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First Evaluation Round

Evaluation Report on the Czech Republic

Adopted by GRECO
at its 13th Plenary Meeting
(Strasbourg, 24-28 March 2003)

I. INTRODUCTION

1. The Czech Republic was the 33rd GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter referred to as “the GET”) was composed of Mr Bernard J. Oosterop, Former Colonel of the Dutch National Police, Senior Adviser, Office of the Permanent State Secretary, Ministry of Justice (The Netherlands, police expert), Dr Alastair Brown, Policy Group, Crown Office and Prosecutor Fiscal Service (United Kingdom, prosecution expert) and Mr Zaal Margvelashvili, Deputy Director of the International Law Department, Ministry of Foreign Affairs (Georgia, policy expert). This GET, accompanied by two members of the Council of Europe Secretariat, visited the Czech Republic from 1 to 4 October 2002. Prior to the visit, the GET experts were provided with a comprehensive reply to the Evaluation Questionnaire (document Greco Eval I (2002) 35E) as well as with copies of the relevant legislation.
2. The GET met with officials from the following Czech Institutions: the Ministry of the Interior, the Police Presidium Criminal Office, the Security Information Service, the Ministry of Justice, the Supreme State Prosecution Office, the Supreme Court, the Sub-Committee on the fight against corruption of the Committee on Foreign Affairs, Defence and Security of the Senate, the Mandate and Immunity Committee of the House of Representatives, the Ministry of Finance, the Institute of criminology and social prevention, the Supreme Audit Office, the International Chamber of Commerce, the Economic Chamber of Prague, the Czech-Moravian Confederation of Trade Unions, the Confederation of the Employer and Business Associations, Transparency International, the Chamber of Auditors, the University of Pardubice, Faculty of Economics and Administration, the Office for Protection of Economic Competition and Public Protector of Rights (Ombudsman).
3. GRECO agreed, at its 2nd Plenary meeting (December 1999) that the evaluation procedure to be used in the 1st Evaluation round would, in accordance with Article 10.3 of its Statute, be based on the following provisions:
 - Guiding Principle 3 (hereafter “GPC 3”: authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
 - Guiding Principle 7 (hereafter “GPC 7”: specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, “GPC 6”: immunities from investigation, prosecution or adjudication of corruption).
4. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for Recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Czech authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in the Czech Republic, the general anti-corruption policy, the institutions and authorities in charge of combating it – their functioning, structures, powers, expertise, means and specialisation – and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in the Czech Republic is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to the Czech Republic in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

5. The Czech Republic, situated in Central Europe, has borders with Germany, Austria, Slovakia and Poland. Its area is almost 79.000 sq. km (30.000 sq. miles). The capital Prague is just in the middle of the western part of the country. The Czech Republic is composed of two regions, Bohemia (Western part) and Moravia (Eastern part).
 6. There are about 10 million people in the Czech Republic and about 1.3 million people in Prague. 94% of the population is Czech, 3% is Slovak, 0,6% is Polish, 0,5% is German, 0,3% is Roma and 0,2% is Hungarian. Unemployment in the Czech Republic is about 9%, in Prague about 3.5%. Inflation is about 4%. The average wage is about 14740 Kc (375 Euros) a month. Its GPD per capita was approximately 12,498 Euro in 1999, which is well below (59% in 1999) the EU-15 average.
 7. Starting as a student demonstration at the time of the fall of the Berlin Wall on 17 November 1989, larger demonstrations forced the Communist Government to resign on 3 December 1989. Mr Vaclav Havel was elected President of Czechoslovakia on 29 December 1989. This is the so-called "Velvet Revolution". At the end of 1992 Czechoslovakia split into Czech Republic (Bohemia and Moravia) and Slovak Republic (Slovakia). This peaceful splitting is called the "Velvet Divorce".
 8. In the Czech Republic, the legislative power is exercised by Parliament which consists of two chambers - the Chamber of Deputies and the Senate. The executive power is exercised by the Government, led by the Prime Minister (Head of Government). The Government is accountable to the Chamber of Deputies and must have the support of its majority. The Constitution and other relevant laws determine the competences of the state and the local authorities.
- a. The phenomenon of corruption and its perception in the Czech Republic**
9. Available indicators of corruption, ranging from opinion surveys and expert indices to estimates by organs of criminal investigation, suggest that corruption (and its perception) is a serious problem in the Czech Republic, and that corruption might be increasing.
 10. On the basis of findings obtained during the preparation of a special report analysing the level of corruption in the Czech Republic from the point of view of the state prosecutor's office, corrupt behaviour which was the subject to criminal prosecution occurred principally in the field of activity of the Czech Police and was prosecuted in connection with illegal actions committed by members of the Czech Police in the execution of their duties or in connection with it.
 11. According to the Transparency International Perception Index for 2002, the Czech Republic was ranked as 52 of 99 countries studied and the perception index is 3,7 (on a scale from 1 (most corrupt) to 10 (least corrupt)). It is worth mentioning that this score has been reduced from 4,8 to 3,7 in the last 5 years.
 12. The GET was informed that no link between organised crime and corruption was found in any criminal case which had been dealt with by the prosecution office.
 13. Finally, the GET heard that there is an increasing public perception of corruption in the judiciary, although very few cases have, to date, been brought to court. The Czech authorities, however,

point out that, owing to appropriate control mechanisms and disciplinary proceedings aimed at ensuring lawful conduct of judges, they could not agree with such public perception.

i) As to the law¹

14. Although the term "corruption" is not defined as such in the Czech criminal legislation as a specific offence, the current legislation is considered by the Government to be sufficient to combat corruption effectively. The relevant provisions of the Criminal Code are: Sec. 160 Taking Bribes², Sec. 161 Bribery³, Sec. 162 Indirect Bribery⁴ (see document Greco Eval I (2002) 35E). Czech criminal law covers both tangible and intangible advantages in relation to corruption offences.
15. The Czech legislation (Section 163 of the Criminal Code)⁵ has a special provision on "effective repentance" which means that an offender who has bribed or promised a bribe because he/she has been requested to do so, shall not be punished if he/she reports the facts voluntarily and without delay to the prosecutors or the police.
16. In addition, the law contains other provisions which are of relevance to the fight against corruption. These include in particular specific offences of public officials under the second subsection of Chapter III of the special part of the Criminal Code: Abuse of Power by a Public Official (Sec. 158)⁶ and Thwarting a Task by a Public Official's Negligence (Sec.159)⁷.

¹ Please note that the translation of the legislation referred to in this document has been provided by the Czech authorities.

² Section 160 of the Criminal Code stipulates:

- (1) Anyone who while dealing with public interest affairs receives a bribe or accepts promises to be given a bribe shall be punished by maximum imprisonment of 2 years or prohibition to carry out professional activities.
- (2) Anyone who is asking for a bribe under the circumstances under clause 1 shall be punished by imprisonment ranging from 6 months up to 3 years.
- (3) The imprisonment for a period ranging from 1 year to 5 years shall be imposed to such an offender who has committed the offence specified under clauses 1 or 2 hereof:
 - a) with the intent of procuring a substantial benefit for himself or for another person or
 - b) if he commits such act as a public official.
- (4) An offender shall be sentenced to imprisonment for 2 to 8 years, if he commits the act given in paragraph 1 or 2
 - a) with the intent of procuring a major benefit for himself or for another person or
 - b) if he commits such act as a public official with the intent of procuring a substantial benefit for himself or for another person.

³ Section 161 of the Criminal Code stipulates:

- (1) Anyone who while dealing with public interest affairs provides, offers or promises a bribe, shall be punished by imprisonment of 1 year at maximum or by pecuniary penalty.
- (2) A perpetrator shall be sentenced to imprisonment for 1 to 5 years or to monetary punishment:
 - a) if he commits the act given in paragraph 1 with the intent of procuring a substantial benefit for himself or for another person or of inflicting substantial damage or other particularly serious aftereffect to another person or
 - b) if he commits the act given in paragraph 1 vis-à-vis a public official.

⁴ Section 162 of the Criminal Code stipulates:

- (1) Anyone who requests or receives a bribe in order to influence a public official in execution of his/her duties or if he/she has already done so, shall be punished by maximum imprisonment of 2 years.
- (2) Anyone who for the reasons given under clause 1 provides, offers or promises a bribe, shall be punished by maximum imprisonment of 1 year.

⁵ It should also be noted that the principle of "effective repentance" applies to a list of other offences, although under less strict conditions.

⁶ A public official who deliberately causes damage to another person or procures an unauthorised benefit for him/herself or another person commits an offence under § 158 of the Criminal Code in basic facts of the case, where he/she:

- a) exercises his/her powers in a manner which is at variance with the law
- b) exceeds his/her powers
- c) does not fulfil an obligation arising from his/her powers.

17. Moreover, the following criminal offences are also relevant to the fight against corruption:
- violation of Statutory Provisions on the Disposal of Goods and Technologies Liable to Control Procedures under Sec. 124 (a)⁸;
 - breaches of Duties in Bankruptcy and Composition Proceedings pursuant to Sec 126⁹ ;
 - breaches of the Duty to Administer Another's Property under Sec. 255¹⁰;
 - misuse of Information in Business relations under Sec. 128¹¹;
 - fraudulent manipulation of public tenders and public auctions pursuant to Sec. 128 (a) – 128 (c)¹² of the Criminal Code;
 - other criminal offences contained in Chapter II of the Special Part of the Criminal Code.
18. Another set of provisions which are relevant in the field of the fight against corruption is contained in § 149 of the Criminal Code and concern unfair competition. The regulations governing competition in economic relations are contained in § 44 - § 52 of the Commercial Code (No. 513/1991 Coll.), which defines unfair competition as a conduct which is opposite to correct ethics of competition and could cause detriment to other competitors or consumers. Unfair competition is forbidden. The Commercial Code defines certain specific types of behaviour which can come under the provisions of unfair competition. These are in particular false advertising, false designation of goods and services, taking advantage of good reputation, bribery, denigration, comparative advertising, breach of business secrecy and endangering the health of consumers and the environment. This responsibility is indirectly reflected in the provisions of § 149 of the Criminal Code. Therefore, cases of bribery in the private sector can also be prosecuted in this manner.
19. Creating or using an invoice or any other accounting document or record containing false or incomplete information, or unlawfully omitting to record a payment in order to commit, conceal or disguise the offences of corruption, can be regarded, under Czech Criminal Law, as a single-act concurrence of the offences of misrepresentation of data on the trading or asset position under §

⁷ A public official who in executing his/her powers thwarts or fundamentally impedes an important task by negligence commits an offence under § 159 of the Criminal Code.

⁸ This offence is committed by one who breaches a prohibition or restriction relating to handling goods and technologies controlled under special regulations or one who exports goods or technologies controlled under special regulations without a licence or one who transfers them to a foreign country or to an organisation which has its registered office abroad, or to a foreign official.

⁹ This offence is committed by a person who after declaring bankruptcy thwarts the bankrupt's estate or grossly impedes performance of the function of administrator of the bankrupt's estate, and thereby endangers full and correct ascertaining of assets belonging to the bankrupt's estate or sale of these assets, or a person who does not fulfil his/her legal obligation to submit a petition for bankruptcy.

¹⁰ An offence is committed under § 255 of the Criminal Code by one who causes considerable damage to another by breaching an obligation imposed on him/her under the law or who has contractually undertaken to look after or administer another's assets.

¹¹ These criteria may be met by the action of the offender, who with the intention of procuring an advantage or benefit for him/herself or another person unjustifiably uses information hitherto not publicly available which he/she has obtained by reason of his/her employment, profession, position or job and publication of this significantly influences decision-making in business relations and effects or instigates implementation of a contract or transaction on an organised securities or goods market (in this form it is a question of what is termed "inside-trading"), or an offender who as an employee, member of a body, partner, entrepreneur or participant in the business of two or more companies or organisations with the same or a similar subject of business with the intention stated above concludes or instigates the conclusion of a contract to the detriment of one or a number of them.

¹² Here this concerns the sanctioning of different unfair actions in connection with a public tender or a public auction.

125 of the Criminal Code¹³ and assistance towards the offence of accepting a bribe, bribery, indirect bribery or abuse of power by a public official. In this context, the commission of the offence of preferential treatment under § 166 of the Criminal Code¹⁴ would also be taken into consideration.

20. In accordance with Article 8, paragraph 1 of Act No. 563/1991 Coll. regarding Accountancy, accounting entities are obliged to keep accounting books correct, complete, conclusive, understandable, transparent and in a manner which guarantees the permanency of such accounting records. Paragraphs 2-6 of this article contain the definitions of the notions referred to therein. In accordance with Article 7 of Act No. 563/1991 Coll. annual accounts shall give true and fair view of assets, liabilities, profit and loss and financial position of the accounting unit.
21. An individual who establishes a criminal conspiracy, or who participates in the activities of, or supports, such a conspiracy, is punishable for the offence under § 163a of the Criminal Code.
22. The term criminal conspiracy is defined in § 89 paragraph 17 of the Criminal Code as a conspiracy of at least three persons with an internal organisational structure, with division of positions and activities, which aims at systematically and intentionally commit offences.
23. As regards the liability of legal persons, the Czech legal theory, based on continental European tradition, is based on the idea of individual criminal liability of physical persons. The Criminal Code in force also regulates this in the provisions on offenders (§ 9 of the Criminal Code) and on culpability (§§ 4, 5 and 6 of the Criminal Code).
24. In 2001, the government approved the draft principles for the re-codification of substantive criminal law, which, *inter alia*, provide for the possible consideration of the introduction of criminal liability of legal entities. There will be a new regulation concerning criminal liability of legal entities and their administrative sanctioning, which should be interrelated. Prosecution of a physical person and prosecution of a legal entity for the same fact would not be excluded.
25. Thus in the Czech Republic only liability of legal entities in the fields of administrative law and civil law has been applied to date.
26. As regards jurisdiction, the principle of territoriality applies. Offences committed on Czech territory are treated under the Czech law. An offence is considered to be committed in the Czech territory if the offender has committed the criminal act there, even if the interests protected by the Criminal Code were violated or threatened, or were supposed to be violated or threatened, in whole or in part, in a foreign country.

ii) *Policy issues*

27. The Government of the Czech Republic adopted in February 1999 (and regularly updated in 2001 and in 2002) a "Programme for combating corruption in Czech Republic and a Report on

¹³ This offence is committed *inter alia* by an offender who does not keep account books, records or other documents enabling an overview of the trading and asset position or checking of these, although obliged to do so by law, or who enters in these account books, records or other documents incorrect or grossly misleading data, or who destroys or damages these account books, records or other documents, renders them unusable or conceals them and so endangers the property rights of another or the timely and proper tax assessment.

¹⁴ An offence is committed under § 166 of the Criminal Code by one who assists the perpetrator of an offence with the intention of enabling him/her to escape criminal prosecution, punishment or curative treatment or their enforcement.

corruption in the Czech Republic and possibilities for effectively combating this negative social phenomenon". The GET was informed that the Ministry of the Interior was in charge of co-ordinating the overall implementation of the Programme, in co-operation with other relevant public Institutions.

28. According to the text of the Programme, its aim is "to describe the nature of combating corruption and its objectives, define its principal methods and means, propose specific measures to be taken in individual walks of life, define who is in charge and a time schedule and indicate the method of monitoring". This Programme contains measures and undertakings (including deadlines for their implementation and bodies in charge) concerning, *inter alia*, legislative measures, organisational measures, training and media promotion and international co-operation.
29. The Programme has been supplemented by the adoption of new measures in 2001 and 2002, which include:
 - a. drawing up a legal regulation to the Government by 31 December 2002 enabling specialised police forces involved in investigation of major economic crimes, corruption and organised crime, access to tax collection information and
 - b. assigning, by 31 December 2002, 25 officers from tax authorities to permanent joint teams of the Ministry of the Interior and the Ministry of Finance to document and confiscate proceeds resulting from crimes, to secure damage claims arising from criminal activities and to identify and collect tax arrears.
30. It appeared to the GET that some of the Institutions visited were not well aware of the Programme.

iii) International undertakings

31. On 1 July 2002 an amended version of the Criminal Code (the so-called "Euro amendment") No. 134/2002 Coll. came into force and laid down new provisions concerning the legalisation of the proceeds from crime under § 252a of the Criminal Code. The GET was informed that the Government position was that this will meet the obligations arising from the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime (ETS 141 - No. 33/1997 Coll.), ratified by the Czech Republic in November 1996.
32. The provisions of Section 383b of the Criminal Procedures Code enable the Supreme Prosecution Office (and the Ministry of Justice after the charge is brought) to transfer criminal prosecution to the country of the nationality of the offender if such an offender is subject to prosecution in the Czech Republic. The Supreme Prosecution Office also takes a decision under Section 383a on the request of the relevant foreign body to transfer the criminal proceedings against a Czech national who commits an offence in that country to the relevant bodies of the Czech Republic.
33. Equally, multilateral or bilateral international treaties apply as "*lex specialis*", most frequently the European Convention on the transfer of proceedings in criminal matters (ETS 73) of 1972 and Article 21 of the European Convention on mutual assistance in criminal matters (ETS 30) of 1959.
34. The Czech Republic ratified the Council of Europe Criminal Law Convention on Corruption on 8 September 2000 (this Convention was also promulgated in the Collection of International Agreements under no. 70/2002 Coll. I. A.). The Czech Republic signed the Council of Europe's

Civil Law Convention on Corruption on 9 November 2000, but has not yet ratified it. According to the information provided by the Ministry of Justice, the Governmental proposal for the ratification of the Civil Law Convention on Corruption was submitted to Parliament on 5 September 2002. According to Article 49 of the Czech Constitution, the ratification of these international agreements requires an approval of both Chambers of Parliament after the Constitutional Court positively rules on conformity of such treaty with constitutional order. The Czech Republic ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 21 January 2000.

35. The Czech Republic has also concluded a number of bilateral agreements (see the appendix to the answers to the questionnaire), which not only relate to requests for legal assistance in cases of criminal prosecution for the criminal offence of corruption, but also to criminal prosecution for all criminal offences.
36. In the event that no agreement has been concluded with a particular state concerning mutual assistance in criminal matters, requests can be granted on the basis of reciprocity (see Section 384 para. 1 of the Criminal Code).
37. As regards international co-operation in criminal matters, the Czech Republic has ratified the European Conventions on Extradition and on Mutual Assistance in Criminal Matters on 15 April 1992, the Additional Protocol and the Second Additional Protocol to the European Convention on Extradition, the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters on 19 November 1996. The Czech Republic has not yet signed the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182). The Ministry of Justice shall submit to the government the documents concerning the signature of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters by 31 March 2003 therefore it can be supposed that the Czech Republic will sign this Additional Protocol by the end of the year 2003.
38. Transfer of proceedings is made on the basis of the rules in the European Convention on the Transfer of Proceedings in Criminal Matters (ratified on 15 April 1992). Transfer is normally possible only to countries that have acceded to this Convention.
39. The Czech Republic does not extradite its nationals for criminal prosecution to foreign countries for any kind of criminal offence, including corruption. However the principle of "personality" shall be applied, i.e. the Czech Republic is competent to bring criminal prosecution for any criminal offence committed by its own citizens, regardless of where this occurred. This means that in the event of a Czech citizen committing a criminal offence of corruption in a foreign country, the Czech Republic has the ability to take over criminal prosecution of its citizen and to continue with this on its own territory.

b. Bodies and institutions in charge of the fight against, and the prevention of, corruption

40. Several bodies have been set up in the Czech Republic to deal specifically with corruption or to co-ordinate anti-corruption efforts conducted by different institutions.

b1. Bodies and institutions in charge of the fight against corruption

i) Czech Police authorities

41. The number of staff in the various police units directly or indirectly involved in investigating corruption offences appears in the chart below, as well as in the corresponding descriptive part.

42. In 1991 a special Czech Police force was set up. It was called the "Service for the Protection of Economic Interests", subsequently re-organised, as from 1994, to the "Czech Police Service for Detection of Corruption and Serious Economic Crime", operational throughout the Czech Republic. Since 1 January 2002, this institution was called the "Unit for Combating Corruption and Serious Economic Crime of the Criminal Police and Investigation Service". This force is responsible for detecting the most serious cases of corruption. Owing to the possible connection between corruption and organised crime, such cases may also be investigated by another department with nationwide competence, called the "Criminal Police Service and Investigation Unit of the Czech Police for Revealing Organised Crime". The "The Bureau for Financial Criminality and Protection of the State of the Criminal Police and Investigation Service" has also been designated for investigating cases relating to corruption.

- *Inspection Department of the Ministry of the Interior (IDMI)*

43. IDMI is a police unit (as defined in § 12 para. 2 of the Criminal Code) which deals with proceedings concerning offences committed by police officers (where investigation and summary preliminary proceedings are conducted under § 161 para. 3 and § 179a para. 3 of the Criminal Code by the state prosecutor). The competence of this police authority extends only to the verification of the facts which may indicate the commission of an offence. However, this does not prevent this department from conducting individual investigation on the basis of an instruction from a state prosecutor. IDMI is not part of the structure of the Police of the Czech Republic, it is directly responsible to the Minister of the Interior.

- *Criminal Police and Investigation Service (CPIS)*

44. CPIS is under the supervision of the Deputy Police President for Criminal Procedure. The CPIS comprises the former Service of Criminal Police and the offices of investigation. The joint service is spread at all levels (central, regional, district) and deals with general crimes and economic crimes. The Bureau of the CPIS includes the following central departments:

- Unit for Combating Corruption and Serious Economic Crime (253 staff members). This force is responsible for detecting the most serious cases of corruption (see para. 43 above for more details);
- Unit for Revealing Organised Crime (UOOZ) (370 staff members), owing to the possible connection between corruption and organised crime, such cases may also be investigated by this Unit;
- National Drugs Unit (100 staff members);
- Special Operations Branch specialised in the surveillance of persons and things (both the classical surveillance and wire tapping – such techniques are used in the context of criminal-procedure institution of Surveillance of Persons and Things) (680 staff members);
- Specialised Operations Branch, which is specialised in such issues as using of undercover agents, using of undercover identity documents as well as in the protection of witnesses and other persons in connection with the criminal proceedings (110 staff members);

- Criminology Analyses and Informatics Section, a section supplying comprehensive crime-relevant information while observing the relevant legal requirements concerning the handling of data contained in the information systems.
- The Economic Crime Division is a central co-ordinating body for the issue of economic crimes. It supervises and co-ordinates demands/needs of the CPIS in the field of combating economic crime throughout central, regional and local level. The Division makes recommendations as to methodology of investigation within CPIS. They have also investigative powers.
- The Bureau for Financial Crime and Protection of the State (BFCPS): BFCPS is responsible for investigating serious crime the supervision of which in the preparatory proceedings falls within the responsibility of specialised departments of the High State Prosecutor's Office. In addition, the Bureau investigates certain specific offences, e.g. offences committed by members of armed forces abroad or offences involving top categories of classified information. BFCPS is presently staffed with 82 officials.

ii) *State prosecutor's offices*

45. The GET was informed that prosecutors were appointed or dismissed by the Government. However, the GET was also informed that prosecutors were completely independent from the Ministry of Justice in the exercise of their functions. Each year, the State prosecutor's office submits a report to the Ministry of Justice about its activity, which includes a part on the "state of affairs" of corruption in the country.
46. In October 2000 Specialised State Prosecutor's departments for combating serious economic crime were established. Two departments are located at the High Public Prosecution Office in Prague (staffed with 9 prosecutors and 1 analyst) and Olomouc (5 prosecutors) respectively. Their work is co-ordinated by a special unit in the Supreme State Prosecutor's Office in Brno (4 prosecutors), for which the First Deputy State Prosecutor is responsible.
47. The provisions of § 15 of Decree No. 23/1994 Coll. (rules of procedure for state prosecutor's offices) deals with the competence of High State Prosecutor's Office. Such a competence, concerns, *inter alia*, the offences committed:
 - a) in relations to banks, investment companies or funds, to dealers in securities, insurance companies, health insurance companies, pension funds, building society/mortgage banks or savings and loan co-operative, if the damage amounts to at least 100 million CZK;
 - b) by physical persons acting in their own capacity or on behalf of legal entities in connection with unauthorised performance of activity any of the entities referred to in (a) above, if the damage amounts to at least 100 million CZK;
 - c) resulted in a damage to a State asset or holding which amounts to at least 50 million CZK;
 - d) under Chapter Two or Nine of the special part of the Criminal Code;
 - e) against the financial or economic interests of the European Union (only three cases have been detected concerning this offence).
48. In the area of justice, there are important units acting on the basis of the decree no. 311/2000 Coll., which amended the decree no. 23/1994 Coll., on rules of procedure of the state prosecutor's office, on the establishment of branches for some state prosecutor's offices and on details and operations carried out by candidates prosecutors. On the basis of this decree, attention was paid to ensure the respect of certain principles and rules during pre-trial proceedings and to determine jurisdiction in matters of major economic crimes (in accordance

with Chapters two and nine of a special part of the Criminal Code). A special emphasis was put on crimes committed in the framework of a criminal conspiracy, of crimes committed, or alleged to have been committed, by public officials in accordance with § 158 of the Criminal Code, and on bribery, in accordance with § 160 to § 162 of the Criminal Code.

49. In the large majority of corruption cases the general jurisdiction of state prosecutors of district or regional state prosecutor's offices applies and this corresponds to court jurisdiction.
50. The GET was informed that, in relation to corruption cases, the main problems concern the inadequate understanding of some police officers of their powers and the complexity of the issues at stake, particularly when investigations and prosecutions do not concern tangible goods.
51. The GET was also told that the use of "agent provocateur" is forbidden and that uncertainty about the limits of acceptable conduct by investigators may be an obstacle to successful detection and prosecution of corruption offences.
52. The GET was informed that, in 2000, there were 860 prosecutors in the Czech Republic.

iii) The courts

53. There is a Court system of four-instances in the Czech Republic. It consists of the Supreme Court, the High Courts, the Regional Courts and the District Courts. The **Supreme Court**, with its seat in Brno has nationwide jurisdiction. It is the highest judicial authority (except for matters which are within the jurisdiction of the Constitutional Court). It controls final and conclusive decisions of the High Courts and ensures uniform interpretation of law by lower Courts. The second highest instance consists of **High Courts** which have *inter alia* jurisdiction to examine decisions of central bodies of the Czech Republic, excluding matters relating to social and health security and pension insurance. The second instance consists of **Regional Courts**. The first instance of the system of courts consists of **District Courts** which represent the base of this system. The judicial districts are similar to the administrative districts and correspond to the existing division of the territory of the Czech Republic and usually have their seats in corresponding district towns.
54. The GET was informed that there were neither special nor specialised courts to deal with corruption cases. However, the GET was informed that within the various courts, specialised chambers (e.g. in the field of bank crimes) were being created gradually. The general principles of jurisdiction of courts contained in §§ 16 to § 18 of the Criminal Code apply. Therefore, cases of corruption will be heard in district courts; proceedings at a first-instance regional court would only be held for offences where the law stipulates a prison sentence with the minimum term of at least five years or for offences committed by means of bills of exchange, cheques and other securities, derivatives and other items of value tradable on the capital market, or forgeries and imitations of these, where their legal characteristic is the causing of significant damage or the obtaining of a significant benefit.
55. The GET was also informed that, in 2001, there were 2660 judges in the Czech Republic.

b2. Other bodies and institutions

i) Supreme Audit Office

56. Under the provisions of § 2 of Act No. 166/1993 Coll., on the Supreme Audit Office, as amended, the Supreme Audit Office audits management of state property and sums of money collected by the state administration bodies on the basis of relevant legal provisions.
57. In its audit, the Office checks whether the activities controlled are in accordance with relevant legal provisions. It examines their material and formal correctness and assesses whether funds are being spent effectively.

ii) Office for Protection of Economic Competition

58. The competence of the Office for Protection of Economic Competition covers three areas:
- the protection of economic competition (in accordance with Act No. 143/2001 Coll. on protection of economic competition);
 - the enforcement of the Public Support Act (in accordance with Act No. 59/2000 Coll., on public support);
 - the supervision over the awarding of public contracts (in accordance with Act No. 199/1994 Coll., on awarding public contracts, as amended).

iii) The Ombudsman

59. The Public Protector of Rights (Ombudsman), whose position and powers are regulated by Act No. 349/1999 Coll., on the Public Protector of Rights, as amended by Act No. 265/2001 Coll., acts to protect persons from mal-administration. The Ombudsman thereby contributes to the protection of fundamental rights and freedoms, including social and economic rights.
60. The Ombudsman does not have a direct and express mandate to combat corruption. However, it can engage in combating corruption indirectly. Accordingly, the Ombudsman has a preventive role in the field of the fight against corruption, eg. by promoting simplified administrative procedures, by raising public awareness on the need to fight corruption.

iv) The Financial Analytical Unit (FAU) of the Ministry of Finance

61. The Financial Analytical Unit (FAU) of the Ministry of Finance is the central governmental authority for receiving, collecting and analysing suspicious transaction reports. This unit closely co-operates with the Unit for Combating Corruption and Serious Economic Crime. The FAU co-operates also with tax administration, customs, banking supervision, other supervision bodies and other governmental authorities.

v) Department of Internal Audit and Inspection of General Customs Directorate

62. The Department of Internal Audit and Inspection of General Customs Directorate has among others the competences to carry out the inspectional activity within the customs administration, investigates extraordinary events within the customs administration, cooperate with the law enforcement agencies during the investigation of a suspicion of criminal offence committed by its own employees, searches for document and enquires into the breach of functional or working

discipline, carries out the analysis of the causes of the negative phenomena and suggests the measures for elimination of the faults discovered or enquires into serious complaints within the customs administration.

vi) *The Security Information Service (BIS)*

63. The Security Information Service is the intelligence service of the Czech Republic, whose competences and position are provided by Act No. 153/1994 Coll., and Act No. 154/1994 Coll. Intelligence services are state agencies for the acquisition, collection and evaluation of information which is important for the protection of the constitutional set-up, major economic interests, security and defence of the Czech Republic. BIS also supplies law enforcement agencies and other state bodies with relevant information.

b3. Other

64. Other Institutions may have an important role to play in the field of the prevention of corruption, such as the Chamber of Commerce and the Auditors' Chamber.

65. There is also an interdepartmental working group of experts (strategic level) responsible for the issue of proceeds from crime, and another such strategic group responsible for analysing the possibility of establishing a system of "assessing the level of integrity" of Czech public officials (this second group has not yet reported on its findings). The Ministry of the Interior is responsible for organising the establishment of this interdepartmental working group. Members of the group are the representatives of the Czech National Bank, the Ministry of Finance, the Ministry of Justice, the Supreme State Prosecutor's Office, Security Intelligence Service, the Ministry of the Interior and the Czech Police.

66. Another special body established by the government of the Czech Republic in 1998 is the Committee for Protection of Economic Interests, which has the role of studying wide scale serious economic crimes, including cases of corruption.

67. The system of special bodies or units specialized in the prevention of corruption also includes the system of financial control newly functioning on the basis of the Act no. 320/2001 Coll., on financial control over public administration. This system of supervision is a part of the financial management at all levels of the organisation of public administration and has a tiered system of management from the Ministry of Finance up to District Offices.

68. Finally, in a wider sense, anti-corruption units also include the Securities and Exchange Commission, the Bank Association of the Czech Republic and international institutions, which have branches in, or regularly visit, the Czech Republic. They include particularly GRECO, Transparency International and OLAF.

c. Criminal investigation

69. Section 2 para. 3 of the Czech Criminal Code provides that state prosecutors are obliged to prosecute in all cases of criminal acts they are aware of, unless otherwise provided by the law or by international conventions to which the Czech Republic is bound (mandatory prosecution).

70. The application of the principle of mandatory prosecution means that, once prosecutors are informed of the commission of an offence, they co-operate with, and entrust, the police to identify

sufficient elements for criminal proceedings to commence (see in this context Section 160 para. 1 of the Criminal Code, the 9th Heading of the Criminal Code and Section 2 para. 1 (d) of the Act on the Police).

71. The principle of mandatory prosecution does not generally apply to petty offences, to disciplinary violations or to other administrative offences.
72. Exceptions to the principle of mandatory prosecution established law can be divided into three groups of cases:
 - a) prosecutors cannot prosecute in cases:
 - concerning exclusion from jurisdiction of law-enforcement bodies,
 - concerning inadmissibility of criminal prosecution due to amnesty, prescription, insufficient age, impediment due to legitimately decided cases, etc.),
 - concerning offences where the consent of the injured party is necessary for prosecution (with the exception of cases provided by Section 163a para. 1 of the Criminal Procedure Code, i.e. the injured party is a person under 15, or in cases in which the injured party has been threatened, or is under pressure through addiction or dependence);
 - b) prosecutors may, but are not obliged to, start prosecution for a criminal offence:
 - under Section 159a para. 3 of the Criminal Procedure Code (ie. if the criminal prosecution is at risk of being ineffective),
 - under Section 172 para. 2 of the Criminal Procedure Code in cases of suspension of criminal proceedings,
 - under Sections 307 and 308 in cases in which the procedure for conditional suspension of criminal proceedings has been initiated,
 - under Section 309 in cases of settlement.
 - c) Criminal prosecution of persons is also not possible if precluded by international conventions ratified by the Czech Republic.
73. Similarly, prosecutors' discretionary powers apply as regards (i) the level of danger of the offence for the society (Section 3 paras. 2 and 4, Section 75 and Section 294 of the Criminal Code), (ii) whether or not an offence has been committed, when the procedure contained in Section 159a para. 1 of the Criminal Procedure Code (suspension of a case) applies, prior to the beginning of criminal prosecution, or, in accordance with Section 172 para. 1 (b) of the Criminal Procedure Code, after its commencement.
74. Moreover, the amendment to Act No. 265/2001 Coll., Section 172 para. 2 (c) Criminal Procedure Code provides that prosecutors (and in no case the police) may terminate criminal prosecution when it is clear that the objective of criminal proceedings has been achieved, taking into account the protection of interests at stake, the method of commission or the consequences of the offence, the circumstances in which it was committed and the behaviour of the accused following the commission of the act.
75. Finally, a special case concerns the temporary suspension of criminal prosecutions (Section 159b of the Criminal Procedure Code).

76. Accordingly, corruption offences are subject to the principle of mandatory prosecution.

d. Immunities from investigation, prosecution and adjudication for corruption offences¹⁵

77. According to Czech legislation immunity from investigation, prosecution and adjudication is provided for the following categories of officials:

- The President of the Republic
- Members of Parliament
- Judges of the Constitutional Court
- Judges

a) President of the Republic

78. A special position is held by the President of the Republic, who enjoys (pursuant to Article 65 of the Constitution) full substantive exemption. The President of the Republic can only be prosecuted for high treason before the Constitutional Court.

b) Deputies and senators of the Parliament of the Czech Republic

79. In this case, there is a need to distinguish between substantive exemption (non-liability immunity) (which relates to proceedings connected with voting in Parliament and its bodies and with speeches made therein (art. 27 par. 1 and 2, Constitution of the Czech Republic) – for speeches in Parliament, deputies and senators are only subject to the disciplinary authority of the chamber) and procedural immunity (inviolability) (according to art. 27 par. 4, Constitution of the Czech Republic, for all other conduct).

80. The procedural immunity (inviolability) means that deputies and senators can be criminally prosecuted only if the respective chamber of the Parliament has agreed. If the parliamentary chamber denies its approval, deputies and senators cannot be prosecuted for the same facts even when they cease to be members of Parliament. A request for approval of criminal prosecution must be discussed by the immunity committee of the respective chamber of Parliament, which must inform the chamber about the request with a proposal for decision. The Constitution of the Czech Republic does not explicitly provide for any criteria to be followed by chambers when deciding on such requests and therefore, in practice, attention is mainly paid to the need to avoid prosecution being carried out against deputies and senators as regards the exercise of their functions as such¹⁶.

¹⁵ In the light of the discussion on the system of immunities of the Czech Republic, GRECO considered necessary to clarify the terminology it uses in this field. It wished to underline, in particular that the term "immunity" covers three distinct situations:

1) Non-liability immunity (freedom of speech) which applies to parliamentarians with regard to opinions expressed or votes cast in parliament or other acts performed in the exercise of parliamentary functions. Non-liability immunity is perpetual in its character and often cannot be lifted.

2) Inviolability-immunity (procedural immunity) which protects certain categories of persons from prosecution and/or investigation and/or arrest for the offences they may have committed, whether linked to official functions or not. This form of immunity is normally temporary in its character as it is linked to the exercise of certain functions and may be lifted.

3) Privileged jurisdiction is not an immunity as such since it does not affect the liability nor the inviolability of the person who enjoys it. It provides for specific legal procedures to be followed when certain categories of officials are prosecuted for having committed a criminal offence.

¹⁶ In the relevant Commission of the Chamber of Deputies, there have been 4 cases in which immunity has been waived and 2 cases (concerning allegations of abuse of powers and false accounting) in which it has not been waived.

- c) Judges of the Constitutional Court of the Czech Republic
- 81. These judges have a similar procedural exemption as members of Parliament. However, it is the Senate that has the competence to give consent to a criminal prosecution.
- d) Judges of the Czech Republic
- 82. Judges have only a partial procedural exemption relating to acts committed in the exercise of their (judicial) functions or in connection with it. In this case, criminal prosecution is subject to the consent of the body which appointed the judge concerned (in case of judges, it is the President of the Republic).
- 83. For other crimes, such a procedural exemption cannot be used and criminal prosecution is therefore not limited.

III. ANALYSIS

a) **Introduction**

- 84. The GET recognised and commended the Czech authorities on the substantial progress which they have made in the relatively short time since the “Velvet Revolution” and recognised that the need to achieve compliance with the European Union *acquis* has made very substantial demands on the legislature and the administration. One aspect of that has, of course, been the exceptionally rapid pace of changes in the law.
- 85. The GET also recognised that, as some of those representatives whom it visited pointed out, the Czech legal system and business environment are in the process of developing and maturing and that some aspects of the system should be seen as somewhat transitional.
- 86. The GET nevertheless noted a strong consensus amongst the representatives visited that corruption is a serious problem in the Czech Republic. This was articulated most clearly and authoritatively by the Annex to the Government decision No 125/99 adopted on 17 February 1999 in which the Government says that it “is disturbed by the corruption among top level civil service officials, judges, state attorneys, policemen, customs officers, officials collecting taxes and state control institutions”. The GET was told by representatives of civil society that there is a risk that incoming investors will be exposed to corruptive behaviour by public officials and that there is a private-sector corruption. The GET wished to recognise explicitly that, in the case of judges at least, several of those to whom the GET spoke pointed out that many of the complaints are from disgruntled unsuccessful litigants and that the pay and conditions of judges are such that the level of temptation might reasonably be regarded as low. The GET considered that the widespread perception of corruption in key institutions and sectors of society is itself a problem in that it risks fostering a climate in which corruption is perceived as normal and hence acceptable. **The GET recommended that the Czech authorities not only combat the actuality of corruption but also raise the awareness of the population on the dangers of corruption which may undermine the economic, social and political foundations of Czech society and give high priority to objective research on corruption in the country.**

b) As to the law

87. The GET heard that there is some debate over whether the “effective repentance” provision (section 163 of the Criminal Code), as described in paragraph 15, should be retained. Whilst recognising that it is desirable to provide an incentive for the provision of information to the law enforcement authorities, the GET sees a distinction between this sort of provision and requirements to secure the reporting of suspicion found in anti-money laundering strategy. The GET considers that the proper course for a person who is offered a bribe or from whom a bribe is solicited is to refuse to enter into the corrupt transaction and also to report the approach which has been received. This being said, Section 163 of the Criminal Code may go too far as a possible tool to facilitate the prosecution of corruption offences where evidence would otherwise not be forthcoming. The GET therefore observed that the Czech authorities may wish to re-examine this provision with a view to assessing its effect in practice.
88. The GET enquired of several representatives about the extent to which special investigative techniques can be and are used. The use of such techniques stands upon the permission of a judge or a state prosecutor or exceptionally by a police body depending on the method of investigation and in accordance with the Criminal Procedure Code. Such techniques can be used for “an extremely serious intentional crime or for any other intentional crime the prosecution of which is a covenant resulting from a declared international agreement”. **The GET recommended adequate training and guidance to the officials applying special investigative techniques on the rules and conditions governing their use and to ensure that special investigative techniques can be applied in the detection and investigation of serious corruption offences.**

c) Policy issues

89. The GET received a copy of the Government Programme for Combating Corruption in the Czech Republic and a Report on Corruption in the Czech Republic and Possibilities for Effectively Combating this Negative Social Phenomenon. The GET noted, however, that this Programme appears to be in a somewhat undeveloped condition. The objectives should all have realistic but challenging target dates, as should the steps to be taken in their achievement. Responsibility should be allocated in a clear way for each objective and for each step. Progress should be reviewed regularly. The GET hopes that its Report might assist in the preparation of such a plan. **The GET recommended that the Government Programme for Combating Corruption in the Czech Republic be revised thoroughly so that (i) the body/ies in charge of its implementation and co-ordination with other relevant authorities are clearly identified, (ii) a series of very specific and measurable objectives and the detailed steps required to achieve them are indicated and (iii) awareness of this Programme is increased both throughout Czech public Institutions (particularly those concerned with its implementation) and the public at large.**
90. During the meetings with the representatives of the Ministry of the Interior and of the various police departments concerned with the fight against corruption, it was indicated that persons having useful information or suspicion about possible acts of corruption are required to report them through official channels (eg hierarchical superiors). This may of course seriously undermine the confidence of (often vulnerable) persons when reporting their suspicion. **The GET therefore recommended to facilitate the reporting of suspicions of corruption cases by individuals, and the setting up of appropriate and effective victim and witness protection programmes.**

d) Bodies and Institutions in charge of the fight against corruption

91. The GET noted that the investigation of allegations of corruption is the responsibility of both the Office of Financial Crime and the Protection of the State and the Unit for Combating Corruption and Serious Crime (under the authority of the Office of Criminal Police and Investigation). The GET was also informed that a recent merging of the functions of the operational and the investigative police had not yet been as complete as might have been hoped. **The GET recommended some streamlining and rationalisation of the functions of the operational and the investigative police and the early completion of the merging of the functions of the operational and the investigative police.** In this connection, the GET records that it was told that one of the difficulties has been that former operational police have not yet received sufficient training in investigation. **The GET also recommended that training in investigation for police forces engaged in the fight against corruption be provided in early course.**
92. The GET was informed that Unit for Combating Corruption and Serious Crime is hard pressed and recognised that there are many demands on resources. **The GET recommended that priority be given to the work of the Unit for Combating Corruption and Serious Crime, increasing its human and technical resources.**
93. The GET was encouraged to hear that specialist prosecutors' offices have been established to deal with serious economic crimes and corruption in the context of serious economic crime. More generally, however, it appeared at first to the GET that arrangements for the management and supervision of prosecutors might have been somewhat rigid and it was not clear at first that there were management options available to senior prosecutors short of formal disciplinary proceedings involving the courts. However, during the discussion in Plenary the Czech authorities provided additional information regarding the availability of performance management tools in the prosecution service. In the light of this information, the GET was satisfied that this issue had been adequately dealt with in the Czech Republic.

e) Other bodies and Institutions

94. The GET noted that the representatives of the Ombudsman institution stated that they had no information or complaints about acts of corruption (probably owing to the recent creation of such an Institution). However, such an Institution may have an important role to play in preventing and combating corruption. **The GET therefore recommended the strengthening of the role of the Ombudsman institution in preventing and combating corruption and to raise effectively public awareness of this role of the Ombudsman institution.**

f) Immunities

95. The GET learned of the immunities from prosecution enjoyed by Deputies, Senators and judges of the Constitutional Court. Clearly, it is important to exclude the possibility of prosecution in respect of anything done properly within the discharge of the official duties of such persons, such as the making of speeches in the Parliament or the manner of voting (non-liability). To countenance prosecution in respect of such activities would be inimical to democracy. However, the same cannot be said of prosecution in respect of other matters having no connection with official duties. The GET regards it as undesirable that such matters should require the approval of the relevant Chamber of Parliament, undesirable that Parliament should be taking such a decision without the very full information which would provide the basis of the assessment of the

prosecutor and the court of whether a case to be answered exists and undesirable that the effect a refusal of permission brings the matter to an end for all time, even if the conduct took place before election to Parliament. It appears to the GET that such a procedure is likely to create an impression of political interference in the judicial process on behalf of a favoured class of persons and to contribute to a climate in which corruption might be perceived to be normal. **The GET recommended that the system of immunities of members of Parliament be reconsidered in such a way as to provide for specific and objective criteria to be applied in determining whether procedural immunity (inviolability) should be lifted; the GET also recommended the Czech authorities to reconsider the fact that the system in place precludes prosecution after the suspect of a criminal offence ceases to be a member of Parliament.**

IV. CONCLUSIONS

96. The Czech Republic has placed anticorruption policy high on its agenda, and has formulated a comprehensive national anticorruption strategy. As indicated above, a Government Programme for combating corruption in the Czech Republic and a Report on corruption in the Czech Republic and possibilities for effectively combating this negative social phenomenon was prepared in 1999 and updated in 2002. A number of the tasks have been fulfilled, in particular changes in criminal law and procedure. However, a certain number of issues remain to be addressed.
97. The EU accession process has been of major importance in influencing Czech anticorruption policy since 1997. However, there is (an astonishing) discrepancy between the (generally accepted) existence of an environment vulnerable to, and affected by, corruption and the absence of a high number of corruption prosecutions. This means either that the analysis of the environment is defective or that the competent authorities (in particular prosecutors and police) fail to investigate, prosecute cases effectively (or a combination of the two). During its meetings, the GET gained the impression that corruption is more widespread than the data show and considered that further measures need to be taken without delay to avoid the risk of toleration of small-scale or "everyday" corruption developing and undermining the economic, social and political foundations of the Czech society.
98. In view of the above, GRECO addressed the following recommendations to the Czech Republic:
 - i. **combat not only the actuality of corruption but also raise the awareness of the population on the dangers of corruption which may undermine the economic, social and political foundations of Czech society and give high priority to objective research on corruption in the country;**
 - ii. **adequate training and guidance to the officials applying special investigative techniques on the rules and conditions governing their use and ensure that special investigative techniques can be applied in the detection and investigation of serious corruption offences;**
 - iii. **the Government Programme for Combating Corruption in the Czech Republic should be revised thoroughly so that (i) the body/ies in charge of its implementation and co-ordination with other relevant authorities are clearly identified, (ii) a series of very specific and measurable objectives and the detailed steps required to achieve them are indicated and (iii) awareness of this Programme is increased both throughout Czech public Institutions (particularly those concerned with its implementation) and the public at large;**

- iv. to facilitate the reporting of suspicions of corruption cases by individuals, and the setting up of appropriate and effective victim and witness protection programmes;
 - v. there should be some streamlining and rationalisation of the functions of the operational and the investigative police and early completion of the merging of the functions of the operational and the investigative police;
 - vi. training in investigation for police forces engaged in the fight against corruption should be provided in early course;
 - vii. priority should be given to the work of the Unit for Combating Corruption and Serious Crime, increasing its human and technical resources;
 - viii. the role of the Ombudsman institution should be strengthened in preventing and combating corruption and raise effectively public awareness of this role of the Ombudsman institution;
 - ix. that the system of immunities of members of Parliament be reconsidered in such a way as to provide for specific and objective criteria to be applied in determining whether procedural immunity (inviolability) should be lifted; the GET also recommended the Czech authorities to reconsider the fact that the system in place precludes prosecution after the suspect of a criminal offence ceases to be a member of Parliament.
99. Moreover, GRECO invites the authorities of the Czech Republic to take account of the observations made by the experts in the analytical part of this report.
100. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of the Czech Republic to present a report on the implementation of the above-mentioned recommendations before 30 September 2004.