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**PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)**

**TECHNICAL PAPER**

**ON THE COMPLIANCE OF THE RELEVANT ALBANIAN LEGISLATION  
WITH RECOMMENDATIONS OF 3rd ROUND GRECO EVALUATION  
CONCERNING CRIMINAL LIABILITY AND INCRIMINATIONS**

*Prepared by:*

**Mr. Bostjan Penko, Council of Europe Expert**  
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For any additional information please  
contact:

Corruption and Fraud Unit  
Economic Crime Division  
Directorate of Co-operation - DG-HL  
Council of Europe  
F-67075 Strasbourg Cedex FRANCE  
Tel +33 388 41 29 76/Fax +33 390 21 56 50  
Email: [lado.lalicic@coe.int](mailto:lado.lalicic@coe.int)  
Web: [www.coe.int/economiccrime](http://www.coe.int/economiccrime)

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## 1 INTRODUCTION/EXECUTIVE SUMMARY

I have been requested by the Council of Europe to prepare this Technical Paper and provide an opinion and advice on amendments to relevant Albanian legislation in order to comply with recommendations of the Third Round GRECO Evaluation concerning criminal liability and incriminations as stipulated in the Council of Europe Convention on Corruption. Views and opinions expressed in this work are personal, and do not represent official views or positions of the institutions I regularly work for in my country. This Technical Paper is an oversight of the accuracy of the draft amendments to the Criminal Code drafted with the aim of fulfilling recommendations in the GRECO Third Round Evaluation Report on Incriminations and an evaluation of implementation of the GRECO recommendations by the draft amendments. It has to be emphasized at this point that this oversight is limited to the oversight of the accuracy of the draft amendments and to the GRECO recommendations to Albania from the Third Evaluation Round Evaluation Report on Albania on Incriminations (ETS 173 and 191, GPC 2). The aim of the paper is to assess the level of compliance of the Albanian legislation with selected provisions of the Council of Europe Criminal Law Convention on Corruption.

In the Third Round Evaluation Report GRECO addresses the following recommendations to Albania:

- to take the legislative measures necessary to ensure that active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, as well as judges and officials of international courts, are explicitly criminalised in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 51);
- to take the necessary legislative measures in order to ensure that foreign jurors as well as domestic and foreign arbitrators are explicitly covered by the bribery provisions of the Criminal Code in conformity with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (paragraph 52);
- to increase the maximum penalties for bribery offences in the private sector (paragraph 55);
- to consider abolishing the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad and thus withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 56);
- to ensure jurisdiction over all offences of public and private sector bribery and trading in influence committed abroad (i) by Albanian nationals, Albanian public officials, or members of Albanian public assemblies; or (ii) involving Albanian public officials, members of Albanian public assemblies or officials of international

organizations, members of international parliamentary assemblies or judges/officials of international courts with Albanian citizenship (paragraph 57).

The findings of this report are that if amended according to the proposed amendments received, Albanian legislation will fulfill the recommendations of the GRECO Third Round Evaluation Report on Incriminations, with the exception of the question of jurisdiction over criminal acts committed abroad by Albanian citizens. In addition, this report recommends that the terms and meanings of “a person exercising public functions” and “high State officials” are clearly defined in legislation for the purposes of criminal law, although the absence of such definitions does not constitute non-compliance.

## **2 GENERAL COMMENTS**

The Albanian legal framework and proposed amendments to the Criminal code of the Republic of Albania for the incrimination of corruption comply with the requirements of the Criminal Law Convention on Corruption (ETS 173) in almost all aspects. Nevertheless it has to be emphasized once more that the analysis was limited to the draft amendments to the Criminal Code with the aspect to the recommendations of the GRECO Third Round Evaluation Report on Incriminations.

Albania has shown a serious will to adopt the standards established by the Convention. Some different, new legal concepts were adopted or are going to be adopted in Albanian legislation. Concept of foreign or international officials as required by the Convention are purposed in the amendments to the Criminal code of the Republic of Albania. Moreover, arbitrators and jurors, as addressed by the Additional Protocol to the Convention (ETS 191), are also covered by new bribery provisions. Available sanctions in respect of private sector bribery have been raised in comparison with those foreseen for public sector bribery.

If we try to generalize our findings concerning the level of compliance of Albanian legislation with scrutinized provisions of the Council of Europe Criminal Law Convention on Corruption, we can conclude that almost all GRECO recommendations were met. With the proposed amendments to the Criminal code Albania ensured that active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, as well as judges, and officials of international courts, is criminalized in accordance with Articles 5, 6, 9, 10, and 11 of the Criminal Law Convention on Corruption, it also took the necessary legislative measures in order to ensure that foreign jurors as well as domestic and foreign arbitrators are explicitly covered by the bribery provisions of the Criminal Code in conformity with the Additional Protocol to the Criminal Law Convention on Corruption. Albania is also willing to increase the maximum penalties for bribery offences in the private sector. However, the problem of the jurisdiction and requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad still exists.

Therefore, we can conclude that there have been great efforts done in Albania recently in order to bring their internal legislation in line with the above mentioned international treaty. Achieved harmonization on legislative level is already quite high and with the enactment of the proposed amendments to the Criminal Code of the Republic of Albania it will be almost complete. Since it was not the task within our mandate to review actual application of the laws and regulations of Albania we satisfied ourselves with the assessment of formal compliance and comparison of internal legal order with above mentioned international treaty.

### 3 COMPLIANCE OBSERVATIONS ON ARTICLE 1

#### **Article 1 ETS – Use of terms**

For the purposes of this Convention:

- a) "public official" shall be understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law;
- b) the term "judge" referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;
- c) in the case of proceedings involving a public official of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law;
- d) "legal person" shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

According to Amendments and additions to the Criminal Code of the Republic of Albania, and also as stated in the GRECO Report, Albanian criminal code does not include the term "public official". The relevant term does not appear in the Albanian bribery provisions, which refer instead to "a person exercising public functions, high state officials and locally elected persons".

Nevertheless, our analysis of relevant provisions shows that Albanian legislation is in line with Article 1 of the Criminal Law Convention on Corruption. As indicated by the Albanian authorities and as stated in GRECO report this concept (the definitions from Article one of the Convention) is to be interpreted on the basis of the legal theory/doctrine and in Albanian jurisprudence in a way that the concept of "a person exercising public functions" and of "high State officials" is interpreted broadly by courts to cover not only employees of public administration but every person performing any public functions, including for example, notaries, lawyers, or persons performing public functions on behalf of private companies with majority State ownership. It seems clear that all different aspects of "public officials" as already interpreted by courts in Albanian legal system correspond to definitions and use of terms as stated in Article 1 of the Criminal Law Convention on Corruption.

However one should also take into account our observations below dealing with further Convention provisions and their domestic counterparts.

**Article 2 ETS – Active bribery of domestic public officials**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

**Article 3 ETS – Passive bribery of domestic public officials**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

**Article 4 ETS – Bribery of members of domestic public assemblies**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

**Criminal code of the Republic of Albania**

**Section 244 CC: Active corruption of persons exercising public functions**

The direct or indirect proposal, offer, or giving, to a person exercising public functions, of any irregular benefit for him/herself or a third person in order to act or not act in relation to his/her duty, is punishable by a term of imprisonment of 6 months to 3 years and a fine of 300,000 to 1 million Albanian Leke (ALL).

**Section 259 CC: Passive corruption by persons exercising public functions**

Soliciting or taking, directly or indirectly, by a person exercising public functions, of any irregular benefit or promise for him/herself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in relation to his/her duty, is punishable by a term of imprisonment of two to eight years and by a fine of 500,000 to three million ALL.

**Section 245 CC: Active corruption of high State officials and of locally elected persons**

The direct or indirect proposal, offer, or giving, to high State officials or to a locally elected person, of any irregular benefit for him/herself or a third person in order to act or not act in relation to his/her duty, is punishable by a term of imprisonment of 1 to 5 years and with a fine of 500,000 to 2 million ALL.

**Section 260 CC: Passive corruption by high State officials or locally elected persons**

Soliciting or taking, directly or indirectly, by a high State official or a locally elected person, of any irregular benefit or of any such promise for him/herself or for a third person, or accepting an offer or promise deriving from an irregular benefit, in order to act or not act in relation to his/her duty, is punishable by a term of imprisonment of 4 to 12 years and a fine of 1 to 5 million ALL.

**Section 319 CC: Active corruption of judges, prosecutors and employees of the judicial bodies**

The direct or indirect proposal, offer, or giving to a judge, prosecutor, or employees of the judicial bodies of any irregular benefit for him/herself or a third person in order to act or not act, regarding his/her duty, is punishable by a term of imprisonment of 1 to 4 years and a fine of 400,000 to 2 million ALL.

**Section 319/a CC: Passive corruption of judges, prosecutors and employees of the judicial bodies**

Direct or indirect soliciting or taking, by a judge, prosecutor, or employees of the judicial bodies, of any irregular benefit or any such offer for him/herself or a third person, or accepting an offer or promise deriving from an irregular benefit in order to act or not act in relation to his/her duty, is punishable by a term of imprisonment of 3 to 10 years and a fine of 800,000 to 4 million ALL.

According to the GRECO report and as seen from our own analysis of relevant provisions of Criminal Code of the Republic of Albania, Articles 244, 245 and 319 of the Criminal Code establish the offence of active bribery and sections 259, 260 and 319/a the offence of passive bribery.

In case of active and passive bribery there are basic provisions as well as specific provisions for corruption of high State officials and locally elected persons and of judges, prosecutors, and employees of the judicial bodies, where specific provisions contain exactly the same elements as the basic ones but provide for more severe sanctions.

This type of legal wording, where basic provisions cover all types of persons exercising public function and specific provisions deal only with high State officials, locally elected persons, and judges, prosecutors and employees of the judicial bodies can be misleading at first sight. The reason for that can be found in a concept of "a person exercising public functions" and in a concept of "high State officials". Both are not defined by law. Although local authorities stated that this concept has been clearly established on the basis of legal theory/doctrine and of jurisprudence, the lack of a clear legal definition could still represent a problem. In theory we can imagine a paradox in which a person would neither be high State official nor a locally elected person, but still in the position of political and decision making power greater than for example locally elected person. If we have in mind that legal theory in criminal law does not tolerate any type of argumentation which would extend the boundaries of

criminal law (ban of analogia iuris and analogia legis) this could mean that this type of a person in a position of big political and decision making power and influence still couldn't be characterized as high State official. Nevertheless as stated in GRECO report and by local authorities the concept of "high State officials" – which entails more severe sanctions for bribery offences – has been clarified by several Supreme Court decisions, and because of that, this problem is more theoretical than practical. But still, it has to be emphasized that in our opinion better and legally entirely correct procedure would be to define the terms and meanings of "a person exercising public functions" and "high State officials",... for the purposes of criminal law. It is not negligible that the term "high State official" still had to be clarified in several occasions by the Supreme Court decisions.

Legal wording and concepts of relevant Criminal Code provisions which use the words "proposal", "offer" and "giving" in the case of active bribery and "soliciting or taking ... of any irregular benefit or of any such promise" in the case of passive bribery are legally correct and fulfil the requirements of relevant articles of the Criminal Law Convention on Corruption. The same holds also for the concept of "undue advantage" where concept is transposed by reference to "any irregular benefit" in the penal provisions concerning active and passive bribery. Although Albanian legislation does not use the same terms and there are discrepancies in terms, we can conclude that Albanian legislation is in accordance with the spirit of the Criminal Law Convention on Corruption. In addition Albanian legislation also expressly covers positive acts and omissions.

Our analysis of relevant provision shows that Albanian legislation is in line with the content of Article 2, 3 and 4 of the Criminal Law Convention on Corruption. Albanian legislation covers Active and Passive bribery of domestic public officials adequately.

## 5 COMPLIANCE OBSERVATIONS ON ARTICLES 5-6 AND 9-11

### **Article 5 ETS – Bribery of foreign public officials**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

### **Article 6 ETS – Bribery of members of foreign public assemblies**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

### **Article 9 – Bribery of officials of international organisations**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning



of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

**Article 10 – Bribery of members of international parliamentary assemblies**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

**Article 11 – Bribery of judges and officials of international courts**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

**Criminal code of the Republic of Albania and proposed amendments to the Criminal code of the Republic of Albania**

**Article 244/a CC: Active corruption of foreign public officials**

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons, to a foreign public official, employee of a public international organisation, member of a foreign public assembly, or member of an international parliamentary assembly to perform or not to perform an action contrary to his duty or function is punishable by imprisonment of from six months to three years and with a fine of from three hundred thousand to three million lek”.

**Article 245 CC: Active corruption of the high state officials and local elected representatives**

The direct or indirect proposal, offer, or giving, to high state officials or to a locally elected person, of any irregular benefit for himself or a third person in order to act or not act in relation to his duty, is punished by imprisonment from one up to five years, and a fine from 500 000 to two million Lek.

**Article 257/a CC: Refusal for the declaration, non-declaration, hiding or false declaration of elected persons and public employees**

Refusal for declaration or non-declaration of assets of the elected persons or of the public employees or of any other person who has the legal obligation to make a declaration in accordance with the law, when previously administrative measures have been taken, constitutes a penal contravention and is punished by fine or imprisonment up to six months. Hiding or false declaration of assets of the elected persons or of the public employees is punished by fine or imprisonment up to three years.

**Article 259/a CC: Passive corruption of foreign public employees**

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such a promise, for oneself or other persons, or accepting an offer or promise arising from the

irregular benefit, by a foreign public employee, employee of a public international organisation, member of a foreign public assembly, or member of an international parliamentary assembly to perform or not to perform an action related to his duty or function is punishable with imprisonment of from two to eight years and a fine from five hundred thousand to three million lek”.

**Article 319/a CC: Active corruption of a judge or official of international courts**

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons, to a judge or official of international courts, to perform or not to perform an action related to his duty or function is punishable by imprisonment of from one year to four years and a fine of from four hundred thousand to two million lek.

**Article 319/b CC: Active corruption of a local and foreign arbitrator**

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons to a local or foreign arbitrator to perform or not to perform an action related to his duty or function is punishable by imprisonment of from one year to four years and by a fine of from four hundred thousand to two million lek.

**Article 319/c CC: Active corruption of a member of a foreign jury**

Promising, proposing or granting, directly or indirectly, any kind of irregular benefit for oneself or other persons to a member of a foreign jury to perform or not to perform an action related to his duty or function is punishable by imprisonment of from one year to four years and by a fine of from four hundred thousand to two million lek”.

**Article 319/d CC: Passive corruption of a judge or official of international courts**

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such a promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit by a judge or official of an international court to perform or not to perform an action related to his duty or function is punishable by imprisonment of from three to ten years and by a fine from eight hundred thousand to four million lek.

**Article 319/dh CC: Passive corruption of a local and foreign arbitrator**

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or acceptance of an offer or promise arising from the irregular benefit, by a local or foreign arbitrator to perform or not to perform an action related to his duty or function is punishable by imprisonment of from three to ten years and by a fine of from eight hundred thousand to four million lek.

**Article 319/e CC: Passive corruption of a member of a foreign jury**

Asking for or receiving, directly or indirectly, any kind of irregular benefit or such promise, for oneself or other persons, or accepting an offer or promise arising from the irregular benefit by a member of a foreign jury to perform or not to perform an action related to his duty or function is punishable by imprisonment of from three to ten years by a fine of from eight hundred thousand to four million lek”.

As stated in the GRECO report at the time of producing of the report there was no explicit reference to foreign officials, officials of international organizations, members of international parliamentary assemblies and judges and officials of international courts in Albanian penal legislation. Today proposed amendments to the Criminal Code of the Republic of Albania cover all different aspects of this potential issue extensively in each individual Section and in accordance with Criminal Law Convention on Corruption.

Our analysis of the relevant amendments to the Criminal Code of the Republic of Albania confirms that proposed amendments implement the Article 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption adequately. We therefore strongly recommend the adoption of these amendments.

## 6 COMPLIANCE OBSERVATIONS ON ARTICLES 7-8

### **Article 7 – Active bribery in the private sector**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

### **Article 8 – Passive bribery in the private sector**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

## **Criminal code of the Republic of Albania**

### **Article 164/a CC: Active corruption in the private sector**

The direct or indirect promise, offer, or giving to a person, who exercises a management function in a commercial company or who works in any other position in the private sector, of any irregular benefit for himself or a third person, in order to act or in order to fail to act, contrary to his duty, is a criminal contravention and is punished with a prison term of three months up to two (three) years and a fine from 200,000 to one million Lek.

### **Article 164/b CC: Passive corruption in the private sector**

Direct or indirect soliciting or taking of any irregular benefit or of any such promise, for himself or a third person, or accepting an offer or a promise that follows from the

irregular benefit, of the person that exercises a management function or works in whatever position in the private sector, with the purpose to act or not to act contrary to his duty or function, is sentenced with imprisonment term of six months up to three (eight) years and a fine from 300,000 to three million Lek.

The Albanian legislation related to implementation of Articles 7 and 8 of Criminal Law Convention on Corruption, covers active and passive bribery in the private sector adequately. The elements described under bribery of domestic public officials also apply to bribery in the private sector. The concept of “persons who direct private sector entities” is transposed into Criminal Code of the Republic of Albania by use of the words “a person who exercises a management function in a commercial company” and the concept of “persons who work for, in any capacity, private sector entities” is adequately substituted with the wording “a person who works in any other position in the private sector”. The concepts of terms “in the course of business activity” and “in breach of duties” are transposed into Criminal Code of the Republic of Albania by the use of words “in order to act or to fail to act/with the purpose of acting or failing to act contrary to his/her duty”. As already stated in the GRECO Report specific element “in the course of business activity” is not reflected in the Albanian Criminal Code. However the absence of this element doesn’t need to be regarded as a shortcoming in relation to the standards established by the Convention.

Therefore, we can conclude that Albanian legislation adequately addresses the requirements of Article 7 and 8, and is compatible with these standards of the Criminal Law Convention on Corruption.

## 7 COMPLIANCE OBSERVATIONS ON ARTICLE 12

### **Article 12 – Trading in influence**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

### **Criminal code of the Republic of Albania**

#### **Article 245/1 CC: The exercising of unlawful influence on public officials**

The direct or indirect proposal, offer, or giving an irregular benefit, for himself or a third person, to the person who promises and guarantees that he is able to exercise illegal influence on the accomplishment of the duties and on taking of decisions by the Albanian or foreign public functionaries, no matter whether the influence has been

actually exercised or not and no matter whether the desirable consequences have occurred or not, is punished with a prison term from six months up to two years and a fine from 300 000 to one million Lek.

The direct or indirect soliciting, receiving, or accepting whatever irregular benefit for oneself or a third person, by promising and confirming the ability to exercise illegal influence on the accomplishment of the duties and on adoption of decisions by the Albanian or foreign public functionaries, no matter whether the influence has been actually exercised or not and no matter whether the desirable consequences have occurred or not, is punished with a prison term from six months up to four years and a fine from 500 000 to two million Lek.

Trading in influence is criminalised in the Criminal Code of the Republic of Albania in its active and passive form. Relevant Criminal Code provisions are legally correct and close to the wording of Article 12 of the Criminal Law Convention on Corruption. However, the term “illegal influence” could indeed be interpreted differently (narrower) than the term “improper influence” as employed by Article 12 of the Criminal Law Convention on Corruption.

Yet the authorities, relating to this issue and referring to several court decisions, including the Supreme Court stated that this kind of legal wording does not represent any kind of departure from the Criminal Law Convention on Corruption provisions. herefore, we can conclude that the existing Albanian legislation adequately addresses the requirements of Article 12.

## 8 COMPLIANCE OBSERVATIONS ON ARTICLE 17

### **Article 17 – Jurisdiction**

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:

- a) the offence is committed in whole or in part in its territory;
- b) the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;
- c) the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.

2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.

3 If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another

Party, solely on the basis of his nationality, after a request for extradition.  
4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

As already mentioned in the GRECO report and regrettably also after taking into the account the proposed amendments to the Criminal Code of the Republic of Albania some critical issues concerning the jurisdiction still remain unanswered.

The question of jurisdiction on criminal acts committed abroad by Albanian citizens is still unresolved. Article 6, paragraph 2 of the Criminal Code of the Republic of Albania provides that the Albanian criminal law is to be applied (principle of nationality) under the condition of dual criminality, and Albania has made a reservation to the Convention with this respect. Albanian citizens can only be prosecuted for corruption offences committed abroad if the offence is punishable in the foreign State as well. This requirement of dual criminality is very real obstacle to the prosecution of corruption offences committed abroad in the environment of possible legal vacua abroad (in relation to the Convention requirements) and it weakens the possibility to prosecute and punish corruption.

Therefore, we can conclude that Albanian legislation at this point fails to fully address the requirements of Article 17 of Criminal Law Convention on Corruption. Also GRECO recommendations were not fulfilled with this respect.

## 9 COMPLIANCE OBSERVATIONS ON ARTICLE 19

### **Article 19 – Sanctions and measures**

1 Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.

As stated already in GRECO report sanctions available for bribery offences committed in the public sector – up to 12 years of imprisonment – and for trading in influence offences – up to four years of imprisonment – under Albanian law appear to conform to the requirements relating to effectiveness, proportionality and dissuasiveness established under Article 19, paragraph 1 of the Convention.

By the proposed amendments to the Criminal code of the Republic of Albania (Article 164/a and Article 164/a) which raise available maximum penalties with respect to private sector bribery the requirements relating to effectiveness, proportionality and dissuasiveness established under Article 19 are met also in this extent. For Article 164/a CC: Active corruption in the private sector available maximum penalty was risen from two to three years of imprisonment, and in the case of Article 164/b CC: Passive corruption in the private sector available maximum penalty was risen from three to eight years of imprisonment.

Therefore, we can conclude that Albanian legislation adequately address the requirements of Article 19 of the Criminal Law Convention on Corruption.