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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 26 March 2010

Public
Greco Eval III Rep (2009) 5E
Theme I

Third Evaluation Round

Evaluation Report on Turkey
Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 46th Plenary Meeting
(Strasbourg, 22-26 March 2010)

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I. INTRODUCTION

1. Turkey joined GRECO in 2004. GRECO adopted the Joint First and Second Round Evaluation Report (Greco Eval I Rep (2005) 3E) in respect of Turkey at its 27th Plenary Meeting (10 March 2006). The aforementioned Evaluation Report, as well as its corresponding Compliance Report, 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 (ETS 173), 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 Turkey on 19 and 20 October 2009, was composed of Mr Fabrizio GANDINI, Magistrate attached to Office I of the Directorate General of the Criminal Justice, Ministry of Justice (Italy) and Mr Kazimir ÅBERG, Judge, Court of Appeal in Stockholm (Sweden). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 6E, Theme I) as well as copies of relevant legislation.

4. The GET met with officials from the following governmental organisations: Ministry of Justice, Ankara Chief Prosecution Office, Ankara Court House (judges), Court of Cassation (judges and prosecutors), Prime Ministry Inspection Board and the Police. The GET also met with representatives of the Ankara Bar Association and the Union of Turkish Bar Association, Universities of Ankara, Istanbul and Konya (Law Faculties) and non-governmental organisations (TEPAV – Economic Policy Research Foundation of Turkey, TESEV – Turkish Economic and Social Studies Foundation, Transparency International).

5. The present report on Theme I of GRECO's Third Evaluation Round on Incriminations was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Turkish 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 Turkey 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 (2009) 5E - Theme II.

II. INCRIMINATIONS

Description of the situation

7. Turkey ratified the Criminal Law Convention on Corruption (ETS 173) on 29 March 2004 and the Convention entered into force in respect of Turkey on 1 July 2004 without any reservations. Turkey has not signed the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

8. The new Turkish Penal Code (hereafter: TPC) entered into force on 1 June 2005. It contains completely revised bribery provisions (in section 252 TPC) as compared to the regulations of the former Penal Code of 1926, including a specific provision on bribery of foreign and international public officials. The latest changes to corruption-related provisions of the TPC were introduced in 2009 and concerned, in particular, jurisdiction over bribery offences[1] and the special defence of "effective regret".[2]

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

9. The system of bribery offences under the Turkish criminal legislation is based on the distinction between simple and aggravated bribery. *Aggravated bribery* presupposes a breach of duty by the public official, see the definition of bribery in section 252, paragraph 3 TPC: "A bribe is defined as the securing of a benefit by a public officer by his/her agreeing with another to perform, or not to perform, a task in breach of the requirements of his/her duty." In contrast with the former Penal Code of 1926, the current legislation does not contain specific bribery provisions for those – *simple* – cases where a public official acts or omits to act without breach of duty.

10. As for *aggravated* cases, section 252, paragraph 1 TPC establishes the offences of *active* and *passive bribery* – which may be committed by giving or receiving a bribe or by agreement on a bribe by the parties. Paragraph 2 of the same section addresses bribery of certain categories of officials, providing for increased sanctions. Paragraph 4 extends the bribery offences to certain categories of persons who are not public officials; paragraph 5 criminalises bribery of foreign and international officials.

11. The authorities explained that in cases of *simple passive bribery*, the provisions on "extortion" (section 250 TPC) or "misuse of public duty" (section 257, paragraph 3 TPC) apply, as indicated in the "reasoning" underlying the relevant provisions, i.e. the explanatory notes of the legislator which must, according to the Court of Cassation, be taken into consideration by the courts for the interpretation of the law.[3] The Court of Cassation – whose decisions are not binding but are generally respected by other courts[4] – has confirmed these indications in several decisions.[5] According to the reasoning of section 252 TPC, "… in accordance with the criminal policy pursued, it is accepted that providing the benefit for making a public officer perform a legal task does not constitute the offence of bribery. Because, in these cases, the person who provides the benefit, is acting at least with a concern that his/her work will not be carried out in due time. For

[1] See paragraph 52 below.
[2] See paragraph 54 below.
[3] See Decision No. 2006/5-147, 2006/1492529 of 30.05.2006 of the General Assembly of the Criminal Chambers, based on the report of the Legal Commission of Parliament. This decision only refers to the explanatory notes of the TPC provisions and not to the explanatory notes of other laws.
[4] Only unifying decisions of the General Assembly of the Court of Cassation are strictly binding.
[5] See, for example, Decision No. 2005/18231E, 2008/1068 K of 21.02.2008 of the Court of Cassation for the Fifth Criminal Circuit; Decision No. 2007/8583 E, 2008/1059 of 21.02.2008; Decision No. 2005/18293, 2008/1276 of 28.02.2008.

this reason, in the case of securing the benefit which is designated for the purpose of having a legal task done, then it is necessary to admit that the offence of extortion occurs." Furthermore, the reasoning of section 257 TPC indicates that "…when a public officer secures benefit from other people in order to act in accordance with requirements of his/her duty, then as a rule extortion offence occurs, not bribery offence. However, if there is no concrete evidence that a person is compelled by another person to secure benefit, the act shall be considered as misuse of public duty."

12. As regards *simple active bribery*, the authorities explained that according to case law, it is covered by section 125, paragraph 3a) TPC which criminalises the "insult" of public officials. According to case law established by the Court of Cassation, only aggravated bribery is included in the definition of bribery in section 252, paragraph 3 TPC, but "as the act of offering a bribe is considered as an attack on the honour and dignity of the public official for the assurance of the just issue …, it constitutes an offence of insult against the public official which is established in section 125/3 TPC …".[6]

Section 252 TPC: Bribery

(1) Any public officer who receives a bribe shall be sentenced to a penalty of imprisonment for a term of four years to twelve years. The person giving the bribe shall be sentenced as if s/he were a public officer. Where the parties agree upon a bribe, they shall be sentenced as if the offence were completed.

(2) Where a person who receives a bribe, or agrees to such, is a person in a judicial duty, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed according to section one shall be increased by between one-third and one-half.

(3) A bribe is defined as the securing of a benefit by a public officer by his/her agreeing with another to perform, or not to perform, a task in breach of the requirements of his/her duty.

(4) Paragraph one shall also apply where, through a breach of duty, a benefit has been conferred upon a person acting on behalf of a professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporation or a foundation operating within the framework of such institutions or corporations), an association acting in the public interest, a co-operative, or a public joint stock corporation, in order to establish a legal relationship with such entities or in order to continue an existing legal relationship with such.

(5) The following actions shall be presumed to be bribery: offering, promising or giving a direct, or indirect, benefit, for the purpose of ensuring the performance or non-performance of a task, or obtaining or protecting an unjust benefit concerning international commercial activities, to an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties; a person working in an international organisation that has been established by another international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country.

[6] Decision No. 2007/12844 E, 2009/1635 K of 16.02.2009 of the Court of Cassation for the Fifth Criminal Circuit; see also, for example, Decision No. 2007/14342-2008/963 of 18.02.2008 and Decision No. 2008/1823-2008/2246 of 19.03.2008.

Section 250 TPC: Extortion

(1) Any public officer who compels another to make a promise or provide a benefit for him/herself or another by misusing the influence derived from his/her office shall be subject to a penalty of a term of imprisonment from five years to ten years.

(2) Any public officer who convinces another, by deception, to make a promise or provide a benefit for him/herself or another by misusing the influence derived from his/her office shall be subject to a penalty of a term of imprisonment from three to five years.

(3) Where the offence defined in paragraph two is committed by taking advantage of a person's mistake the sentence to be imposed shall be a penalty of imprisonment for a term of one to three years.

Section 257 TPC: Misuse of Public Duty

(1) Excluding any situation defined elsewhere as a separate offence in law, any public officer who secures an unjust financial gain for another or causes any loss to the public or an individual by acting contrary to his/her duty shall be sentenced to a penalty of imprisonment for a term of one to three years. (…)

(3) Any public officer who secures benefit for him/herself, or another, in return for fulfilling the requirements of his/her duty shall be sentenced according to paragraph one, provided such act does not constitute the offence of extortion.

Section 125 TPC: Insult

(1) Any person who attributes an act, or fact, to a person in a manner that may impugn that person's honour, dignity or prestige, or attacks someone's honour, dignity or prestige by swearing shall be sentenced to a penalty of imprisonment for a term of three months to two years or a judicial fine. To be culpable for an insult made in the absence of the victim, the act should be committed in the presence of at least three further people.

(…)

(3) Where the insult is committed:

a) against a public officer due to the performance of his/her public duty; (…)

the penalty to be imposed shall not be less than one year.

Elements of the offence

"Domestic public official"

13. The above-mentioned pertinent provisions employ the term "public officer" which is defined in section 6, paragraph 1c) TPC.[7] In addition, the qualified bribery provision of section 252, paragraph 2 TPC refers, *inter alia*, to the concept of "a person in a judicial duty" as defined in section 6, paragraph 1d) TPC. According to the authorities' explanations, the categories of

[7] In this report the term *public official* is used and is to be understood in the sense of "*public officer*".

persons addressed by section 252, paragraph 2 TPC – including "persons in a judicial duty", arbitrators, expert witnesses, public notaries and professional financial auditors – are sub-categories of the concept of public officials.

> ***Section 6 TPC: Definitions***
>
> *(1) In the implementation of the criminal law the terms used herein shall have the following meaning:*
>
> *(…)*
>
> *c) Public Officer: any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period.*
>
> *d) Person in a Judicial Duty: Public Prosecutors and Judges of the Courts of Cassation, Judicial, Administrative and Military Courts and Practising Lawyers. (…)*

14. The authorities stated that the concept of "public officer" was to be understood – on the basis of legal doctrine and of jurisprudence – as a person who participates in carrying out a service on behalf of the public and according to public law including, for example, elected representatives (such as village headmen, MPs, members of municipal or provincial councils), officials of ballot-box committees, witnesses, experts and translators/interpreters who are assigned by authorised public offices such as courts.

"Promising, offering or giving" (active bribery)

15. As regards aggravated active bribery, section 252, paragraph 1 TPC only uses the word "giving" but adds that "where the parties agree upon a bribe, they shall be sentenced as if the offence were completed". In contrast with section 213 of the former Penal Code of 1926, the (unilateral) promise and the offer are not mentioned. However, the authorities indicated that according to case law established by the Court of Cassation,[8] a promise or an offer which has been refused by the public official constitutes attempted bribery and is criminalised under section 252, paragraph 1 TPC in conjunction with section 35 TPC. Pursuant to section 35, paragraph 2 TPC, in cases of attempt the penalty is to be reduced by one-quarter to three-quarters.

> ***Section 35 TPC: Attempt***
>
> *(1) Any person who begins to directly act, with the appropriate means and with the intention of committing an offence, but has been unable to complete such offence due to circumstances beyond his/her control, shall be culpable for the attempt.*
>
> *(2) In a case of attempt, depending upon the seriousness of the damage and danger that accrued, an offender shall be sentenced to a penalty of imprisonment for a term of thirteen to twenty years where the offence committed requires a penalty of aggravated life imprisonment, or to a penalty of imprisonment for a term of nine years to fifteen years where the offence committed requires a penalty of life imprisonment. Otherwise the penalty shall be reduced by one-quarter to three-quarters.*

[8] Decision No. 2007/1416-2007/5069 of 20.06.2007 of the Court of Cassation for the Fifth Criminal Circuit; Decision No. 2008/3303-3093 of 01.04.2008; Decision No. 2008/3971-2009/8861 of 02.07.2009.

Section 36 TPC: Voluntary Abandonment

(1) An offender who voluntarily abandons the performance of the acts necessary to commit an offence, or who prevents the completion of an offence or its consequence, shall not be subject to a penalty for the attempt. However, where the completed part of an action constitutes an offence, s/he shall be subject to a penalty for the completed part of the act.

16. Concerning simple active bribery, the TPC does not contain any specific provisions. The authorities explained that according to case law established by the Court of Cassation, promising and offering a bribe are covered by the "insult" offence (section 125, paragraph 3a TPC).[9] They stated, furthermore, that according to legal doctrine, if the bribe is actually handed over to the public official, the latter is to be punished for "misuse of public duty" and the bribe-giver for participation in "misuse of public duty" (section 257, paragraph 3 TPC in conjunction with sections 38/39 TPC). There is no case law/court decision confirming this explanation.

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

17. As regards aggravated passive bribery, section 252, paragraph 1 TPC only uses the word "receives" but adds that "where the parties agree upon a bribe, they shall be sentenced as if the offence were completed". The authorities affirmed that in line with the above-mentioned decision of the Court of Cassation of 01.04.2008, attempts at passive bribery are covered under section 252, paragraph 1 TPC in conjunction with section 35 TPC, and the request for an advantage by a public official – which has been refused by the bribee – constitutes such an attempt.

18. Concerning cases of simple passive bribery, the TPC does not contain any specific provisions. Requests of a compelling character are covered by the provisions on "extortion" (section 250 TPC). The authorities indicated that according to legal doctrine, in cases where such a request is refused, it constitutes attempted "extortion" and is criminalised under section 250 TPC in conjunction with section 35 TPC. The pertinent provision on "misuse of public duty" (section 257, paragraph 3 TPC) covers instances where an official "secures" financial benefit, i.e. where he receives and/or accepts it. Concerning the acceptance of an offer or a promise which does not materialise, the authorities referred to legal doctrine according to which such instances constitute attempted "misuse of public duty" (section 257, paragraph 3 TPC in conjunction with section 35 TPC)

"Any undue advantage"

19. The definition of aggravated – active or passive – bribery in section 252, paragraph 3 TPC employs the term "benefit"; the element "undue" is not transposed. The authorities explained that the definition of the concept of benefit is not provided by the law but is left to academics and practitioners, and according to legal theory this concept should be interpreted in an extensive manner, including both material and immaterial advantages (e.g. of a sexual nature, being lodged in a luxury hotel); there is no threshold; the amount of the advantage does not matter. The authorities indicated that the only exception to this rule is Article 3 of Law No. 3628, according to which gifts in the context of international relations can be accepted, but if the gift exceeds a certain value (more than ten monthly minimum wages), the gift has to be submitted to the authorities; gifts below this value still have to be reported to the Ethics Council.

[9] Decision No. 2007/12844 E, 2009/1635 K of 16.02.2009 of the Court of Cassation for the Fifth Criminal Circuit; see also, for example, Decision No. 2007/14342-2008/963 of 18.02.2008 and Decision No. 2008/1823-2008/2246 of 19.03.2008.

20. As concerns simple active bribery, section 125 TPC does not refer to the concept of advantage at all. Regarding simple passive bribery, the "extortion" provisions in section 250 TPC and the "misuse of public duty" provision in section 257, paragraph 3 TPC employ the same term ("benefit") as the bribery provisions.

"Directly or indirectly"

21. Neither the provisions on aggravated active and passive bribery nor the provisions on "extortion", "misuse of public duty" and "insult" specify whether the offence could be committed directly or indirectly, in contrast with the bribery provisions of the former Penal Code. The authorities indicated that according to academics, both direct and indirect requests or offers and their acceptance by the other party are sufficient to constitute bribery offences.

"For himself or herself or for anyone else"

22. Contrary to the former Penal Code, the terms "for himself or herself or for anyone else" are not mentioned explicitly in the relevant provisions of the new TPC. However, the authorities made reference to legal theory according to which the advantage can be provided to the public official him/herself or to another person, because the legislator saw no need to regulate this detail and the general provisions on participation apply.

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

23. Section 252 TPC expressly covers both positive – illegal – acts and omissions, see paragraph 3: "… the securing of a benefit by a public officer by his/her agreeing with another to perform, or not to perform, a task in breach of the requirements of his/her duty." The authorities explained that the "duty" in the meaning of this provision is defined by the relevant rules (i.e. laws, bye-laws, orders or administrative traditions) governing the institution of which the official is in charge. Concerning acts or omissions which fall wholly or partially outside the official's competence, they referred to section 255 TPC.

> ***Section 255 TPC: Securing a Benefit for a Task outside the Scope of Authority***
>
> *(1) Any public officer who secures a benefit by giving the impression that s/he is able to perform a task, either by him/herself or through another, which is outside the scope of his/her duty and is unauthorised shall be sentenced to a penalty of imprisonment for a term of one year to five years and a judicial fine.*

24. As regards simple active bribery, section 125 TPC does not refer to the concept of acting or refraining from acting in the exercise of the official's functions at all. Concerning simple passive bribery, the "extortion" provisions in section 250 TPC employ the words "by misusing the influence derived from his/her office", and the "misuse of public duty" provision in section 257, paragraph 3 TPC uses the terms "in return for fulfilling the requirements of his/her duty". According to the reasoning of the relevant provisions, sections 250 and 257, paragraph 3 TPC cover both acts and omissions by a public official.

"Committed intentionally"

25. Both active and passive bribery can only be committed with intention, in accordance with the general provisions on intent in section 21 TPC: "The existence of a criminal offence depends upon the presence of intent" (paragraph 1). In cases of only probable intent, i.e. when the perpetrator "conducts an act while foreseeing that the elements in the legal definition of an offence may occur", the penalty is to be reduced by one-third to one-half (paragraph 2).

Sanctions

26. Aggravated active and passive bribery – implying a breach of duty by the public official – is punishable by from 4 to 12 years of imprisonment. If the bribe-taker is "a person in a judicial duty", an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed is increased by one third to one half. It is to be recalled that only the giving and receiving of a bribe, as well as the agreement upon a bribe, constitute completed offences of aggravated bribery. By contrast, according to the authorities, offering, promising and requesting are punishable as attempted bribery. Pursuant to section 35 TPC, in cases of attempt the penalty is reduced by one-quarter to three-quarters.

27. As regards cases of simple active bribery – implying a legal act or omission by the public official –, "insult" offences committed against public officials carry a prison sentence of 1 to 2 years. Concerning simple passive bribery, "extortion" offences carry a prison sentence of 5 to 10 years in the case of compulsion and 3 to 5 years in the case of deception (1 to 3 years if committed by taking advantage of a person's mistake); "misuse of public duty" offences carry a prison sentence of 1 to 3 years.

28. Similar sanctions are available for other comparable criminal offences such as "fraud during a tender" (section 235 TPC), "fraud during the discharge of contractual obligations" (section 236 TPC) or "embezzlement" (section 247 TPC).

29. According to section 61 TPC, the court determines the punishment in consideration of the following factors: the manner in which the offence was committed; the means used to commit it; the time and place where the offence was committed; the importance and value of the subject of the offence; the gravity of the damage or danger; the degree of fault relating to the intent or recklessness and the object and motives of the offender. If the offence is committed only with probable intent (i.e. the perpetrator conducts an act while foreseeing that the elements in the legal definition of an offence may occur), the penalty is to be reduced by one-third to one-half.[10] In cases of attempt, the penalty is reduced by one-quarter to three-quarters.[11] The penalty to be imposed on aiders is to be reduced by one-half.[12] Furthermore, the court reduces the punishment by up to one-sixth when there are grounds for discretionary mitigation, taking into account the background, social relations, the behaviour of the offender after the commission of the offence and during the trial period, and the potential effects of the penalty on the future of the offender.[13]

30. In addition to the above-mentioned punishments, the security measure "deprivation of exercising certain rights" prohibits public officials having committed bribery from becoming an MP or undertaking employment as, or in the service of, an appointed or elected public officer within the administration of the State, a province, municipality or village, or institution or entity under their

[10] Section 21 TPC.
[11] Section 35 TPC.
[12] Section 39 TPC.
[13] Section 62 TPC.

control or supervision; from voting or being elected and exercising other political rights; from acting as a guardian or being appointed in the role of guardianship and trustee; from being the administrator or inspector of a legal entity namely, foundation, association, trade union, company, cooperative or political party; and from conducting any profession or trade, which is subject to the permission of a professional organisation (which is in the nature of a public institution or organisation), under his/her own responsibility as a professional or a tradesman (see section 53, paragraph 1 TPC). Generally, this prohibition is effective until the completion of the term of imprisonment; however, where a sentence of imprisonment has been imposed for an offence related to the abuse of the rights or authority defined in paragraph 1, the offender is prohibited from exercising such rights for a period of one-half to two times the length of imprisonment imposed; this is to come into effect after the prison term is served.

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

31. The authorities indicated that members of domestic public assemblies are covered by sections 252 TPC which criminalises aggravated active and passive corruption involving a "public officer", as defined by section 6, paragraph 1c) TPC, i.e. "any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period". As regards simple active and passive bribery, the provisions on "insult" against a public officer (section 125, paragraph 3a) TPC), "extortion" (section 250 TPC) and "misuse of public duty" (section 257, paragraph 3 TPC) also refer to the concept of "public officer". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of domestic public assemblies. The authorities quoted several decisions of the Court of Cassation and of a court of appeal concerning bribery of, *inter alia*, members of municipal councils and of the permanent committee of municipality.

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

32. Bribery of foreign public officials is regulated in the specific provision of section 252 TPC (paragraph 5) – which is intended to adjust national legislation to the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – but only as regards (simple or aggravated) active bribery within the context of international commercial activities. By contrast, active bribery out of such a context and passive bribery are not covered. The authorities explained that section 252, paragraph 5 TPC is autonomous in the sense that the general requirements of domestic bribery provisions do not apply to bribery of foreign public officials. This provision is more detailed than the general bribery provisions of paragraphs 1 to 4 in that it expressly includes the offer, promise or giving of an advantage, as well as the concepts of "unjust benefit" and of indirect commission of the offence. The concept of "foreign public official" is transposed into "an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties, (…), or any other person performing a duty having an international character in a foreign country". The applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. There is no case law/court decision concerning bribery of foreign public officials.

Section 252 TPC: Bribery

(…) (5) The following actions shall be presumed to be bribery: offering, promising or giving a direct, or indirect, benefit, for the purpose of ensuring the performance or non-performance of a task, or obtaining or protecting an unjust benefit concerning international commercial activities, to an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties; a person working in an international organisation that has been established by another international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country.

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

33. According to the authorities, bribery of members of foreign public assemblies is covered by section 252, paragraph 5 TPC which includes the concept of "an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties, (…) , or any other person performing a duty having an international character in a foreign country". However, this provision only applies to cases of (simple or aggravated) active bribery within the context of international commercial activities. The elements of the offence detailed under bribery of foreign public officials and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of foreign public assemblies. There is no case law/court decision concerning bribery of members of foreign public assemblies.

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

34. Under section 252, paragraph 4 TPC the general bribery provision of paragraph 1 also applies to certain types of entities acting in the private sector such as public joint stock companies and private sector companies under partial or total public ownership. The authorities explained that this provision addresses both active and passive bribery of persons acting on behalf of such entities.

Section 252 TPC: Bribery

(…) (4) Paragraph one shall also apply where, through a breach of duty, a benefit has been conferred upon a person acting on behalf of a professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporation or a foundation operating within the framework of such institutions or corporations), an association acting in the public interest, a co-operative, or a public joint stock corporation, in order to establish a legal relationship with such entities or in order to continue an existing legal relationship with such.

Elements of the offence

35. The elements described under bribery of domestic public officials also apply to section 252, paragraph 4 TPC in accordance with the particular elements detailed below – except for certain types of corrupt behaviour: section 252, paragraph 4 TPC requires that a benefit has been

"conferred" on the bribee, in contrast with the general bribery provision of paragraph 1 which also includes cases where a benefit has been agreed upon by the parties but has not been given. According to the authorities, however, cases where a benefit has been promised or offered but not given, or where a promise or offer has been accepted, constitute attempted bribery, punishable under section 252, paragraph 4 TPC in conjunction with section 35 TPC.

"Persons who direct or work for, in any capacity, private sector entities"

36. Section 252, paragraph 4 TPC uses the words "a person acting on behalf of a professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporation or a foundation operating within the framework of such institutions or corporations), an association acting in the public interest, a co-operative, or a public joint stock corporation".

"In the course of business activity"; "…in breach of duties"

37. Section 252, paragraph 4 TPC does not expressly require that the bribery must occur in the course of business activity, but it must be committed "through a breach of duty" by the person acting on behalf of the private sector entity. Moreover, this provision requires that the advantage has been transferred to the entity "in order to establish a legal relationship with such entities or in order to continue an existing legal relationship with such".

Sanctions

38. The applicable sanctions detailed under bribery of domestic public officials also apply to offences falling under the scope of section 252, paragraph 4 TPC.

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

39. Bribery of officials of international organisations is regulated by section 252, paragraph 5 TPC (see paragraph 32 above), which includes the concept of "a person working in an international organisation that has been established by another international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country". The authorities indicated to the GET that this definition is broad enough to also cover contracted employees, seconded personnel and persons carrying out functions corresponding to those performed by public officials. However, section 252, paragraph 5 TPC only applies to cases of (simple or aggravated) active bribery within the context of international commercial activities. By contrast, active bribery out of such a context and passive bribery are not covered. The elements of the offence detailed under bribery of foreign public officials and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international organisations. There is no case law/court decision concerning bribery of officials of international organisations.

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

40. The authorities indicated that bribery of members of international parliamentary assemblies is covered by section 252, paragraph 5 TPC (see paragraph 32 above), but only as regards (simple or aggravated) active bribery within the context of international commercial activities. The elements of the offence detailed under bribery of foreign public officials and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international parliamentary assemblies. There is no case law/court decision concerning bribery of officials of international parliamentary assemblies.

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

41. The authorities indicated that bribery of judges and officials of international courts is criminalised under section 252, paragraph 5 TPC (see paragraph 32 above), but only as regards (simple or aggravated) active bribery within the context of international commercial activities. The elements of the offence detailed under bribery of foreign public officials and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of judges and officials of international courts. There is no case law/court decision concerning bribery of judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

42. According to the authorities, trading in influence is criminalised in section 158, paragraph 2 TPC, but only in its passive form. Section 158 TPC addresses qualified forms of "theft by deception".

> ***Section 158 TPC: Qualified Theft by Deception***
>
> *(1) Where the offence of theft by deception is committed by (…), the offender shall be sentenced to a penalty of imprisonment for a term of two to seven years and a judicial fine of up to five thousand days.*
> *(2) Any person who receives gain from another by representing that s/he has a relationship with the public authorities and is respected by them, and deceiving such person by promising that his/her difficulty will be resolved, shall be sentenced according to the provisions of the above paragraph.*

Elements of the offence

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

43. This concept is implemented in section 158, paragraph 2 TPC by use of the words "by representing that s/he has a relationship with the public authorities and is respected by them, and deceiving such person by promising that his/her difficulty will be resolved". The authorities affirmed that it is not relevant whether the influence was actually exerted or if it led to the intended result. It is to be noted, however, that the offence requires a deception by the influence peddler on his/her ability to exert influence. The Court of Cassation[14] stated in this regard that "the fraudulent actions must be deceptive for the offence of fraud to occur" and that the deceptive element is absent if the deceptive action is noticed immediately by the other person. The term "improper" is not transposed and the provision of section 158, paragraph 2 TPC makes no difference as to whether the (intended or real) acts or omissions by the influence peddler are legal or illegal.

Other constitutive elements

44. The element "undue advantage" is transposed into "gain". The authorities indicated that this term is to be understood in the same, broad manner as the term "benefit" employed in the bribery provisions, thus covering both material and immaterial advantage. Only the receipt of an

[14] Decision No. 2007/5434-6343 E/k. of 04.10.2007 of the Court of Cassation for the Eleventh Criminal Circuit.

advantage is covered, whereas the request and the acceptance of an offer or a promise are not mentioned. The provision of section 158, paragraph 2 TPC makes no reference to indirect commission of the offence nor to third party beneficiaries.

Sanctions

45. "Qualified theft by deception" is punishable by between 2 and 7 years of imprisonment and a judicial fine of up to 5,000 days. Pursuant to section 52 TPC, a judicial fine is "an amount payable to the State Treasury by the offender, which is calculated, unless otherwise stated in the law, by multiplying the identified number of days, which shall be more than 5 but not more then 730, with a daily amount." The daily amount of the judicial fine is at least 20 Turkishe Lira/TRY (9 EUR)[15] and at most 100 TRY/46 EUR, and it is determined with regard to the personal and economic conditions of the person.

Bribery of domestic arbitrators (Article 1, paragraphs 1 and 2 and Articles 2 and 3 of ETS 191)[16]

46. Domestic arbitrators are explicitly mentioned in section 252, paragraph 2 TPC among the categories of persons to whom the provisions on aggravated active and passive bribery apply, and who are subject to increased sanctions. By contrast, the provisions on "insult" (section 125, paragraph 3a) TPC), "extortion" (section 250 TPC) and "misuse of public duty" (section 257, paragraph 3 TPC) which are meant to cover cases of simple bribery, do not make such an express reference to arbitrators but simply refer to the concept of "public officers" as defined in section 6, paragraph 1c) TPC. The authorities indicated that this concept was broad enough to cover domestic arbitrators, as it includes "any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period" (see paragraph 13 above). Arbitration is regulated in sections 516 – 536 of the Civil Procedure Code, according to which both parties can assign an arbitrator to solve their conflict by rendering a binding decision. The authorities stressed that domestic arbitrators carry out a public duty in the meaning of section 6, paragraph 1c) TPC, as the civil procedure law on evidence applies to their adjudication and as their decisions are submitted to and can be appealed to the competent court. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of domestic arbitrators. There is no case law/court decision concerning bribery of domestic arbitrators.

Bribery of foreign arbitrators (Article 4 of ETS 191)

47. The authorities affirmed that foreign arbitrators were covered by the bribery provision of section 252, paragraph 5 TPC which refers to the concept of "an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties; a person working in an international organisation that has been established by another international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country" (see paragraph 32 above). More specifically, according to the authorities, persons performing functions of an arbitrator in a foreign country are covered by the terms "an elected or appointed person in a foreign country who is (…) a member of a public institution charged with judicial or administrative duties", and persons performing functions of an arbitrator in an international organisation or on the basis of an international arbitration agreement are covered by the terms "a person working in an international organisation that has been established by another

[15] Exchange rate from TRY to EUR on 7 July 2009.
[16] As for the offences of bribery of arbitrators and jurors, it has to be noted that Turkey is not party to ETS 191.

international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country". Section 252, paragraph 5 TPC only criminalises (simple or aggravated) active bribery within the context of international commercial activities. By contrast, active bribery out of such a context and passive bribery are not covered. According to the authorities, the elements of the offence detailed under bribery of foreign public officials and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign arbitrators. There is no case law/court decision concerning bribery of foreign arbitrators.

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

48. The authorities indicated that the notion of "public officer" as defined in section 6, paragraph 1c) TPC – i.e. as "any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period" – is broad enough to capture domestic jurors. According to the authorities, the elements of the relevant offences – "aggravated bribery" (section 252 TPC), "insult" (section 125, paragraph 3a) TPC), "extortion" (section 250 TPC) and "misuse of public duty" (section 257, paragraph 3 TPC) – and the applicable sanctions detailed under bribery of domestic public officials would also apply to bribery of domestic jurors. However, they stressed that there are no domestic jurors in the Turkish justice system.

Bribery of foreign jurors (Article 6 of ETS 191)

49. The authorities affirmed that (simple or aggravated) active bribery of foreign jurors within the context of international commercial activities is covered by the bribery provision of section 252, paragraph 5 TPC which includes, *inter alia*, "an elected or appointed person in a foreign country who is (…) a member of a public institution charged with judicial or administrative duties". By contrast, active bribery out of the context of international commercial activities and passive bribery are not covered by section 252, paragraph 5 TPC. According to the authorities, the elements of the offence detailed under bribery of foreign public officials and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign jurors. There is no case law/court decision concerning bribery of foreign jurors.

Other questions

Participatory acts

50. Aiding and abetting the commission of all of the abovementioned criminal offences is criminalised under Turkish legislation. According to section 38, paragraph 1 TPC a person who incites another to commit an offence is, in general, subject to the penalty appropriate to the offence that is committed. Pursuant to section 39, paragraph 1 TPC the penalty of a person who assists another with the commission of an offence is, generally, reduced by one-half, not exceeding 8 years. Finally, it is to be noted that under section 37, paragraph 2 TPC a person who uses another as an instrument for the commission of an offence remains culpable as an offender.

Jurisdiction

51. Under the relevant provisions of the general part of the TPC which apply to all criminal offences, jurisdiction is, firstly, established over acts committed fully or partially within the territory of Turkey, by Turkish or foreign citizens (principle of territoriality), see section 8 TPC.

Section 8 TPC: Territorial Jurisdiction

(1) Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey.

(2) If the criminal offence is committed:

a) within Turkish territory, airspace or in Turkish territorial waters;

b) on the open sea or in the space extending directly above these waters and in, or by using, Turkish sea and air vessels;
c) in, or by using, Turkish military sea or air vehicles;
d) on or against a fixed platform erected on the continental shelf or in the economic zone of Turkey
then this offence is presumed to have been committed in Turkey.

52. As regards offences committed abroad, it is to be noted that subparagraph h) of section 13, paragraph 1 TPC – which established jurisdiction over Turkish citizens and aliens who committed an offence of bribery abroad and are found in Turkey, upon request of the Minister of Justice – has been abolished by the Law on the Amendment of the Turkish Penal Code and Some Other Codes of 26 June 2009, which entered into force on 9 July 2009. Nevertheless, the authorities indicated that Turkey has established jurisdiction over the bribery and trading in influence offences committed by its nationals, its public officials or by members of its domestic public assemblies (under sections 10, paragraph 1 TPC and 11, paragraph 1 TPC), or involving its public officials or members of its public assemblies who are at the same time Turkish nationals (under section 12, paragraph 1 TPC). As regards offences committed by Turkish public officials or members of domestic public assemblies, the authorities indicated that according to legal theory section 10, paragraph 1 TPC may be applied irrespective of whether they are Turkish citizens or not.

Section 10 TPC: Offences Committed During the Performance of a Duty

(1) Any person who is employed as a public officer or is charged with a particular duty by the Turkish State and who, in the course of that employment or duty, commits a criminal offence shall be tried in Turkey, despite having been convicted in a foreign country in respect of his/her acts.

Section 11 TPC: Offences Committed By Citizens

(1) If a Turkish citizen commits an offence in a foreign country that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is one year, and s/he is present in Turkey, and upon satisfying the conditions that s/he has not been convicted for the same offence in a foreign country and a prosecution is possible in Turkey, s/he shall be subject to a penalty under Turkish law, except in regard as to the offences defined in section 13.
(2) Where the aforementioned offence is subject to a penalty of imprisonment, the minimum limit of which is less than one year, then criminal proceedings shall only be initiated upon the making of a complaint by a victim or a foreign government. In such a case the complaint must be made within six months of the date the citizen entered Turkey.

Section 12 TPC: Offences Committed By Non-Citizens

(1) Where a non-citizen commits an offence (other than one defined in section 13), to the detriment of Turkey, in a foreign country, that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is one year, and s/he is present in Turkey, s/he shall be subject to penalty under Turkish law. Criminal proceedings shall only be brought upon request by the Minister of Justice.
(2) Where the aforementioned offence is committed to the detriment of a Turkish citizen or to the detriment of a legal personality established under Turkish civil law and the offender is present in Turkey and there has been no conviction in a foreign country for the same offence then, upon the making of a complaint by the victim, s/he shall be subject to penalty under Turkish law.

Statute of limitations

53. The period of limitation is determined by the severity of sanctions which can be imposed for the offence in question.[17] On this basis, the limitation period provided for offences of aggravated active and passive "bribery" in the public and private sectors (section 252 TPC), "qualified theft by deception" (section 158, paragraph 2 TPC) and "extortion" (section 250 TPC) is 15 years. Offences of "misuse of public duty" (section 257, paragraph 3 TPC) and "insult" against a public officer (section 125, paragraph 3a) TPC) are subject to a limitation period of 8 years.

Defences

54. The provisions of section 254 TPC provide for a special defence – "effective regret" – applicable to aggravated active and passive bribery offences (section 252 TPC) committed in the public sector. If the bribe-giver, the bribe-taker or another person who participated in the bribery offence informs the competent authorities before the commencement of an investigation, s/he is exempted from punishment. In cases of "effective regret" by the bribe-taker, s/he has to deliver the bribe received to the authorities; in cases of "effective regret" by the bribe-giver, the bribe is confiscated and returned to the bribe-giver. This special defence of "effective regret" applies neither to persons who give a bribe to foreign public officials[18] nor to perpetrators of the offences of "extortion", "misuse of public duty" and "insult".

Section 254 TPC: Effective Regret

(1) Where, prior to the commencement of an investigation, the person in receipt of the bribe delivers it, in its original state, to the authorities, no penalty shall be imposed for the offence of bribery. Where, prior to the commencement of an investigation, a public officer who, after having agreed to receive a bribe, informs the authorities of such, no penalty shall be imposed.
(2) Where, prior to the commencement of an investigation, a person who offered and gave a bribe to a public officer informs the authorities responsible for investigation of such, no penalty shall be imposed and the bribe s/he gave to the public officer shall be taken from the public officer and handed back to him/her.
(3) Where, prior to any investigation, any other person who participates in the offence of bribery demonstrates regret *by informing the authorities responsible for investigation of such, no penalty shall be imposed upon such person.*

[17] See section 66 TPC.
[18] See section 254, paragraph 4 TPC which was introduced by the Law No. 5918 on the Amendment of the Turkish Penal Code and Some Other Codes of 26 June 2009, entered into force on 9 July 2009.

55. In addition, the TPC contains a general provision in section 28, paragraph 1 according to which no penalty is imposed upon a person who commits a criminal offence "as a result of intolerable or inevitable violence, or serious menace or gross threat."

Statistics

56. According to the statistics submitted by the authorities, in 2007, 554 cases of "aggravated bribery "offences (section 252 TPC) involving 1,325 accused persons were filed in criminal courts (in 2006, 447 cases and 987 accused). As regards the judgments made in 2007, out of 1,119 accused persons 662 were convicted (in 2006, 782 out of 1,307 accused).

57. As regards the offence of "misuse of public duty" (section 257 TPC, also including paragraph 3 which is meant to cover certain offences of simple passive bribery), 11,590 cases were filed in criminal courts in 2007 (12,004 cases in 2006); out of 19,682 accused persons 6,458 were convicted in 2007 (7,909 out of 22,071 accused in 2006). Concerning the offence of "qualified theft by deception" (section 158 TPC, also including certain forms of passive trading in influence in paragraph 2), 7,468 cases were filed in criminal courts in 2007 (3,217 cases in 2006); out of 17,571 accused persons 6,343 were convicted in 2007 (1,953 out of 5,889 accused in 2006).

IV. ANALYSIS

58. The GET found the Turkish legal framework for the criminalisation of corruption quite complex. The basic bribery provisions are contained in section 252 of the new Turkish Penal Code (TPC), which entered into force on 1 June 2005. The previously separate offences of active and passive bribery have been merged into one single offence, inspired by the concept of bribery as a "contract offence", in which the agreement between the parties is an essential element. It is worth noting that the former basic bribery offences only covered the "giving" and receiving" of an advantage, whereas the new offence also incriminates the agreement upon a bribe, irrespective of whether or not the latter is actually handed over. At the same time, however, the agreement is now always required in order to constitute bribery as defined by paragraph 3 of section 252 TPC: "The securing of a benefit by a public officer by his/her agreeing with another to perform, or not to perform, a task in breach of the requirements of his/her duty." On the basis of this definition, paragraph 1 of the same section establishes the general offence of active and passive bribery; paragraph 2 addresses bribery of certain categories of officials, providing for increased sanctions; paragraph 4 extends the bribery offences to certain categories of persons acting in the private sector. In addition, paragraph 5 establishes the autonomous offence of active bribery of foreign and international officials, to which the definition of paragraph 3 does not apply. Particular features of the bribery definition, quoted above, are the requirements of an agreement between the parties and of a breach of duty by the public official. In order to address the gaps deriving from this narrow concept – e.g. the lack of the elements "offer", "promise" and "request" –, reference is made to the general rules on attempt and participation as well as other criminal offences. The authorities and other interlocutors interviewed by the GET based their comments in this respect on the "reasoning" underlying the relevant provisions, i.e. the explanatory notes of the legislator which must, according to the Court of Cassation,[19] be taken into consideration by the courts for the interpretation of the law, on the jurisprudence of the Court of Cassation (whose decisions are not binding but generally respected by other courts[20]) and on legal doctrine. The

[19] See Decision No. 2006/5-147, 2006/1492529 of 30.05.2006 of the Assembly General of the Criminal Chambers, based on the report of the Legal Commission of Parliament. This Decision only refers to the explanatory notes of the TPC provisions and not to the explanatory notes of other laws.

[20] Only unifying decisions of the General Assembly of the Court of Cassation are strictly binding.

Turkish authorities apparently consider that in light of these complementary explanations, existing criminal law provides a sufficient basis for the prosecution and adjudication of corruption offences. The GET identified, however, several significant shortcomings in relation to the requirements of the Criminal Law Convention on Corruption (ETS 173) (hereafter: the Convention), outlined below.

59. Firstly, as bribery of domestic public officials requires an agreement between the parties, unilateral acts of bribery – namely the (refused) offer, promise or request of a bribe – are not directly covered. By contrast, section 252, paragraph 5 TPC explicitly incriminates offering, promising and giving a bribe to foreign and international officials. During the interviews, it was explained that this provision had been modelled on the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The GET is concerned about the completely different systematic approach to domestic and foreign bribery – regulated in one and the same section – and about the narrow concept of domestic bribery. The GET wishes to recall that the Criminal Law Convention on Corruption has expressly adopted a very broad concept of bribery offences in order to capture without any doubt the various types of corrupt practice and to send a clear signal in this respect. Therefore, the Convention was construed in such a way as to address active and passive bribery offences independently from each other in Articles 2 and 3, explicitly covering unilateral acts and not requiring an agreement between the parties.

60. In this context, the authorities indicated that, according to case law established by the Court of Cassation, such unilateral acts constitute attempted bribery, punishable under section 252, paragraph 1 TPC in conjunction with section 35 TPC. However, the GET is not convinced that the relevant jurisprudence guarantees the adequate incrimination of all possible forms of corrupt behaviour referred to in Articles 2 and 3 of the Convention. In practice, it will be very difficult in certain cases to establish and prove an attempt to conclude a specific agreement upon a bribe – e.g. in cases where a person gives advantages on a regular basis in order to gain the support of the official either for minor everyday services or for bigger projects/contracts in the future, or where an official seeks – but not explicitly – a bribe. Furthermore, the GET notes that an attempt is punishable only if the offence is not completed "due to circumstances beyond his/her [i.e. the briber's] control"[21] and if the perpetrator has not voluntarily abandoned the performance of his/her acts.[22] These conditions will almost certainly not be fulfilled in cases where a person withdraws his/her offer (or promise or request), e.g. before it is clearly refused by the bribee. Finally, it must be noted that in cases of attempt the penalty is to be reduced by one-quarter to three-quarters. Although the GET's interlocutors pointed at the high level of sanctions available under section 252, paragraph 1 TPC – i.e. four to 12 years of imprisonment – the GET has strong misgivings about the considerable reduction of penalties in the case of several basic types of corrupt conduct. Overall, the GET takes the view that unilateral acts of bribery need to be explicitly criminalised in order to clearly stigmatise such acts, submit them to the same rules as bribery agreements and avoid possible loopholes in the legal framework. In this core area, bribery law must be unambiguous.

61. Secondly, paragraphs 1 to 4 of section 252 TPC only cover "aggravated bribery" implying a breach of duty by the public official – whereas paragraph 5 of the same section criminalises active bribery of foreign and international officials with and without breach of duty, as was indicated by the authorities. In the domestic context, "simple bribery" cases without breach of duty are dealt with under other offences. More precisely, the authorities explained that promising and

[21] See section 35, paragraph 1 TPC.
[22] See section 36 TPC.

offering a bribe are considered as an attack on the honour and dignity of the public official and are therefore penalised under the "insult" offence (section 125, paragraph 3a TPC), according to the Court of Cassation; giving a bribe constitutes participation in "misuse of public duty" (section 257, paragraph 3 TPC in conjunction with sections 38/39 TPC), according to legal doctrine; requests of a compelling character are covered by the provisions on "extortion" (section 250 TPC), according to the explanatory notes of the legislator and the Court of Cassation (if the request is refused, it constitutes attempted "extortion"); the acceptance of an offer or a promise and the request without a compelling character constitute "misuse of public duty" (section 257, paragraph 3 TPC), according to the explanatory notes of the legislator and the Court of Cassation (according to legal doctrine, instances where the offer, promise or request do not materialise constitute attempted "misuse of public duty"); concerning acts or omissions which fall outside the official's competences, the authorities referred to the offence of "securing a benefit for a task outside the scope of authority" (section 255 TPC).

62. In this context, the GET must reiterate its concerns about the completely different systematic approach of paragraphs 1 to 4 of section 252 TPC on the one hand and paragraph 5 of the same section on the other. Moreover, it has serious misgivings about the fact that certain types of corrupt behaviour referred to in Articles 2 and 3 of the Convention – which do not contain the element "breach of duty" – are treated as "insult", "extortion" and some other offences. These offences do not reflect the specific character of corruption as a crime which threatens the stability of democratic institutions and the moral foundations of society and undermines good governance. Furthermore, the sanctions available for some of these offences – which the GET considers as imperfect substitutes for the offences covered by the Convention – are significantly lower, in particular in the case of "insult" (the maximum penalty being two years' imprisonment). In addition, the GET finds the system described above extremely complicated and since it is only partly confirmed by relevant court decisions the GET very much doubts that all cases of bribery in the meaning of Articles 2 and 3 of the Convention would indeed be properly captured by the aforementioned offences. For example, as regards instances where an official acts outside his/her competence, the GET notes that section 255 TPC only contains the element "securing a benefit" (i.e. receiving) but not the other types of corrupt behaviour. Furthermore, it requires a deception by the official concerning the scope of his/her competence. By contrast, Articles 2 and 3 of the Convention do not contain any such restrictions.

63. To conclude, the GET accepts that the Turkish legislation probably allows to apprehend a significant range of corruption-related behaviours likely to occur in practice. However, it is very concerned about the complicated structure and the narrow concept of bribery offences, which makes it necessary to draw on the general rules on attempt and participation and on numerous other criminal offences. In the view of the GET, Turkish legislation fails to clearly signal which kind of conduct constitutes bribery. It therefore warrants a thorough review in order to provide for a clear and foreseeable, coherent and comprehensive legal framework, in conformity with Articles 2 and 3 of the Convention, and to avoid possible loopholes which might arise in the practical application of the law. The coverage of core elements of bribery law such as the "offer" and the "request" of an advantage cannot rely only on jurisprudence and "legal doctrine", it needs to be properly regulated. Consequently, the GET recommends **to revise existing criminal law in order to (i) provide for comprehensive, consistent and clear definitions of bribery offences; and (ii) to capture unambiguously a) promises, offers and requests for a bribe, irrespective of whether or not the parties have agreed upon the bribe; and b) all acts/omissions in the exercise of the functions of a public official, irrespective of whether or not they constitute a breach of duty and whether or not they lie within the scope of the official's competence.**

64. The GET notes that neither the general provision on aggravated bribery (section 252, paragraph 1 TPC) nor the provisions meant to cover cases of simple bribery (sections 125, paragraph 3a, 250 and 257, paragraph 3 TPC) expressly provide for indirect commission of bribery offences, i.e. bribery committed through intermediaries. The authorities indicated that according to academics both direct and indirect commission of bribery are covered by the relevant provisions, and some legal practitioners interviewed referred to the general rules of the TPC on "jointly committed offences" in sections 37 to 41 TPC. However, there is no case law available in order to support this view. Moreover, the GET is concerned that in contrast to the above-mentioned provisions, section 252, paragraph 5 TPC explicitly regulates the indirect commission of active bribery of foreign and international officials. The GET wishes to stress how important it is for the sake of consistency and clarity that all corruption offences contain the same basic elements. It is therefore of the firm opinion that the legislation applicable to instances of bribery needs to be streamlined in order to cover, without any doubt, the indirect commission of domestic bribery offences.

65. As regards beneficiaries of the bribe, neither the provisions on aggravated bribery nor the provision on "insult" – which is meant to cover simple active bribery – specify whether the advantage must be for the official him/herself or may be intended for a third party as well. The wording of the aforementioned provisions raises serious doubts as to whether bribery offences are criminalised where the beneficiary of the bribe is a third person, e.g. where the official or employee would solicit an advantage for one of his or her relatives, a political party or a company. The authorities stated that the legislator saw no need to specifically regulate this detail, and that according to legal theory such instances would be covered by the bribery provisions; as for third party beneficiaries themselves, they would be punishable either for principal involvement or for aiding/abetting, depending on the circumstances. However, no court decisions could be provided in order to support these assertions, and some legal practitioners interviewed during the visit expressed conflicting views in this respect. Moreover, the GET notes that some other provisions of the TPC – in particular, section 250 TPC (extortion) and section 257, paragraph 3 TPC (misuse of public duty) – explicitly include the concept of a third party beneficiary. The GET takes the strong view that an explicit reference to third party beneficiaries in the bribery provisions is needed in order to ensure, without any doubt, their coverage as required by Articles 2 and 3 of the Convention. In light of the preceding paragraphs, and as a complement to the recommendation given in paragraph 62, the GET recommends **to ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries as well as instances where the advantage is not intended for the official him/herself but for a third party.**

66. Concerning the categories of persons covered by public sector bribery offences, all the corruption-related provisions employ the words "public officer". This notion is defined in section 6, paragraph 1c) TPC as "any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period". It was indicated to the GET that this concept is very wide and flexible and encompasses all categories of persons referred to in Article 1.a of the Convention, as well as members of domestic public assemblies who are addressed by Article 4 of the Convention. The authorities stated that the concept of "public officer" was to be understood – on the basis of legal doctrine and of jurisprudence – as a person who participates in carrying out a service on behalf of the public and according to public law including, for example, elected representatives (such as village headmen, MPs, members of municipal or provincial councils), or public employees without the status of civil servant. In addition to the general concept of "public officer", the aggravated bribery offence of section 252, paragraph 2 TPC refers to several specific categories of persons who are subject to increased sanctions: "persons in a judicial duty" as defined in section 6, paragraph 1d) TPC, arbitrators,

expert witnesses, public notaries and professional financial auditors. It was explained to the GET that these categories are sub-categories of the concept of "public officer".

67. Foreign and international officials are addressed by a specific provision of section 252 (paragraph 5), TPC which is intended to adjust national legislation to the requirements of the OECD Anti-Bribery Convention.[23] It incriminates bribery of "an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties; a person working in an international organisation that has been established by another international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country". According to the authorities, this provision is broad enough to cover foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts, in line with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption. The authorities furthermore indicated that section 252, paragraph 5 TPC is autonomous in the sense that the general requirements of domestic bribery provisions do not apply. According to these explanations, neither an agreement nor a breach of duty is required, and therefore instances of simple and aggravated bribery are covered likewise.

68. The GET notes the rather broad scope of section 252, paragraph 5 TPC. However, several major shortcomings remain as regards the proper transposition of the Convention into Turkish criminal law. Firstly, this provision only addresses active bribery. Passive bribery of foreign and international officials is therefore not penalised in Turkey. Secondly, only offences committed within the context of international commercial activities are covered. These two restrictions relate to the implementation of the OECD Convention. The GET wishes to stress that the Criminal Law Convention on Corruption of the Council of Europe does not contain any such limitations. In addition, the GET has some doubts as to whether all foreign and international officials addressed by the Convention are effectively covered by the Turkish legislation. At the time of the visit, no court decisions on bribery of such officials were available and the precise ambit of this provision had therefore never been tested. In particular, section 252, paragraph 5 TPC only refers to "an elected or appointed person in a foreign country …", whereas the general definition of a domestic public official in section 6, paragraph 1c) TPC includes "any person who is elected, appointed *or chosen in any other way* …". The GET considers that the narrower wording in section 252, paragraph 5 TPC might in practice lead to loopholes with regard to persons exercising a public function for a foreign country or an international organisation who – according to the relevant regulations of the country or organisation concerned – have not been elected or appointed. Therefore, the GET finds it highly advisable, for the sake of legal certainty and clarity, that in the framework of the necessary legal amendments to section 252, paragraph 5 TPC appropriate arrangements be made in order to undoubtedly cover all categories of persons referred to in Articles 5, 6, 9, 10 and 11 of the Convention. In light of the foregoing, the GET recommends **to ensure that active and passive bribery – within or outside of the context of international commercial activities – of all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts are criminalised unambiguously, in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).**

[23] The authorities indicated that a similar provision had already been inserted into the former Penal Code of 1926 by Law No. 4782 of 02.01.2003.

69. Regarding jurors and arbitrators as perpetrators of corruption offences which are addressed by the Additional Protocol to the Convention, the GET notes, firstly, that this instrument has not been signed or ratified by Turkey. Secondly, these categories of persons are not fully captured by the pertinent national legislation. On the one hand, the authorities made it convincingly clear to the GET that the notion of "public officer" as defined in section 6, paragraph 1c) TPC – i.e. as "any person who is elected, appointed or chosen in any other way to carry out a public duty for a temporary, permanent or specifically defined time period" – is broad enough to cover domestic jurors and arbitrators (the latter are, in addition, explicitly mentioned in section 252, paragraph 2 TPC). On the other hand, as regards foreign jurors and arbitrators, the authorities again referred to section 252, paragraph 5 TPC, whose scope of application is limited to active bribery committed within the context of international commercial activities (see paragraph 68 above), in contrast to Articles 4 and 6 of the Additional Protocol. Moreover, it appears debatable whether a foreign juror or arbitrator can be considered as "*a member of a public institution* charged with judicial or administrative duties" as required by section 252, paragraph 5 TPC. Consequently, the GET recommends **to ensure that active and passive bribery – within or outside of the context of international commercial activities – of foreign jurors and arbitrators are criminalised unambiguously, in accordance with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), and to sign and ratify this instrument as soon as possible.**

70. Bribery in the private sector is criminalised only with regard to a very limited number of entities acting in the private sector, i.e. certain entities with public participation or acting in the public interest. More precisely, section 252, paragraph 4 TPC extends the general, public sector bribery provision of 252, paragraph 1 TPC to "a person acting on behalf of a professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporation or a foundation operating within the framework of such institutions or corporations), an association acting in the public interest, a co-operative, or a public joint stock corporation". The GET acknowledges that this concept goes partly beyond the requirements of the Convention in that it is not restricted to business entities but also appears to cover non-profit organisations. On the other hand, however, it is obvious that the concept does not cover all types of private sector entities (involved in business) as required by Articles 7 and 8 of the Convention[24] but only those with public participation or acting in the public interest. Moreover, the GET wishes to recall that the Convention refers to "any persons who direct or work for, in any capacity, private sector entities" – whereas section 252, paragraph 4 TPC only includes persons acting "on behalf of" the above-mentioned entities, which presupposes a certain degree of responsibility within the entity concerned. The introduction of a comprehensive provision on bribery in the private sector will therefore be necessary. Such a provision will have to be carefully designed in order to ensure full compatibility with all the elements contained in Articles 7 and 8 of the Convention – which is clearly not the case with section 252, paragraph 4 TPC in its present form. This provision does not explicitly mention the different types of corrupt behaviour but only the "conferring of a benefit"; moreover, it does not explicitly regulate bribes given or received through intermediaries or intended for third parties; and, furthermore, it contains a specific restriction in that it only covers the transfer of a benefit to entities "in order to establish a legal relationship with such entities or in order to continue an existing legal relationship with such", which is not foreseen by the Convention. In view of the above, the GET recommends **to criminalise active and passive bribery in the private sector – applicable to any persons who direct or work for, in any**

[24] Including even entities without legal personality, as well as individuals – see the Explanatory report to the Criminal Law Convention, paragraph 54.

capacity, any private sector entities – in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).

71. As concerns trading in influence, the authorities referred to the provision on "qualified theft by deception" in section 158, paragraph 2 TPC. However, in the view of the GET, this type of offence has little to do with trading in influence – not to mention the fact that this provision misses several specific and crucial elements[25] contained in Article 12 of the Convention, to which Turkey has not made any reservation. The essence of "qualified theft by deception" is not the influence peddling as such but the deception by the influence peddler on his/her ability to exert influence. As the Court of Cassation puts it, "the fraudulent actions must be deceptive for the offence of fraud to occur", and this element is absent if the deceptive action is noticed immediately by the other person.[26] In other words, the receipt of an advantage by an influence peddler who actually is in a position to exert influence on public authorities and who actually exerts this influence is not criminalised under section 158, paragraph 2 TPC. By contrast, Article 12 of the Convention addresses trading in influence irrespectively of "whether or not the influence is exerted or whether or not the supposed influence leads to the intended result". During the interviews, various other provisions were mentioned which might incriminate certain forms of trading influence, such as provisions on "securing a benefit for a task outside the scope of authority" (section 255 TPC) and "trading by a public officer" (section 259 TPC). However, the GET notes, firstly, that there was no common understanding among the interlocutors met on site of which provisions would exactly apply to cases of trading in influence. Secondly, all of the above-mentioned offences are narrower in scope than Article 12 of the Convention. They again require a deceptive element (section 255 TPC) or only criminalise acts by a public official but not by a person who asserts to have *influence on* a public official (sections 255, 259 TPC), and they only incriminate passive forms of influence peddling. In view of the above, the GET concludes that trading in influence is not adequately penalised in Turkey. Consequently, the GET recommends **to criminalise active and passive trading in influence – without the requirement of a deception by the influence peddler – in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173).**

72. Overall, the sanctions available for bribery offences under Turkish law appear to conform to the requirements established under Article 19, paragraph 1 of the Convention. At the same time, the system of sanctions reflects the complexities of Turkish bribery law as analysed in the preceding paragraphs. The level of penalties depends on whether the offence implies a breach of duty by the public official (aggravated bribery) or not (simple bribery). Aggravated active and passive bribery is punishable by 4 to 12 years of imprisonment. If the bribe-taker is "a person in a judicial duty", an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed is increased by one third to one half. By contrast, in cases of attempted bribery – i.e. in cases of a refused offer, promise or request – the penalties are to be reduced by one-quarter to three-quarters. The GET refers to its concerns about this significant reduction of sanctions for basic types of corrupt behaviour expressed above (see paragraph 60). As regards the offences meant to cover cases of simple active and passive bribery, the GET notes that the various offences referred to by jurisprudence and doctrine provide for different levels of sanctions and reiterates its particular concerns about the relatively low maximum sanctions available for "insults" (see paragraph 62 above). "Insults" committed against public officials carry a prison

[25] Section 158, paragraph 2 TPC does not address active trading in influence at all; it only contains the element "receipt" of an advantage but not the "request" or the "acceptance of the offer or the promise of an advantage"; no reference is made to indirect commission of the offence nor to third party beneficiaries. In addition, the GET has serious doubts as to whether the concept of "public authorities" – on which the peddler asserts to have influence – covers the whole range of categories of persons referred to in Articles 2, 4 to 6 and 9 to 11 of the Convention, including for example foreign public officials and officials of international organisations and courts.

[26] Decision No. 2007/5434-6343 E/k. of 04.10.2007 of the Court of Cassation for the Eleventh Criminal Circuit.

sentence of 1 to 2 years; "extortion" carries a prison sentence of 5 to 10 years in the case of compulsion and 3 to 5 years in the case of deception (1 to 3 years if committed by taking advantage of a person's mistake); "misuse of public duty" carries a prison sentence of 1 to 3 years. In conjunction with the overhaul of Turkish bribery law – comprising instances of simple and aggravated bribery – as advocated for in this report, care needs to be taken to respond to the above-mentioned concerns relating to the system of sanctions.

73. Under the provisions of section 254 TPC the perpetrators of aggravated active and passive bribery in the public sector are exempted from punishment in cases of "effective regret". This special defence can be invoked not only by the bribe-giver but even by the bribe-taker or another person who participated in the bribery offence – on the condition that s/he informs the competent authorities before the commencement of an investigation. In cases of "effective regret" by the bribe-taker, s/he has to deliver the bribe received to the authorities. The GET is concerned about the automatic nature of this defence. There is no possibility for review of the situation and motives of the person invoking "effective regret" by the competent court. If s/he reports the offence before the prosecution service learns of the offence, the court must remit his/her punishment.[27] In principle, very serious cases of corruption could go totally unpunished by reference to this defence which could be misused for example by the bribe-giver as a means of exerting pressure on the bribe-taker to obtain even more advantages from him/her. In this context, it is to be noted that following recent legal amendments the defence of "effective regret" no longer applies to foreign public officials.[28] The GET cannot see why this defence should be maintained – with automatic effect – in respect of domestic public officials, and it was not made unambiguously clear to the GET what would be the added value in the fight against corruption of section 254 TPC in its present form. Moreover, the GET is of the opinion that the provision in section 254, paragraph 2 TPC, according to which the bribe is to be restored to the bribe-giver who invokes "effective regret", is questionable. Finally, some of the legal practitioners met by the GET claimed that this defence may be applied even after the commencement of preliminary investigations (e.g. by the Prime Ministry Inspection Board, competent for the inspection of central and local administrations) as long as the prosecutor has not learned of the offence and opened the case. Such a situation might lead to exemption from punishment even in cases where the offence has already been detected. After the visit, the authorities indicated that according to the reasoning of section 254 TPC "effective regret" was restricted to cases where no investigation (including administrative) had been initiated against a public official. However, the GET remains concerned about the conflicting view expressed by some practitioners who are to apply the law and considers it necessary to take measures to ensure that in practice "effective regret" may not be successfully invoked after the commencement of preliminary investigations. In view of the above, the GET recommends **(i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active and passive bribery in the public sector in cases of "effective regret", and to abolish the restitution of the bribe to the bribe-giver in such cases; and (ii) to make it clear to everyone, including the practitioners who are to apply the law, that exemption from punishment is not granted in cases where "effective regret" is invoked after the start of preliminary investigations.**

74. The jurisdictional principles of territoriality and nationality apply to all corruption-related offences. Turkish law is applicable, firstly, to offences which are fully or partially committed in Turkey or the results of which occur in Turkey (section 8 TPC). Secondly, as regards offences committed

[27] During the interviews held on site, some legal practitioners claimed that the prosecutor may abstain from opening the case and making an indictment if the conditions of "effective regret" are clearly fulfilled. However, the authorities indicated to the GET that this information was wrong and that only the courts were competent to apply section 254 TPC.

[28] See section 254, paragraph 4 TPC which was introduced by the Law No. 5918 on the Amendment of the Turkish Penal Code and Some Other Codes of 26 June 2009, entered into force on 9 July 2009.

abroad, jurisdiction is established, *inter alia*, over criminal offences committed by: Turkish "public officers" (including members of domestic public assemblies – see paragraph 66 above) or persons entrusted with a particular duty by the Turkish State, in the course of their employment (section 10 TPC); by Turkish citizens (section 11 TPC); and by non-citizens to the detriment of Turkey, of a Turkish citizen or of a legal person established under Turkish law (section 12 TPC).[29] The authorities indicated that all the aforementioned provisions are applicable to corruption-related offences, including section 12, paragraph 1 TPC and the concept of offences committed "to the detriment of Turkey" (e.g. bribery committed by a foreign offender but involving a Turkish public official). As regards offences committed abroad by Turkish public officials or members of domestic public assemblies, the authorities explained that section 10, paragraph 1 TPC may be applied irrespective of whether the persons concerned are Turkish citizens or not. The condition in sections 11, paragraph 1 and 12, paragraph 1 TPC "that the offence is subject to a penalty of imprisonment where the minimum limit is one year" is fulfilled in respect of all corruption-related offences, including the offences of "extortion", "misuse of public duty" and "insult". The GET welcomes that the above-mentioned jurisdictional rules are rather broad, covering offences committed abroad by nationals (as required by Article 17, paragraph 1.b of the Convention) or involving nationals (as required by Article 17, paragraph 1.c of the Convention), without establishing a dual criminality requirement, as was confirmed by the authorities. However, the GET notes with concern that under section 12, paragraph 1 TPC offences committed abroad by non-citizens but involving Turkish citizens may be prosecuted only upon request by the Minister of Justice. This requirement constitutes an unnecessary restriction which is not foreseen by the Convention. Moreover, it would appear that section 12, paragraph 1 TPC – which establishes jurisdiction over offences committed *to the detriment of Turkey* – is not applicable to offences committed abroad by non-citizens but involving officials of international organisations, members of international parliamentary assemblies, and judges or officials of international courts who are, at the same time, Turkish citizens. Consequently, the GET can only conclude that Turkish legislation is not fully compatible with Article 17, paragraph 1.c of the Convention and it therefore recommends **(i) to abolish the condition that the prosecution of acts of corruption committed abroad by non-citizens, but involving Turkish public officials or members of Turkish public assemblies who are at the same time Turkish citizens, must be preceded by a request by the Minister of Justice (section 12, paragraph 1 of the Turkish Penal Code); and (ii) to establish jurisdiction over acts of corruption committed abroad by non-citizens, but involving officials of international organisations, members of international parliamentary assemblies, judges or officials of international courts who are, at the same time, Turkish citizens.**

V. CONCLUSIONS

75. The Turkish legal framework for the incrimination of bribery and trading in influence is quite complex and contains several deficiencies in relation to the requirements established under the Criminal Law Convention on Corruption (ETS 173). First and foremost, the narrow concept of bribery offences excludes corrupt behaviour without an agreement between the parties or without a breach of duty by the public official. Therefore, the explanatory notes of the legislator, legal doctrine and the jurisprudence of the Court of Cassation refer to a large number of other criminal provisions in order to complement the unnecessarily narrow bribery offences. On this basis, it would appear that legal practitioners are able to fill some noticeable gaps and to secure a non negligible number of convictions for corruption. However, the current system is not fully

[29] It is to be noted that subparagraph h) of section 13, paragraph 1 TPC – which established jurisdiction over Turkish citizens and aliens who committed an offence of bribery abroad and are found in Turkey, but only upon request of the Minister of Justice – has been abolished by the Law No. 5918 on the Amendment of the Turkish Penal Code and Some Other Codes of 26 June 2009, which entered into force on 9 July 2009.

comprehensive and coherent and doubtless warrants a thorough review to fully transpose the relevant Articles of the Convention into Turkish criminal law, in order to clearly signal what kind of conduct constitutes bribery. In addition, bribery of foreign and international officials is criminalised only in its active form and in the context of international commercial activities. The same lacunae exist with regard to bribery of foreign jurors and arbitrators as defined by the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) – to which Turkey should, as soon as possible, become a Party. Bribery in the private sector is penalised only in respect of a very limited number of entities with public participation or "acting in the public interest". Trading in influence is supposedly addressed – but only in its passive form – by the offence of "qualified theft by deception", which falls short of the standards set by the Convention. Finally, the possibility provided by the special defence of "effective regret" to exempt the briber who declares the offence before the commencement of investigations from punishment, needs to be reviewed in order to limit the risk of abuse.

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

i. **to revise existing criminal law in order to (i) provide for comprehensive, consistent and clear definitions of bribery offences; and (ii) to capture unambiguously a) promises, offers and requests for a bribe, irrespective of whether or not the parties have agreed upon the bribe; and b) all acts/omissions in the exercise of the functions of a public official, irrespective of whether or not they constitute a breach of duty and whether or not they lie within the scope of the official's competence** (paragraph 63);

ii. **to ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries as well as instances where the advantage is not intended for the official him/herself but for a third party** (paragraph 65);

iii. **to ensure that active and passive bribery – within or outside of the context of international commercial activities – of all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts are criminalised unambiguously, in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 68);

iv. **to ensure that active and passive bribery – within or outside of the context of international commercial activities – of foreign jurors and arbitrators are criminalised unambiguously, in accordance with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), and to sign and ratify this instrument as soon as possible** (paragraph 69);

v. **to criminalise active and passive bribery in the private sector – applicable to any persons who direct or work for, in any capacity, any private sector entities – in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 70);

vi. **to criminalise active and passive trading in influence – without the requirement of a deception by the influence peddler – in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 71);

vii. **(i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active and passive bribery in the public sector in cases of "effective regret", and to abolish the restitution of the bribe to the bribe-giver in such cases; and (ii) to make it clear to everyone, including the practitioners who are to apply the law, that exemption from punishment is not granted in cases where "effective regret" is invoked after the start of preliminary investigations** (paragraph 73);

viii. **(i) to abolish the condition that the prosecution of acts of corruption committed abroad by non-citizens, but involving Turkish public officials or members of Turkish public assemblies who are at the same time Turkish citizens, must be preceded by a request by the Minister of Justice (section 12, paragraph 1 of the Turkish Penal Code); and (ii) to establish jurisdiction over acts of corruption committed abroad by non-citizens, but involving officials of international organisations, members of international parliamentary assemblies, judges or officials of international courts who are, at the same time, Turkish citizens** (paragraph 74).

77. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Turkish authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2011.

78. Finally, GRECO invites the authorities of Turkey 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.