with complex and sensitive (corruption) cases. Therefore, **the GET recommends that the term of office of the Special Prosecutor for Organised Crime and of his/her deputies be extended.**

41. The Special Prosecutor for Organised Crime is competent for dealing with cases regarding criminal offences, including active and passive corruption, committed in an organised manner. At the time of the on-site visit, the office of the Special Prosecutor for Organised Crime had not filed any charge of corruption in the cases it had dealt with, despite the fact that the existence of close connections between organised crime and corruption was recognised. The procedure to obtain jurisdiction in a case is complicated and requires the Special Prosecutor, when s/he is made aware of a case that could relate to his/her competence, to make a written request to the Republic Public Prosecutor who has to take a decision within 8 days. Corruption cases without organised crime component are dealt with by the district and municipal prosecutor's office. The need for specialisation of prosecutors dealing with serious corruption offences and economic and financial offences that could be related to corruption was highlighted by the GET's interlocutors. Carrying out investigations, especially in corruption cases occurring in sectors such as privatisation or public procurement, requires special expertise and knowledge that cannot be gained by prosecutors who deal with all kind of criminal cases[27]. Two proposals for improving the specialisation of the prosecutors were presented to the GET during the visit. One related to the possible extension of the Special Prosecutor for Organised Crime's competence in order to encompass serious cases of corruption, including those not committed in an organised manner. The second was to create special departments for financial crime, including corruption, in all district prosecutor's offices. In the GET's view, the solution that could assure the best strategic coordination and use of human and technical resources would be to create a special unit within the prosecution service to deal with corruption and corruption-related offences, be it within or outside of the Special Prosecutor's Office for Organised Crime. This unit could also have territorial subunits. Therefore, **the GET recommends to create a special unit within the Public Prosecutor's Office to deal with corruption (including corruption-related economic crime offences).**

42. The police are independent of the prosecutor. Nevertheless, police officers are legally obliged to inform the prosecutor about any action undertaken and to proceed upon any of the prosecutor's requests. In practice, as the GET was able to observe, the relationship between the police and the prosecutors is not always based on functional cooperation. Although some examples of good cooperation between the two agencies were reported, several allegations were made during the visit related to distrust and a lack of mutual understanding. Police officers complain that, in complex cases involving organised criminal groups, corruption, or financial crimes, because of the lack of specialisation among prosecutors and investigative judges, they encounter difficulties in convincing them that there are sufficient grounds for opening an investigation or securing an

[27] According to the statistics provided by the Serbian authorities, in 2004 very few indictments for corruption in the most vulnerable sectors, as identified by the national legislation, were filed: one indictment for corruption in administration bodies, no indictments in corruption in privatisation or in public procurement field.

indictment. Prosecutors are unsatisfied since they are not informed immediately after a criminal offence is discovered and because the police sometimes withhold essential information or evidence from them or deliver it too late in the pre-investigative phase[28]. Moreover, although the prosecuting authorities are supposed to direct the investigative activity of the police, they lack the means to enforce this authority. The GET is concerned about this situation that could hinder an efficient fight against crimes, including corruption, and could also undermine the public trust in the efforts undertaken by the state authorities. Therefore, **the GET recommends that i) a clear mechanism for cooperation between police and prosecutors is put in place, that would consolidate the leading role of the prosecutor in the preliminary investigations and would ensure that s/he is provided with all relevant information as soon as possible; ii) the creation of task forces composed of police officers and prosecutors be encouraged in order to promote team work.**

43. At the time of the visit, the investigating judge played a predominant role in the pre-trial criminal procedure. Although the prosecutor was involved in principle during the whole pre-trial phase, the investigative judge had the prerogative both to collect the evidence needed in order to support an indictment or a decision not to indict and to take liberty restricting measures. The system was heavily criticized by most of the interlocutors involved in criminal proceedings, in particular, because it scattered resources and divided responsibility between three main actors (i.e. prosecutors, investigating judges and police) and appeared to be one of the major causes of delays in criminal proceedings and of inefficiency, including in corruption and corruption-related cases. The Serbian authorities stressed that the new Code of Criminal Procedure was aimed, inter alia, at changing this situation, notably by securing more rapid and effective investigations.

Training

44. Financial investigation is highly important in the detection of corruption, particularly when tracing criminal proceeds that could be subject to confiscation. A key element for ensuring the success of financial investigations is systematic, professional cooperation between the police, the prosecuting services, the tax and auditing authorities etc. in order to effectively identify data regarding income, asset declaration, tax declaration etc. The GET noted that there is some cooperation between the police, the anti-money laundering authorities, the tax service, banks etc. At the same time, during the on site visit, the GET was told by the police and prosecutors that there is a need for joint training on how to conduct investigations in a more professional way with regard to financial crimes related to corruption. Therefore, **the GET recommends establishing continuous in-service training for police officers and prosecutors in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption, including the full use of the practical and legal means available for tracing and seizing the proceeds of corruption.**

Criminal investigation of corruption, special investigative means and witness protection

45. During the on-site visit, the GET was repeatedly told by police officers and prosecutors that the main difficulty in a corruption case was the gathering of evidence. They also underlined that since behind almost every corruption offence lays a pact of silence between the briber and the bribed person, usual investigative techniques may not always be efficient enough for collecting the requisite evidence. Statements from witnesses and collaborators of justice together with data and documents from banks and financial institutions as well as the use of special investigative

[28] Situations were reported where it took several years until a case known to the police was brought to the attention of the prosecutor.

techniques (SITs) could facilitate the investigative agencies' task. According to Article 232 of the Code of Criminal Procedure, the investigative judge may order, upon a public prosecutor's request, "surveillance and recording of telephone and other conversations or communications by other technical means". The order is implemented by the police. The aforementioned SITs can be used in relation to a few criminal offences, including the offering and receiving of a bribe. They cannot be used in relation to trading in influence. The representatives of the Serbian law enforcement bodies met by the GET stated that, in practice, SIT's are used above all in cases of crimes involving organised groups. They stressed the need for more specialised training for police officers who use such techniques in order to ensure greater efficiency, in full respect of human rights. Consequently, **the GET recommends to adopt legislative and other measures to establish an efficient system of special investigative techniques and to provide the competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice.**

46. At the time of the vist, there was no Witness Protection Programme in Serbia. Nevertheless, some measures to protect witnesses had been taken over the last years with regard to organised and war crimes and a draft law on a "Programme for the protection of participants in criminal procedure" was before the Parliament. Even though the draft stipulated that the Police, upon request of the relevant judicial authorities, "undertake special measures regarding the protection of a witness" (Articles 109, paragraph 3 of the Code of Criminal Procedure), the absence of a proper legislative framework made it impossible to apply, if necessary, any systematic and effective protection of witnesses and collaborators of justice (and their relatives). Therefore, **the GET recommends to introduce the necessary measures to ensure that a witness protection programme is fully operational in practice.**

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

47. The following categories of persons enjoy immunities in the Republic of Serbia:

- The President of the Republic,
- Members of the Government,
- Members of the National Assembly (Parliament),
- Constitutional Court Judges,
- Judges,
- Prosecutors.

48. In addition to the immunities for opinions expressed or votes cast in the exercise of their functions ("non-liability immunities"), Members of Parliament also enjoy "inviolability", ie criminal proceedings can not be initiated against them without prior approval of the Parliament" (Article 77 paragraph 4 of the Serbian Constitution). Pursuant to Article 77 paragraph 3, MPs can be detained without Parliament approval, only if apprehended in *flagrante delicto*. Chapter X ("Immunity") of the Rules of procedure of the National Assembly provides specific procedural measures to be applied with regard to MP's immunities[29]. The same rules apply to the President

[29] The request for an authorisation to detain a Deputy or to start criminal proceedings against him is made by the competent law enforcement body to the Chairperson of the National Assembly, who forwards it to the Administrative Committee. The Committee considers the request, votes on it and submits its report, along with its motion, to the National Assembly (all Committee's documents are accessible to the public). If the Assembly does not give its authorisation for prosecuting the Deputy, s/he cannot be detained and the proceedings against him are suspended. The required majority is a simple majority of the MPs present.

of the Republic[30]. As regards members of government, Article 91 paragraph 4 of the Constitution states: "The prime minister, deputy prime ministers, and ministers shall enjoy the immunity as representatives. The immunity of the prime minister, deputy prime ministers and ministers shall be decided upon by the Government.". Judges of the Constitutional Court enjoy the same type of immunity as MPs. The decision for lifting their immunity is taken by the Constitutional Court.

49. Judges and prosecutors enjoy immunity in accordance with Articles 96 paragraph 2 and 103 paragraph 3 of the Constitution and Article 5 of the Law on judges and Article 35 of the Law on the Public Prosecutor's Office: they cannot be held accountable for opinions expressed in the performance of their duty and cannot be detained in proceedings initiated for a criminal offence committed in the performance of their duty without consent of the National Assembly. Judges and public prosecutors enjoy immunity only in respect of detention and not with regard to prosecution for a criminal offence, including corruption.

b. Analysis

50. The GET is of the view that the immunities enjoyed by the President of the Republic, members of the Government and Members of the National Assembly and related procedures do not constitute an unacceptable obstacle to the country's capacity to effectively prosecute corruption.

51. As regards judges and public prosecutors in particular, they enjoy immunity for opinions expressed in performance of their duty and only in relation to detention and not in regard to criminal prosecution. The GET was told that there were "no problems" with the immunity for judges and prosecutors and that the immunity in relation to detention was of no importance in practice. However, as already mentioned above, the GET was repeatedly told that corrupt activities among judges and prosecutors were not uncommon. Bearing in mind that, at the time of the on-site visit, a very limited number of judges and prosecutors had been indicted it is difficult for the GET to judge whether or not the immunities can be considered as an obstacle for prosecuting judges and prosecutors. However, in the GET's opinion, the subject of immunities of judges and prosecutors could be considered in the future when the relevant legislation is amended.

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

52. In Serbia, confiscation of the proceeds of crime constitutes a criminal sanction. The use of confiscation is regulated by Heading VII of the Basic Criminal Law (hereinafter the BCL)[31]. A decision to confiscate instrumentalities and/or proceeds of crime is made by the court and may be included in a judgment of conviction (Article 517, paragraph 1 of the Code of Criminal Procedure). Confiscation may be exacted from both natural and legal persons.

53. Confiscation of the proceeds of crime (or *"the benefit"*) is mandatory. If direct confiscation is not possible, the court can recover an equivalent amount of money from the perpetrator. According to the Serbian authorities, the relevant legislation may be interpreted to the effect that proceeds transformed or converted into other properties can also be confiscated. If the assessment of

[30] Article 86 paragraph 9 of the Constitution states: "The President of the Republic shall enjoy immunity as a representative (in the National Assembly). The immunity of the President of the Republic shall be decided upon by the National Assembly".
[31] Confiscation of the proceeds of crime is currently regulated by Heading VII of the Criminal Code.

proceeds entails undue difficulties or a significant delay, their amount can be fixed at the court's discretion. In so doing, the court may ask for the assistance of experts.

54. Proceeds transferred to a third party "*if such a party has been aware of the fact that the proceeds have been acquired through the commission of a crime,*" shall be confiscated (Article 85, paragraph 2 of the BCL). Proceeds transferred to a close relative are subject to confiscation should this person fail to prove that such proceeds have been acquired against the payment of their full value[32].

55. In cases of confiscation, the burden of proof normally lies with the prosecutor. However, as mentioned above, where the benefit was transferred to a perpetrator's close relative, the burden of proof can be reversed[33].

56. In criminal proceedings, the injured party has the right to bring a claim for compensation in a civil action. If s/he has been awarded a claim for damages in the criminal proceedings, the court may order the confiscation of proceeds insofar as they do not exceed the adjudicated claim.

Interim measures: freezing and seizure

57. The Code of Criminal Procedure provides for the interim seizure of objects and proceeds of crime if there are (substantial) grounds that a criminal offence has been committed. Interim measures may be ordered either pursuant to Articles 82 to 86 of the CCP as regards temporary seizure of objects and Article 234 with regard to suspicious transactions in case of suspicion that a criminal offence punishable by imprisonment of at least four years has been committed, or in accordance with Chapter XXIXa when there is evidence that a criminal offence committed was a result of organised crime[34].

58. The imposition of interim measures is decided upon by an investigative judge, on a public prosecutor's request. Interim measures may consist of the temporary seizure or freezing of financial assets or cash or financial transactions if there are well-founded grounds that they might constitute proceeds of a criminal offence or are intended for the commission or concealment thereof. At the written request of the court, a bank, a financial or other institution is bound to provide data on the state of business and personal accounts of the suspect.

59. As regards the management of seized property, objects seized must be managed by the court or secured in another way, whereas property or proceeds seized in relation to a criminal offence with elements of organised crime must be placed with a competent state authority.

60. Insofar as the systematic tracing of instrumentalities and proceeds of crime is concerned, according to the Serbian authorities, from the opening of an investigation, investigative actions are carried out with the aim of identifying, tracing and freezing the assets that are considered to be the result of any criminal offence, including corruption.

[32] The new Criminal Code regulates this issue in a different manner. Article 92, paragraph 2 states: "Material gain obtained by a criminal offence shall also be seized from the persons it has been transferred to, without compensation or with compensation that is obviously inadequate to its actual value.

[33] According to the new Criminal Code, the concept has been extended to all third persons (see footnote above)

[34] Under the new CCP, these measures can be used for all criminal offences.

Statistics

61. There are no statistics on the number of cases in which confiscation has been adjudicated, including in corruption cases nor on the number of corruption cases in which interim measures have been taken or the value of the property seized.

Money laundering

62. In the Republic of Serbia, the Administration for the Prevention of Money Laundering (hereafter APML, the Serbian Financial Intelligence Unit) comes under the Ministry of Finance. At the time of the visit, the APML was staffed with 20 employees with different backgrounds, such as banking, financial sector, tax administration, analysis etc. The APML is divided into divisions and units : division for information gathering and analysis (prevention, supervision and record keeping); division for national and international cooperation; unit for suspicious transactions from banks; unit for suspicious transactions from other obliged entities. The Law on the Prevention of Money Laundering (hereinafter the LPML)[35] prescribes that "*anyone, who deposits, on accounts of banks and other financial institutions, money or other financial assets, acquired by performance of illegal activity, or makes such money part of legal financial flows, in order to perform an authorised commercial or financial operation,"* is liable for the offence of money laundering (Article 27)[36]. All corruption offences are predicate offences to money laundering, with the exception of bribery of members of foreign and international parliamentary assemblies, of officials of international organisations, and of judges and officials of international courts[37].

63. The law contains the list of institutions that are obliged to transmit suspicious transaction and cash transaction reports over 600 000 dinars (approximately 7 500 euros) to the Administration for the Prevention of Money Laundering. They include financial institutions and other entities such as insurers, stock exchanges, brokers. The new version of the law, which was, at the time of the on-site visit, before the Parliament for consideration, will further expand the list of entities under the reporting obligation. In cases of suspicion of money laundering such entities may temporarily suspend a transaction for no more than 48 hours and promptly inform the APML thereof (Article 15)[38].

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[35] The new Law on the Prevention of Money Laundering was adopted and entered into force on 10 December 2005.

[36] The new CC defines the criminal offence of money laundering in Article 231 as follows:
'(1) Whoever converts or transfers property while aware that such property originates from a criminal offence, with intent to conceal or misrepresent the unlawful origin of the property, or conceals and misrepresents facts on the property while aware that such property originates from a criminal offence, or obtains, keeps or uses property with foreknowledge, at the moment of receiving, that such property originates from a criminal offence, shall be punished by imprisonment of six months to five years.
(2) If the amount of money or property specified in paragraphs 1 of this Article exceed one million five hundred thousand dinars, the offender shall be punished by imprisonment of one to ten years.
(3) Whoever commits the offence specified in paragraph 1 and 2 of this Article, and could have been aware or should have been aware that the property represents proceeds acquired by criminal offence, shall be punished by imprisonment of up to three years.
(4) The responsible officer in a legal entity who commits the offence specified in paragraphs 1 through 3 of this Article shall be punished by the penalty stipulated for that offence, if aware or should have been aware that the money or property represents proceeds acquired by criminal offence.
(5) The money and property specified in paragraphs 1, through 4 of this Article shall be seized".

[37] According to the relevant provisions of the new Criminal Code, any criminal offence that generates proceeds is considered as a predicate offence.

[38] The list of entities was expanded and now includes : investment funds and other institutions operating in the financial market; custody banks; banks authorised to trade in securities and other individuals/entities engaged in transactions involving securities, precious metals and precious stones; organisers of classical and special games of chance (casinos, slot-machine clubs, betting places), as well as of other games of chance; pawnshops, other legal entities, entrepreneurs,

Mutual legal assistance: interim measures and confiscation

64. Mutual legal assistance is carried out on the basis of the principle of reciprocity, bilateral agreements, the UN Convention against Transnational Organised Crime, the European Convention on Mutual Assistance in Criminal Matters (ETS 30) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141). The framework for international legal assistance on corruption cases involving property confiscation and seizure is provided by Heading XXXII of the Code of Criminal Procedure[39]. When Serbia is a requesting state, requests by courts and public prosecutors for international legal assistance are forwarded to relevant foreign authorities via the Ministry of Justice of the Republic of Serbia. When Serbia is a requested state, requests by foreign authorities for legal assistance are forwarded to the competent court, which decides on the permissibility and the manner of performance of actions constituting the subject of a request, in accordance with domestic regulations.

b. Analysis

65. The GET found that confiscation of instrumentalities and proceeds of crime was well regulated by the Serbian legislation. Article 84 of the Basic Criminal Law provides for the confiscation of a) "all proceeds acquired through the commission of a criminal offence", b) the equivalent value when the direct proceed is not found, c) the proceeds transferred to a third party, if the third party was aware of the illicit origin of the assets. When objects considered to be proceeds of corruption are acquired by the offender's close relatives, confiscation can be imposed if the relatives fail to prove their acquisition against the payment of the object's full value. Confiscation of the proceeds is mandatory. The imposition of this measure is strictly related to a court decision determining the commission of the criminal offence[40].

66. According to the Serbian Code of Criminal Procedure (hereafter CCP), temporary measures can be taken as follows: before and during the criminal investigation, the police may seize objects that can be used as evidence in court, on the basis of a seizure order issued by a judge (Articles 225 and 238 CCP); during the investigation and the trial, the investigative judge or the court can order provisional security measures with the purpose of securing a claim for compensation (Article 210 CCP); temporary measures can also be taken before and during the starting of the criminal investigation in order to confiscate objects and proceeds related to criminal offences according to Article 82 CCP. As far as freezing of suspicious transactions is concerned, the legal basis applicable differs, depending on whether or not the criminal offence was committed in an organised manner. As regards organised crime offences, provisional measures provided by the Chapter XXIXa of the CCP allow the prosecutor to order the freezing of any suspicious transaction and to order banking or other financial institutions to hand over all documents that may serve as evidence. As regards other criminal offences, including corruption, which are not committed in an organised manner, Article 234 CCP states that the investigating judge, upon a request from the public prosecutor, may temporarily freeze suspicious transactions and order the temporary seizure of money intended for that transaction, only for criminal offences punishable by at least 4 years imprisonment. The GET was told that this threshold had been reduced from 10 to 4 years imprisonment. However, this covers most of, but not all, the corruption offences

and individuals doing business related to leasing, organisation of travel and others (Article 4 of the new Law on PML)". Moreover, a transaction can be suspended by the entities mentioned and the APML for 72 hours.

[39] It is now Heading XXXIV of the new CCP.

[40] Please refer to footnotes 31 and 32.

provided for under Serbian law[41]. Therefore, **the GET recommends that the legal provisions regarding temporary freezing of suspicious transactions be extended in order to cover all corruption offences.**

67. As the GET was able to learn during the on-site visit, legal provisions on confiscation and seizure are very seldom applied in practice. Although statistics on seizure and confiscation in corruption cases are not available, judges, prosecutors and police officers met by the GET confirmed that objects and instruments used for the commission of the crime are regularly seized and confiscated, whereas the same measures are very seldom used in relation to money or other properties derived from the commission of the crime or in relation to the equivalent value of the proceeds[42]. In addition, measures to freeze bank accounts are very rarely taken. Difficulties in identifying proceeds and proving their link with a given criminal offence were mentioned. Although the meaning of "good faith" third party seems to be interpreted in a rather restrictive manner (the person "could have known" the illicit origin of the property), in practice, the transfer of the illicit property to third persons appears as a significant obstacle when it comes to imposing seizure measures. Interlocutors met by the GET during the on-site visit (in particular law enforcement officers) complained that unless they apprehend the suspect red handed, it is almost impossible to prove the illicit origin of his/her property. In the GET's opinion, the ability of the law enforcement agencies to identify, trace and enable the seizure and further confiscation of illegally obtained assets, even when in the hands of a third person, is essential for the effective and dissuasive sanctioning of corruption offences. Consequently, **the GET recommends that the use of seizure and confiscation measures in corruption cases is encouraged also with regard to illicit property transferred to third parties and to the equivalent value of property not found.**

68. The GET was informed by the Administration for the Prevention of Money Laundering (hereafter APML) that during the period from the 1 July 2002 to 14 June 2005 a total number of 238,363 suspicious transaction reports were submitted by the obliged entities and 37,903 by the customs authority[43]. According to the figure provided by the APML, almost all reports received were submitted by the banks or the customs authority and very few from other obliged entities listed in the Law on the Prevention of Money Laundering. To increase the effort to tackle money laundering in a more effective way, the GET considers that all organisations that are obliged to report to the APML are to be well aware of their reporting obligation and of how to do it. Therefore, **the GET recommends to keep under careful review the range of reporting institutions, pursue enhanced training initiatives to increase awareness of suspicious transaction reporting and monitor progress. The GET also recommends that guidelines be issued containing money laundering indicators, for all obliged entities.**

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[41] According to the new Criminal Code, which was adopted and entered into force after the on-site visit, some conducts related to illegal mediation and passive bribery are punished with a maximum of three years' imprisonment.

[42] One case of organised crime, regarding the seizure of an amphetamine production line was reported to the GET. In that case, during the trial, the court established the quantity and value of the amphetamine produced and sold and ordered that the equivalent value of the defendant's property to be confiscated.

[43] The number of transactions mentioned refers to cash transaction reports which exceed 600 000 dinars (approximately 7 500 euros) and cross-border cash transfers which exceed 30 000 dinars (approximately 370 euros).

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

69. The competence and organisation of the public administration and other state authorities are mainly regulated by the following legal acts: the Law on State Administration, the Law on Public Services, the Law on Public Relations in State Authorities and the Law on General Administrative Procedure[44]. The concept of "public administration" encompasses all bodies performing administrative functions: government and other state organisations and the agencies established pursuant to special laws and subordinate acts (e.g. the Law on Privatisation Agency, the Law on Agency for Development of Small and Medium-Sized Enterprises, etc.). Public administration in a wider sense also includes territorial authorities, local self government, public services and entities vested with public functions.

70. The rights, obligations and responsibilities of the civil servants[45] are regulated by the Law on Labour Relations in State Authorities (hereafter LPR) and corresponding acts. As a general principle, the LPR provides that, in the performance of his/her functions and overall conduct, civil servants and public officials have to preserve the reputation of the authority where s/he is employed. The preparation of the new Law on Civil Servants was, at the time of the on-site visit, under consideration[46].

Anti-corruption policy

71. At the end of 2004, the draft National Anti-Corruption Strategy was finalised and transmitted to Parliament for adoption (see paragraphs 10 and 11 above). One of the main issues regarded as essential for a successful policy to curb corruption in the country is the reform of the public administration. An action plan was also being prepared in order to ensure the implementation of the Strategy's general principles. In December 2001, the Council for the fight against corruption was established (see paragraph 11 above).

72. No methodology has been elaborated to estimate the efficiency of anti-corruption measures specifically targeting the public administration.

Transparency

73. In accordance with the Law on State Administration (hereafter LSA), the administrative authorities are under a general obligation to make their work public by providing information to the mass media, through official publications, and creating positive conditions for access to information by the public. A Law on Free Access to Information of Public Importance was adopted in November 2004. A wide range of public bodies fall under the scope of the Law: all government authorities, local self-government/territorial autonomy bodies, organisations vested

[44] The new Law on State Administration was adopted during the on-site visit and entered into force on 24 September 2005 and the new Law on civil servants was adopted on 16 September 2005, during the on-site visit, and will take effect on 1 July 2006.

[45] The term "civil servant" includes all employees of bodies performing administrative functions (see paragraph above). The terms "public official" includes political appointees such as ministers, secretaries and assistants of ministers, heads of different government organizations, their assistants and advisors.

[46] The Council for the reform of public administration adopted the Strategy for reform of public administration in October 2004.

with powers at a certain level of government or with public powers[47], entities founded by (or wholly or predominantly by) public authority organisations[48]. Article 4 of the Law lays down a "legal presumption of justified interest" of the public to receive government information, "unless otherwise proven by the public authority". Exemptions to access to public information are set out in Articles 9, 13 and 14[49]. Information may be requested in writing or orally. Responses to requests for access to government information are normally to be provided within 15 days. Information is provided free of charge. A Commissioner for Information of Public Importance was appointed in December 2004 by the parliament. His/her main task is to ensure an efficient functioning of the right to access information of public importance, and to examine complaints against the decisions of public authorities. Moreover, the Commissioner submits regular reports to the National Assembly concerning the implementation of the Law by public authorities and prepares a guidebook with practical instructions on how to exercise the rights envisaged by the Law.

74. As regards the practice of public consultation, the Rules of Procedure of the Government prescribe that the latter has to inform the public of its activities, adopted acts, views, or issues under consideration, by way of official announcements, press conferences, interviews, publications (including on the Internet), or in any other appropriate way (Article 72). While considering issues of major importance, the government may decide to conduct a public discussion on a draft law, regulation or general act. At local level, the practice of consultation is mainly realised through the Councils for the promotion and protection of local government which may be established by assemblies of local government units (Law on Local Self-Government). The Councils' members are selected from among citizens and experts in the fields relevant to the local government.

Control of public administration

75. The Law on General Administrative Procedure (hereafter LGAP) regulates administrative procedures and the Law on Administrative Disputes regulate the system for challenging administrative decisions. The LGAP provides that an appeal against a decision made by an administrative organisation can be submitted to the higher administrative authority. The appeal is sent to the first instance authorities for reconsideration. If the latter does not alter the decision, there is a possibility of appealing in the second instance procedure. The relevant authority may dismiss the appeal, partially or fully annul the administrative act or alter it. The Law on Administrative Disputes prescribes the judicial control over the legality of all administrative acts. An administrative dispute may be initiated before the competent court against an administrative act that has been passed in the second instance, as well as the one passed in the first instance,

[47] for example, electricity, telecommunication and public utility companies.
[48] for example schools, universities, hospitals, theatres etc.
[49] Information which would :
-expose to significant risk the life, health, safety or another vital interest of a person;
- imperil, obstruct or impede the prevention or detection of a criminal offence, indictment for criminal offence, pre-trial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- seriously imperil national defence, national and public safety, or international relations;
- substantially undermine the government's ability to manage the national economic processes or significantly impede the fulfilment of justified economic interests;
- cause serious legal or other consequences for interests protected by the law and are overriding in relation to the interest to access specific information treated as a State, official, business or other secret;
- constitute a serious misuse of the right to access information;
- seriously violate the right to privacy, the right to reputation or any other right of a person who is the subject of information.

against which the appeal is not allowed in the above mentioned administrative procedure. The plaintiff in an administrative dispute may be a natural or legal person.

Ombudsperson

76. At central level, the Law on the Ombudsperson was adopted on 14 September 2005 (during GRECO's on-site visit). At local level, the Law on Local Government provides that local governments may establish an ombudsperson to protect citizens' individual and collective rights by monitoring the work of the administration and public services. The management of the local self-government unit and of the public services is obliged to provide the ombudsperson, at his/her request, with data and information necessary for the performance of his/her duties. Where illegal or improper activities of a civil servant result in the violation of citizens' rights and interests, the ombudsperson may issue a warning to the administration and/or public services, make a recommendation, and inform the local government unit's assembly, as well as the general public, thereof.

Recruitment, career and preventive measures

77. The Law on Labour Relations in State Authorities (LPR) lays down the general principle of equal employment conditions for all civil servants in state authorities and for public officials (as for the difference between these two categories of employees, see footnote 47)[50]. A person accepted for the position of civil servant must meet the general requirements laid down in Article 6[51]. Vacancies are advertised and recruitments are decided on the basis of a competitive examination. The final decision is taken by the person in charge of the relevant organisation. It is possible to file an appeal against the decision on the recruitment of a civil servant.

78. The LPR sets out the limitations on the right to occupy a position in the state administration by prohibiting the recruitment of persons sentenced to unconditional imprisonment for at least 6 months or to a punishable offence rendering the person incapable of working in the civil service. This information is verified by the authorities which keep records of convicted persons and of persons against whom a criminal procedure has been conducted.

Training

79. The content and forms of professional training for civil servants are regulated by acts of the government for ministries, special organisations and specialised services. Persons recruited as civil servants for the first time are obliged to pass a professional examination, whereby they acquire the knowledge of the regulations governing the state authorities' activities.

Conflicts of interest

80. The legal framework to prevent conflicts of interest is provided in the Law on the Prevention of Conflicts of Interest in the Discharge of Public Office (hereinafter the LPCI). A "public function" in terms of Article 2 paragraph 1 "shall be a function discharged by a person pursuant to election, appointment or nomination to organs of the Republic of Serbia, autonomous province, municipality, town and the City of Belgrade, and organs of public enterprises founded (…)" by any of the aforementioned entities. Paragraphs 2 and 3 of the same article establish that the

[50] According to the new Law on public servants and the new Law on state administration, some public officials such as secretaries, assistants of ministers, heads of different government organisations and their assistants will become civil servants recruited on a permanent basis, but appointed for a 5 year period.
[51] E.g. be a citizen of Serbia, be physically capable etc.

conflicts of interest encountered by judges and prosecutors as well as "officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, autonomous province, municipality, town and the city of Belgrade" are regulated by separate law. The overall objective of the LPCI is to ensure that public officials, while exercising their official activities or duties, are prohibited from using public office to acquire benefit for themselves or their relatives. According to the LPCI (Article 6), a public official is prohibited *inter alia* from: "1) acquiring a right for himself or a relative if, by doing so, he violates the principle of equality of citizens before the law; 2) abusing special powers granted to him by virtue of the functions of his public office; 3) receiving, soliciting or accepting any value or service to vote on any item or to influence the decision of an organ, body or individual; 4) promising employment or other rights in exchange for a gift, promise or other benefit or privilege; 5) influencing the assignment of tenders or public procurement; 6) accepting compensation from a foreign state or international organisation, except for travel and other costs relating to participation in international conferences, in accordance with the decision of competent bodies; 7) using knowledge and information on the work or governmental bodies that is not publicly available for personal benefit or that of related persons."

81. Article 9 of the LPCI reads: "A public official may not be a director, deputy or assistant director, member of the management or supervisory board of a public company, institution, company or any other legal entity with state capital share (…)". Within 30 days of appointment, public officials are obliged to "transfer managing rights in a commercial entity to a legal or natural person" (but not a relative) "to operate in their own name and on behalf of the official until the end of the term in office" (Article 8). The case of members of parliament, deputies and members of councils sitting in managerial boards of public founded companies and other commercial companies is regulated by Article 10[52]. Within 15 days from election, appointment or nomination, a public official is obliged to submit to the Republic Board – an authority established to implement the LPCI and to resolve possible conflicts of interest[53] – "a report on his/her income and property and property of spouse and lineal relatives by consanguinity" (Articles 12 and 13). When a public official or his/her relative holds a personal interest in a specific issue s/he is dealing with in the exercise of his/her functions, s/he has to declare the existence of the conflicts of interest prior to taking part in the debate, or before the adoption of a decision (Article 7).

82. In case of a breach of the above provisions, the LPCI envisages the imposition of one of the following measures: a confidential warning, a public announcement of a decision that the law has been violated, or a public announcement of a recommendation for the official's dismissal. This does not exclude criminal responsibility of persons breaking the aforementioned law.

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[52] "A Member of Parliament, Deputy and Councillor may be a director or deputy and assistant director or member of the management or supervisory board of at most one public enterprise, institution and company or other legal entity with majority state capital share.
In all other business entities a Member of Parliament, Deputy and Councillor may continue to exercise his/her management rights or remain as member of the management or supervisory board, director, deputy and assistant director, if this does not interfere with his/her discharge of public office and the nature of the activity of the business entity does not influence impartial and independent discharge of public duty."

[53] Article 19 of the LPCI: "The Republic Board shall have nine members. Three are chosen by judges of the Supreme Court of Serbia from the ranks of persons with law degree with notable expertise in criminal, civil, commercial and administrative law, and one member shall be chosen by the Bar Association of Serbia from among its members. Presidents of courts, judges, public prosecutors and deputy public prosecutors may not be members of the Republic Board.
The remaining five members are chosen by the National Assembly at the recommendation of the Serbian Academy of Science and Arts, from a list containing ten candidates."

Rotation

83. A system of regular or periodic rotation of staff employed in public services susceptible to corruption is not prescribed, but, according to the Serbian authorities, is used in practice. The Law on Labour Relations in State Authorities contains a provision, whereby a public official managing a state authority may, if so required by the authority's needs, allocate the employee to another job for which s/he is qualified within the same authority. No provisions exist to regulate the phenomenon of public officials moving to the private sector.

Gifts

84. By virtue of the LPCI, restrictions are imposed on public officials and their relatives as regards the receiving of gifts, which are defined as "any money, objects, services or any other benefit given or promised to an official" or his/her relative, either personally or through a third party (Article 15). As prescribed by Article 16, "an official may not accept gifts related to the discharge of his/her public office, except for (…) gifts whose value does not exceed half the average monthly salary in the Republic of Serbia"[54]. The criteria for determining appropriate or protocol gifts are set by the aforementioned Republic Board (paragraph 79). If several gifts were received from a single source during one year, the aggregate of all gifts is counted as its value. If still in doubt, the public official has to decline the gift. In case the latter is not possible, the gift must be handed over to the organisation for which the public official works, in which case the gift will become the property of the State.

Code of ethics

85. Activities with respect to ethics are regulated by different legal acts: the Law on the Prevention of Conflicts of Interest in the Discharge of Public Office, the Law on Labour Relations and the Law on State Administration. There is no general code of conduct/ethics for civil servants.

Reporting corruption

86. The obligation for public officials and civil servants to report criminal offences to the public prosecutor's office is set out in Articles 222 and 224 of the Code of Criminal Procedure[55]. Failure to report a criminal offence and denounce its perpetrator constitutes a criminal offence, according to Serbian criminal legislation. A public official failing to report a criminal offence which is punishable by five or more years of imprisonment and of which s/he has learned in the performance of his/her duties, can be punished by three years of imprisonment. No specific protection is afforded to public officials and civil servants reporting instances of corruption within the public administration.

Disciplinary proceedings

87. The Law on Labour Relations provides for a disciplinary liability of civil servants in cases of violations of their duties and obligations. This liability is regulated uniformly for all categories of

[54] The average monthly salary is approximately 220 euros.

[55] Article 222: "1) All state authorities, territorial autonomy and local government authorities, public companies and institutions are bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned in a different way. 2) Authorities, public companies and institutions referred to in paragraph 1 of this Article shall indicate evidence known to them and undertake measures to preserve traces of the criminal offence, the objects upon which or by means of which the criminal offence was committed as well as other evidence."
Article 224 paragraph 1: "The report shall be filed with the competent public prosecutor in writing or orally".

civil servants, and its rules are also applicable to public officials appointed by the Government.[56] The disciplinary procedure is initiated by the immediate manager of a civil servant or another authorised person, while the carrying out of the procedure is entrusted to the Disciplinary Commission appointed by the official in charge of the state authority. Disciplinary sanctions consist of a fine ranging from 20% to 35% of the public official's monthly salary extracted during a period of 3 to 6 months, or of termination of labour relations. The civil servant may file an appeal against the disciplinary measure[57].

88. Criminal offence liability does not exclude disciplinary sanctions for the same offence, regardless of whether or not the public official has been released from criminal liability.

Licensing and issuing permits

89. The present system for obtaining licenses and permits is very complicated. The relevant rules are laid down in different pieces of legislation. During the on-site visit, it was stressed that the applicant could need as much as ten permits to obtain a building license and that the turnaround time in practice could be as long as two years[58].

b. Analysis

90. The GET wishes to stress that, during the last few years, Serbia has made remarkable progress in preparing the necessary legal and regulatory basis for the prevention of – and fight against – corruption in the public administration. A draft National Anti-Corruption Strategy was prepared and – at the time of the on-site visit – was being considered by the National Assembly. The main general subjects dealt with by the Strategy are prevention, investigation, and raising of public awareness. The Serbian authorities informed the GET that following the adoption of the new Criminal Code, which was before Parliament for adoption during the on-site visit, the Action Plan for the implementation of the Strategy would be adopted. Most of the recently adopted legislation related to administrative matters (e.g. the Law on Free Access to Information) are at the implementation stage. The Serbian Government has made the fight against corruption one of the three key priorities of the country[59]. **The GET recommends that the Action Plan for the implementation of the National Anti-corruption Strategy be adopted and that an efficient monitoring of its implementation is ensured.**

91. The Law on Free Access to Information of Public Importance was implemented in July 2005 when the Commissioner for Free Access to Public Information was established. In spite of the fact that a "Guide to the Law on Free Access to Information" was issued, the GET was told that there was a lot of misunderstanding among civil servants as well as the public about the actual scope of the right to public information. In particular, the Commissioner for Free Access to Public Information said that "a crucial obstacle for the implementation of the Law is the lack of knowledge" and that "neither the citizens nor the media are sufficiently familiar with the new rights and the way in which they are exercised". Therefore, **the GET recommends to provide training to civil servants on the public's rights under the Law on Free Access to**

[56] The disciplinary procedure for persons appointed by the Government is regulated by a Government regulation.
[57] In the new Law on civil servants the range of fines is now from 20-30% and an additional sanction is introduced: prohibition of promotion of civil servants for a period of 2-4 years.
[58] According to information provided by the Serbian authorities after the visit, under the Strategy for promoting and developing foreign investments, the turnaround time for issuing building licenses will henceforth be no longer than 15 days.
[59] According to information provided by the Serbian authorities after the visit, the National Anti-corruption Strategy was adopted in December 2005.

Information of Public Importance and give appropriate information on the Law to the public at large.

92. At central level, a Law on the Ombudsperson was adopted on 14 September 2005 (at the time of the on-site visit). It was announced that an ombudsperson would be appointed within six month from the adoption of the Law. At local level, the Law on Local Government provides that local governments may establish an ombudsperson to protect citizens´ individual and collective rights by monitoring the work of the administration and public services. Only the Autonomous Province of Vojvodina has established a local ombudsperson. His office's staff consists of 15 persons. **The GET recommends to speed up the setting up of the ombudsperson at central level and to encourage the local governments to establish ombudspersons.**

93. The GET notes with satisfaction that the Serbian authorities are planning to establish, in compliance with the National Anti-Corruption Strategy, a centralised civil servant recruitment and career service as well as a specialised training centre where comprehensive training of civil servants is to be conducted[60]. In this connection, **the GET recommends to prepare and adopt special mandatory anti-corruption training programmes tailored to the various categories of civil servants.**

94. The Law on the Prevention of Conflicts of Interest in the Discharge of Public Office came into force in April 2004. According to information provided by the Republic Board for Resolving Conflicts of Interest, during the first nine months of 2005 a total number of 54 complaints regarding potential conflicts of interest were examined by the Board. As a result of these assessments, three public officials were dismissed. This Law is applicable to all public officials, with the exception of judges and public prosecutors and of "officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, the autonomous province, the municipalities, the towns and the City of Belgrade". The Law provides that the conflicts of interest related to these categories of individuals should be governed by "separate laws" (Articles 2 and 3). However, the Serbian authorities informed the GET that these laws are not in place, with the exception of judges and prosecutors for whom incompatibilities are established in the relevant laws (see paragraphs 28 and 35) In addition, the overall objective of the Law on the Prevention of Conflicts of Interest is to ensure that public officials, while exercising their duties, are prohibited from using public office to acquire benefit for themselves or their relatives. In the light of the aforesaid, the **GET recommends to expand the application of the Law on the Prevention of Conflicts of Interest in the Discharge of Public Office so that it would include all public officials who perform public administration functions without excluding those indicated in Article 2 paragraphs 2 and 3 of the Law (i.e. judges and public prosecutors and "officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, the autonomous province, the municipalities, the towns and the City of Belgrade").**

95. The GET notes that there are no specific rules in place that can be applied to public officials who move from the public to the private sector. It considers that there is a potential risk that a promise of future lucrative employment may be used to influence serving public officials, and that former officials may abuse their contacts and inside knowledge of their former work areas, especially in cases where their new employment is closely related to their previous functions. **The GET recommends to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage") in order to avoid situations of conflicts of interest.**

[60] The Human Resource Service has been established and will be operational from 1 July 2006.

96. As indicated in the descriptive part of this report (paragraph 84), the general rule with regard to gifts is contained in Article 16 of the Law on Prevention of Conflicts of Interest, which states that "an official may not accept gifts related to the discharge of his/her public office, except for gifts whose value does not exceed half the average monthly salary in the Republic of Serbia". The GET considers this minimum value to be far too high and therefore **recommends to lower the value of any gifts that may be accepted by public officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage.**

97. The GET notes that significant progress has been made with regard to the implementation of standards of conduct, at municipal level. In 2004, the National Conference on ethical standards for local government representatives in Serbia drafted the Ethical Code of Conduct for Local Officials and Model Code of Conduct of Local Government and Public Services Employees in Towns and Municipalities in Serbia, which were adopted by the Standing Conference of Towns and Municipalities. The GET was informed that these codes had already been implemented in approximately 2/3 of municipalities. The GET was also told that a wide-scope educational campaign intended for the general public was being carried out and training was being organised for civil servants at municipal level. However, the GET notes that a unified system of standards of conduct has not been developed at national level. Codes of conduct for civil servants have not been drafted and adopted yet. In connection with this, **GET recommends to adopt codes of conduct for civil servants at national level and to organise a wide-scope campaign for their implementation in public institutions.**

98. The GET noted that there are no legal measures in place to ensure confidentiality and to protect employees in public service reporting corruption (so-called whistleblowers) from retaliation. Therefore, the GET **recommends to ensure that civil servants who report suspicions of corruption in public administration in good faith are adequately protected from retaliation when they report their suspicions.**

Licensing and issuing permits

99. As mentioned in the descriptive part of this report, the current system for obtaining licenses and permits in Serbia is very complicated. During the on-site visit, it was mentioned that corruption was frequent in the area of urban and construction permits. It was also questioned if all licenses and permits were essential. In the GET´s opinion, this situation feeds corruption and gives rise to doubts about the system's reliability. Therefore, **the GET recommends to limit licenses and permits to those that are indispensable, to reduce the turnaround time required for obtaining them and to encourage the compilation and editing of guidelines both for civil servants handling licenses and permits and for the general public.**

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition

100. Pursuant to the Law on Commercial Association (hereinafter the LCA), a company is a corporate body exercising business activities for the purpose of generating profit. An economic association may be founded as an association of individuals (general or limited partnership) or as an association of capital (corporation or limited liability company) (Article 2 of the LCA). The definitions of the most important types of economic associations are as follows:

a) General partnership established on the basis of an agreement between two or more individuals, with joint and individual liability, undertaking to conduct certain business activities under a common name (Article 53 of the LCA);

b) Limited partnership established on the basis of an agreement between two or more parties for the purpose of conducting business activities under a joint name, of which at least one partner is jointly and individually liable (the general partner), and the risk of at least one person is limited to his/her contracted investment (the limited partner);

c) Joint stock company established by individuals or corporate bodies for the purpose of conducting business activities, the initial capital of which is set and divided into shares specified by value (Article 184); and

d) Limited liability company established for the purpose of conducting business activities by corporate bodies and individuals who are not liable for the company's commitments and who bear the risk for the company's transactions to the extent of their investments. The company's initial capital is composed of its members' investments, and any member may acquire a stock in the company in proportion to the value of his/her investment.

Establishment

101. The requirements for establishing a company depend on its form. Thus, individuals may only form a general partnership, a limited partnership, a corporation and a limited liability company. Corporate bodies, in the capacity of limited partners, may found a corporation, a limited liability company and a limited partnership. The state and local government entities may establish a public company.

102. The certificate of establishment of a company is its memorandum of association made in writing. The signatures of the company's founders must be authenticated by a competent court (Article 7 of the LCA). As regards the number of members in a company, the only limitation is prescribed for a limited liability company, which may have no more than 100 members (Article 104). The sum of start-up capital depends on whether the company is an association of individuals or of capital. For a joint-stock company, the minimum value of shares, unless otherwise prescribed by law, must not be less than approximately 10 to 25 000 euros.

Registration and transparency measures

103. In January 2005, the new Law on Registration of Commercial Entities and the Law on Agency for Commercial Registries entered into force, bringing about a reform of the previous registration system. In particular, a unified electronic database was created on all registered commercial entities in Serbia, and an Agency for Commercial Register for keeping several commercial registers was established. The registration procedure was simplified and reduced to 5 days. In addition to the possibility of filing the registration application over the counter and by mail, electronic filing of registration was envisaged, including subsequent electronic communication between the registrar and the applicant.

104. According to the new rules, the registrar is no longer authorised to examine the accuracy of data and credibility of documents attached to the registration form as only compliance with formal requirements is verified. If the registrar fails to decide upon the request within 10 days of its filing, the request for registration is considered adopted, and an appropriate entry made in the Register.

Registered data is public and is published on the Agency's website. An appeal may be filed in case the application for registration is rejected.

Limitations on exercising functions in legal persons

105. Different pieces of legislation establish rules related to the disqualification system, whereby perpetrators of an offence are deprived of the right to exercise certain activities, including holding a leading position in a legal person. In particular, by virtue of Article 66 of the Basic Criminal Law[61], in case a person has committed a criminal offence through misuse of his/her position, independent activity or duty, "a court may order a prohibition to exercise a particular profession, occupation, or independent activity, all or some other duties involving disposition, use, management or handling of state or socially-owned property or safe-keeping thereof". This security measure can be imposed for a period of one to ten years.

106. Similarly, the Law on Commercial Offences establishes "protective measures", whereby a leading person in a legal person who is the perpetrator of a commercial offence, may be prevented from performing the duty s/he had performed at the time the offence was committed, a certain leading duty in regard to commercial or financial operation, a certain type of job or duties related to the disposal, use, management or handling of assets or to keeping thereof (Article 35).

107. Protective measures are also envisaged under the Law on Misdemeanours : the perpetrator of a petty offence, who is a leading person in a legal person, may be prohibited from performing the duty s/he performed at the time the offence was committed, or a managing duty in a commercial or financial operation, or a certain type of job, or all or some duties related to the disposal, use, management and handling of entrusted property, in case s/he abuses the duty in order to commit a petty offence (Article 46).

Legislation on the liability of legal persons

108. No provisions exist or measures have been undertaken to establish civil, criminal or administrative liability of legal persons specifically for corruption (or corruption-related) offences. The legal system of Serbia does not recognise the principle of criminal liability of legal persons.

Tax deductibility

109. The Law on Corporate Income Tax does not envisage tax deductions, tax incentives or tax credits for payments constituting bribes or other costs linked to corruption.

Fiscal authorities

110. Pursuant to the aforementioned Article 222 of the Code of Criminal Procedure (prescribing the obligation to report criminal offences for all state authorities), the tax administration officials are obliged to report criminal offences prosecuted *ex officio*, of which they have learned while carrying out their duties. In order to detect criminal offences specifically within the field of taxation, the Law on Tax Procedure and Tax Administration prescribes that, in the preliminary criminal procedure, the tax police may act as a law enforcement authority and, in accordance with the law, carry out an investigation and summon and interrogate suspects (Article 135).

[61] This is now regulated by Article 85 of the Criminal Code.

111. During the tax control procedure, a tax inspector has the right to access taxpayers' documents. In case of suspicion that an offence has been committed, s/he must transmit to the tax police without delay a report and evidence thereof. If the tax inspector establishes that the facts and circumstances give reason to believe that a criminal offence has been committed in areas different from taxation, the tax administration transmit the file to the competent law enforcement authority (Article 136). There is a general obligation on the tax police to co-operate with the public prosecutor's office.

Accounting Rules

112. The Law on Accounting and Audit contains a general obligation for legal persons and entrepreneurs to keep accounting records and business books, as well as to designate a person responsible for their keeping (Article 14). Various time-limits are prescribed for the storage of accounting data depending on the type of accounting document (e.g. 50 years for financial reports; 10 years for business books) (Article 15)[62]. No exemptions are possible. Accounting documents and business books must be kept in the premises of the legal person.

113. Negligent accounting constitutes a criminal offence. According to the Law on Accounting and Audit, if an act of forgery is committed in respect of a public document, including infringement of the rules governing its storage, the sanction of imprisonment of three months to five years can be applied. Serbian legislation further criminalises the destroying of official stamps or official documents. This offence is sanctioned by imprisonment of up to three years and may be applied to any person who illegally takes, hides, destroys, damages or makes otherwise unfit for use an official stamp, book, record or document belonging to a state authority, company, institution or other organisation which exerts public authority. Sanctions are also envisaged for an attempt at this offence.

Role of accountants, auditors and legal professionals

114. The Code of Criminal Procedure contains an obligation for any person to report criminal offences that are prosecuted *ex officio*. There are no special regulations obliging accountants, auditors and/or other advisory professionals to report a criminal offence revealed in the course of performing their duties.

115. Only the new Law on the Prevention of Money Laundering provides for the obligation to report to the Administration for the Prevention of Money Laundering suspicions of money laundering by an auditing company, independent auditor, lawyer, legal or natural person responsible for keeping business books or engaged in tax counselling, when participating in planning or realising certain transactions for their clients, or in cases when a client seeks advice on money laundering.

b. Analysis

116. The GET notes with appreciation that it is laid down in different pieces of legislation that perpetrators of an offence could be deprived of the right to exercise certain activities, including holding a leading position in a legal person. However no provisions exist establishing civil, criminal or administrative liability of legal persons for corruption or corruption-related offences. Therefore, **the GET recommends adopting the necessary legislation to speedily implement liability of legal persons for offences of corruption providing for sanctions – including**

[62] Under the new Law on Accounting and Audit which entered into force on 10 June 2006, Articles 14 and 15 are now regulated by Articles 16 and 23. Under the new law, financial reports are kept for 20 years instead of 50 years.

monetary sanctions - that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS No 173).

117. In accordance with the Law on Corporate Income Tax, which stipulates that any expenses that are subject to tax deduction procedures have to be explained and justified, tax deductibility for bribes and any kind of facilitation payments is not provided for.

118. The Law on Accounting and Audit contains a general obligation (Article 14) for legal persons and entrepreneurs to keep accounting records and business books, as well as to designate a person responsible for their keeping. There are no exemptions from the obligation to keep accounting records. The destruction of books, the use of false or incomplete information in accounting documents as well as unlawfully omitting to record payments are all offences under Serbian law. The GET considers the legislation in this regard to be in conformity with article 14 of the Criminal Law Convention on Corruption.

119. By virtue of Article 222 of the Code of Criminal Procedure, public officials are obliged to report criminal offences. Article 223 of the same Law[63] prescribes a general obligation for all citizens to report a criminal offence subject to public prosecution, including corruption. There is no specific legal obligation for private auditors, accountants and other advisory professionals (such as lawyer, legal or natural person engaged in tax counselling, when participating in planning or realising certain transactions for their clients) to report suspicious corrupt activities that they may come across when performing their tasks. However, the GET was told that severe crimes were reported according to international standards for auditors and accountants. Other sources informed the GET that Article 223 of the Code of Criminal Procedure was also applicable to private auditors and accountants. Therefore, **the GET recommends encouraging private auditors, accountants and other advisory professionals to report suspicions of corruption to the public prosecutor and to organise training on the detection and reporting of corruption.**

120. Concerning state owned property, the GET was told that the Budgetary Inspectorate within the Ministry of Finance is responsible for the audit of the whole public sector. The Inspectorate's findings are communicated to the Parliament and the information is public. To the GET´s understanding, it is difficult for the Inspectorate to fulfil its task in a proper way, especially as there is a significant ongoing privatisation process in the Republic of Serbia. However, the GET was told there are two bills pending before the Parliament concerning a law on the introduction of a national auditing authority[64]. **The GET recommends to speed up the introduction of a national auditing authority.**

CONCLUSIONS

121. In the Republic of Serbia, corruption is perceived as a significant problem that affects many sectors of the public service. The sectors mostly considered as being worst affected are the judiciary, the municipalities, the customs service, the police and the health care system. Policies aiming at preventing and fighting against corruption should also focus on two other areas where there is room for improvement : collection of taxes (it is a well known fact that lacunas in the tax system favour corruption) and the privatisation process whose implementation seems to suffer from several shortcomings. The integrity and functioning of the justice system is also an issue of concern. In particular, members of the judiciary remain subject to strong social pressure as a

[63] These two Articles of the previous CCP are now regulated by Article 253 of the new CCP.
[64] The Law on the State Audit Institution was adopted on 29 November 2005.

result of some cases/allegations of corruption in which prosecutors and judges had been involved. Nevertheless, the efforts made by the Serbian government over recent years to identify problems in this area and to address them, to propose modern legislation on the status of judges and prosecutors, as well as to set up both an anti-corruption strategy and to carry out judicial reform, are to be highlighted. There is a need for better specialisation of prosecutors dealing with serious corruption offences and economic and financial offences that could be related to corruption and to establish a clear mechanism for cooperation between police and prosecutors as well as the creation of task forces composed of police officers and prosecutors in order to promote team work. Immunities enjoyed by certain categories of persons in the Republic of Serbia (namely the President of the Republic, members of the Government and Members of the National Assembly) and related procedures for lifting these immunities do not constitute an unacceptable obstacle to the country's capacity to effectively prosecute corruption.

122. As far as public administration is concerned, there is a need for implementing appropriate measures that extend the application of the Law on the Prevention of Conflicts of Interest in the Discharge of Public Office so that it would also include all public officials who perform public administration functions without the existing exceptions. It is also necessary to speed up the setting up of the ombudsperson institute at central level, to adopt codes of conduct for civil servants at national level, to organise a wide-ranging campaign for their implementation in public institutions, and to establish adequate protection for civil servants and public officials who report instances of corruption (whistleblowers) in good faith. As regards legal persons and corruption, the Serbian legal system does not provide for corporate liability. Therefore, there is a need to establish such liability for bribery and money laundering and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption.

123. In view of the above, GRECO addresses the following recommendations to the Republic of Serbia:

i. **that the implementation of the Public Procurement Law be enhanced, notably by providing training to civil servants involved in the procurement process** (paragraph 17);

ii. **that ways should be found to render the procedure for appointing and promoting judges and prosecutors more transparent, in order to foster the public's confidence in the complete independence of prosecutors and judges from any improper political influence and their impartiality in exercising their functions** (paragraph 37);

iii. **that the conditions of tenure of deputy public prosecutors be reconsidered in order to give them a reasonable degree of stability** (paragraph 38);

iv. **that the term of office of the Special Prosecutor for Organised Crime and of his/her deputies be extended** (paragraph 40);

v. **to create a special unit within the Public Prosecutor's Office to deal with corruption (including corruption-related economic crime offences)** (paragraph 41);

vi. **that i) a clear mechanism for cooperation between police and prosecutors is put in place, that would consolidate the leading role of the prosecutor in the preliminary investigations and would ensure that s/he is provided with all relevant information**

as soon as possible; ii) the creation of task forces composed of police officers and prosecutors be encouraged in order to promote team work (paragraph 42);

vii. **establishing continuous in-service training for police officers and prosecutors in order to share common knowledge and understanding on how to deal with corruption and financial crimes related to corruption, including the full use of the practical and legal means available for tracing and seizing the proceeds of corruption** (paragraph 44);

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

ix. **to introduce the necessary measures to ensure that a witness protection programme is fully operational in practice** (paragraph 46);

x. **that the legal provisions regarding temporary freezing of suspicious transactions be extended in order to cover all corruption offences** (paragraph 66);

xi. **that the use of seizure and confiscation measures in corruption cases is encouraged also with regard to illicit property transferred to third parties and to the equivalent value of property not found** (paragraph 67);

xii. **to keep under careful review the range of reporting institutions, pursue enhanced training initiatives to increase awareness of suspicious transaction reporting and monitor progress. The GET also recommends that guidelines be issued containing money laundering indicators, for all obliged entities** (paragraph 68);

xiii. **that the Action Plan for the implementation of the National Anti-corruption Strategy be adopted and that an efficient monitoring of its implementation is ensured** (paragraph 90);

xiv. **to provide training to civil servants on the public's rights under the Law on Free Access to Information of Public Importance and give appropriate information on the Law to the public at large** (paragraph 91);

xv. **to speed up the setting up of the ombudsperson at central level and to encourage the local governments to establish ombudspersons** (paragraph 92);

xvi. **to prepare and adopt special mandatory anti-corruption training programmes tailored to the various categories of civil servants** (paragraph 93);

xvii. **to expand the application of the Law on the Prevention of Conflicts of Interest in the Discharge of Public Office so that it would include all public officials who perform public administration functions without excluding those indicated in Article 2 paragraphs 2 and 3 of the Law (i.e. judges and public prosecutors and "officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, the autonomous province, the municipalities, the towns and the City of Belgrade")** (paragraph 94);

xviii. **to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage") in order to avoid situations of conflicts of interest** (paragraph 95);

xix. **to lower the value of any gifts that may be accepted by public officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage** (paragraph 96);

xx. **to adopt codes of conduct for civil servants at national level and to organise a wide-scope campaign for their implementation in public institutions** (paragraph 97);

xxi. **to ensure that civil servants who report suspicions of corruption in public administration in good faith are adequately protected from retaliation when they report their suspicions** (paragraph 98);

xxii. **to limit licenses and permits to those that are indispensable, to reduce the turnaround time required for obtaining them and to encourage the compilation and editing of guidelines both for civil servants handling licenses and permits and for the general public** (paragraph 99);

xxiii. **adopting the necessary legislation to speedily implement liability of legal persons for offences of corruption providing for sanctions – including monetary sanctions - that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS No 173)** (paragraph 116);

xxiv. **encouraging private auditors, accountants and other advisory professionals to report suspicions of corruption to the public prosecutor and to organise training on the detection and reporting of corruption** (paragraph 119);

xxv. **to speed up the introduction of a national auditing authority** (paragraph 120).

124. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Serbian authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2007.