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Theme I

Third Evaluation Round

Evaluation Report on the Slovak Republic on Incriminations (ETS 173 and 191, GPC 2) (Theme I)

Adopted by GRECO
at its 36th Plenary Meeting
(Strasbourg, 11-15 February 2008)

I. INTRODUCTION

1. The Slovak Republic joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2000) 2E) in respect of the Slovak Republic at its 4th Plenary Meeting (12-15 December 2000) and the Second Round Evaluation Report (Greco Eval II Rep (2003) 2E) at its 17th Plenary Meeting (Strasbourg, 22-25 mars 2004). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I - Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption, Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II - Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to the Slovak Republic on 11 and 12 June 2007, was composed of Ms Silvia THALLER, Judge, Directorate for Penal Legislation, Federal Ministry of Justice (Austria) and Mrs Magdolna HAJDU, Prosecutor, General Prosecutor's Office, Department for International and European Affairs (Hungary). The GET was supported by Mr Christophe SPECKBACHER and Ms Tania VAN DIJK from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2007) 3E, Theme I) as well as copies of relevant legislation.
4. The GET met with the following officials and governmental organisations: Ministry of Interior (the Minister of Interior, Bureau for the fight against Corruption, Police Academy), Ministry of Justice (the Minister of Justice, Division for Penal Legislation, Foreign Relations and Human Rights Division, Division for Judicial Cooperation in Criminal Matters, Supreme Court, Special Court for Corruption and other Serious Crimes) and the Special Prosecution Office (Department responsible for organised crime, terrorism and international cooperation, Department responsible for corruption). Moreover, the GET met with members of the following non-governmental institutions: Faculty of Law of the Comenius University, Fair Play Alliance.
5. The present report on Theme I of GRECO's Third Evaluation Round – Incriminations – was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit (or shortly after). The main objective of the report is to evaluate the measures adopted by the Slovak authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to the Slovak Republic in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II – Transparency of party funding - , is set out in Greco Eval III Rep (2007) 4E-Theme II.

II. INCRIMINATIONS

Description of the situation

7. The Slovak Republic ratified, without making any reservation, the Criminal Law Convention on Corruption (ETS 173) on 9 June 2000. It entered into force in respect of the Slovak Republic on 1 July 2002.
8. The Slovak Republic ratified, without making any reservation, the Additional Protocol to the Criminal Law Convention (ETS 191) on 7 April 2005. It entered into force in respect of the Slovak Republic on 1 August 2005
9. The new Criminal Code of the Slovak Republic, Act No. 300/2005 Coll., entered into force on 1 January 2006. The Slovak authorities underline that no substantive changes were made to the provisions on bribery and trading in influence as compared to the old Criminal Code, with the exception of certain increases in the level of sanctions and – as it turned out during the on-site discussions – the use of the concept of “bribe” instead of “undue advantage”.

Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

10. Active bribery of domestic public officials is criminalised under Sections 332 and 333 of the Criminal Code, Act No. 300/2005 Coll. (hereafter: CC). Section 332 CC criminalises active bribery to have another person act or refrain from acting in breach of his/her duties, regardless of whether this other person is a public official or not. Section 333 CC criminalises active bribery “in connection with the procurement of a thing of general interest”, regardless of breach of duties of the bribe taker, whereby the fact that the bribe taker is a public official is an aggravating circumstance pursuant to paragraph 2 of this section.

Section 332 (Active bribery in breach of duties)

“(1) Any person, who either directly or through an intermediary, gives or promises a bribe to another person to make that person act or refrain from acting and thus breach his/her duties resulting from his/her employment, profession, position or function, or gives or promises a bribe for the same reason to a third party either directly or through an intermediary, shall be punished by imprisonment for a term of up to three years.

(2) The offender shall be punished by imprisonment for a term of one to five years if s/he commits the criminal offence referred to in paragraph 1 as a result of more serious misconduct

(3) The offender shall be punished by imprisonment for a term of four to ten years s/he commits the criminal offence referred to in paragraph 1 at a large scale.

Section 333 (Active bribery in connection with the procurement of a thing)

(1) Any person, who in connection with the procurement of a thing of general interest, gives, offers, or promises a bribe to another person, either directly or through an intermediary, or gives, offers or promises a bribe for the same reason to a third party, shall be punished by imprisonment for a term of six months to three years.

(2) The offender shall be punished by imprisonment for a term of two to five years if he/she commits the act referred to in paragraph 1 as a result of more serious misconduct, or against a public official

(3) The offender shall be punished by imprisonment for a term of five to twelve years if s/he commits the criminal offence referred to in paragraph 1 at a large scale.

11. The Slovak authorities report that passive bribery of a domestic public official is covered by Sections 328 and 329 CC. As before with active bribery, 328 CC criminalises passive bribery whereby the person concerned, not necessarily an official, accepts a bribe to act or refrain from acting in breach of his/her duties and Section 329 CC criminalises passive bribery in connection with the procurement of a thing of general interest, not necessarily accompanied by a breach of duties, whereby the fact that the offender is a public official is an aggravating circumstance. Sections 328 and 329 CC provide:

Section 328 (Passive bribery in breach of duties)

(1) Any person, who either directly or through an intermediary, receives, requests or accepts the promise of a bribe for himself or another person for acting or refraining from acting and thus violates his/her duties resulting from his/her employment, occupation, position or function shall be punished by imprisonment for a term of two to five years.

(2) The offender shall be punished by imprisonment for a term of three to eight years if s/he commits the criminal offence referred to in paragraph 1 as a result of more serious misconduct.

(3) The offender shall be punished by imprisonment for a term of seven to twelve years if s/he commits the criminal offence referred to in paragraph 1 at a large scale.

Section 329 (Passive bribery)

(1) Any person, who in connection with the procurement of a thing of general interest, receives, requests or accepts the promise of a bribe for himself or for another person, either directly or through an intermediary, shall be punished by imprisonment for a term of three to eight years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he/she commits the offence referred in paragraph 1 as a public official.

(3) The offender shall be punished by imprisonment for a term of seven to twelve years if s/he commits the criminal offence referred to in paragraph 1 at a large scale.”

Elements/concepts of the offence

“Domestic public official”

12. Sections 328, 329, 332 and 333 CC are not limited to bribery of public officials. As already indicated above, the involvement of a public official is an aggravating circumstance as regards bribery in connection with the procurement of thing of general interest in paragraph 2 of Sections 329 and 333. The public official to which Sections 329 and 333 refer is defined in Section 128, paragraph 1, CC by reference to a list of functions.

Section 128 (public official)

(1) For the purposes of this Act, public officials shall mean the President of the Slovak Republic, members of the National Council of the Slovak Republic, members of the European Parliament, members of the Government, judges of the Constitutional Court of the Slovak Republic, judges, prosecutors or other persons holding an office in a body of public authority, members of the armed forces, persons in a service relationship, mayors, heads of self-governing regional authorities, members of local or regional self-governing authorities, civil servants and employees of State administration authorities, of local or regional self-governing authorities or of other State authorities,

persons exercising the competencies of legal entities that have a statutory authority to make decisions in the area of public administration, notaries, court executors, members of forest guard, water guard, fishery guard, hunting guard, nature guard or persons authorised to act as nature guard, when they participate in the fulfilment of the duties of the society and of the State exercising the competencies they have been granted with a view to the responsible fulfilment of such duties. Criminal liability and protection of public officials under relevant provisions of this Act require that the offence be committed in connection with the exercise of their powers and responsibilities. Public officials shall also include the judges and officials of international judicial bodies recognised by the Slovak Republic and the functionaries and other officials of criminal justice authorities of other States, of the bodies of the European Union or the bodies established jointly by Member States of the European Union, who carry out criminal procedure duties for such other States or bodies; to be entitled to the protection under the provisions of this Act, they must carry out criminal procedure duties in conformity with the applicable international treaties or with the consent of Slovak authorities.

13. The Slovak authorities take the view that the above definition of public official includes all terms mentioned in Article 1, paragraphs a and b, of the Criminal Law Convention on Corruption (ETS 173), namely official, public officer, mayor, minister and judge, as well as prosecutors and holders of a judicial office. In order to apply the provisions of Sections 329 and 333 CC as regards public officials, the Slovak authorities report that the following basic conditions need to be fulfilled by virtue of Section 128 paragraph. 1 CC:

- the person has to belong to one of the categories of officials enumerated;
- s/he has to have the statutory authority to make decisions in the area of public administration;
- s/he has to be a holder of power, which has been given to him/her to fulfil his/her official duty;
- the criminal offence has to be committed in direct connection with these powers.

“Promising, offering or giving” (active bribery)

14. ‘Promising, offering or giving’ is transposed by reference to ‘gives or promises’ in the provision on active bribery (accompanied by a breach of duties) in Section 332 CC and by reference to ‘gives, offers or promises’ in the provision on active bribery in connection with procurement of a thing of general interest in Section 333 CC.

“Request or receipt, acceptance of an offer or promise” (passive bribery)

15. ‘Request or receipt, acceptance of an offer or promise’ is transposed by reference to ‘receives, requests or accepts the promise’ in the provision on passive bribery (accompanied by a breach of duties) in Section 329 CC and by reference to ‘receives, requests or accepts the promise’ in the provision on passive bribery in connection with procurement of a thing of general interest in Section 330 CC.

“Undue advantage”

16. The term ‘advantage’ is not used in the provisions on bribery in the Slovak Criminal Code, instead the term ‘bribe’ is used, which is defined in Section 131, paragraph 3: “a bribe shall mean a thing or other transaction of property or non-property nature to which there is no legal entitlement”. A thing in turn is defined in Section 130, paragraphs 1 and 2:

Section 130 (Thing)

(1) For the purposes of this Act, a thing shall mean

- a) A movable or immovable thing, dwelling or non-residential premises, or animals, unless the relevant provisions of this Act provide otherwise,
- b) A controllable force of nature or energy, or:
- c) A security paper irrespective of its form.

(2) Intangible information, computer data or video recording on a technical medium shall also be considered as things.

17. The Slovak authorities indicate that this includes all kinds of financial and/or non-financial gifts, payments, other transactions of a property or non-property nature, and all kinds of services, to which there is no legal entitlement and that from the point of view of criminal procedure it is important why the gifts, payments or service have been bestowed upon the public official, if it has been done in connection with carrying out his/her official duties or if there were other reasons (a purchase for example).
18. The use of the term “bribe” implies that it is something which is “undue”. This is further emphasised by the definition of a bribe, meaning “a thing or other transaction (...) to which there is no legal entitlement”. According to the Slovak authorities, the value of the bribe (or gift) given, offered, promised to the official or received or requested by the public official is irrelevant.¹ Although there have not been any bribery cases involving non-monetary bribes, the Slovak authorities indicate that these would not be considered any different from monetary bribes.

“Directly or indirectly”

19. ‘Directly’ is transposed by using the exact same term in all the provisions on active and passive bribery. Indirectly’ is covered by use of the term ‘through an intermediary’ in all the aforementioned provisions on bribery in Sections 328, 329, 332 and 333 CC. In addition, both abovementioned provisions on active bribery (Sections 332 and 333) explicitly mention the giving, offering or promising of “a bribe for the same reasons to a third party either directly or through an intermediary”.

“For himself or herself or for anyone else”

20. ‘For himself or herself or for anyone else’ is transposed in both provisions on passive bribery in Sections 328 and 329 CC by use of the expression ‘for himself or another person’. There is no similar wording in the provisions on active bribery which, however, refer to bribes offered to a third party (see paragraph 19 above).

“To act or refrain from acting in the exercise of his or her functions”

21. ‘To act or refrain from acting in the exercise of his or her functions’ is transposed by the sentence ‘acting or refraining from acting’ in the provisions on active and passive bribery in Sections 328 and 332 CC (bribery in breach of duties). As regards Sections 329 and 333 CC on bribery in

¹ To illustrate this, the Slovak authorities have given two examples: in 2006 a public official was convicted for receiving a monetary bribe of 200 Slovak Crowns (approximately €6). In a second case, a police officer was convicted for accepting a monetary bribe of 400 Slovak Crowns (approximately €12) and was sentenced to 3 years imprisonment.

connection with the procurement of a thing of general interest, whereby the involvement of a public official is mentioned as an aggravating circumstance, the Slovak authorities point to Section 128, paragraph 1, CC, which provides: "Criminal liability and protection of public officials under relevant provisions of this Act require that the offence be committed in connection with the exercise of their powers and responsibilities." According to the Slovak authorities, to exercise the powers of a public official means to act in accordance with the law if law requires him/her to act and to refrain from acting if law requires him to do so.

"Committed intentionally"

22. Bribery cases are restricted to those committed intentionally. To this end, Section 17 CC provides that "an act committed by a natural person shall carry criminal liability only in case of intentional causation, unless it is explicitly stated in this Act that causation by negligence is sufficient." As the provisions on bribery do not mention that they can be caused by negligence, they can only be committed intentionally.

Other elements

23. As already indicated above, Sections 329 and 333 CC are restricted to bribery offences committed "in connection with the procurement of a thing of general interest". The Slovak authorities indicate that this refers to activities performed in the common interest (and is not limited to, for example, public tender procedures). To this end, Section 131, paragraph 1, CC provides for the following definition.

Section 131

(1) For the purposes of this Act, a thing of general interest shall mean an interest that transcends the framework of individual rights and interests of individuals, and is important for the society.

Sanctions

24. The applicable sanction as regards passive bribery in Section 328 – i.e. where it is unqualified if the offence is committed by a public official or not and the bribe does not have to be received in connection to the procurement of a thing of general interest, but has to be accompanied by a breach of duties – is 2 to 5 years' imprisonment.² By comparison, the sanction applicable to passive bribery in connection with the procurement of a thing (regardless of whether the person has breached his/her duties) under Section 329 is 3 to 8 years' imprisonment. If this passive bribery offence was committed by a public official the sanction will, pursuant to paragraph 2, be increased to 5 to 12 years' imprisonment.³
25. As regards, active bribery the applicable sanctions are up to 3 years' imprisonment⁴ under Section 332 CC (active bribery accompanied by breach of duties, but not necessarily of a public official or in connection with the procurement of a thing of general interest), a term of 6 months up to 3 years' imprisonment⁵ under Section 333 (active bribery, not necessarily accompanied by a breach of

² If the offence has been committed as a result of more serious misconduct the sanction can be increased to 3 to 8 years' imprisonment, or if committed at a large scale, to 7 to 12 years' imprisonment.

³ Or if the offence has been committed at a large scale the sanction can be increased to 7 to 12 years' imprisonment.

⁴ If the offence has been committed as a result of more serious misconduct the sanction can be increased to 1 to 5 years' imprisonment, or if committed at a large scale to 4 to 10 years' imprisonment.

⁵ If the offence has been committed as a result of more serious misconduct the sanction can be increased to 2 to 5 years' imprisonment, or if committed at a large scale to 5 to 12 years' imprisonment.

duties, but in connection with the procurement of a thing of general interest) or a term of 2 to 5 years' imprisonment if a public official was given/offered a bribe in connection with the procurement of a thing of general interest.

26. The applicable sanctions for other comparable crimes is two to five years' imprisonment for abuse of power⁶ of a public official (section 326 CC), up to two years for embezzlement (Section 213 CC), up to two years for fraud (Section 221 CC), one to five years for tax evasion. These are the basic sanctions, which can be increased depending on certain aggravating circumstances.
27. In addition to imprisonment, the Criminal Code provides for certain additional sanctions. First of all, the court may impose a fine or a 'pecuniary penalty' of 5,000 to 10,000,000 Slovak Crowns (approximately €150 to €300,000) for intentional criminal offences whereby the offender has gained or tried to gain property benefits (Section 56 CC). Secondly, the court may order forfeiture of property (Section 58 CC) if it has convicted the offender to "life imprisonment or to unconditional imprisonment for a particularly serious crime through which the offender gained or tried to gain large-scale property benefits or caused large-scale damage." If these conditions are however not fulfilled, the court may also order forfeiture of property if it has convicted the offender for, *inter alia*, money laundering (Section 233) or passive bribery pursuant to Section 328, paragraph 2, CC (passive bribery, accompanied by breach of duties, as a result of more serious misconduct) or Section 329, paragraph 2 or 3, CC (passive bribery in connection with the procurement of a thing of general interest, of a public official or 'at a large scale'), if it has been proven that the offender has acquired his/her property or part thereof from the proceeds of crime. Forfeiture of property is imposed on the entire property of the offender. A third additional sanction is, pursuant to Section 60 CC, forfeiture of the thing that was (intended to be) used to commit the criminal offence or obtained by means of the criminal offence (or in exchange thereof), which may in corruption cases be used to forfeit the bribe received or offered. Finally, Section 61 CC provides for the possibility to impose a 'prohibition of certain activities' for a period of 1 to 10 years if the offender committed the criminal offence in connection with this activity.

Statistics/case-law

28. According to the statistics available, in 2006 there has been a total of 159 cases for which prosecution was based on Sections 328, 329, 332 and 333. The latter was used in the vast majority of cases. There have been 67 convictions during the same period.

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

29. Active and passive bribery of members of domestic public assemblies is a criminal offence covered by the above-mentioned provisions on bribery accompanied by a breach of duties in Sections 328 (passive) and 332 CC (active) and the provisions on bribery in connection with the procurement of a thing of general interest in Sections 329 (passive) and 333 CC (active), whereby the involvement of a public official is an aggravating circumstance.

⁶ Abuse of power is described as follows: "a public official who, with the intent to cause damage to another person or to obtain undue benefits for him/herself or another person,

- (a) Exercises his/her powers in an unlawful manner,
- (b) Exceeds his/her legal authority, or
- (c) Fails to fulfil a duty resulting from his/her legal authority or from a court decision,

Shall be punished by imprisonment for a term of two to five years."

The provision also includes certain aggravating circumstances, in which case the term of imprisonment can be increased.

30. As well as being covered by 'any person' in Sections 328 and 329 CC and 'another person' in Sections 332 and 333 CC, members of a domestic assembly are mentioned in the definition of public official in Section 128 CC (namely "members of the National Council of the Slovak Republic" and "members of local and regional self-governing authorities", which is to be understood as including local assemblies) to which the second paragraph of Sections 329 and 333 CC refer. The description of the elements of the offence is the same as described above for the offences of active and passive bribery of a domestic public official. In order to apply the provisions of Sections 329 and 333 CC as regards public officials to members of the National Council (and other domestic assemblies), the basic conditions referred to in paragraph 13 have to apply.
31. As with bribery of domestic public officials, the sanctions applicable to passive bribery of a member of a domestic assembly is 5 to 12 years' imprisonment (pursuant to Section 329, paragraph 2, on passive bribery of a public official in connection with the procurement of a thing of general interest) and 2 to 5 years' imprisonment for active bribery of a member of a domestic assembly (pursuant to Section 333, paragraph 2, sub b). Additional sanctions can be a pecuniary penalty or fine, forfeiture of property, forfeiture of a thing (i.e. the bribe) and 'prohibition of certain activities'.
32. Overall figures for 2006 have been provided above as regards cases handled under Sections 328, 329, 332 and 333. The replies to the questionnaire pointed out that to date, there has been only one court decision on active bribery of members of domestic public assemblies.

Bribery of foreign public officials (Article 5 of ETS 173)

Definition of the offence

33. Active and passive bribery of foreign public officials is a criminal offence under Slovak law and is covered by provisions separate from the ones outlined in paragraphs 10 and 11 above.
34. Active bribery of foreign public officials is covered by Section 334 CC:

Section 334 CC

(1) Any person, who gives, offers or promises a bribe to a foreign public official or to another person, either directly or through an intermediary, in connection with the official duties of the foreign public official with the aim to obtain or maintain an undue advantage in an international business transaction, shall be punished by imprisonment for a term of two to five years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he/she commits the criminal offence referred to in paragraph 1 at a large scale.

35. The Slovak authorities indicate that active bribery of foreign public officials is also covered by Section 335 CC, which provides:

Section 335 CC

(1) Any person, who either directly or through an intermediary, gives, offers or promises a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual

relationship, or to a person in a similar position, or gives, offers or promises a bribe to a third party for the same reason, shall be punished by imprisonment of two to five years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he/she commits the criminal offence referred to in paragraph 1 at a large scale.

36. Passive bribery of foreign public officials is covered under Section 330 CC:

Section 330 CC

(1) Any person, who as a foreign public official, for himself or for another person, receives, requests or accepts the promise of a bribe in connection with his/her official duties, either directly or through an intermediary, in order to provide or maintain an undue advantage in an international business transaction, shall be punished by imprisonment for a term of five to twelve years.

(2) The offender shall be punished by imprisonment for a term of ten to fifteen years if he/she commits the offence referred in paragraph 1 at a large scale.

37. In addition, Section 331 is also of relevance to passive bribery of foreign public officials:

Section 331 CC

(1) Any person, who as a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or as a person in a similar position receives, for himself or for another person, requests or accepts the promise of a bribe in connection with the exercise of his/her office, either directly or through an intermediary, shall be punished by imprisonment for a term of five to twelve years.

(2) The offender shall be punished by imprisonment for a term of ten to fifteen years if he/she commits the offence referred in paragraph 1 at a large scale.

38. The term foreign public official is defined in Section 128, paragraph 2, CC⁷:

Section 128, paragraph 2

(2) For the purposes of this Act, foreign public official shall mean any person holding an office

(a) In the legislature, a judicial authority or a public administration authority of a foreign country including the head of State, or

(b) In a legal entity in which a foreign country exercises a decisive influence or in international organisation established by States or other subjects of public international law,

⁷ The Slovak authorities also drew the GET's attention to Section 133 ("on Foreign powers and foreign officials" which specifies that (...) (2) For the purposes of this Act, a foreign official shall mean a natural person or a legal entity which, although not being a body or a representative of a foreign State, has nevertheless an important influence in his/her State or in international relations because of his/her political, economic or social status.

if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies.

Elements/concepts of the offence

“Promising, offering or giving” (active bribery)

39. ‘Promising, offering or giving’ is transposed by reference to ‘gives, promises or offers’ in Section 334 CC (and also in Section 335 CC).

“Request or receipt, acceptance of an offer or promise”

40. ‘Request or receipt, acceptance of an offer or promise’ is transposed by reference to ‘receives, requests or accepts the promise’ in Section 330 CC (and by ‘requests or accepts the promise’ in Section 331 CC).

“Advantage”

41. As indicated before, the concept ‘advantage’ is not used as such in the provisions on bribery in the Slovak Criminal Code, instead the term ‘bribe’ is used, which implies that this was ‘undue’; see further paragraphs 16-18 above.

“Directly or indirectly”

42. ‘Directly’ is transposed by using the exact same term; Indirectly’ is covered by use of the term ‘through an intermediary’ in Sections 330 and 334 CC (and also in Sections 331 and 335 CC. In addition, Section 335 CC explicitly mentions the giving, offering or promising of “a bribe for the same reasons to a third party either directly or through an intermediary”.

“For himself or herself or anyone else”

43. The replies to the questionnaire indicated that the expression ‘For himself or herself or for anyone else’ is not transposed in the provisions on bribery of a foreign public official of Section 330 and 334 CC (nor in Sections 331 and 335 CC). In fact, these provisions refer to the expressions “for himself or for another person (Section 330), “or to another person” (Section 334), “for himself or for another person” (Section 331), “or gives, offers or promises a bribe to a third party for the same reasons (Section 335)⁸.

“To act or refrain from acting in the exercise of his or her functions”

44. ‘To act or refrain from acting in the exercise of his or her functions’ is transposed by reference to the term ‘in connection with his/her official duties’ in Sections 330 and 334 CC (and ‘in connection with the exercise of his/her office’ in Sections 331 and 335 CC). In addition, the definition of ‘foreign public official’ in Section 128 CC provides “if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies.”

⁸ As far as Sections 330 and 331 CC are concerned, it turned out after the visit that these elements were missing in the English version of these provisions made available to the examiners.

Other elements

45. As before, bribery cases are restricted to those committed intentionally. It should furthermore be noted that the application of Sections 330 and 334 CC is limited to those offences committed in an international business transaction.

Sanctions

46. As with bribery of domestic public officials, the sanctions applicable to bribery of a foreign public official are, pursuant to Sections 330 and 334, 2 to 5 years' imprisonment for active bribery and 5 to 12 years' imprisonment for passive bribery. (Sanctions of a similar level exist under Sections 331 and 335). If the offence has been committed on a large scale, the sanction can be increased to 10 to 15 years' imprisonment and 5 to 12 years' imprisonment respectively.

Statistics/case-law

47. The Slovak authorities have indicated that bribery of foreign public officials was introduced in Slovak legislation on the basis of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Since then Slovakia has had one criminal case under investigation, on the basis of the IIC-report concerning corruption committed in the framework of the UN Oil-for-Food programme. No criminal charges have however been brought in this case⁹.

Bribery of members of foreign public assemblies (Article 6 of ETS 173)

48. Active and passive bribery of members of foreign public assemblies is covered by the abovementioned provisions on foreign public officials in Sections 330 and 334, the definition of which expressly refers to "any person holding an office in the legislature (...) of a foreign country". As already indicated above, the application of these provisions is restricted to international business transactions. However, active and passive bribery of members of foreign public assemblies is also covered by Sections 331 and 335 CC. As the provisions on bribery of foreign public officials have already been outlined above, the paragraphs below will focus on Sections 331 and 335.
49. Passive bribery of members of foreign public assemblies is covered by Section 331 CC:

Section 331 CC

(1) Any person, who as a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or as a person in a similar position, for himself or for another person, receives, requests or accepts the promise of a bribe in connection with the exercise of his/her office, either directly or through an intermediary, shall be punished by imprisonment for a term of five to twelve years.

⁹ The GET was advised during the on site visit that as part of the standard procedures of the OECD, explanations had to be provided for the absence of conviction under these provisions but for the time being, there is no information available concerning such cases.

(2) The offender shall be punished by imprisonment for a term of ten to fifteen years if he/she commits the offence referred in paragraph 1 at a large scale.

50. Active bribery of members of foreign public assemblies is covered by Section 335 CC:

Section 335 CC

(1) Any person, who either directly or through an intermediary, gives, offers or promises a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or to a person in a similar position, or gives, offers or promises a bribe to a third party for the same reason, shall be punished by imprisonment of two to five years.

(2) The offender shall be punished by imprisonment for a term of five to twelve years if he/she commits the criminal offence referred to in paragraph 1 at a large scale.

Elements/concepts of the offence

“Promising, offering or giving”

51. ‘Promising, offering or giving’ is transposed by reference to ‘gives, offers or promises’ in Section 335 CC.

“Request or receipt, acceptance of an offer or promise”

52. ‘Request or receipt, acceptance of an offer or promise’ is transposed by reference to ‘requests or accepts the promise’ in Section 331 CC.

“Advantage”

53. As indicated before, the term ‘bribe’ is used instead of ‘advantage’ (See further paragraph 14 above).

“Directly or indirectly”

54. As before, ‘directly’ is transposed by using the exact same term; ‘Indirectly’ is covered by use of the term ‘through an intermediary’ in Sections 331 and 335 CC. In addition, Section 335 CC explicitly mentions the giving, offering or promising of “a bribe for the same reasons to a third party either directly or through an intermediary”).

“For himself or herself or for anyone else”

55. ‘For himself or herself or for anyone else’ is transposed in the provisions on bribery of members of foreign public assemblies as regards Section 331 CC (Section 335 uses the wording “a bribe to a third party for the same reason”).

“To act or refrain from acting in the exercise of his or her functions”

56. ‘To act or refrain from acting in the exercise of his or her functions’ is transposed by reference to the term ‘in connection with the exercise of his/her office’ in Sections 331 and 335 CC.

Sanctions

57. As with bribery of domestic public officials and foreign public officials, the sanctions applicable to bribery of a member of a foreign public assembly is, pursuant to Sections 331 and 335, 5 to 12 years’ imprisonment for passive bribery and 2 to 5 years’ imprisonment for active bribery. As before, if the offence has been committed on a large scale, the sanction can be increased to 10 to 15 years’ imprisonment and 5 to 12 years’ imprisonment respectively.

Statistics/case-law

58. There have been no court decisions or cases in the Slovak Republic in connection with bribery of members of foreign public assemblies.

Bribery in the private sector (Articles 7 and 8 of ETS 173)

59. Active and passive bribery in the private sector is an offence covered by the general provisions of Sections 328 and 332 CC. These sections have already been outlined in paragraphs 10 to 27 above, as regards bribery of domestic public officials. With regard to the scope of the perpetrators, the term ‘persons who direct or work for, in any capacity for private sector entities’ has not been transposed in the abovementioned provisions on bribery, but this is covered by reference to ‘any person’ in Sections 328 and 332 CC. The Slovak authorities have indicated that on the basis of these two provisions any corrupt act in the private sector can be prosecuted. They also indicate that under these provisions, for example an offender who gives a bribe to an insurance company or claims agent to make a false liquidation report to increase the amount, s/he will also be prosecuted. The provisions of 328 and 332 CC furthermore include the wording “act or refrain from acting and thus violates his/her duties resulting from his/her employment, occupation, position or function”. The GET was furthermore informed that as private sector bribery is criminalised under the same provisions as public sector bribery, it would be difficult to differentiate between private and public sector bribery in the statistics on court cases.

Bribery of officials of international organisations (Article 9 of ETS 173)

60. Active and passive bribery of officials of international organisations is covered both by the aforementioned provisions on bribery of foreign public officials in international business transactions (see paragraphs 33-47 above) in Sections 330 and 334 CC and the aforementioned provisions of Sections 331 and 335 CC (see as regards *inter alia* members of foreign parliamentary assemblies in paragraphs 48-58 above). The provisions on bribery of foreign public officials in international business transactions refer to the definition of foreign public officials in Section 128 CC, which state that – apart from officials holding an office in a foreign country – foreign public officials shall also mean “any person holding an office (...) in an international organization established by states or another subject of public international law, if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies”. In addition, the aforementioned Sections 331 and 335 CC, which have already been outlined in the paragraphs on bribery of members of foreign public assemblies, refer explicitly to “a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak

Republic is a member or with which the Slovak Republic has a contractual relationship, or (...) a person in a similar position". The elements of the offence of bribery of officials of international organisations are implemented in the same way as outlined above for bribery of foreign public officials in international business transactions and for bribery of *inter alia* members of foreign public assemblies.

61. The sanctions mentioned under bribery of foreign public officials in international business transactions and bribery of *inter alia* members of foreign public assemblies also apply in respect of officials of international organisations.

62. There have not been any cases (yet) concerning bribery of officials of international organisations.

Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)

63. As before (see paragraph 60 above), active and passive bribery of members of international parliamentary assemblies is covered both by the aforementioned provisions on bribery of foreign public officials in international business transactions (see paragraphs 33-47 above) in Sections 330 and 334 CC and the aforementioned provisions of Sections 331 and 335 CC (see as regards *inter alia* members of foreign public assemblies in paragraphs 48-58 above). The provisions on bribery of foreign public officials in international business transactions refer to the definition of foreign public officials in Section 128 CC, which state that – apart from officials holding an office in a foreign country – foreign public officials shall also mean “any person holding an office (...) in an international organization established by states or another subject of public international law if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies”, which is to include members of international parliamentary assemblies. In addition, the aforementioned Section 331 and 335 CC refer to “member of a foreign parliamentary assembly, (...), a representative or employee of an international, supranational, intergovernmental organization or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or (...) a person in a similar position”. The elements of the offence of bribery of members of international parliamentary assemblies are implemented in the same way as outlined above for bribery of foreign public officials in international business transactions and for bribery of *inter alia* members of foreign public assemblies.

64. The sanctions mentioned under bribery of foreign public officials in international business transactions and bribery of *inter alia* members of foreign public assemblies also apply in respect of members of international parliamentary assemblies.

65. There have not been any cases (yet) concerning bribery of members of international parliamentary assemblies.

Bribery of judges and officials of international courts (Article 11 of ETS 173)

66. Active and passive bribery of judges and officials of international courts is covered both by the aforementioned provisions on bribery of foreign public officials in international business transactions (see paragraphs 33-47 above) in Sections 330 and 334 CC and the aforementioned provisions of Sections 331 and 335 CC (see as regards *inter alia* members of foreign public assemblies in paragraphs 48-58 above). The provisions on bribery of foreign public officials in international business transactions refer to the definition of foreign public officials in Section 128 CC, paragraph 2, which states that – apart from officials holding an office in a foreign country – foreign public officials shall also mean “any person holding an office (...) in an international

organization established by states or another subject of public international law, if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies". In addition, the aforementioned Section 331 and 335 CC refer to "a representative or employee of an international, supranational, intergovernmental organization or institution of which the Slovak Republic is a member of with which the Slovak Republic has a contractual relationship, or (...) a person in a similar position". The elements of the offence of bribery of judges and officials of international courts are implemented in the same way as outlined above for bribery of foreign public officials in international business transactions and for bribery of (*inter alia*) members of foreign public assemblies.

67. The sanctions mentioned under bribery of foreign public officials in international business transactions and bribery of *inter alia* members of foreign public assemblies also apply in respect of judges and officials of international courts.
68. There have not been any cases (yet) in the Slovak Republic concerning bribery of judges and/or officials of international courts.

Trading in influence (Article 12 of ETS 173)

69. Trading in influence is covered by Section 336 CC (on "indirect corruption"):

Section 336 CC

(1) Any person, who either directly or through an intermediary, for himself or for another person, receives, requests or accepts the promise of a bribe for using or having used his/her influence on the exercise of duties by persons referred to in Sections 328, 329, 330 and 331, shall be punished by imprisonment for a term of up to three years.

(2) Any person, who either directly or through an intermediary, gives or promises a bribe to another person in order to make that person use his/her influence on the exercise of duties by persons referred to in Sections 332 and 333 or for having used that influence, or gives, offers or promises a bribe to a third party for the same reason, shall be punished by imprisonment for a term of up to two years.

Elements/concepts of the offence

"Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]"

70. The provision 'asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]' is transposed in Section 336 CC by use of the words "receives, requests or accepts the promise of a bribe for using or having used his influence on the exercise of duties by persons". The Slovak authorities however indicate that in practice for a criminal prosecution it is important if the person who receives, request or accepts the promise of a bribe for using or having used his/her influence is really able to exert improper influence over the decision-making process of an official. If not, such person will be prosecuted for another offence (such as fraud).

“Promising, offering or giving”; “Request or receipt, acceptance of an offer or promise”

71. ‘Promising, offering or giving’ is transposed in Section 336, paragraph 2, by use of the words “gives or promises”. ‘Request or receipt, acceptance of an offer or promise’ is transposed by use of the words “receives, requests or accepts the promise”.

“Advantage”

72. As already indicated before (see paragraph 16-18 above), the term ‘advantage’ is not used. Instead the provision on trading in influence uses the term “bribe”, which according to the Slovak authorities includes all kinds of financial and/or non-financial gifts, payments, other transactions of a property or non-property nature, and all kinds of services, to which there is no legal entitlement.

“Directly or indirectly”

73. The expression is transposed – as before with the provisions on bribery – by the words “directly or through an intermediary”. The provision on active trading in influence furthermore also mentions the giving, offering or promising of a bribe to a third party.

“For himself or herself or anyone else”

74. The replies to the questionnaire indicated that the expression is not transposed into the provision on trading in influence. After the evaluation visit, the Slovak authorities provided a corrected English translation of Section 336 CC which uses the expression “*for himself or for another person*” in paragraph 1 (in addition to paragraph 2 which contained already the expression “*or gives, offers or promises a bribe to a third party for the same reason*”).

Other elements

75. The Slovak authorities indicate that in order to apply the legal provisions on trading in influence it is not relevant if the influence was actually exerted or if it led to the intended result. However, although it is thus not a legal condition to prosecute the offender for trading in influence, it is important in practice to prove the offender’s intent to apply his/her influence. As indicated above, the person who accepts the bribe or promise of a bribe must be actually able to exert improper influence.

Sanctions

76. The sanction applicable to active trading in influence is up to 2 years’ imprisonment; for passive trading in influence this is up to 3 years’ imprisonment. Additional sanctions (see paragraph 25 above) may also be imposed when appropriate.

Statistics/case-law

77. Statistics made available to the GET signal 6 prosecutions in 2005 and 1 conviction in 2004.

Bribery of domestic arbitrators (Article 1 paragraphs 1 and 2, and Articles 2 and 3 of ETS 191)

78. The Slovak authorities claim that active and passive bribery of domestic arbitrators is covered by the provisions on bribery in connection with the procurement of a thing of general interest in Sections 329 and 333 CC (see paragraphs 10-27 above). They also claim that domestic arbitrators

are considered to be (domestic) public officials within the meaning of Section 128, paragraph 1 of the Criminal Code, which provides an exhaustive list of functions that fall within the definition of public officials (see, however, paragraph 109).

79. Other elements of the offence are transposed as described before in the paragraphs on bribery of domestic public officials (see paragraphs 10-27 above). The sanctions applicable to bribery of domestic arbitrators are the same as can be imposed for bribery of domestic public officials.
80. There have not been any court cases yet on bribery of domestic arbitrators.

Bribery of foreign arbitrators (Article 4 of ETS 191)

81. The Slovak authorities indicate that active and passive bribery of foreign arbitrators is covered (see, however, paragraph 109) both by the provisions on bribery of foreign public officials in international business transactions (Sections 330 and 334 CC, see paragraphs 33-47 above) and by the provisions on bribery under Sections 331 and 335 CC (i.e. bribery of *inter alia* members of foreign parliamentary assemblies, officials of international courts, see paragraphs 48-58 above). Foreign arbitrators are considered to be foreign public officials within the meaning of Section 128, paragraph 2, CC, for the purpose of applying the provisions on bribery of foreign public officials in international business transactions of 330 and 334 CC. As already outlined above, Section 128, paragraph 2, CC provides:

Section 128, paragraph 2

“Foreign public officials shall mean any person holding an office

(a) In the legislature, a judicial authority or a public administration authority of a foreign country including the head of State, or

(b) In a legal entity in which a foreign country exercises a decisive influence or in the international organisation established by States or another subject of public international law, if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies.

82. The Slovak authorities indicate that the provisions of Sections 331 and 335 CC on bribery of *inter alia* members of foreign parliamentary assemblies, officials of international courts are also considered to cover bribery of foreign arbitrators. Bribery of foreign arbitrators will be prosecuted as bribery of foreign public officials in international business transactions if the aim of the offence was to obtain or retain international business. It will be prosecuted under Sections 331 or 335 CC on bribery of *inter alia* members of foreign parliamentary assemblies, officials of international courts and others if the foreign arbitrator is a member of an international organisation. Other elements of the offence have already outlined above in the paragraphs on bribery of foreign public officials in international business transactions and those on bribery of *inter alia* members of foreign parliamentary assemblies, officials of international courts and others (see, however, paragraph 109).
83. The sanctions applicable to bribery of foreign arbitrators are the same as those which can be imposed on foreign public officials and/or members of foreign parliamentary assemblies.
84. There have not been any court cases in the Slovak Republic on bribery of foreign arbitrators.

Bribery of domestic jurors (Article 1 paragraph 3 and Article 5 of ETS 191)

85. The Slovak authorities claim that active and passive bribery of domestic jurors is covered (see, however, paragraph 109) by the provisions on bribery in connection to procurement of a thing of general interest in Sections 329 and 333 CC, as well as by the provisions on bribery in connection with a breach of duties in Sections 328 and 332 CC (see paragraphs 10-27 above). Further, the Slovak authorities indicate that domestic jurors are also considered to be public officials within the meaning of Section 128, paragraph 1 of the Criminal Code (see paragraph 12 above for the exhaustive list of functions that fall within the definition of public officials under Section 128, paragraph 1). Other elements of the offence are transposed as described above in the paragraphs on bribery of domestic public officials.
86. The sanctions applicable to bribery of domestic jurors are the same as can be imposed on domestic public officials.
87. There have not been any court cases on bribery of domestic jurors.

Bribery of foreign jurors (Article 6 of ETS 191)

88. The Slovak authorities have not made any declarations or reservations to Article 6 of the Additional Protocol to the Criminal Law Convention on Corruption. The Slovak authorities indicate that active and passive bribery of foreign jurors is covered (see, however, paragraph 109) by the provisions on bribery of foreign public officials in international business transactions (Sections 330 and 334 CC, see paragraphs 33-47 above) and by the provisions on bribery of *inter alia* members of foreign parliamentary assemblies, officials of international courts and others (Sections 331 and 335 CC, see paragraphs 48-58 above). Foreign jurors are considered to be foreign public officials within the meaning of Section 128, paragraph 2, CC, for the purpose of applying the provisions on bribery of foreign public officials in international business transactions of 330 and 334 CC. The provisions on bribery of *inter alia* members of foreign parliamentary assemblies, officials of international courts and others in Sections 331 and 335 CC are also considered to cover bribery of foreign jurors. In connection to these sanctions, the term is considered to cover foreign jurors. Other elements of the offence of bribery of foreign jurors are transposed as described before in the paragraphs on bribery of foreign public officials in international business transactions and those on bribery of *inter alia* members of foreign parliamentary assemblies and officials of international courts.
89. The sanctions applicable to bribery of foreign jurors are the same as those which can be imposed on foreign public officials and/or members of foreign parliamentary assemblies.
90. There have not been any court cases on bribery of foreign jurors.

Other questions

Participatory acts

91. Aiding and abetting the commission of all of the abovementioned criminal offences is criminalised under Section 21 CC.

Section 21

*“(1) An abettor to a completed or attempted criminal offence is any person, who wilfully
(a) devises and leads another person to commit a crime (organiser);*

- (b) *instigates another person to commit a crime (instigator);*
- (c) *asks another person to commit a crime (the person hiring);*
- (d) *helps to commit a crime, mainly by procuring the means, by removing the obstacles, by advising, by strengthening the determination, by promise of acting as an accessory after the facts (helper);*

(2) Unless this Act provides otherwise, criminal liability and culpability of abettors shall be governed by the same provisions as criminal liability and culpability of offenders.”

Jurisdiction

92. By virtue of Section 3 CC, Slovakia has established jurisdiction over all bribery and trading in influence offences committed (in whole or in part) on its territory (territorial jurisdiction):

Section 3

(1) This Act shall be applied to determine the criminal liability for a criminal offence committed on the territory of the Slovak Republic.

(2) The criminal offence shall be considered as having been committed on the territory of the Republic even if the offender:

- (a) Performed the action in whole or in part, on its territory, if the actual breach of or threat to an interest protected under this Act took place or was intended to take place, in whole or in part, outside of its territory, or*
- (b) Committed the act outside of the territory of the Slovak Republic, if the actual breach of or threat to an interest protected under this Act took place or was intended to take place, in whole or in part, outside of its territory.*

93. Sections 4, 5 and 6 CC determine the jurisdiction of Slovakia according to the nationality of the offender, and Section 7 - more generally - as it is prescribed in an international treaty which has been ratified and promulgated:

Section 4

This Act shall also be applied to determine the criminality of an act committed outside of the territory of the Slovak Republic by a Slovak national or a foreign national with permanent residency status in the Slovak Republic.

Section 5

This Act shall also be applied to determine the criminality of a particularly serious crime, if the act was committed outside of the territory of the Slovak Republic against a Slovak national, and if it carries criminal liability in the place of its commission, or if the place of its commission does not fall under any criminal jurisdiction.

Section 6

(1) This Act shall be applied to determine the criminality of an act committed outside the territory of the Slovak Republic by a foreign national who does not have permanent residency status in the Slovak Republic also where:

- (a) The act carries criminal liability under the law of the territory where it was committed,*
- (b) The offender was detained or arrested in the territory of the Slovak Republic, and*
- (c) Was not extradited to another State for prosecution.*

(2) However, the offender referred to in paragraph 1 may not receive a stricter punishment than that allowed under the law of the State on the territory of which the criminal offence was committed.”

Section 7 Jurisdiction according to international treaties

(1) This Act shall be used to determine the criminality also when it is prescribed by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

(2) Provisions of Sections 3 through 6 shall not apply if their use is prohibited by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic.

94. Slovakia has thus jurisdiction for crimes committed outside the country:
- by a Slovak national or a foreign national with permanent residency status in the Slovak Republic (Section 4);
 - against a Slovak national, if the act is a particularly serious crime (punishable by imprisonment for at least 8 years – Section 11 CC) and if it carries criminal liability in the place of its commission (Section 5);
 - by a foreign citizen who is not a permanent resident if the offender was detained or arrested in Slovakia and not extradited, and the criminal act was also an offence in the territory where it was committed (Section 6).

Statute of limitations

95. The statute of limitations is calculated on the basis of the level of punishment: 5 years when the offence is punishable by a maximum prison sentence of up to 3 years, 10 years when the maximum level of punishment is more than three years. The calculation starts with the committing of the offence and lapses with the initiation of criminal proceedings. The following are not taken into account for the calculation of the time limit: any period in which the offender could not be made to stand trial because of legal impediments, the period during which s/he stayed abroad with the intention to avoid criminal prosecution, the probationary period in case of a conditional stay of criminal prosecution, the period during which the bringing of the indictment was temporarily postponed or the period during which the criminal prosecution was interrupted.

Defences

96. A person who has committed active bribery (under Sections 332, 333, 334 or 335 CC) or active trading in influence (Section 336 CC) may seek recourse to a defence of 'effective regret'. To this end, Section 86, paragraph f, CC provides:

Section 86, paragraph f

“Punishability of the following criminal offences shall also become extinct (...)

(f) Active bribery pursuant to Section 332, 333, 334 or 335 and indirect corruption pursuant to Section 336, paragraph 2, if the offender provided or promised a bribe only because it was solicited, and s/he voluntarily and without delay reported this fact to a body active in criminal proceedings or to the Police Corps or, in case of members of the armed forces, also to their commanding officers or service body, and in case of sentenced and remand prisoners, with an officer of the Corps of Prison and Court Guard.”

97. The Slovak authorities indicate that this defence is only possible when (1) the bribe was solicited, (2) the offender voluntarily reported this fact to a body active in criminal proceedings and (3) this report was made without delay. Only when all three of these conditions have been fulfilled can an investigator propose that the offender will not be held criminally liable. This proposal is to be sent in writing to the prosecutor for consideration and approval. Criminal proceedings will not start after the decision has become final; if criminal proceedings have already started, they would be discontinued. Confiscation of the bribe would normally take place under Section 60 CC (on forfeiture as a penalty), but in cases like these, where the offender is not prosecuted or sentenced, Section 83 (on confiscation of a thing as a protective measure) would apply. Nevertheless, he/she can claim in separate proceedings for the return of the bribe/proceeds.
98. In addition, the Slovak authorities have indicated that Section 30, paragraph 3 CC also provides for an explicit exemption of liability for various corruption offences when this is part of covert investigations (controlled or simulated bribery etc.).

III. ANALYSIS

99. The GET understood that when the new Criminal Code (CC) entered into force on 1st January 2006, the introduction of amendments to the substantive provisions on corruption (and other) offences had been postponed to leave more time for wider consultation and careful consideration of the changes required. New provisions are thus planned to be adopted at the beginning of 2008 which would reportedly also take the views of academics and practitioners into account. Information made available after the visit suggests that a new draft of the Criminal Code is currently under preparation.
100. According to interlocutors met on site, the Slovak authorities have only been successful in prosecuting corruption offences since very recently, although the first significant anti-corruption measures date back to 1999. The positive results in terms of convictions appear to owe much to the use of special investigative techniques, especially simulated offences (controlled deliveries in the context of bribery), and the system of effective regret (both of which imply that one of the parties has refused to be involved in the perpetration of the crime and has collaborated with the authorities).
101. During the on-site visit, it was repeatedly stressed that the existence of a chain of specialist institutions and practitioners in the police, prosecution and judiciary (who are subjected to particular screening measures) has greatly reduced 'leaks' at the various stages of criminal proceedings (these 'leaks' were especially prevalent when corruption cases were handled by the authorities at local level, where they had taken place). The GET noted with interest the existence of a Special Court for Corruption and other Serious Crimes, which had reportedly led to an increase in the number of cases processed and a more harmonised approach in dealing with corruption cases. Although a significant number of cases have been successfully processed, the GET was advised that in general, only about 10% of corruption cases reported to, or suspected by the police, can ultimately be substantiated by the investigators (sufficient evidence gathered) and successfully prosecuted.
102. Turning to the legal framework for the criminalisation of corruption, the GET found that the provisions criminalising corruption are to a relatively large extent in line with the Criminal Law Convention on Corruption (ETS 173), and present a series of shortcomings in respect of the Additional Protocol (ETS 191). In the absence of court decisions regarding several types of offences (e.g. bribery involving foreign officials or officials of international organisations, trading in

influence, arbitrators and jurors), the following analysis is mainly based on an in-depth consideration of Slovak law.

103. The definition of the concept of “public official” provided for under Section 128 paragraph 1 CC is based on a long and limitative list of functions, but it also includes some international and foreign officials who are specifically addressed under paragraph 2. The GET noted that this could cause a lack of consistency between paragraph 1 and paragraph 2 of Section 128 CC since foreign officials are thus covered under different wordings. That said, it would seem that, in principle, the scope of the concept of public officials both under Section 128 paragraph 1 and paragraph 2 CC is broad enough and in line with that of Art. 1 paragraph a. of the Convention.
104. Whilst the wording used to refer to the passive side of corruption - receiving, requesting, accepting (of an undue advantage/bribe) - is generally in line with the Convention, the legal provision relating to the active side misses one of the three mirroring elements, namely the “offering” (of the undue advantage/bribe) under Section 332 paragraph 1 CC which covers active bribery in both the public and the private sector. All other active bribery offences contain the three elements. Some practitioners indicated that this omission could have been a mistake by the law makers. Other interlocutors indicated that this fact could also have been a deliberate choice, but they were unaware of possible reasons. Finally, some practitioners took the view that there was no real lacuna and the “offering” would be covered by “giving” and “promising”. The GET wishes to stress that it is important for the sake of consistency and clarity that all active bribery offences contain the same basic elements. Furthermore, the “offering” is a particularly important element in that it covers bribes which are proposed (but not accepted) and often leads to the actual “giving” or “promising” of an undue advantage (e.g. thus referring to situations where potential offenders “test” their interlocutor). Consequently, the GET recommends **to introduce the concept of “offering” (of an undue advantage) in Section 332 of the Criminal Code.**
105. Sections 328 CC (passive bribery in breach of duties) and 332 CC (active bribery in breach of duties) are a combination of different requirements of the Convention (ETS 173): they are both meant to implement the provisions on bribery in the public sector (Articles 2 and 3 of the Convention), but both suppose a breach of duties (which is found only in Articles 7 and 8 of the Convention concerning private sector corruption). Although the Slovak authorities stressed after the visit that, in principle, all public and private employees must be subject to strict duties which are part of their employment contract or ethical rules and which would automatically be infringed in case of corruption (therefore all cases would normally fall under these provisions), the on-site discussions have shown, however, that there is no unanimity on this issue; it is thus difficult to rely on this purely theoretical assumption. Furthermore, the GET noted that in the absence of a breach of duties, Sections 329 CC (passive bribery) and 333 CC (active bribery) apply only in connection with the “procurement of a thing of general interest”. The GET was told that these offences had been taken over from the earlier communist legislation and that the procurement concept was to be understood broadly (i.e. an activity performed in the common interest) and was not limited to tendering procedures, as the wording seems to imply¹⁰. The explanations provided on-site suggested that many situations would indeed be covered by either of these situations (bribery in breach of duties, “procurement of a thing of general interest”); however, the GET is convinced that, in practice, there could well be situations which do not involve a breach of duty nor the “procurement of a thing of general interest”. Such situations are likely not to be captured by the existing provisions. The GET also found that if both regimes are meant to cover a much broader scope of criminal acts than a strict reading of their respective wording would suggest, it could be

¹⁰ Section 131 CC defines a *thing of general interest* as “an interest that transcends the framework of individual rights and interests of individuals, and is important for the society”.

difficult in practice to distinguish between the two, which makes the legal framework unnecessarily complex for practitioners. Representatives of the Ministry of Justice agreed that there was room for improvement and that, furthermore, the incrimination of bribery could suffer from the fact that public and private sector bribery are criminalised by the same provisions, which have merged different requirements of the Convention; they acknowledged that a clearer distinction between public and private sector bribery could have been a better option. The GET therefore recommends **(i) to review Sections 328 and 332, as well as 329 and 333 of the Criminal Code in order to ensure that bribery in the public sector is criminalised also in situations which do not involve a breach of duty or the “procurement of a thing of general interest”, in line with the Criminal Law Convention on Corruption (ETS 173) and (ii) to consider, for the sake of clarity, criminalising bribery in the public and in the private sector in separate provisions, in conformity with the Convention.**

106. Section 336 CC, which criminalises trading in influence, covers various categories of persons – including in relation to bribery in the private sector, which goes beyond the requirements of the Convention – upon whom influence is to be exerted: paragraph 1 (passive side of trading in influence) refers to those mentioned in Sections 328, 329, 330 and 331 CC, whereas paragraph 2 (active side of trading in influence) refers to those mentioned in Sections 332 CC and 333 CC. The fact that some Sections are not listed – i.e. Section 334 (active bribery of foreign public officials in the context of international business transactions) and Section 335 (covering active bribery of – i.a – members of foreign parliamentary assemblies) could seem irrelevant at first glance because the categories of persons / officials concerned are mentioned under the other (mirroring) provisions of Section 330 and 331. The GET noted, however, that Section 336 could also be read in such a way that these categories of persons would only be covered in the situations contemplated under the provisions to which Section 336 refers. Indeed, if the intent of the drafters of the Criminal Code was to avoid redundancies, they could probably also have avoided the (over-)emphasis of Sections 328, 329, 332 and 333 CC which all cover (bribery of) “any person”. The GET believes that this needs clarification to avoid risks of misunderstanding or erroneous interpretations (e.g. the criminalisation of trading in influence being interpreted in such a way that it is prosecutable only in certain circumstances when it involves influence exerted over a foreign official). The Slovak authorities shared the doubts of the GET¹¹.
107. The GET was also doubtful whether Section 336 CC covers trading in influence in all instances “whether or not the influence is exerted or whether or not the supposed influence leads to the intended result” (as it is required by Art. 12 of the Criminal Law Convention). The discussions held on site suggested that in practice trading in influence would be prosecutable also where the persons supposed to exert his/her influence had no real influence or the influence was not exerted at all. However, there was no unanimity on this matter. The GET therefore recommends **to ensure that i) trading in influence is criminalised in respect of all categories of domestic and foreign public officials upon whom influence is exerted, irrespective of the context of the offence, and ii) cases of alleged influence and non-exerted influence are covered by domestic law.**
108. The criminalisation of bribery of foreign public officials, as provided for under Section 334 CC applies the broad definition of foreign public officials set out in Section 128 paragraph 1 CC;

¹¹ they indicated that although Section 336 CC does not refer to Sections 334 and 335 CC, there is no obstacle to prosecute a person who gives or promises to give a bribe to another person in order to make that person use his/her influence on the exercise of duties by foreign public officials referred to in Sections 334 and 335 CC. However, they added that the person giving or promising to give a bribe to another person in order to make that person use his/her influence over the foreign public official would be prosecuted as an organiser, instigator or accessory (in accordance with Section 21 CC on participatory acts), and not under Section 336 CC.

however, it is limited to situations where the aim of the bribe is to “obtain or maintain an undue advantage in an international business transaction”. Although it is likely that a number of cross-border corruption cases would involve business transactions, there are situations where this offence would not apply, in which case practitioners would turn to Section 335 CC (for the active side, and Section 331 CC for the passive side) which concern bribery of a *member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or to a person in a similar position*. As the Slovak authorities explained, the scope of Section 335 CC is in fact broader than it seems and is not limited to the types of officials enumerated due to the concept of “person in a similar position”. The GET had misgivings about this approach since the aforementioned concept is rather vague and needs to be read in conjunction with a very narrow list of specific categories of international officials and foreign parliamentarians. It is for instance doubtful whether the director of a foreign public hospital, for instance, would be considered as fulfilling functions equivalent to those of a foreign parliamentarian or member of an international organisation or judicial institution. Therefore, Section 335 CC does not offer a satisfactory alternative to (the narrow scope of) Section 334 CC. The GET wishes to stress that corruption in the international context is a crucial and problematic area. Therefore, it is important to ensure that international corruption (and not just domestic corruption) is subject to a sound legal framework. At present, it would appear that corruption of foreign public officials relies too much on the interpretation of a few words of Section 335 CC. Finally, the GET noted that Section 133 paragraph 2 CC, which provides for a separate definition of foreign officials, seems to limit the concept to persons who – without being government officials - are in a position to exert “important influence in State or in international relations because of their political, economic or social status”. This general provision could be read as excluding less senior officials, whereas the Criminal Law Convention on Corruption takes a broader approach and seeks to criminalise corruption of any foreign public official. The Slovak authorities underline that any official is, as such, in a position to exert an important influence in state or in international relations and therefore Section 133 paragraph 2 would cover all situations. The GET takes the view that it would therefore be useful to better reflect this in the provisions. In view of the above, the GET recommends **to take measures to ensure that the criminal offence of bribery of foreign public officials under Slovak law is fully in line with the requirements of Art. 5 of the Criminal Law Convention on Corruption (ETS 173)**.

109. As indicated in the descriptive part of this report, there are no specific provisions dealing with arbitrators and jurors. Domestic arbitrators (and jurors¹²) are dealt with under the general provisions on active and passive bribery under Sections 329 and 333 CC. According to the Slovak authorities the expression “procuring a thing of general interest” would also extend to the type of functions vested in arbitrators and jurors. Arbitrators and jurors are also considered as public officials in the meaning of Section 128 paragraph 1 CC (which covers i.a. “other persons holding an office in a body of public authority”). Under paragraph 2 of Sections 329 and 333 CC, corruption involving officials is an aggravating circumstance. Alternatively, in case of breach of duties, arbitrators and jurors would be covered by Sections 328 and 332 CC. As before with bribery of domestic public officials, the GET could envisage that there are certain tasks performed by domestic arbitrators which cannot be considered as “procuring a thing of general interest” or that would not necessarily involve a breach of duties, thus not being covered by either Sections 329 and 333 CC, or Sections 328 and 332 CC. Active and passive bribery of foreign arbitrators and jurors would be dealt with under the general provisions of Sections 330 and 334 CC (dealing with

¹² The Slovak Republic does not have a jury system but the Additional Protocol to the Criminal Law Convention on Corruption requires the criminalisation of corruption of jurors also in this kind of situation.

the active and passive bribery of foreign public officials in the context of international business transactions) as arbitrators and jurors are considered to be “person[s] holding an office (...) in the judicial authority (...) of a foreign country” under Section 128, paragraph 2 CC. Foreign arbitrators and jurors are also said to fall within the scope of Sections 331 and 335 CC (which cover i.a. members of foreign parliamentary assemblies, “officials of an international judicial institution”, judges or officials of an international, supranational, intergovernmental organisation or institution, and “a person in a similar position”). The GET found that this approach leaves much room for interpretation, especially as regards the applicability of the definitions of Section 128 CC to arbitrators and jurors. Furthermore, even a wide interpretation of the existing provisions would not always ensure that the criminalisation is broad enough, especially as regards foreign arbitrators and jurors outside the context of international business transactions or as regards foreign arbitrators and jurors who are not employed by an international judicial institution or international organisation (as such employment by an international body is not likely to be very common in practice). As regards this latter point, the Slovak authorities consider that the expression a “person in a similar position” of Section 331 and 335 CC would allow to cover arbitrators and jurors, but here too, the link to the categories of officials concerned is rather loose and this solution relies too much on interpretation (see also paragraph 108 above). The GET therefore recommends **i) to criminalise bribery of domestic arbitrators and jurors, ensuring that the nature of their functions is fully captured, in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); ii) to extend the provisions on bribery of foreign arbitrators and jurors beyond situations involving international business transactions or employment by an international judicial institution.**

110. As regards the coverage of members of foreign public assemblies, the definition of foreign public officials of Section 128 paragraph 2 (which is to be taken into account in conjunction with Sections 330 and 334 CC) seems broad enough as it covers “any person holding an office in the legislature, a judicial authority or a public administration authority of a foreign country”. However, as already noted, Sections 330 and 334 CC are limited to corruption in the context of international business transactions. The provisions of Sections 331 and 335 CC – which would apply alternatively in all other cases - use the wording “foreign parliamentary assemblies” and it is thus doubtful whether members of non-legislative assemblies in a foreign country would fall under those Sections, as is required by the broader concept of “members of public assemblies” used by Article 6 of the Convention (i.e. “any public assembly exercising legislative or administrative powers”). In this case, the GET agrees with the Slovak authorities that the expression “a person in a similar position” of Sections 331 and 335 CC could cover by analogy bribery involving members of non parliamentary foreign assemblies. This has not been tested yet in court and therefore it might still be appropriate to spell out more clearly in law, or at least in a guidance document, that Sections 331 and 335 CC cover bribery of members of any type of foreign assemblies. In view of the above considerations, the GET recommends **to examine the need to provide more explicitly for a broader concept of members of foreign assemblies in line with Article 6 of the Criminal Law Convention on Corruption (ETS 173), or at least to provide guidance on this matter in an appropriate manner.**
111. The sanctions provided for corruption offences seem to be effective, proportionate and dissuasive. With the current Criminal Code, their level was apparently increased and it was intended to vigorously prosecute corruption because this type of crime is considered to represent a particular social danger. When looking at the overall statistics for the years 2003 to 2006, it would appear that the Slovak authorities have managed to obtain a non negligible number of convictions (although all corruption-related provisions have not yet been tested). The highest sanction applied was 48 months imprisonment (one occurrence), the vast majority being between 4 and 24 months imprisonment. Most penalties (and all those for the year 2006) were suspended sentences.

112. The GET was informed that about 50% of cases leading to a conviction were triggered by the system of effective regrets established under Section 86 CC (which is applicable only to a briber who has been solicited)¹³. The GET had no reason to believe that this system had been used in an abusive way in practice. However, Section 86 remains silent about the outcome of the bribe/undue advantage when a person has voluntarily reported the offence to the authorities. Looking at the statistics on the types and levels of punishment imposed, it would appear that the deprivation of proceeds and instruments is applied only seldom (e.g. 40 convictions have been pronounced in 2006, forfeiture was applied only on two occasions). The Slovak authorities explained that usually the bribe is subject to confiscation but in a number of corruption cases, the person who has been solicited reported the offence before the payment and in fact acted as an “agent” as part of a controlled delivery operation using money coming from the police budget (that was returned to it after the operation).
113. The GET noted that Slovakia has jurisdiction for all corruption offences committed in whole or in part in its territory (Section 3 CC), but also those committed by a foreign national with permanent residency status in the Slovak Republic (Section 4 CC). In practice this second provision is probably broad enough to cover most situations where the offender is a public official or a member of a domestic public assembly who would not have Slovak citizenship (cf. Article 17 paragraph 1b of the Criminal Law Convention on Corruption). By virtue of Section 7 CC, the country has jurisdiction in all cases other than those provided for under Sections 3 to 5 CC “when it is prescribed by an international treaty ratified and promulgated in a manner defined by law, which is binding for the Slovak Republic”. The GET welcomes this solution which enables Slovakia to cover the various situations contemplated under Art. 17 paragraph 1c of the Convention (including cases where a foreign briber has committed abroad the offence against a Slovak official or employee). Considering that Section 7 CC refers to international instruments in general, the GET wishes to emphasise the importance of sufficient knowledge of these - including the Criminal Law Convention on Corruption and its Additional Protocol - on the side of Slovak practitioners.

IV. CONCLUSIONS

114. The main problem of Slovakia with the implementation of the Criminal Law Convention on Corruption (ETS 173) is that the domestic legal framework is complex and cumbersome. A series of shortcomings need to be addressed such as the coverage of bribery of public officials which is not broad enough and is limited – as regards domestic officials - to situations which involve a breach of duty or the “procurement of a thing of general interest”, trading in influence which appears to be criminalised in respect of categories of persons which are not clearly identified or which are left out of its scope of application (e.g. foreign public officials), and bribery of foreign public officials which is related to a limited number of persons or situations. Regarding the Additional Protocol to the Criminal Law Convention on Corruption, the Slovak legislation does not criminalise corruption of arbitrators and jurors in a satisfactory manner since the nature of their functions is not fully captured in the existing legislation. GRECO welcomes the Slovak authorities’ intention to review the current legal provisions on corruption. The legal framework in its complexity will clearly benefit from such a review. This would also provide a good opportunity to address the shortcomings and other lacunae identified in this report. The GET encourages Slovakia to proceed speedily with this reform.

¹³ Additional information provided after the visit seems to contradict this overall figure: in 2007, the General Prosecution Office prepared an analysis on the application of Section 86; it shows that the mechanism of “effective regret” was applied only in one case. In 6 other cases, which involved 12 persons, the provision on temporary suspension of indictment (Section 205 CCP) was applied.

115. In view of the above, GRECO addresses the following recommendations to the Slovak Republic:
- i. **to introduce the concept of “offering” (of an undue advantage) in Section 332 of the Criminal Code (paragraph 104);**
 - ii. **(i) to review Sections 328 and 332, as well as 329 and 333 of the Criminal Code in order to ensure that bribery in the public sector is criminalised also in situations which do not involve a breach of duty or the “procurement of a thing of general interest”, in line with the Criminal Law Convention on Corruption (ETS 173) and (ii) to consider, for the sake of clarity, criminalising bribery in the public and in the private sector in separate provisions, in conformity with the Convention (paragraph 105);**
 - iii. **to ensure that i) trading in influence is criminalised in respect of all categories of domestic and foreign public officials upon whom influence is exerted, irrespective of the context of the offence, and ii) cases of alleged influence and non-exerted influence are covered by domestic law (paragraph 107);**
 - iv. **to take measures to ensure that the criminal offence of bribery of foreign public officials under Slovak law is fully in line with the requirements of Art. 5 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 108);**
 - v. **i) to criminalise bribery of domestic arbitrators and jurors, ensuring that the nature of their functions is fully captured, in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); ii) to extend the provisions on bribery of foreign arbitrators and jurors beyond situations involving international business transactions or employment by an international judicial institution (paragraph 109);**
 - vi. **to examine the need to provide more explicitly for a broader concept of members of foreign assemblies in line with Article 6 of the Criminal Law Convention on Corruption (ETS 173), or at least to provide guidance on this matter in an appropriate manner (paragraph 110).**
116. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Slovak authorities to present a report on the implementation of the above-mentioned recommendations by 31 August 2009.
117. Finally, GRECO invites the authorities of Slovakia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.