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

(Theme I)

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I. INTRODUCTION

1. Armenia joined GRECO in 2004. GRECO adopted the Joint First and Second Round Evaluation Report (Greco Eval I-II Rep (2005) 2E) in respect of Armenia at its 27th Plenary Meeting (6-10 March 2006). The aforementioned Evaluation Report, as well as its corresponding Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (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 Armenia from 17 to 18 May 2010, was composed of Mr Dimitrios GIZIS, Prosecutor, Court of First Instance of Chania (Greece) and Mr Cezary MICHALCZUK, Prosecutor, National Prosecutor's Office, Bureau of International Legal Cooperation, Ministry of Justice (Poland). The GET was supported by Ms Tania VAN DIJK and Ms Sophie MEUDAL-LEENDERS from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 4E, Theme I), as well as copies of relevant legislation.

4. The GET met with the Deputy Minister of Foreign Affairs, the Deputy Minister of Justice and the Deputy Head of Police and the Chairman of the Anti-Corruption Strategy Monitoring Commission as well as officials from the Ministry of Justice, the Office of the Prosecutor General, the Special Investigation Service, the Oversight Chamber, the Judicial Department[1], the State Revenue Committee, the Police and the National Security Service. The GET also met with representatives of the Armenian chapter of Transparency International and Yerevan State University.

5. The present report on Theme I of GRECO's 3rd Evaluation Round – 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 Armenian 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 Armenia 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 (2010) 4E, Theme II.

[1] The Judicial Department is a state body, which *inter alia* ensures the execution of the powers vested in the courts, the General Assembly of Judges, the Council of Chairmen of the Courts and the Council of Justice.

II. INCRIMINATIONS

Description of the situation

7. Armenia ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) on 9 January 2006. These instruments entered into force in respect of Armenia on 1 May 2006. Armenia has made two reservations to the Criminal Law Convention on Corruption, namely in respect of Articles 12 (trading in influence)[2] and 26 (mutual assistance)[3]. Armenia did not make any reservation to the Additional Protocol to the Criminal Law Convention on Corruption.

8. The current Criminal Code of Armenia entered into force in 2003. The most recent amendments to the Criminal Code (hereafter: CC) as regards the provisions on bribery were made in April 2008 when articles 311[1], 311[2] and 312[1] were added. Articles 311[1], 312[1] and 311[2] criminalise respectively passive and active bribery of employees in public service who cannot be regarded as officials, as well as "*the use of real or supposed influence for mercenary purposes*" (article 311[2]).

9. As regards the reference made below to the minimum wage in the various provisions of the CC, it is understood to amount to 1000 Armenian Drams (ADM), which is approximately €2[4].

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

Definition of the offence

10. Active bribery of domestic public officials is criminalised in two different articles: (1) Article 312 CC deals with those categories of officials covered by the definition of Article 308, paragraphs 3 and 4 CC (see paragraph 12 below) and (2) Article 312[1] CC deals with certain employees in the public service who do not have the status of an official. Both articles foresee aggravated sanctions if the offence was committed on a "large scale" or "particularly large scale" (which relates to the value of the bribe involved) or by an organised group.

> **Article 312 CC – Giving bribes**
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> 1. Giving a bribe to an official, i.e. promising or offering or granting money, property, property rights, securities or any other advantage, personally or through an intermediary, for the official or another person, for the purpose of performing or not performing an action by the official within the scope of his authorities, in favour of the person giving the bribe or the person represented by him, or favouring the performance or non-performance of such action by the official by use of his official position, or for the purpose of patronage or connivance, shall be punished by a fine in the amount of 100-fold to 200-fold of the minimum wage or by detention for a term of one to three months or by imprisonment for a maximum term of three years.

[2] The reservation states: "Pursuant to Article 37, paragraph 1, of the Convention, the Republic of Armenia reserves its right not to establish as a criminal offence under its domestic law the conduct referred to in Article 12". This reservation was renewed in 2009 (and, if not withdrawn, will thus remain valid until May 2012).

[3] The reservation states: "Pursuant to Article 37, paragraph 3, of the Convention, the Republic of Armenia declares that it may refuse mutual legal assistance under Article 26, paragraph 1, if the request concerns an offence which it considers a political offence." This reservation was renewed in 2009 (and, if not withdrawn, will thus remain valid until May 2012).

[4] Article 3 of the Law on the Minimum Monthly Wage of 17 December 2003 provides that, for the purpose of codes, laws, presidential decrees, decisions of the prime minister and government, and legal acts of ministries, agencies, local self-government bodies, and specific legal entities, 1000 Armenian Drams is the basis for calculations.

2. Giving bribes on a large scale shall be punished by a fine in the amount of 200-fold to 400-fold of the minimum wage or by imprisonment for a term of two to five years.
3. Giving bribes committed:
   (1) on an especially large scale;
   (2) by an organised group
   shall be punished by imprisonment for a term of three to seven years.
4. The person, giving a bribe, shall be exempt from criminal liability in case the bribe has been extorted or in case the person has voluntarily informed law enforcement bodies on giving bribe.

Article 312[1] CC – Giving unlawful remuneration to a public servant who is not an official

1. Giving unlawful remuneration to a public servant, who is not an official, i.e. promising or offering or granting money, property, property rights, securities or any other advantage to a public servant, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the public servant within the scope of his authorities, in favour of the person giving the remuneration or the person represented by him, or favouring the performance or non-performance of such action by the public servant, who is not an official, by use of his official position, or for the purpose of patronage or connivance, shall be punished by a fine in the amount of 100-fold to 200-fold of the minimum wage or by detention for a maximum term of 2 months or by imprisonment for a maximum term of two years.
2. Giving unlawful remuneration on a large scale shall be punished by a fine in the amount of 200-fold to 400-fold of the minimum wage or by imprisonment for a maximum term of four years.
3. Giving unlawful remuneration committed
   (1) on an especially large scale;
   (2) by an organised group;
   shall be punished by imprisonment for a term of two to five years.
4. The person, giving unlawful remuneration, shall be exempt from criminal liability in case the unlawful remuneration has been extorted or in case the person has voluntarily informed law enforcement bodies on giving unlawful remuneration.

11. As with active bribery, passive bribery of domestic public officials is criminalised by two separate articles: (1) Article 311 CC deals with passive bribery of officials and (2) Article 311[1] CC deals with passive bribery of employees in the public service who do not have the status of officials (so-called *"public servants*"). Both articles foresee in two sets of aggravating circumstances giving rise to higher sanctions.

Article 311 CC – Taking bribes

1. Taking bribes by an official, i.e. accepting money, property, property rights, securities or any other advantage by an official, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the official within the scope of his authorities, in favour of the person giving the bribe or the person represented by him, or favouring the performance or non-performance of such action by use of his official position, or for the purpose of patronage or connivance shall be punished by a fine in the amount of 300-fold to 500-fold of the minimum wage or by imprisonment for a maximum term of five years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.

2. Taking bribes by an official for his obvious illegal action or inaction, in favour of the person giving the bribe or the person represented by him, shall be punished by imprisonment for a term of three to seven years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.
3. The same act committed:
   (1) by extortion;
   (2) by a group of persons with a prior agreement;
   (3) on a large scale;
   (4) repeatedly,
   shall be punished by imprisonment for a term of four to ten years with or without confiscation of property.
4. The acts provided for in part 1 or 2 or 3 of this Article, committed:
   (1) by an organised group;
   (2) on an especially large scale;
   (3) by a judge;
   shall be punished by imprisonment for a term of seven to twelve years with or without confiscation of property.
5. In this Chapter the amount (cost) not exceeding 200-fold to 1000-fold of the minimum wage set at the moment of the crime shall be deemed as large-scale. In this Chapter the amount (cost) exceeding 1000-fold of the minimum wage set at the moment of the crime shall be deemed as especially large-scale.

Article 311[1] CC – Accepting unlawful remuneration by a public servant who is not an official

1. Accepting unlawful remuneration by a public servant, who is not an official, i.e. accepting money, property, property rights, securities or any other advantage by a public servant, who is not an official, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the public servant within the scope of his authorities, in favour of the person giving the remuneration or the person represented by him, or favouring the performance or non-performance of such action by use of his official position, or for the purpose of patronage or connivance shall be punished by a fine of 200-fold to 400-fold of the minimum wage or by imprisonment for a maximum term of three years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.
2. Accepting unlawful remuneration by a public servant who is not an official for his obvious illegal action or inaction, in favour of the person giving the remuneration or the person represented by him, shall be punished by imprisonment for a term of three to five years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.
3. The same act committed:
   (1) by extortion;
   (2) on a large scale;
   (3) by a group of persons with a prior agreement;
   (4) repeatedly,
   shall be punished by imprisonment for a term of four to seven years
4. The acts provided for in part 1 or 2 or 3 of this Article, committed:
   (1) by an organised group;
   (2) on an especially large scale;
   shall be punished by imprisonment for a term of five to ten years with or without confiscation of property.
5. Persons performing public service shall be considered as public servants in this Chapter, in accordance with Article 1 of the Law of the Republic of Armenia on Civil Service.

Elements/concepts of the offence

"Domestic public official"

12. As indicated above, the provisions on bribery in the public sector differentiate between officials (Articles 311 and 312 CC) and other persons employed in public service – referred to as "*public servants*" – (Articles 311[1] and 312[1] CC) and provides two different definitions for these categories of personnel. The definition of an official is provided by Article 308, paragraphs 3 and 4 CC, which deals with the offence of "*Abuse of official authority*".[5]

> **Article 308 CC – Abuse of official authority**
>
> 1. (…)
> 2. (…)
> 3. In this Chapter the following persons shall be deemed as officials:
>   (1) persons performing functions of representative of the authorities on a permanent, temporary basis or by special authorisation;
>   (2) persons performing organisational-managerial, economic-administrative functions on a permanent, temporary basis or by special authorisation in state bodies, local self-government bodies, organisations thereof, as well as in the armed forces of the Republic of Armenia, other troops and military units of the Republic of Armenia;
> 4. With regard to committal of acts provided for in Articles 311, 312 and 313 of this Code the following persons shall be deemed as officials as well:
>   (1) persons performing functions of public official of a foreign state in accordance with the internal law of the state concerned, as well as members of legislative or other representative body of a foreign state exercising administrative authorities;
>   (2) officials of international or supranational public organisations or bodies or in cases provided for in statutes of those organisations or bodies, contractual employees or other persons, performing functions equal to those performed by similar officials or employees;
>   (3) members of parliamentary assemblies of international or supranational organisations or other bodies performing similar functions;
>   (4) members of or officials performing judicial functions in international courts, jurisdiction of which has been recognised by the Republic of Armenia;
>   (5) jury of courts of foreign states.

13. As to the definition of public servants (i.e. employees in public sector not considered to be officials pursuant to Article 308 CC), Article 311[1], paragraph 5 CC (see under paragraph 11 above) refers to Article 1 of the Law on Civil Service, which provides a definition of the concept of public service.

[5] Article 308 CC is the first article of Chapter 29 of the CC on "Crime against State Service". This chapter also comprises the provisions on bribery in the public sector.

Article 1, Law on Civil Service – Public Service

1. Public service is the exercise of the authorities vested upon the state by the legislation, including policy implementation by the state and local self-governing bodies, public service and community service as well as civil service in the state and local self-governing bodies.
2. The state and local self-governing bodies exercise policy through persons occupying political, discretionary and civil positions within the framework of authorities vested upon them by the legislation of the Republic of Armenia, who adopt political decisions and coordinate their execution.
3. The state service is a professional activity aimed at the exercise of issues and functions vested upon state bodies by the legislation of the Republic of Armenia. The state service includes civil service, judicial service, special services in defence, national security, police, tax, customs, rescue service in the central executive bodies, National Security Council as well as other diplomatic services and those provided for by laws.
4. The community service is a professional activity aimed at the execution of issues and functions vested upon local self-governing bodies by the laws and the Constitution of the Republic of Armenia.
5. The civil service is the execution through hired employees of specific issues and functions vested upon state and local self-governing bodies by the Constitution and the legislation of the Republic of Armenia.

14. The Armenian authorities indicate that the above-mentioned definitions cover persons carrying out official duties or exercising functions in state and local government bodies (including mayors and other heads of communities and ministers), irrespective of their type of contract (*e.g.* temporary/permanent character of the functions performed). Prosecutors and judges are part of the "judicial service" in Armenia and thus considered to be public servants.

"Promising, offering or giving" (active bribery)

15. Articles 312 and 312[1] CC contain explicitly the elements "*promising*", "*offering*", as well as "*granting*".

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

16. Articles 311 and 311[1] CC refer only to the "*receipt*" of a bribe. The authorities of Armenia have explained that the "*request*" and "*acceptance of an offer or promise*" of a bribe would be considered as acts to prepare to receive a bribe under Article 35 CC (or, as attempt, if the bribe-taker has taken further steps to obtain the bribe, but was unable to complete the criminal offence due to circumstances beyond his/her control).[6] However, according to Article 33, paragraph 2 CC, only the preparation of grave or particularly grave crimes is subject to criminal liability.[7] Pursuant to Article 19 CC, grave crimes are intentional crimes for which a maximum sanction is provided of more than five and less than ten years' imprisonment; particularly grave crimes are intentional crimes for which the Criminal Code provides a sanction of more than 10 years' imprisonment.[8]

[6] Article 35 CC – Preparation of crime
"Preparation of crime shall be deemed to be the acquisition or adaptation of means or tools for committing an offence with direct intention, as well as intentional creation of other conditions where the crime has not been completed for circumstances beyond the person's control."
[7] Article 33 CC – Completed and unfinished crime (extract)
"(2) An unfinished crime shall be an attempt and a preparation for grave or particularly grave crimes."
[8] Article 19 – Types of crimes (extract)

Both the taking of bribes under Articles 311, paragraph 1 and 311[1], paragraph 1 CC (as well as the taking of bribes for an obviously illegal action or inaction by a public servant under Article 311[1], paragraph 2 CC) carry a maximum sentence under this limit. Therefore, the request or the acceptance of an offer or promise of a bribe as described under Articles 311, paragraph 1 and 311[1], paragraphs 1 and 2 CC, without any of the aggravating circumstances foreseen in the following paragraphs of these Articles, are not criminalised.

"Any undue advantage"

17. The provisions on bribery of officials (Articles 311 and 312 CC) refer to a "*bribe*" and the provisions on bribery of public servants (Articles 311[1] and 312[1] CC) to "*unlawful remuneration*". Both notions are however similarly defined, as "*money, property, property right, securities or any other advantage*". The Armenian authorities indicated on site that a bribe and an unlawful remuneration had in this context exactly the same meaning, but were used in such a way to make a difference between bribery of officials and public servants. The difference in the terms used in these two articles was viewed as a mere technicality.

18. Although immaterial advantages are not explicitly mentioned in legislation, the interlocutors met by the GET on site indicated unanimously that the reference to "*other advantage*" would also cover immaterial advantages (including those which would have no value for anyone other than for the official or public servant in question). Examples given were an unremunerated internship or a placement at a school for the son or daughter of an official. However, the GET noted that these were theoretical examples and did not refer to case-law: there have not been any bribery cases involving immaterial advantages.

"Directly or indirectly"

19. The relevant provisions on active and passive bribery in Articles 311, 311[1], 312 and 312[1] CC specify that the bribe (or unlawful remuneration, as appropriate) may be given (or offered/promised) or received "*directly or through an intermediary*".

20. In addition, the aforementioned articles also explicitly refer to situations in which the act performed by the official or public servant is not for the bribe-giver him/herself, but for a third party. To this end, Articles 311 and 312 CC as well as 311[1] and 312[1] CC contain the phrase "*in favour of the person giving the [bribe/remuneration] or the person represented by him*".

"For himself or herself or for anyone else"

21. Articles 311, 311[1], 312 and 312[1] explicitly refer to third party beneficiaries of the bribes with the phrase "*for himself or another person*".

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

22. The four provisions on bribery (311, 311[1], 312 and 312[1] CC) contain the phrase "*for the purpose of performing or not performing an action (…) within the scope of his authorities*". It was explained to the GET on site that this was interpreted broadly: if because of his/her position an official or

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"(4) Grave crimes shall be deemed to be intentionally committed acts for which maximum punishment provided for in this Code shall not exceed ten years of imprisonment.
(5) Particularly grave crimes shall be deemed to be intentionally committed acts for which this Code provides for maximum punishment, i.e. imprisonment for a term of more than ten years or life imprisonment."

public servant would have opportunity to do something – even if it would strictly speaking not fall within the realm of his job – it would be considered to be within the scope of his/her authorities. In this connection, the authorities also pointed to the phrase "*favouring the performance or non-performance of such action (…) by use of his official position"*, which would be used to cover situations in which something was within the power of another official or public servant and the bribe-taker would use his/her influence to get the other official or public servant to act (or not to act) in a certain way (see further on this issue paragraph 53 and further, on trading in influence).

23. In this context, the GET discussed on site the meaning of an "*obvious illegal action or inaction*", which is an aggravating circumstance for the passive bribery offence (Article 311 and 311[1], paragraph 2 CC). It was indicated to the GET that this related to the knowledge on the side of the official/servant: for example, if the official/public servant knows that someone does not qualify for a licence but gives it to the bribe-giver anyway.

"Committed intentionally"

24. A basic principle of the Criminal Code is that an action is punishable only when committed intentionally, subject to provisions to the contrary (Article 28 of the Criminal Code).[9] Therefore, as the provisions on bribery do not mention that they can be caused by negligence, it can be inferred *a sensu contrario* that they can only be committed intentionally.

Other elements

25. As indicated above (see paragraph 22), the four provisions on bribery each mention the possibility that bribery is committed to have the official or public servant act or not act in a certain way. In addition to this, the provisions on bribery mention the possibility of bribery for the purpose of the official/servant influencing actions by another official or servant ("*favouring the performance or non-performance of such action*"). A third possibility is however that the bribery is committed for the purpose of "*patronage or connivance*". The GET learned on site that these terms were not exactly defined and were not always clear in practice. The terms were said to refer to a longer stretch of time in which either certain interests were being protected by the official/servant in return for the bribe (patronage) or in which a blind eye was being turned by the official/servant to certain unlawful actions in return for the bribe (connivance).

Sanctions

26. The following sanctions can be imposed for active bribery of officials (Article 312 CC):
    - a fine in an amount of 100-fold to 200-fold the minimum wage[10], one to three months detention or three months to three years' imprisonment[11], for 'basic' active bribery;
    - a fine in an amount of 200-fold to 400-fold the minimum wage[12] or two to five years' imprisonment, if the offence was committed on a large scale[13];

[9] Article 28 – Forms of guilt (extract)
"(2) An act committed negligently shall be deemed to be crime where it is especially provided for in the Special Part of this Code."
[10] See paragraph 9 and footnote 4 above: this refers to 1000 Armenian Drams (ADM)], which is approximately €2. 100 to 200 times the minimum wage is thus 100,000 to 200,000 ADM (approximately €200 to €400).
[11] According to Articles 57 and 59 CC, "detention" corresponds to a custodial sentence of 15 days to 3 months, whereas "imprisonment" refers to a period of 3 months to 15 years.
[12] 200,000 to 400,000 ADM (approximately €400 to €800) (see footnotes 4 and 10 above).
[13] Pursuant to Article 311, paragraph 5 CC, "*large scale"* refers to a bribe in an amount of 200 to 1000 times the minimum wage (i.e. 200,000 to 1 million ADM, approximately €500 to €2000).

- three to seven years' imprisonment, if the offence was committed on an especially large scale[14] or if the offence was committed by an organised group.

27. In the case of active bribery of public servants who do not have the status of officials the fines are the same as for active bribery of officials (see above), but lighter detention and prison sentences are foreseen (Article 312[1] CC):
    - one to two months' detention or three months to two years' imprisonment, for 'basic' active bribery;
    - three months to four years' imprisonment, if the offence was committed on a large scale;
    - two to five years' imprisonment if the offence was committed on an especially large scale or if the offence was committed by an organised group.

28. For passive bribery of officials the following sanctions can be imposed (Article 311 CC):
    - a fine in an amount of 300 to 500 times the minimum wage[15] or three months to five years' imprisonment, with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years, for 'basic' passive bribery;
    - three to seven years' imprisonment, with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years, if the bribe was received in exchange for an "*obviously unlawful action or inaction"* by the official;
    - four to ten years' imprisonment, with or without confiscation of property, if the offence was committed by extortion, by a group of persons upon prior agreement, on a large scale or repeatedly;
    - seven to twelve years' imprisonment, with or without confiscation of property, if the offence referred to in one of the previous indents was committed by an organised group, by a judge or on an especially large scale.

29. Article 311[1] CC, dealing with passive bribery of public servants who do not have the status of officials, is similarly organised similarly but provides for lighter sanctions:
    - a fine in an amount of 200 to 400 times the minimum wage[16] or three months to three years' imprisonment, with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years, for 'basic' passive bribery;
    - three to five years' imprisonment, with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years, if the bribe was received by the public servant in exchange for an "*obviously unlawful action or inaction"*;
    - four to seven years' imprisonment, if the offence was committed by extortion, by a group of persons upon prior agreement, on a large scale or repeatedly;
    - between five and ten years' imprisonment, with or without confiscation of property, if the offence referred to in one of the previous indents was committed by an organised group or on an especially large scale.

30. The applicable sanctions for other comparable crimes are
    - A fine in an amount of 300 to 500 times the minimum wage, up to two months' detention or three months' to two years' imprisonment up for 'basic' fraud or embezzlement (Articles 178 and 179 CC) to up to four to eight years' imprisonment with or without confiscation of property for aggravated fraud or embezzlement;

[14] Pursuant to Article 311, paragraph 5 CC, *"especially large scale"* refers to a bribe in an amount of more than 1000 times the minimum wage (i.e. more than 1 million ADM / more than €2000).
[15] 300,000 to 500,000 ADM (approximately €600 to €1000).
[16] 200,000 to 400,000 ADM (approximately €400 to €800)

- A fine in an amount of 200 to 300 times the minimum wage, deprivation of the right to hold a certain position or engage in certain activities for a maximum term of five years, two to three months detention or three months to four years' imprisonment for abuse of powers (Article 308)
- A fine in an amount of 200 to 400 times the minimum wage, one to three months' detention or three months' to two years' imprisonment for 'basic' forgery by an official (Article 314 CC) up to a fine in an amount of 300 to 500 times the minimum wage, up to five years' imprisonment with the deprivation of the right to hold certain positions or engage in certain activities for a maximum term of three years for 'aggravated' forgery by an official.

Case-law

31. The GET was not provided with any case law on active and passive bribery of domestic public officials (i.e. officials and/or public servants).

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

32. Although members of domestic public assemblies are not explicitly mentioned in Article 308 CC, the Armenian authorities state that they are considered to be officials in accordance with paragraph 3, sub 1 of Article 308 CC, which refers to "*persons performing functions of a representative of the authorities on a permanent, temporary basis or by special authorisation*". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of domestic public assemblies. There was no case law available on bribery of members of domestic public assemblies.

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

33. Foreign public officials are equated with domestic officials in Article 308, paragraph 4, sub 1 CC, which provides that for the purpose of Articles 311, 312 and 313 CC an official is also "a *public official of a foreign state in accordance with the national law of the state concerned".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign public officials. There was no case law available on bribery of foreign public officials.

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

34. Members of foreign public assemblies are considered to be officials pursuant to Article 308, paragraph 4, sub 1 CC, which refers to "*as well as members of legislative or other representative bodies of a foreign state exercising administrative authorities*". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of foreign public assemblies. To date, there has not been any court decision bribery of members of foreign public assemblies.

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

Definition of the offence

35. Active and passive bribery in the private sector are criminal offences under Armenian law, pursuant to Article 200 CC, which establishes the offence of *"commercial bribery"*.[17]

> **Article 200 CC – Commercial bribery**
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> 1. Giving a bribe to an administrative servant implementing management functions of a commercial or other entity, arbiter, including an arbiter of a foreign country performing functions in accordance with arbitration legislation, auditor or advocate, i.e. illegally promising or offering or giving money, property, rights over property, securities or other advantage to those persons, in person or through an intermediary, for themselves or for another person, for the performance or non-performance of actions, in favour of a briber or a person represented by him, shall be punished by a fine in the maximum amount of 200-fold to 400-fold of the minimum wage or by deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of two years or by imprisonment for a maximum term of two years.
> 2. The same act committed by a group of persons with prior agreement or by an organised group shall be punished by a fine in the amount of 300-fold to 500-fold of the minimum wage or by imprisonment for a maximum term of four years.
> 3. Receiving a bribe by a servant implementing management functions of a commercial or other entity, arbiter, including an arbiter of a foreign country performing functions in accordance with arbitration legislation, auditor or advocate, i.e. illegally receiving money, property, rights over property, securities or other advantages by those persons, in person or through an intermediary, for them or other persons, for the performance or non-performance of actions in favour of a briber or a person represented by him, shall be punished by a fine in the amount of 200-fold to 400-fold of the minimum wage or by deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or by imprisonment for a maximum term of three years.
> 4. The act provided for in part 3 of this Article committed by extortion shall be punished by a fine in the amount of 300-fold to 500-fold of the minimum wage or by deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of five years or by imprisonment for a maximum term of five years.
> 5. In articles of this Chapter a servant of a commercial or other entities shall be a person who permanently, temporarily or with a special authorisation implements regulatory or other

[17] It should be noted that in addition to this, the Criminal Code contains a special article on bribery in sports:
Article 201 - Bribing participants and organisers of professional sporting events and commercial competition show
"(1) Giving a bribe to sportspersons, referees, coaches, team captains or other participants or organisers of professional sporting events, as well as organisers of commercial competition shows and members of award commission, i.e. illegally promising or offering or giving money, property, right over a property, securities or other advantage to those persons in person or represented for them or other person for the purpose of affecting on the results of those sporting events or competitions shall be punished by a fine in the amount of 200-fold to 500-fold of the minimum wage or by detention for a maximum term of two months (2) The same acts committed by a group of persons with prior agreement or by an organised group shall be punished by imprisonment of a maximum term of five years.
(3) Receiving a bribe from sportspersons, referees, coaches, team captains or other participants or organisers of professional sporting events, as well as organisers of commercial competition shows and members of award commission, i.e. receiving money, property, right over a property, securities or any other advantage from those persons in person or represented for them or other person shall be punished by a fine in the amount of 300-fold to 500-fold of the minimum wage or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or by detention for a term of two or three months or by imprisonment for a maximum term of two years."

management functions in commercial entities irrespective of the form of ownership, as well as in non-commercial entities not deemed to be state and local self-governing bodies, institutions of state and local self-governing bodies.
Persons guilty of crimes provided for in this Article shall be exempt from punishment by court if they voluntarily informed the authority having the right to institute criminal cases on the crime committed, if those who received illegal remuneration have at the same time returned the proceeds or compensated its value.

Elements/concepts of the offence

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

36. With regard to the scope of perpetrators, Article 200 CC on commercial bribery covers persons, called *"administrative servants in commercial or other entities"*, who are *"implementing managerial functions in a commercial or other entity".* It is explained in the same article (paragraph 5) that a *"servant in commercial or other entities"* is a *"person who permanently, temporarily or with a special authorisation implements regulatory or other managerial functions in commercial entities – irrespective of the form of ownership – as well as in non-commercial entities which are not deemed to be state and local self-governing bodies, establishments of state and local self-governing bodies".* The scope of this provision is therefore different from that of Articles 7 and 8 of the Convention. On the one hand, it is broader than the provisions of the Convention, as it is not limited to business activities, and thus also includes non-profit activities (e.g. staff working for an NGO). On the other hand, it is narrower than Articles 7 and 8 of the Convention, as employees who do not have a managerial function (and/or are not officially in a position to issue instructions to others), nor persons who have another type of relationship with the company than that of employer-employee are covered, if they do not act on "*special authorisation*". "*Special authorisation*" in this context refers to situations in which persons who do not have a regulatory or other managerial function in the entity are specially instructed by the head of the entity in question to act on behalf of the entity.

"Promising, offering or giving" (active bribery)

37. The elements "*promising*", "*offering*" and "*giving*" are explicitly mentioned in Articles 200 CC.

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

38. Article 200 CC only refers to the "*receipt*" of a bribe. The request for an undue advantage or the acceptance of an offer or promise of such an advantage would be considered as preparation of a crime. However, as indicated before (see paragraph 16 above), pursuant to Article 33 CC only the preparation of grave or particularly grave crimes is subject to criminal liability. Due to the fact that the sanctions provided for active and passive commercial bribery are not higher than 5 years, the request for a bribe or the acceptance of an offer or promise of a bribe cannot be regarded as preparation of a grave or particularly grave crime and are thus not criminalised.

"Any undue advantage"

39. Article 200 CC refers to the "*illegal*" giving (or promising or offering) and receiving of money or another advantage. During the on site visit, the Armenian authorities indicated that the concept of 'illegal' was used to differentiate the giving or receiving of money or another advantage in the

private sector from that in the public sector: to receive any money or other advantages (other than salaries and possibly other benefits defined by law) by an official would be considered illegal - especially as officials are reportedly not permitted to engage in any remunerated outside activities - whereas it could be perfectly legal for someone in the private sector to receive such advantages.

40. As before, with regards to bribery in the public sector, the authorities were unanimous in their opinion that the reference to "*any other advantage*" was sufficiently broad to also cover immaterial advantages.

"Directly or indirectly"

41. Article 200 CC specifies that the bribe may be given (or promised or offered) or received "*in person or through an intermediary*".

"For themselves or for anyone else"

42. Article 200 specifies as regards passive and active bribery that the bribe could be for the bribe-taker him/herself or any other person.

"To act or refrain from acting"

43. With reference to the phrase "*for the performance or non-performance of actions*", Article 200 covers both 'acting and refraining from action'.

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

44. As already indicated above (see paragraph 37), the scope of article 200 CC is limited to the type of entity in which the bribe-taker operates, namely a commercial or other entity and by his/her function in this entity (i.e. performing *"regulatory or other management functions*"). Whether or not bribery occurred "in the course of business activity" or lead the person to act "in breach of his/her duties" is therefore irrelevant.

"Committed intentionally"

45. Articles 200 and 201 CC do not mention that bribery in the private sector can be caused by negligence. Therefore, as before (see paragraph 24 above), pursuant to Article 28 CC, intent is a required element for the commission of these offences.

Sanctions

46. The sanctions provided for active commercial bribery are the following (Article 200, paragraphs 1 and 2 CC):
    - a fine in an amount of 200 to 400 times the minimum wage[18], three months to two years' imprisonment or the deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of two years, for 'basic' active commercial bribery;

[18] 200,000 to 400,000 ADM (approximately €400 to €800).

- a fine in an amount of 300 to 500 times the minimum wage[19] or up to four years' imprisonment, if the offence was committed by a group of persons upon prior agreement or by an organised group.

47. The sanctions provided for passive commercial bribery are the following (Article 200, paragraphs 3 and 4 CC):
    - a fine in an amount of 200 to 400 times the minimum wage[20], three months to three years' imprisonment or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years, for 'basic' passive bribery;
    - a fine in an amount of 300 to 500 times the minimum wage[21] or up to five years' imprisonment, if the bribe was extorted.

Case-law

48. The GET was not provided with any case law on commercial bribery to illustrate any of the items described in the paragraphs above.

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

49. Officials of international organisations are considered to be officials, pursuant to Article 308, paragraph 4 CC, which extends the definition of an official to include "*officials of public international or supranational organisations and bodies, the contracted employees or other persons performing functions as those performed by similar officials or employees".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of officials of international organisations. To date, there has not been any court decision concerning bribery of officials of international organisations.

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

50. Members of international parliamentary assemblies are considered to be officials, pursuant to Article 308, paragraph 4 CC, which includes in the definition of officials "*members of parliamentary assemblies of international or supranational organisations, or other bodies performing similar functions*". The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of members of international parliamentary assemblies. There has been no court decision to date concerning bribery of members of foreign public assemblies.

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

51. Judges and officials of international courts are considered to be officials, pursuant to Article 308, paragraph 4 (sub 4) CC, which provides that officials are also "*members or officials performing judicial functions in international courts, the jurisdiction of which has been recognised by the Republic of Armenia*". The Armenian authorities indicate that officials of international courts who do not perform judicial functions would be covered by the phrase "*officials of international or supranational public organisations and bodies*" in paragraph 4 (sub 2) of Article 308 CC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of judges and officials of international courts. To date, there

[19] 300,000 to 500,000 ADM (approximately €600 to €1000).
[20] See footnote 18 above.
[21] See footnote 19 above.

have not been any court decisions concerning bribery of judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

Definition of the offence

52. As already indicated above (see paragraph 7), Armenia made a reservation to Article 12 of the Convention, according to which "pursuant to Article 37, paragraph 1, of the Convention, the Republic of Armenia reserves its right not to establish as a criminal offence under its domestic law the conduct referred to in Article 12". In accordance with the procedure foreseen in Article 38 of the Convention, this reservation has been upheld until 1 May 2012.

53. Nevertheless, the authorities stated that trading in influence is partly criminalised by the provisions on bribery. Passive trading in influence would be criminalised by Articles 311 and 311[1] CC, in as far as the offence is committed by an official or public servant: it refers to the receipt of a bribe by an official or a public servant for *"favouring the action or refraining from action by an official [or a public servant] in the exercise of his or her official functions"* (i.e. an official/a public servant receiving a bribe to exercise his/her influence for another official/public servant). Active trading in influence of officials and public servants would in turn be criminalised by Articles 312 and 312[1] CC, which cover the giving, promising or offering of a bribe to an official or public servant for *"favouring the action or refraining from action by an official [or a public servant] in the exercise of his or her official functions or for the purpose of patronage and connivance"* (i.e. someone who gives, promises or offers a bribe to an official or public servant to exercise his/her influence over another official/public servant).

54. In addition, the Armenian authorities point to a separate article dealing with passive trading in influence: Article 311[2] CC, which criminalises "*the use of real or supposed influence for mercenary purposes (…) or for the purpose of patronage and connivance*". During the on site visit, it was made clear to the GET that "*mercenary purposes*" referred to some sort of lucrative objective (i.e. the purpose of the exerted influence would be profit). As indicated above (see paragraph 25) the reference to patronage and connivance was explained as referring to actions and inactions over a longer stretch of time, whereby certain interests would be protected or a blind eye would be turned to certain unlawful actions.

Article 311[2] CC – Use of real or supposed influence for mercenary purposes

1. Use of real or supposed influence for mercenary purposes, i.e. accepting money, property, property rights, securities or any other advantage, personally or through an intermediary, for favouring the performance or non-performance of an action by an official or a public servant, who is not an official, within the scope of his authorities in favour of legal entities or natural persons, or for the purpose of patronage or connivance, shall be punished by a fine in the amount of 200-fold to 400-fold of the minimum wage or by imprisonment for a maximum term of three years.
2. The same act committed for obviously illegal action or inaction shall be punished by imprisonment for a term of three to five years.
3. The same act committed:
   (1) by extortion;
   (2) on a large scale;
   (3) by a group of persons with a prior agreement;

(4) repeatedly,
shall be punished by imprisonment for a term of four to seven years.
4. The acts provided for in part 1 or 2 or 3 of this Article, committed:
(1) by an organised group;
(2) on an especially large scale;
shall be punished by imprisonment for a term of five to ten years with or without confiscation of property.

55. Apart from the fact that Article 311[2] CC only criminalises passive trading in influence (whereas Articles 311, 311[1], 312, 312[1] CC deal with both sides of the offence), the difference between the trading in influence offence under Articles 311, 311[1], 312, 312[1] CC and Article 311[2] CC lies with the position of the influence peddler and the purpose of the exerted influence. In the former case the influence peddler is him/herself an official or public servant and it does not matter for which purpose the influence is exerted. In the latter case (Article 311[2] CC) the influence peddler can be anyone, but the offence is limited in the fact that the exerted influence has to have a financially profitable purpose ("*mercenary purposes*").

Elements/concepts of the offence

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

56. The provision 'asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]' is transposed in – on the one hand – Articles 311, 311[1], 312, 312[1] CC by use of the words *"favouring the performance or non-performance of such an action by [an official or a public servant]".* Article 311[2] CC on the other hand qualifies these actions as the *"use of real or supposed influence"*. It was explained to the GET that "s*upposed influence*" refers to situations in which the influence peddler thinks s/he has influence but in reality has not.

57. Furthermore, the Armenian authorities state that accepting an undue advantage for the mere assertion or confirmation of an intention to exert influence is considered as a preparatory act to the crime and is therefore only punishable for grave and particularly grave offences.

Other concepts/elements

58. In as far as trading in influence by officials and public servants is covered by Articles 311, 311[1], 312 and 312[1] CC, the elements of the offence described under these articles apply accordingly to trading in influence by officials and public servants.

59. As regards passive trading in influence for "*mercenary purposes"* by other persons under Article 311[2] CC, the elements described under passive bribery of officials also apply to these offences with one exception, namely that Article 311[2] does not foresee the possibility of the bribe being received by a third party instead of the influence peddler him/herself.

Sanctions

60. The sanctions for the forms of trading in influence criminalised by Articles 311, 311[1], 312 and 312[1] CC are the same as those outlined under bribery of domestic public officials (see

paragraphs 26-29 above). The sanctions applicable to passive trading in influence pursuant to Article 311[2] CC are:

- a fine in an amount of 200 to 400 times the minimum wage or up to three years' imprisonment, for 'basic' passive trading in influence;
- three to five years' imprisonment, if the offence was committed for an obviously unlawful action or inaction;
- four to seven years' imprisonment, if the offence was committed (1) by extortion, (2) in a large amount, (3) by a group of persons upon prior agreement or (4) repeatedly;
- five to ten years' imprisonment, with or without confiscation of property, if the offence was committed by (1) by an organised group or (2) in a particularly large amount.

Case-law

61. There was one court decision in 2008 concerning passive trading in influence, pursuant to Article 311[2], which led to an acquittal. The GET was not provided with any further information on this case. As for the forms of trading in influence, partly criminalised by Articles 311, 311[1], 312 and 312[1] CC (*"favouring the performance or non-performance of such an action*"), the GET was – as indicated in paragraph 48 above – not given any case law on these provisions.

Bribery of domestic arbitrators (Articles 1-3 of ETS 191) and bribery of foreign arbitrators (Article 4 of ETS 191)

62. Bribery of domestic and foreign arbitrators is criminalised by Article 200 of the Criminal Code on commercial bribery, which refers to "*arbitrators performing functions in accordance with the arbitration legislation, including that of a foreign country".* The elements of the offence and the applicable sanctions detailed under commercial bribery in the section dealing with bribery in the private sector apply accordingly to bribery of domestic and foreign arbitrators. To date there has been no court decision concerning bribery of domestic or foreign arbitrators.

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

63. The Armenian justice system does not work with jurors. Bribery of domestic jurors is therefore not a criminal offence.

Bribery of foreign jurors (Article 6 of ETS 191)

64. Foreign jurors are considered to be officials, pursuant to Article 308, paragraph 4 CC, which explicitly extends the definition of an official to include also "*jurors of courts of foreign states".* The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign jurors. To date, there have not been any cases concerning bribery of foreign jurors.

Other questions

Participatory acts

65. In its general part, the Criminal Code foresees three kinds of accomplices to the perpetrator of the offence (Article 38 CC), the organiser, the abettor and the person who assisted in the offence ("*aider* ").

Article 38 CC – Types of accessories

1. An organiser, abettor and aider together with a principle shall be deemed to be accessories.
2. A principle shall be a person who directly committed an offence or immediately participated in the committal thereof with other persons (accomplices), as well as committed an offence through the use of persons who by virtue of law shall not be held criminally liable or committed an offence negligently.
3. An organiser shall be a person who has arranged or directed the committal of an offence, as well as has established an organised group or a criminal organisation or has managed them.
4. An abettor shall be a person who has instigated another person to commit an offence through persuasion, financial incentive, threat or other means.
5. An aider shall be a person who assisted in the committal of a crime through pieces of advice, instructions, provision of information or means, tools or eliminate obstacles, as well as a person who has previously promised to conceal the criminal, means or instruments of crime, traces of crime or criminally acquired items, as well as a person who has previously promised to acquire or realise those items.

66. Accomplices are held liable pursuant to the same articles as the main offenders. Pursuant to Article 39, paragraph 1 CC, accomplices are liable within the limits of their intent and the nature and level of their participation is taken into account when subjecting them to liability. Accomplices are liable only for the aggravating circumstances of which they were aware. If the crime is not accomplished for circumstances beyond the accomplice's control, s/he is liable for preparation of the crime (in case of "*grave*" or "*particularly grave crimes"*) or complicity to attempt a crime (Article 39 CC). The law does not stipulate the level of sanctions applicable to accomplices as compared to the main offender. The GET was, however, informed that – according to legal doctrine and court practice – the organiser would be subject to the most severe sanction, followed by the perpetrator, the abettor and, lastly, the person who assisted in the offence (*"aider"*).

67. In addition to this, the Criminal Code contains the offence of "*bribery mediation"* (Article 313 CC), which is defined as "*favouring to reach an agreement between the briber and the bribe taker or to carry out the agreement already reached"* and thus provides for separate criminal liability of the intermediary.

Article 313 CC – Mediation in bribery

1. Mediation in bribery, i.e. favouring the reaching of an agreement between the briber and bribe taker or carrying out the agreement already reached, shall be punished by a fine in the amount of 100-fold to 200-fold of the minimum wage or by detention for a maximum term of two months or by imprisonment for a maximum term of three years.
2. The act envisaged in part 1 of this Article, committed
   (1) repeatedly,
   (2) by use of official position
   shall be punished by a fine in the amount of 200-fold to 400-fold of the minimum wage or by detention for a term of one to three months or by imprisonment for a term of two to five years.

68. The GET was informed that if a person would actively bring together two parties (i.e. the bribe-giver and bribe-taker), who did not have any previous intention to engage in a bribery offence, the person in question would be held liable under the articles on participation in the general part of the Criminal Code (Article 38 and 39 CC). However, if there was already some intention on the part of the bribe-giver and bribe-taker to commit the bribery offence, and the mediator only facilitated the reaching of an agreement between the parties or the transfer of a bribe, s/he would be held liable under Article 313 CC.

Jurisdiction

69. The rules of Armenian criminal jurisdiction are laid down in Articles 14 and 15 CC; they apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed within the territory of Armenia or aboard Armenian ships or aircrafts (principle of territoriality, Article 14 CC).

> **Article 14 CC – Operation of criminal statute on persons having committed an offence in the territory of the Republic of Armenia**
>
> 1. A person committed an offence in the territory of the Republic of Armenia shall be held criminally liable under the Criminal Code of the Republic of Armenia.
> 2. The offence shall be deemed to be committed in the territory of the Republic of Armenia that:
>   (1) was commenced, continued or finished in the territory of the Republic of Armenia.
>   (2) was committed in complicity with other persons who were engaged in criminal activity in the territory of other country.
> 3. The liability of a person that commits an offence in the territory of the Republic of Armenia and other countries shall ensue under the Criminal Code of the Republic of Armenia where he is brought to liability in the territory of the Republic of Armenia and unless otherwise provided for in international treaties of the Republic of Armenia.
> 4. (…)
> 5. (…)

70. In addition, Article 15 establishes jurisdiction as well as acts committed abroad by Armenian citizens and stateless persons residing permanently in Armenia (principle of nationality, Article 15, paragraph 1 CC). In this context, the GET was informed on site that it would not be possible for a non-national to be an official (or public servant) and/or a member of a domestic public assembly. Article 15 however restricts jurisdiction over acts by its nationals (and thus its officials/public servants, members of its domestic public assemblies as well as Armenian officials of international organisations, Armenian members of international parliamentary assemblies, Armenian judges and officials of international courts, pursuant to Article 17, paragraph 1 (c) of the Convention) to those which are also a criminal offence in the country where the offence is committed (Article 15, paragraph 1 CC). Dual criminality is thus required to establish jurisdiction in respect of acts committed by Armenian nationals (and Armenian public officials) abroad.

Article 15 CC – Operation of criminal statutes in respect of persons having committed an offence outside the territory of the Republic of Armenia

1. Citizens of the Republic of Armenia and stateless persons permanently residing in the Republic of Armenia who committed an offence outside the territory of the Republic of Armenia shall be held criminally liable under the Criminal Code of the Republic of Armenia if the act they committed is recognised as a crime by the legislation of the country where the crime was committed and if they were not convicted in other country. While convicting the aforementioned persons the punishment may not exceed the upper threshold of punishment provided for in the law of the foreign country in the territory of which the offence was committed.
2. Citizens of the Republic of Armenia outside the territory of the Republic of Armenia and stateless persons permanently residing in the Republic of Armenia shall be held criminally liable under the Criminal Code of the Republic of Armenia for committing crimes provided for in Articles 384, 386-391, 393-397 of this Code regardless whether that act is considered or not considered an offence in the Criminal Code of the country where it was committed.
3. Foreign citizens and stateless persons not permanently residing in the Republic of Armenia who committed the offence outside the territory of the Republic of Armenia shall be held criminally liable under the Criminal Code of the Republic of Armenia if they committed:
   (1) such crimes, which are provided for in international treaties of the Republic of Armenia.
   (2) such grave or particularly grave crimes, which are directed against the interests of the Republic of Armenia or rights and freedoms of citizens of the Republic of Armenia.
4. Norms defined in part 3 of this Article shall apply if foreign citizens and stateless persons not permanently residing in the Republic of Armenia have not been convicted for the given crime in another country and are held criminally liable in the territory of the Republic of Armenia.

71. Article 15 CC also provides for jurisdiction to prosecute "*grave or particularly grave crimes*" committed abroad by foreigners against Armenia or any of its citizens, as well as offences provided for in international treaties ratified by Armenia (Article 15 (3) CC). The GET was informed that bribery with aggravating circumstances of an Armenian official/public servant by a foreign citizen abroad would be considered as being directed against the interest of Armenia, thus establishing jurisdiction of Armenia over the offence. In any case, regardless of whether the offence is a "*grave or particularly grave crime*", the Criminal Law Convention would be the applicable treaty and Armenia would thus have jurisdiction over bribery and trading in influence offences committed by foreign citizens abroad, if the offender in question had not already been convicted in another jurisdiction.

72. Armenia does not extradite its nationals.

Article 16 CC – Extradition of offenders

1. Citizens of the Republic of Armenia having committed an offence in the territory of another country shall not be extradited to other country.
2. (…) – 5. (…)

Statute of limitations

73. According to Article 75 of the Criminal Code, the period of limitation depends on the gravity of the offence.[22] It is two years for minor crimes (i.e. intentional crimes for which the maximum sanction is 2 years' imprisonment), five years for crimes of medium gravity (intentional crimes for which the maximum sanction is 5 years' imprisonment), ten years for grave crimes (crimes for which the maximum sanction is 10 years' imprisonment) and fifteen years for particularly grave crimes (crimes for which the maximum sanction is more than 10 years' imprisonment). The limitation period runs from the time of the completion of the offence to the moment the judgment becomes effective: it may be interrupted when a person commits a new crime (in which case a new period will start) or suspended in case a person evades the investigation or trial. The perpetrator may no longer be held liable when ten years have elapsed, since the commission of a crime of minor or medium gravity (or when twenty years have elapsed since the commission of a grave or particularly grave crime.

74. The following table illustrates the applicable limitation periods for bribery, trading in influence and other offences of comparable gravity, according to the aggravating circumstances foreseen in the relevant articles:

Article	Offence	Max. sentence (imprisonment)	Limitation period
Bribery of officials			
311, para. 1	Passive bribery	3 years	5 years
311, para. 2	Passive bribery for an obviously illegal action or inaction	7 years	10 years
311, para. 3	Passive bribery by extortion, by a group of persons with prior agreement, on a large scale or repeatedly	10 years	10 years
311, para. 4	Passive bribery by an organised group, on an especially large scale or by a judge	12 years	15 years
312, para. 1	Active bribery	3 years	5 years
312, para. 2	Active bribery on a large scale	5 years	5 years
312, para. 3	Active bribery on an especially large scale or by an organised group	7 years	10 years

[22] "Article 75 CC – Exemption from criminal liability due to expiry of statute of limitations

1. A person shall be exempt from the criminal liability where the following periods have passed from the day considered as that of completion of an offence:
   (1) two years from the day considered as that of completion of an offence of minor gravity.
   (2) five years from the day considered as that of completion of an offence of medium gravity.
   (3) ten years from the day considered as that of completion of a grave offence.
   (4) fifteen years from the day considered as that of completion of a particularly grave offence.
2. The statute of limitations shall be calculated from day considered as that of completion of an offence up to the entry into force of the judgement. In case of continuous crime the statute of limitations shall be calculated from the moment of termination of an act, whereas in case of continuing crime – at the moment of committing the final act.
3. The running of statute of limitations shall be interrupted where, before the expiry of the mentioned periods, a person commits a new offence of medium gravity, a grave and particularly grave offence. In this case, the calculation of the statute of limitations shall start from the moment considered as that of completion of a new offence.
4. The running of the statute of limitations shall be suspended where a person evades an investigation or trial. In this case, the running of the statute of limitations shall restart from the moment of arrest or surrender of a person. Moreover, a person shall not be held criminally liable where ten years have passed from the day considered as that of completion of an offence of minor or medium gravity, whereas twenty years from the day considered as that of completion of a grave or particularly grave offence and the running of the statute of limitations has not been interrupted by a new crime.
5. (…) - 6 (…)"

Article	Offence	Max. sentence (imprisonment)	Limitation period
Bribery of public servants			
311[1], para. 1	Passive bribery	3 years	5 years
311[1], para. 2	Passive bribery for an obviously illegal action or inaction	5 years	5 years
311[1], para. 3	Passive bribery by extortion, by a group of persons with prior agreement, on a large scale or repeatedly	7 years	10 years
311[1], para. 4	Passive bribery by an organised group or on an especially large scale	10 years	10 years
312[1], para. 1	Active bribery	2 years	2 years
312[1], para. 2	Active bribery on a large scale	4 years	5 years
312[1], para. 3	Active bribery on an especially large scale or by an organised group	5 years	5 years
Commercial bribery			
200, para. 1	Active commercial bribery	2 years	2 years
200, para. 2	Active commercial bribery by a group of persons with prior agreement or by an organised group	4 years	5 years
200, para. 3	Passive commercial bribery	3 years	5 years
200, para. 4	Passive commercial bribery by extortion	5 years	5 years
Use of influence for mercenary purposes (trading in influence)			
311[2],para. 1	Use of influence for mercenary purposes (passive trading in influence)	3 years	5 years
311[2],para. 2	Use of influence for mercenary purposes (passive trading in influence) for an obviously illegal action or inaction	5 years	5 years
311[2],para. 3	Use of influence for mercenary purposes (passive trading in influence) by extortion, on a large scale, by a group of persons with prior agreement or repeatedly	7 years	10 years
311[2],para. 4	Use of influence for mercenary purposes (passive trading in influence), by an organised group or on an especially large scale	10 years	10 years
Mediation in bribery			
313, para. 1	Mediation in bribery	3 years	5 years
313, para. 2	Repeated mediation in bribery or by use of 'official position'	5 years	5 years
Bribery in sports			
201, para. 1	Active bribery in sports	[2 months detention][23]	2 years
201, para. 2	Active bribery in sports, by a group of persons with prior agreement or an organised group	5 years	5 years
201, para. 3	Passive bribery in sports	2 years	2 years

[23] See footnote 11 above: "Detention" is considered to be different from "imprisonment" in that it can only be imposed for a maximum of 3 months; "imprisonment" refers to a period between 3 months and 15 years. For 'basic' active bribery in sports only a sanction of up to two months' detention can be imposed.

Defences

75. Criminal liability for some bribery and trading in influence offences may be waived in cases of effective regret of the offender (Article 312, paragraph 4 and 312[1], paragraph 4 CC, as well as Article 200, paragraph 5 CC). Articles 312 and 312[1] CC on the one hand and Article 200 CC on commercial bribery on the other hand however differ on several points. First of all, whereas the defence in Articles 312 CC and 312[1] CC applies only to the active briber, the defence of Article 200 applies to both the active and passive briber. Furthermore, Articles 312 and 312[1], paragraph 4 CC is applicable in two situations: (1) if the bribe has been extorted and (2) if the person has voluntarily informed the law enforcement authorities on the offence committed.[24] Article 200 is only applicable in the latter situation (whereby it is further also stipulated that the bribe-taker must have returned the bribe – to the bribe-giver in case of extortion or to the state in all other cases – or compensated its value). Finally, an important difference is that Articles 312 and 312[1] CC speak of "*exemption from criminal liability*", whereas Article 200 CC provides for "*exemption from punishment*", which does not discharge offenders from being criminally liable but stipulates that they will not face a sanction. The defence provided for in all three cases – Article 200 CC, as well as Articles 312 and 312[1] CC – is mandatory (i.e. there is no choice but to release the briber from liability in the case of Articles 312 and 312[1] CC, or punishment, in the case of 200 CC). Both the defence of effective regret of Articles 312 and 312[1] CC and of Article 200 CC does not specify the time period in which the offender has to come forward, as long as this is before law enforcement bodies have learned of the offence.

Article 312 CC – Giving bribes

(…)
4. The person, giving a bribe, shall be exempt from criminal liability in case the bribe has been extorted or in case the person has voluntarily informed law enforcement bodies on giving bribe.

Article 312[1] CC – Giving unlawful remuneration to a public servant who is not an official

(…)
4. The person, giving unlawful remuneration, shall be exempt from criminal liability in case the unlawful remuneration has been extorted or in case the person has voluntarily informed law enforcement bodies on giving unlawful remuneration.

Article 200 CC – Commercial bribery

(…)
5. (…) Persons guilty of crimes provided for in this Article shall be exempt from punishment by court where they voluntarily informed the authority having the right to institute criminal case on the crime committed, and if those having received illegal remuneration have meanwhile returned the proceeds or compensated its value.

[24] It was explained to the GET on site that if a briber would only come forward when s/he had a realistic fear that law enforcement authorities would soon learn of the offence this would not be considered as "voluntarily informing law enforcement bodies".

Data

76. The authorities have provided the following data regarding the number of cases and convictions relating to bribery and trading in influence offences in the period 2007-2009.

Article of the Criminal Code	2007			2008			2009			2010 (Jan. – Sept.)		
	Criminal Prosecution	Number of cases filed with the Court	Number of convictions	Criminal Prosecution	Number of cases filed with the Court	Number of convictions	Criminal Prosecution	Number of cases filed with the Court	Number of convictions	Criminal Prosecution	Number of cases filed with the Court	Number of convictions
200	0	0	0	9	4	3	10	2	1	5	3	
201	0	0	0	0	0	0	0	0	0			
308	21	12	0	61	30	11	65	29	15			
309	5	1	0	8	8	9	14	13	5			
310	0	0	0	0	0	0	0	0	0			
311	5	3	3	44	22	11	35	19	8	34	20	
311^1	0	0	0	4	1	0	8	3	1	9	5	
311^2	0	0	0	1	1	0	0	0	0	0	0	
312	2	1	1	10	0	0	9	1	0	4	3	
312^1	0	0	0	0	0	0	1	0	0	1	0	
313	0	0	0	4	1	0	3	5	2	2	0	

III. ANALYSIS

77. The legal framework providing for the criminalisation of corruption offences was last amended in 2008, when provisions on bribery of so-called public servants – i.e. employees in the public sector who do not have the status of officials – (Articles 311^1 and 312^1 CC) and passive trading in influence (Article 311^2 CC) were added to the Criminal Code. With these amendments, the Armenian Criminal Code contains eight different provisions on bribery and trading in influence: Article 200 on commercial bribery, Article 201 on bribery in sports, Article 311 on passive bribery of officials, Article 311^1 on passive bribery of public servants, Article 311^2 on passive trading in influence, Article 312 on active bribery of officials, Article 312^1 on active bribery of public servants and Article 313 on bribery mediation. As such the provisions cover a wide range of corrupt behaviour. However, despite the GET's positive impression of the comprehensiveness of the provisions under review, the Armenian Criminal Code still suffers from some noteworthy shortcomings and loopholes as regards bribery and trading in influence (including in the understanding of the provisions by practitioners and, consequently, their application in practice). In the absence of any case law or court decisions being provided, the GET's considerations below derive from an in-depth analysis of the legal provisions as such, against the background of information gathered on site.

78. One of the most obvious shortcomings of the Armenian provisions on bribery is, as already indicated in the descriptive part of the report (see paragraph 16) above, that – whereas the

provisions on active bribery in Articles 312 and 312[1] CC (active bribery in the public sector) and Article 200, paragraph 1 CC (active bribery in the private sector) criminalise the promising, offering and giving of an undue advantage – the mirroring provisions in Articles 311 and 311[1] CC and Article 200, paragraph 3 CC, on passive bribery in respectively the public and private sector (as well as 311[2] CC on passive trading in influence) lack the elements "*request*" and "*acceptance of an offer or promise"* of an undue advantage. The pertinent provisions solely criminalise the receipt of a bribe. The Armenian authorities indicate that (1) the request for a bribe would be covered by the reference to extortion (an aggravating circumstance in Article 200, paragraph 4 CC and Articles 311 and 311[1], paragraph 3 CC) and (2) the provisions on preparation of a crime (or in some cases: attempt[25]) would nevertheless criminalise the request for and acceptance of an offer or promise of an undue advantage. The GET has clear misgivings about this line of reasoning. First of all, in the opinion of the GET the mere request for a bribe can simply not be equated to extortion. Secondly, as regards the provisions on preparation of a crime, Article 33, paragraph 2 CC foresees criminal liability for the preparation of a crime only if the given offence is deemed to be a 'grave' or 'particularly grave crime'. Due to the level of sanctions, 'basic' passive bribery of officials (Article 311, paragraph 1 CC), 'basic' passive bribery of public servants (Article 311[1], paragraph 1 CC), passive bribery of public servants when committed as regards an obviously illegal action or inaction (Article 311[1], paragraph 2 CC), passive bribery in the private sector, including when the bribe is extorted (Article 200, paragraph 3 and 4 CC) as well as passive trading in influence, including when committed in connection to an obviously illegal action or inaction (Article 311[2], paragraph 1 and 2 CC, which will be addressed further below), cannot be regarded as 'grave' (or 'particularly grave') crimes and criminal liability in the preparation stage is thus not provided for. Finally, qualifying a request for a bribe and the acceptance of an offer or a promise of a bribe as either attempt or preparation of the offence of "*receiving*" would result in a lower sanction (which means, pursuant to Article 65 CC, half the maximum sanction for preparation and, in case it would qualify as an attempt, three-quarters of the applicable sanction). In the view of the GET, passive bribery is – unlike homicide, for example – not a crime of result but a crime of conduct, whereby the fact that the bribe-taker has not actually received the undue advantage should not make an immediate difference. In a similar vein the Explanatory Report to the Convention (paragraph 41) explains as regards requesting: "it is immaterial whether the request was acted upon, the request itself being the core of the offence". In light of the above, the GET therefore recommends **to explicitly criminalise the request for and acceptance of an offer or promise of a bribe in Articles 200, 311 and 311[1] of the Criminal Code, in line with Articles 3 and 8 of the Criminal Law Convention on Corruption (ETS 173).**

79. However, even in cases where unilateral acts – such as the offer and promise of a bribe or unlawful remuneration in Articles 312, 312[1] and 200 CC – are explicitly mentioned in the relevant provisions, the GET was struck by the existence of a firm notion among the practitioners it met on site that the act of bribery (be it in the public or private sector) would only be completed once the bribe had changed hands.[26] Even when confronted with the literal wording of Articles 312, 312[1] and 200 CC, practitioners maintained their position that the mere offer or promise of an undue advantage would be an act of preparation (or in some case attempted bribery), which would – as indicated above – in certain cases not be liable for prosecution. While it would be possible to raise the level of sanctions so that acts such as the offer and promise (and subject to the

[25] As to whether a certain act (request or acceptance of an offer) should be qualified as a preparatory act or an attempt would depend on the stage of preparation. Pursuant to Article 34 CC an attempt would be an action or inaction, with the "intention aimed directly at committing the offence, whereby the crime has not been completed for reasons beyond the person's control". In turn, preparation of a crime would be – pursuant to Article 35 CC, the "acquisition or adaptation of means or tools for committing an offence with direct intention, as well as the intentional creation of other conditions where the crime has not been completed for circumstances beyond the person's control.

[26] The only divergent view in this context came from academics.

previous recommendation the request for and acceptance of an offer or promise) are grave crimes (making them thus seen to be prosecutable), this would ignore the fundamental point that an offer and a promise of a bribe are autonomous offences, which do not require the other party to respond positively in order to be prosecutable as a completed offence. In addition, as also indicated in the previous paragraph, prosecuting these offences as acts of preparation would result in a much lower sanction. In this context, it should also be noted that the standard of evidence – which was by some practitioners deemed to be excessive – is also likely to have its bearing on the notion that bribery is only a completed offence once money (or any other advantage) has changed hands. The GET is aware that bribery offences are notoriously difficult to prove , but maintains that other countries have managed to establish a standard of proof allowing prosecutorial authorities to infer evidence from objective factual circumstances. In this context, the GET notes that a comprehensive programme, to provide initial and in-service training to police officers, prosecutors and judges on issues related to corruption, has been set up.[27] The GET welcomes this initiative and very much hopes that the aforementioned problems will be duly addressed in the context of this training programme. The GET therefore **recommends to take measures (such as training, circulars etc.) (i) to make it clear that offering and promising an undue advantage (as well as the request for and acceptance of an offer or promise of an undue advantage) are prosecutable as autonomous offences and (ii) to encourage the use of objective factual circumstances to substantiate bribery offences.**

80. Turning more in detail to bribery in the public sector, the GET examined the range of offenders covered by respectively Articles 311 and 312 CC on bribery of officials and Articles 311[1] and 312[1] CC on bribery of public servants and – in this context – the definition of an official in Article 308 CC and the description of public servants in the Law on Civil Service. While initially the GET had doubts that the definition of an official would sufficiently cover members of domestic public assemblies, it ultimately accepted the position taken by its interlocutors on site that the reference to "*persons performing functions of a representative of the authorities on a permanent, temporary basis or by special authorisation*" in Article 308 CC (on the definition of an official) would include members of domestic public assemblies. Turning to the concept of 'public servants', the GET noted that the relevant provisions were added to the Criminal Code as recently as 2008 to cover the categories of employees in public service who do not have the status of officials. The GET welcomes this. However, on site several practitioners seemed to believe that the concept of a 'public servant' would only cover state/local government employees with certain relatively high-ranking positions: if a person employed in the public sector did not have any formal decision-making authority, s/he would consequently still not be captured by the reference to 'public service' for the purpose of the Criminal Code. To remove any doubt that Articles 311[1] and 312[1] CC also cover bribery of public sector staff in auxiliary positions, such as clerks, secretaries or archivists, the GET recommends **to take measures to make it clear that bribery of all categories of employees in the public sector is criminalised, including those without official decision-making authority.**

81. In connection with the separation of public sector bribery in provisions dealing with officials and provisions dealing with public servants, the GET noted that these provisions use different terms to denote an 'undue advantage'. While identically defined as "*money, property, property right, securities or any other advantage*", Articles 311 and 312 CC on bribery of officials refer to a "*bribe"*, whereas Articles 311[1] and 312[1] CC refer to an "*unlawful remuneration*". On site it was further explained to the GET that an "*unlawful remuneration*" referred to any kind of benefit, which did not have an official character (like a salary) and that its meaning was commonly understood

[27] See the Addendum to the Joint First and Second Round Compliance Report on Armenia (Greco RC-I/II (2008) 3E Addendum), pp. 1-2.

as referring to bribery of public servants. Furthermore, the interlocutors met by the GET on site stated unanimously that the reference to "*other advantage*" would also cover immaterial advantages (including those which would have no value to anyone other than for the official or public servant in question). While it would have preferred to see this confirmed by case-law, the GET accepts that the notion of an 'undue advantage' used in the Convention is satisfactorily covered by the terms "*bribe*" and "*unlawful remuneration*".

82. Furthermore, the phrasing of Articles 311, 311[1], 312 and 312[1] CC and the explanations given on-site did not leave the GET in any doubt that third party beneficiaries and the indirect commission of bribery offences were sufficiently covered (by use of the phrases "*for himself or another person*" and "*directly or through an intermediary*"). In the context of indirect commission of bribery offences, the GET noted that in addition to the reference to an intermediary in Articles 311, 311[1], 312 and 312[1] CC, the Armenian Criminal Code contains a particular offence of bribery mediation. Article 313 defines bribery mediation as "*favouring to reach an agreement between the briber and the bribe taker or to carry out the agreement already reached"*. The rationale of this article could not be made clear to the GET and several interlocutors on site criticised this offence, as the dividing line between mediation and the participatory acts of Article 39 CC would be unclear. After the visit, it was explained to the GET that in cases where the intermediary is the instigator of the bribery offence, s/he would be prosecuted pursuant to Article 39 CC, which could in certain cases lead to a higher sanction being imposed than provided for under Article 313 CC. In cases where the intermediary is merely a go-between (for example, in transferring the bribe from the bribe-giver to the bribe-taker), s/he would be prosecuted pursuant to Article 313 CC. In this context, considering that Articles 38 and 39 CC cover a wide array of participatory acts, the GET cannot see any reason for having a separate article on bribery mediation. However, as the main articles on bribery are in line with the Convention as regards the indirect commission of bribery offences, the GET does not see compelling reasons to address this issue by a recommendation.

83. As regards the scope of an official's functions, Articles 311, 311[1], 312 and 312[1] CC criminalise bribery "*for the purpose of performing or not performing an action (…) within the scope of his authorities*". The GET understands from the discussions held on site that this is to be interpreted broadly: if because of his/her position an official/public servant has the opportunity to do something – even if it would not strictly speaking fall within the realm of his/her job – it would be considered to be within the scope of his/her authority. In this context, the GET also discussed the meaning of an "*obvious illegal action or inaction*", which is an aggravating circumstance on the passive side. It was explained that this concept had been introduced to denote actions (or inactions), which would be in flagrant contravention of the rules. The example given concerned a situation in which a married person gives a bribe to an official, who registers the second marriage of the bribe-giver knowing that s/he is already married.

84. A peculiarity in the provisions on bribery in the public sector is the reference to the bribery being committed for the purpose of "*connivance and patronage*" (in addition to the two other modalities mentioned in Articles 311, 311[1], 312 and 312[1] CC: bribery committed for "*the purpose of performing or not performing an action*" and for "*favouring the performance or non-performance of such action*"). It was explained to the GET on site that these terms were not defined by legislation (and were thus open to interpretation). It was however understood to refer to (in)actions over a longer stretch of time, whereby "*patronage"* referred to actions to protect someone's interests and "*connivance*" was to turn a blind eye to someone else's wrongdoing. Although some interlocutors met by the GET were of the view that these terms needed to be defined in the legislation or deleted in their entirety (*inter alia* because illegal actions and inactions are mentioned as an aggravated circumstance for passive bribery, whereby "*connivance*" would by its very nature

relate to illegal actions and inactions), the GET considers that, even though the Convention does not provide for such a modality, the term "*connivance and patronage*" has – as emphasised by one interlocutor – a particular meaning in the Armenian context. As it does not unduly narrow the scope of the provisions as compared to the Convention, the GET cannot see any substantive arguments for recommending a change to this.

85. Turning to bribery in the private sector, the GET welcomed the fact that to a certain extent Article 200 CC on commercial bribery goes beyond the requirements of the Convention in that – even though its title would suggest otherwise – it is not limited to business activities, but explicitly covers non-commercial entities (other than the state and local government bodies). In this regard, it should also be noted that Article 200 CC explicitly covers bribery of domestic and foreign arbitrators.[28] However, in other aspects Article 200 CC falls short of the requirements of the Convention. Apart from the deficiencies already mentioned above (see paragraphs 78 and 79) as regards the request and acceptance of a promise/offer of an undue advantage and the problems in practice with regard to the offering and promise of a bribe, an additional shortcoming is the fact that Article 200 CC is restricted to bribery of "*servants of a commercial or other entity (…) who permanently, temporarily or with a special authorisation implement regulatory or other management functions*". While the phrase "*with special authorisation*" may cover persons who do not have a traditional employer-employee relationship with the company (or non-profit entity), the reference to the exercise of "*regulatory or other management functions*" unjustifiably limits the scope of the application of Article 200 CC, thereby falling short of the requirements of Articles 7 and 8 of the Convention (to criminalise bribery of "*any persons who direct or work for, in any capacity, private sector entities*", which includes all persons acting in or on behalf of a private sector entity). In the light of the above, the GET recommends **to amend Article 200 of the Criminal Code to ensure that the full range of persons who direct or work for, in any capacity, private sector entities, as provided for by Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) are covered.**

86. As regards trading in influence, Armenia has reserved its right not to establish trading in influence as a criminal offence (see paragraphs 7 and 53 above). This reservation, which Armenia made upon depositing its instrument of ratification in January 2006, was renewed in 2009 and is expected to be upheld until 2012. Nevertheless, in 2008, Article 311[2] CC was introduced, which criminalises passive trading in influence: the acceptance of an advantage by *any person* to influence an official or public servant to act or not to act in a certain way (or for the purpose of *"patronage or connivance",* as discussed above). There is however no provision mirroring the active side of this offence. By itself Article 311[2] CC contains several distinct shortcomings as compared to the Convention. First of all, it does not criminalise the request or the acceptance of an offer or promise of an undue advantage to exert improper influence (which would in the absence of the aggravating circumstances mentioned in paragraphs 3 and 4 of Article 311[2] CC also not be covered by the provisions on attempt or preparatory acts). Furthermore, Article 311[2] CC restricts the offence to acts committed for "*mercenary purposes*". It was explained to the GET on site that this meant that the perpetrator would commit the offence with the aim of obtaining a concrete material benefit, which further narrows the scope of its application (in particular in comparison with the Convention, which does not specify for which purpose the offence would be committed). Finally, as – unlike the provisions on bribery – Article 311[2] CC does not refer to third party beneficiaries, it is unlikely that this provision covers cases in which the undue advantage is for someone else than the influence peddler.

[28] Foreign jurors are, on the other hand, considered to be officials and covered by the provisions on bribery in the public sector (See paragraph 64 above).

87. However, Article 311[2] CC is complemented by the provisions on bribery of officials and public servants in Articles 311, 311[1], 312 and 312[1] CC, which by including the phrase "*favouring the performance or non-performance of*" also partly criminalise trading in influence. While these provisions do not suffer from all of the abovementioned deficiencies, in that they do criminalise active trading in influence, are not limited to offences committed for "*mercenary purposes"* and cover third party beneficiaries, an obvious shortcoming is that the realm of these provisions is restricted to cases in which the influence peddler is an official or public servant (i.e. situations in which an official or public servant exerts influence over the actions or inactions of another official or public servant). In addition, regarding passive trading in influence, as with Article 311[2] CC (and as is also already mentioned in the paragraph above on passive bribery), Articles 311 and 311[1] do not sufficiently criminalise the 'request' and 'acceptance of an offer or promise' of an undue advantage to exert improper influence and, regarding active trading in influence, has the same problem as outlined above (see paragraph 79) on the provisions on bribery with regard to an offer or promise of an undue advantage. Finally, both under Article 311[2] CC and Articles 311, 311[1], 312 and 312[1] CC the influence must actually be exerted (even if it is irrelevant whether the exertion of influence has the intended result or not): the receiving (or requesting/accepting an offer or a promise) by an influence peddler or the providing/promising/offering of an undue advantage to an influence peddler who merely asserts that s/he can exert improper influence over the decisions of an official or public servant is not sufficiently criminalised. Bearing all these findings in mind, it is clear that Article 311[2] CC and Articles 311, 311[1], 312 and 312[1] CC cannot be regarded as implementing Article 12 of the Convention in its entirety. It goes without saying that due to Article 37, paragraph 1 of the Convention, Armenia has the right to make a reservation to Article 12 which remains its independent and sovereign decision, but the GET takes the view that all parties to the Convention should be urged to lift their reservations as soon as practicable. Consequently, the GET recommends **to consider criminalising trading in influence, ensuring that all requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met and thus withdrawing or not renewing the reservation relating to this article of the Convention.**

88. The sanctions provided by the Criminal Code for bribery in the public sector include imprisonment (called 'detention' if no longer than three months), fines, as well as disqualification and – in certain aggravated cases – confiscation of property for passive bribery and trading in influence offences. As indicated before, bribery and trading in influence offences are spread over a large number of provisions and the multiplicity of prison sentences is similarly large. The maximum prison sentences range from three to twelve years' imprisonment (depending on aggravating circumstances) for passive bribery of officials (Article 311 CC), three to ten years' imprisonment for passive bribery of public servants (Article 311[1] CC), three to seven years' imprisonment for active bribery of officials (Article 312 CC) and two to five years' imprisonment for active bribery of public servants (Article 312[1] CC). Furthermore, passive trading in influence (Article 311[2] CC) can be punished by a maximum prison sentence from three to 10 years' imprisonment; passive commercial bribery from three to five years' imprisonment; active commercial bribery from two to four years' imprisonment (Article 200 CC) and bribery in sports (Article 201 CC) two months detention to five years' imprisonment. The need for such differences in prison sentences between the various bribery and trading in influence offences was not made clear to the GET. Leaving this aside, the GET considers the level of sanctions, particularly as various aggravating circumstances ensuring higher sanctions apply, to be generally in line with Article 19, paragraph 1 of the Convention (with the exception of the maximum sanction of two months' detention for 'basic' active bribery in sports). In this context, the GET however notes that the limitation period is related to the maximum sanction that can be imposed for the offence (see paragraph 74 above). Consequently the limitation period is five to ten years for most corruption offences, but not for

'basic' active bribery of public servants (Article 312[1] CC), 'basic' active commercial bribery (Article 200 CC) and corruption in sports (Article 201 CC). Given the special difficulties in detecting and establishing proof of these offences, the GET is of the opinion that the limitation period for these offences should be extended. In light of this, the GET recommends **to raise the sanctions for 'basic' active bribery of public servants (Article 312[1], paragraph 1 of the Criminal Code), 'basic' active commercial bribery (Article 200, paragraph 1 of the Criminal Code) and bribery in sports (Article 201, paragraph 1 and 3 of the Criminal Code), ensuring consequently that the statutory limitation period for these offences is increased.**

89. Armenian law provides for a defence of effective regret in the provisions dealing with active bribery of officials and public servants (Articles 312 and 312[1]) and active and passive bribery in the private sector (Article 200 CC). The defence is mandatory and relies on the voluntary reporting by the offenders, but does not specify a time frame in which the offence is to be reported.[29] There are, however, important differences as regards this defence in the public sector (paragraph 4 of Article 312 and 312[1] CC) compared to that in the private sector (paragraph 5 of Article 200 CC). As explained in paragraph 75 above, under Article 200 CC the defence of effective regret applies to both the bribe-giver and bribe-taker, whereas it is limited to the bribe-giver in Articles 312 and 312[1] CC. Furthermore, the defence under Article 312 and 312[1] CC is applicable both when the bribery was voluntarily reported and when the bribe was extorted, whereas Article 200 CC only applies in the former case. Moreover, Articles 312 and 312[1] exempt the bribe-giver from criminal liability, thus providing that the case does not reach the court (even if it does not specify in which stage of the proceedings or by which authority the offender is exempted from criminal liability). The defence provided by Article 200 on the other hand, exempts the bribe-giver or bribe-taker from punishment, which appears to provide for some form of judicial review, even if the court does not have any discretion in deciding whether or not to impose sanctions (i.e. the exemption from punishment is mandatory). GET discussed the practical application of these provisions in detail on site and while most interlocutors agreed on the usefulness of these provisions, no example of their effective application could be provided.

90. The GET has several concerns about the abovementioned provisions on effective regret, as: 1) under Articles 312 and 312[1] CC the defence is provided for in the case of extortion even if the bribe-giver has not voluntarily reported this; 2) both under Articles 312 and 312[1] CC and Article 200 CC the defence is mandatory and thus automatically exempts the person reporting the offence from liability or punishability, as appropriate, and is thus also applicable in situations in which s/he took the initiative and offered or promised a bribe (or pursuant to Article 200 CC requested a bribe); 3) both Articles 312 and 312[1] CC and Article 200 CC do not specify a time frame in which the offence is to be reported, as long as the person reporting the offence *thinks* that the law enforcement authorities do not yet know about the offence (which is also a problem in relation to the fact that the limitation period starts running from the time the offence was committed). In light of these concerns and the absence of any safeguards for abuse of the offence (*e.g.* the immediate reporting of the offence, the possibility of judicial review in cases where abuse is suspected, limiting the provision of effective regret to situations in which the offender has been solicited, not providing the possibility of effective regret in cases of extortion if the extortion of a bribe has not been voluntarily reported etc.), the GET recommends **i) to**

[29] The GET was informed that only in cases in which it had been proved that a person did not voluntarily inform law-enforcement bodies of the bribery, the defence would not have a mandatory character (i.e. the law enforcement body in question or the court could in such cases decide that the defence would not apply). "Voluntary reporting" was explained on site as meaning that the offender had to be convinced that the law enforcement authorities did not yet know about the offence. If s//he only reported the offence, after having some concrete indications that law enforcement authorities would find out about it, it would not be considered to be voluntary.

analyse Articles 312 (paragraph 4), 312[1] (paragraph 4) and 200 (paragraph 5) of the Criminal Code and accordingly revise the automatic – and mandatorily total – exemption from punishment granted in cases of effective regret and, in any case, ii) to clarify the conditions under which the defence of effective regret can be invoked.

91. Finally, as explained in the descriptive part (see paragraphs 69 to 72 above), Article 14 establishes jurisdiction of Armenia over offences committed on Armenian territory, in line with Article 17, paragraph 1(a) of the Convention. Turning to Article 17, paragraph 1(c) of the Convention, the GET notes that Article 15, paragraph 3, sub 1 CC establishes jurisdiction of Armenia over offences committed by foreign citizens abroad for offences provided for in international treaties. The Convention is such a treaty and thus Armenian jurisdiction over bribery and trading in influence offences committed by a *foreigner* abroad, *involving* an Armenian official, a member of an Armenian public assembly or a national who is at the same time an official of an international organisation, a member of an international parliamentary assembly or a judge or an official of an international court, is provided for. However, in relation to Article 17, paragraph 1(b) of the Convention, the GET notes that Article 15, paragraph 1 CC limits jurisdiction over offences *committed* abroad by one of its *nationals* (which includes its officials/public servants and members of domestic public assemblies[30]) to cases in which there is dual criminality. In the view of the GET this is an unjustifiable restriction of jurisdiction, in particular as it cannot be ruled out that certain jurisdictions will not have criminalised private sector bribery or bribery by one of the other categories of persons mentioned in Articles 9 to 11 of the Convention. The problem is more flagrant in cases of passive trading in influence where the fact that the undue advantage was received by one of its nationals in a foreign jurisdiction, would mean that – in cases where trading in influence is not established as a criminal offence in the foreign jurisdiction concerned – the act would go unpunished, even if the influence was improperly exerted in Armenia. The statement by the Armenian authorities that Article 17 of the Convention overrides Article 15 CC cannot be readily accepted by the GET, as this is explicitly provided for in respect of offences committed by foreigners (pursuant to Article 15, paragraph 3 CC) but not in respect of offences committed by Armenian citizens. In light of this, the GET recommends **to abolish the dual criminality requirement in respect of bribery and trading in influence offences committed abroad by Armenian nationals.**

IV. CONCLUSIONS

92. The Armenian Criminal Code was last amended in 2008, when the scope of the bribery provisions was broadened to also include categories of employees in public service who do not have the status of official, and an article on passive trading in influence was added. Despite these amendments, the criminalisation of bribery and trading in influence in the Armenian Criminal Code still suffers from several deficiencies in comparison to the standards established by the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). These deficiencies were identified on the basis of a strict reading of the provisions contained in the Criminal Code, since no case-law was made available to provide interpretative guidance.

93. The most obvious deficiencies in Armenian legislation are that both the provisions on bribery in the private sector and in the public sector do not sufficiently criminalise the request for a bribe and the acceptance of an offer of a bribe, as required by the Convention, and that the provisions on commercial bribery do not cover all persons who direct or work for private sector entities.

[30] As only Armenian nationals can be Armenian officials (or public servants) and members of Armenian domestic public assemblies, jurisdiction over offences committed abroad by officials (or public servants) and members of domestic assemblies of Armenia is thus provided for.

While the sanctions for these offences, in both the private and public sector, are by and large considered to be of an adequate level, it is nevertheless recommended to raise the sanctions for active bribery of public servants and active commercial bribery, as well as bribery in sports, so that the limitation period is consequently increased, to ensure that law enforcement bodies have sufficient time to investigate these offences. Furthermore, Armenia is urged to lift the reservation it has made in respect of Article 12 of the Convention and to consequently criminalise trading in influence in line with that Article. As regards jurisdiction, despite comprehensive provisions which allow Armenia to assume jurisdiction over bribery and trading in influence offences committed abroad by foreigners, Armenia can only assume jurisdiction over similar offences committed by Armenian nationals (and Armenian officials/public servants) in another country if these offences are also a crime in that country. Armenia is consequently urged to abolish the requirement of dual criminality regarding the offences of bribery and trading in influence. Moreover, the possibility provided by the special defence of effective regret to exempt an offender who voluntarily reports the offence should be reviewed, in particular to clarify the conditions under which someone who has committed a bribery offence can be exempted from liability or punishment and to reduce the risks of abuse.

94. Finally, leaving the abovementioned deficiencies in the legislation aside, the main challenge in fighting corruption lies with the effective application of legislation. In this regard, concerns are raised about the understanding of the corruption-related provisions and the level of proof required in bribery cases. Armenia is therefore urged to continue its efforts to train practitioners in the law, including on the use of evidence based on objective factual circumstances.

95. In view of the above, GRECO addresses the following recommendations to Armenia:

i. **to explicitly criminalise the request for and acceptance of an offer or promise of a bribe in Articles 200, 311 and 311[1] of the Criminal Code, in line with Articles 3 and 8 of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 78);

ii. **to take measures (such as training, circulars etc.) (i) to make it clear that offering and promising an undue advantage (as well as the request for and acceptance of an offer or promise of an undue advantage) are prosecutable as autonomous offences and (ii) to encourage the use of objective factual circumstances to substantiate bribery offences** (paragraph 79);

iii. **to take measures to make it clear that bribery of all categories of employees in the public sector is criminalised, including those without official decision-making authority** (paragraph 80);

iv. **to amend Article 200 of the Criminal Code to ensure that the full range of persons who direct or work for, in any capacity, private sector entities, as provided for by Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) are covered** (paragraph 85);

v. **to consider criminalising trading in influence, ensuring that all requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met and thus withdrawing or not renewing the reservation relating to this article of the Convention** (paragraph 87);

vi. **to raise the sanctions for 'basic' active bribery of public servants (Article 312[1], paragraph 1 of the Criminal Code), 'basic' active commercial bribery (Article 200, paragraph 1 of the Criminal Code) and bribery in sports (Article 201, paragraph 1 and 3 of the Criminal Code), ensuring consequently that the statutory limitation period for these offences is increased** (paragraph 88);

vii. **i) to analyse Articles 312 (paragraph 4), 312[1] (paragraph 4) and 200 (paragraph 5) of the Criminal Code and accordingly revise the automatic – and mandatorily total – exemption from punishment granted in cases of effective regret and, in any case, ii) to clarify the conditions under which the defence of effective regret can be invoked** (paragraph 90);

viii. **to abolish the dual criminality requirement in respect of bribery and trading in influence offences committed abroad by Armenian nationals** (paragraph 91).

96. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Armenian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2012.

97. Finally, GRECO invites the authorities of Armenia 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.