



Provisional version

## Committee on Legal Affairs and Human Rights

### Corruption as a threat to the Rule of Law<sup>1</sup>

#### Report

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#### A. Draft resolution

1. The Parliamentary Assembly recognises that corruption remains a major problem in Europe, which poses a serious threat to the rule of law.
2. Corruption jeopardises the good functioning of public institutions and diverts public action from its purpose, which is to serve the public interest. It disrupts the legislative process, affects the principles of legality and legal certainty, introduces a degree of arbitrariness in the decision-making process and has a devastating effect on human rights. Furthermore, corruption undermines citizens' trust in the institutions.
3. The Council of Europe, its Parliamentary Assembly and its member states must be in the forefront of fighting against corruption.
4. The Assembly, recalling *inter alia* its recommendations and resolutions on fighting corruption ([Resolution 1214 \(2000\)](#)), good practice in electoral matters and concerning political parties ([Resolution 1264 \(2001\)](#) and [Resolution 1546 \(2007\)](#)), conflict of interest ([Resolution 1554 \(2007\)](#)), the state of democracy and human rights in Europe ([Resolution 1547 \(2007\)](#) and [Recommendation 1791 \(2007\)](#)) and lobbying in a democratic society (European code of good conduct on lobbying) ([Recommendation 1908 \(2010\)](#)), welcomes the Council of Europe's efforts in this field. In particular, it welcomes the intensified implementation of the Criminal Law Convention on Corruption, its additional protocol and the Civil Law Convention on Corruption. It calls on Council of Europe member states which have not yet signed or ratified these legal instruments to do so without delay.
5. The Assembly also welcomes the work carried out by the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and urges Council of Europe member states to implement their recommendations and to encourage non-member states and other relevant institutions to do so. The Assembly further calls on parliaments to contribute to the implementation of these recommendations by setting-up specific parliamentary scrutiny procedures.
6. The Assembly invites all member states to step up international cooperation in the fight against corruption, including by:
  - 6.1. cooperating more efficiently in following the "money trail" left by electronic transfers of funds with a view to helping each other recuperate funds generated by corrupt practices;
  - 6.2. taking vigorous action against banks, which still aid and abet corrupt practices by assisting perpetrators in hiding and laundering their illegal profits;
  - 6.3. take vigorous action against the accrual of illegal gains.

<sup>1</sup> Draft resolution and draft recommendation adopted unanimously by the Committee in Izmir, Turkey on 27 May 2013.

7. The Assembly also invites all member states to review their legislation concerning the fight against corruption, keeping in mind the following guiding principles:

7.1 All acts of active and passive corruption shall be incriminated. Offenses relating to corruption shall be clearly defined and distinguished from other offenses, such as abuse of power or abuse of authority.

7.2 The legislation shall ensure the independence of the judiciary through transparent appointment and promotion procedures and, if need be, the use of appropriate disciplinary measures, applied by bodies free from political interference and other undue influence.

7.3 The legislation shall ensure a maximum of transparency in political, administrative and economic life, through:

7.3.1. the publication of information on the identity of owners and managers of legal persons, or similar structures, of transfers of funds abroad, in particular to notorious tax havens;

7.3.2. strengthening the information rights of minority shareholders in private companies and of democratic accountability for the management of publicly-owned companies;

7.3.3. a determined crackdown on insider trading and other forms of abuse of inside knowledge obtained by politicians and public servants and members of control bodies;

7.3.4. the adoption and general implementation of sound rules on the declaration of assets, income and financial and other interests by members of Government and Parliament, by leaders of political parties and political movements and by public servants, judges and prosecutors and the setting-up of independent control bodies and the regulation of lobbying activities;

7.3.5. facilitating the confiscation of assets of natural or legal persons or similar structures who are unable to establish, on a legally sound basis, that they were obtained legally.

8. The Assembly stresses that the necessary legislative improvements must be accompanied by an evolution of the general cultural attitude towards corruption, which must be clearly recognised as an intolerable practice and a major threat to the rule of law.

9. The Assembly, recalling its [Resolution 1214 \(2000\)](#), asks once again its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to assess the progress made in the fight against corruption, considering corruption's negative impact on the upholding of the Council of Europe's standards by its member states.

10. It recognises the important role of the media and non-governmental institutions in contributing to the evolution of the general attitude towards corruption and in tracking and denouncing this phenomenon.

11. In order to set a good example, the Assembly resolves to pay special attention to the effective implementation of its own code of conduct.

**B. Draft recommendation**

1. The Parliamentary Assembly, referring to its Resolution (2013) ..., stresses the paramount importance of strengthening the fight against corruption, which is a major threat to the rule of law.
2. It recommends to the Committee of Ministers to invite member and observer states of the Council of Europe to examine their existing legislation on the fight against corruption and its implementation with a view to assessing its conformity with the guiding principles set out in Resolution (2013) ...
3. It further recommends to the Committee of Ministers to draw up a set of guidelines for codes of conduct and ethics for public officials, in conformity with the guiding principles set out in Recommendation 1908 (2010).
4. It invites the Committee of Ministers to instruct the Secretary General of the Council of Europe to ensure that the training programs implemented by the Council of Europe bodies include curricula specifically dedicated to the fight against corruption.
5. Furthermore, the Assembly urges the Committee of Ministers to address a recommendation to the member States calling on them to implement GRECO's and MONEYVAL's recommendations without delay.

## C. Explanatory memorandum by Ms Reps, Rapporteur

### 1. Introduction

#### 1.1. Procedure to date

1. On 5 October 2012, the Parliamentary Assembly's Bureau decided to transmit the topic of "Corruption as a threat to the Rule of Law" to the Committee on Legal Affairs and Human Rights for report, to be presented to the Assembly in the context of its June 2013 debate on "the state of human rights in Europe". The Committee appointed me as rapporteur at its meeting on 12 November 2012.

2. On 24 January 2013, the Committee held a joint hearing with the Committee on Rules of Procedure, Immunities and Institutional Affairs with the participation of Mr Marin Mrčela, President of the Group of States against Corruption (GRECO), in the framework of the fourth evaluation round on the prevention of corruption in respect of members of Parliament, judges and prosecutors. On 19 March 2013, the Committee on Legal Affairs and Human Rights held another hearing during its meeting in Paris, which brought together a number of experts and representatives of international non-governmental organisations with specialist knowledge in the fields of corruption and the rule of law. The invitees included Ms Anne Koch, Transparency International's Regional Director for Europe and Central Asia (Berlin) and Ms Valentina Rigamonti, Transparency International's Senior Regional Coordinator (Berlin), Ms Erica Razook, Associate Legal Officer on Anticorruption at the Open Society Foundation (New York), Ms Roisin Pillay, Director of the International Commission of Jurists' Europe Programme (Geneva), and Mr Daniel Smilov, Programme Director at the Centre for Liberal Strategies (Sofia).<sup>2</sup>

#### 1.2. Definitions

3. There is no single universally recognised definition of corruption or the rule of law. In addition, whilst corruption and the rule of law are commonly used phrases, it is somewhat surprising that the European Court of Human Rights has not developed specific definitions for these terms in its case law. A number of other institutions and legal instruments have attempted to define both terms.

4. Several working definitions of the concept of corruption have been developed by various bodies of the Council of Europe.<sup>3</sup> For the purpose of this explanatory memorandum, I will base myself on the working definition of 'corruption' used by Transparency International: "*The abuse of entrusted power for private gain*".<sup>4</sup> This brief formula encapsulates the key aspects of other, more detailed definitions.

5. The Rule of Law has been defined by The United Nations Security Council as: "*A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency*".<sup>5</sup> The working definition of the Rule of Law which I shall use for this explanatory memorandum will be that of the European Commission for Democracy through Law (Venice Commission), which defines the concept by stating its component elements:

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<sup>2</sup> Due to bad weather conditions, the two representatives of Transparency International arrived too late to take the floor at the hearing. Nevertheless, Ms Koch and Ms Rigamonti were able to participate in a very fruitful working lunch and thus to provide me with the information they had planned to submit to the Committee at the hearing, in addition to a background document prepared by Ms Koch, which had been distributed to Committee members (see date appended to this report).

<sup>3</sup> The Multidisciplinary Group on Corruption (GMC), used the following working definition: "*Corruption (...) is bribery and any other behaviour in relation to persons entrusted with responsibilities in the public or private sector, which violates their duties that follow from their status as a public official, private employee, independent agent or other relationship of that kind and is aimed at obtaining undue advantages of any kind for themselves or for others*" (Programme of Action against Corruption, adopted by the GMC at its meeting from 25 to 27 September 1995, and subsequently adopted by the Committee of Ministers at the 578th meeting of the Ministers' Deputies, 18-21 November 1996). Subsequently, corruption was defined in the Council of Europe's Civil Law Convention on Corruption as: "*[The] requesting, offering, giving, or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof*" (Civil Law Convention on Corruption, Article 2, adopted on 4 November 1999, ETS no. 174).

<sup>4</sup> Transparency International, [Global Corruption Report 2007, Corruption in Judicial Systems](#), Cambridge University Press, 2007, page xxi.

<sup>5</sup> United Nations Security Council, [The rule of law and transitional justice in conflict and post-conflict societies](#), 23 August 2004, Section 3, paragraph 6.

*“Consensus can now be found for the necessary elements of the rule of law ... These are:*  
 (1) *Legality, including a transparent, accountable and democratic process for enacting law,*  
 (2) *Legal certainty,*  
 (3) *Prohibition of arbitrariness,*  
 (4) *Access to justice before independent and impartial courts, including judicial review of administrative acts,*  
 (5) *Respect for human rights, and*  
 (6) *Non-discrimination and equality before the law”.*<sup>6</sup>

6. The Parliamentary Assembly has previously tackled a terminological issue pertaining to the notion of the Rule of Law in different legal systems. It has decided, in its Resolution on “The Principle of the Rule of Law,” to use exclusively the terms of ‘the Rule of Law’ and its French synonym of “*La prééminence du droit*” (rather than the expression ‘*Etat de droit*’) in order to ensure that there is no misunderstanding as to what the concept actually means.<sup>7</sup>

### 1.3 Scope of this report

7. The Council of Europe’s priority objectives are to uphold pluralist democracy, human rights and the rule of law. It is therefore this Organisation’s duty to make every effort to combat all forms of corruption, which endanger democracy and the rule of law. In quite a number of countries corruption permeates all levels of society, ranging from the (often daily) abuse of authority by traffic police and relations with (corrupt) tax authorities, not to mention the need to ‘grease the hands’ of officials or persons possessing discretionary powers to ‘facilitate’ access to schools or university places, public hospitals and even the provision of emergency medical treatment. Likewise, on the local (municipal) level, approval of construction permits, business plans etc. are often contingent or tied to considerations based on a mix of political and ‘normal’ corruption, with businesses supporting, or often being closely connected to political parties or political elites.

8. It is imperative that a well-functioning legal system must rid itself of all forms of corruption if equity and justice are to be maintained in a state governed by the rule of law. The importance of this topic has recently been brought to our attention by the Secretary General of the Council of Europe when he noted in his presentation before the Parliamentary Assembly, in January 2013, that; “*The first priority should be on the fight against corruption and other forms of misuse of power [in the Council of Europe]. Corruption is today’s biggest threat to democracy and it undermines citizens’ trust in the rule of law. According to the EU Commission’s data, almost three quarters of EU citizens perceive corruption as a major problem in their country and almost half think that the level of corruption has risen over recent years. We find it in all countries.*”<sup>8</sup>

9. The preparatory work on this report has demonstrated that corruption is present not only in state institutions, but is also prevalent in many criminal activities such as the trafficking of human beings, the selling of human organs, drugs smuggling, corporate insider dealing and the production of fake goods. Although corruption is indeed a much wider problem, the scope of this report will be limited to corruption in the public sector, particularly in the judicial and political arena (including executive bodies, law-enforcement agencies and parliament) and the threat corruption poses to the rule of law. This non-exhaustive approach is justified by both a lack of time and resources available and the existence of previous work carried out by various bodies of the Council of Europe – including the Parliamentary Assembly – and other international organisations on this topic (see below).

10. Hence, certain other important aspects of the problem, such as the funding of political parties, are not dealt with in this report. Cases of corruption relating to companies involved in the extraction and / or in the trade of natural resources, such as oil or gas, also do not neatly fit into this report, even though many persons involved in such dealings have close connections with those in power. Hence, proposals related to

<sup>6</sup> European Commission for Democracy Through Law (Venice Commission), [Report on The Rule of Law](#), Strasbourg, 4 April 2011.

<sup>7</sup> The Resolution states: “*The Assembly stresses that the terms ‘rule of law’ and ‘la prééminence du droit’ are substantive legal concepts which are synonymous, and which should be considered as such in all English and French language versions of documents issued by the Assembly as well as in the member states in their official translations.*” [Resolution 1594 \(2007\)](#) on The Principle of the Rule of Law, adopted on 23 November 2007. For a more detail including cases discussing the Rule of Law, see JURGENS, Erik, [The Principle of The Rule of Law](#), Doc 11343, 6 July 2007.

<sup>8</sup> [Speech](#) held by Mr T. Jagland, Secretary General of the Council of Europe, at the 1<sup>st</sup> Part of the 2013 Ordinary Session of the Council of Europe Parliamentary Assembly, Strasbourg, 22 January 2013.

improving transparency cannot be limited to the public sector alone, otherwise corrupt public officials can easily continue hiding their illegally-obtained assets in opaque private legal persons.

11. This report will highlight only some instances, which concern only a few member states of the Council of Europe. The presentation of these examples shall not suggest that these States are the only ones affected by corruption. On the contrary, the very fact that such cases were disclosed at all, and publicly debated, may suggest that these states have a functioning 'immune system' ensuring that corrupt practices are not simply covered up.

## 2. Context

### 2.1. International legal instruments

12. Several legal instruments relating to corruption and the rule of law have been adopted at UN level. The General Assembly of the United Nations has adopted a Convention against Corruption which aims to "*promote and strengthen measures to prevent and combat corruption more efficiently and effectively.*"<sup>9</sup> Specifically relating to the judiciary, Article 11 reads as follows: "*Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary.*"<sup>10</sup> On 30 November 2012, the General Assembly has adopted a Declaration on the Rule of Law at the National and International Levels, in which it declares to be "*convinced of the negative impact of corruption*" and stresses "*the importance of the rule of law as an essential element in addressing and preventing corruption.*"<sup>11</sup>

13. There are many other international legal instruments on corruption, some of which focus on specific elements and others on general principles, for example in the framework of the Organisation for Economic Cooperation and Development (OECD)<sup>12</sup>, the African Union<sup>13</sup> and the Organization of American States.<sup>14</sup> The European Union has also developed legal instruments to combat corruption: the 1997 EU Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union<sup>15</sup>, the 2003 Framework Decision on Combating Corruption in the Private Sector<sup>16</sup> and the 2011 EU Anti-corruption reporting mechanism for periodic assessment.<sup>17</sup>

### 2.2. The Council of Europe's work relating to issues of corruption

14. The Council of Europe has played a leading role in Europe. Following the recommendations of the 19th Conference of European Ministers of Justice (Valletta, 1994), the Multidisciplinary Group on Corruption (GMC) was established to prepare a Programme of Action against Corruption as well as:

- "*to elaborate as a matter of priority one or more international conventions to combat corruption, and a follow-up mechanism to implement undertakings contained in such instruments, or any other legal instrument in this area;*
- *to elaborate as a matter of priority a draft European Code of Conduct for Public Officials;*
- *after consultation of the appropriate Steering Committee(s) to initiate, organise or promote research projects, training programmes and the exchange at national and international level of practical experiences of corruption and the fight against it;*
- *to implement the other parts of the Programme of Action against Corruption, taking into account the priorities set out therein;*
- *to take into account the work of other international organisations and bodies with a view to ensuring a coherent and coordinated approach;*

<sup>9</sup>The United Nations [Convention Against Corruption](#), adopted by the General Assembly resolution 58/4 of 31 October 2003.

<sup>10</sup> *Ibid.*

<sup>11</sup> [Resolution 67/1](#) adopted by the General Assembly of the United Nations, 30 November 2012, para. 25.

<sup>12</sup> The [OECD Anti-Bribery Convention](#), adopted by the Negotiating Conference on 21 November 1997.

<sup>13</sup> The [African Union Convention on Preventing and Combating Corruption](#), adopted at the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003.

<sup>14</sup> The [Inter-American Convention against Corruption](#), adopted by the member states of the Organisation of American States at the third plenary session, held on 29 March 1996.

<sup>15</sup> [Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the EU](#), adopted on 26 May 1997.

<sup>16</sup> Council of the European Union, [Framework Decision on Combating Corruption in the Private Sector](#), 22 July 2003.

<sup>17</sup> European Commission, [Decision establishing an EU Anti-corruption reporting mechanism for periodic assessment](#), 6 June 2011.



- to consult the CDCJ and/or CDPC on any draft legal text relating to corruption and take into account its/their views.”<sup>18</sup>

15. As a result, the Council of Europe has adopted a number of instruments which deal with this subject, including two flagship instruments, namely the Criminal Law Convention on Corruption<sup>19</sup> and the Civil Law Convention on Corruption<sup>20</sup>. The Criminal Law Convention on Corruption covers a range of different forms of bribery both active and passive, in the private and public sector. The Civil Law Convention on Corruption covers matters which include the validity of contracts (invalidating contracts which in effect provide for corruption), the protection of employees who report corruption (whistle-blowers) and the provision of compensation for damage suffered as a result of corruption. The Committee of Ministers of the Council of Europe has also adopted a recommendation on corruption associated with political funding<sup>21</sup>, to increase transparency and reduce corruption within the political system, and a recommendation on the conduct of public officials<sup>22</sup>, to specify the standards of integrity required by those in public office. Last but not least, Resolution (97)24 on the twenty guiding principles for the fight against corruption provides for an inventory of the best policy elements which had been identified by the GMC in its early work.

16. In 1999, the Council of Europe established its anti-corruption monitoring body, named Group of States against Corruption (GRECO). This enlarged partial agreement open to non-Council of Europe States currently involves all 47 Council of Europe members, as well as the USA and Belarus. GRECO's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practices in the prevention and detection of corruption.

17. GRECO works in cycles of evaluation rounds, each covering specific themes addressed in the six instruments adopted under the aegis of the organisation. GRECO's first evaluation round (2000–2002) dealt with the independence, specialisation and means of national bodies engaged in the prevention and fight against corruption. It also dealt with the extent and scope of immunities of public officials from arrest and prosecution. The second evaluation round (2003–2006) focused on the identification, seizure and confiscation of corruption proceeds, the prevention and detection of corruption in public administration and the prevention of legal persons (and corporations) from being used as shields for corruption. The third evaluation round (2007-2011) addressed (a) the incriminations provided for in the Criminal Law Convention on Corruption and (b) the transparency of party funding. The Fourth evaluation round which was launched in 2012 deals with the prevention of corruption in the judiciary (judges and prosecutors) and in parliaments, and it deals *inter alia* with the rules of conduct aimed at ensuring integrity, declaration of assets and interests, the management of conflicts of interest.

18. All members participate in, and submit themselves without restriction to the mutual evaluation and compliance procedures. In accordance with the principle of equal treatment, all members are systematically evaluated against the same standards, leading to recommendations which are aimed at furthering the necessary legislative, institutional and practical reforms and require action within 18 months. Moreover, a compliance procedure is designed to specifically assess the measures taken by its members to implement the recommendations for improvement which are contained in the evaluation reports. In cases where not all recommendations have been complied with, GRECO will re-examine outstanding recommendations within another 18 months. Compliance reports adopted by GRECO also contain an overall conclusion, the purpose of which is to decide whether to terminate the compliance procedure in respect of a particular member or to apply the special procedure, based on a graduated approach, in case the response to GRECO's recommendations has been found to be globally unsatisfactory.

<sup>18</sup> [Terms of reference of the Multidisciplinary Group on Corruption](#), as reproduced at pages 112 and 113 of the Programme of Action against Corruption (1996).

<sup>19</sup> [Criminal Law Convention on Corruption](#), adopted on 27 January 1999, (ratified by 36 states). An [additional Protocol](#) to this Convention extending the scope of the Convention to arbitrators in commercial, civil and other matters, as well as to jurors, has been adopted on 15 May 2003.

<sup>20</sup> [Civil Law Convention on Corruption](#), adopted on 4 November 1999, (ratified by 28 states).

<sup>21</sup> [Recommendation No. R \(2003\) 4](#) on common rules against corruption in the funding of political parties and electoral campaigns.

<sup>22</sup> [Recommendation No. R \(2000\) 10](#) on codes of conduct for public officials.

19. Besides, thematic and horizontal reports are also produced to assist countries in their reforms (by providing an overview of foreign experience) and to provide a global picture of progress and problematic areas.<sup>23</sup>

20. The Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL – is a more specific mechanism, established to ensure that participating states have in place effective systems to counter-money laundering and terrorist financing, and comply with the relevant international standards, in particular with the 40 Recommendations<sup>24</sup> of the Financial Action Task Force (FATF) and its Special Recommendations on Terrorist Financing.<sup>25</sup> While the FATF Standards are not anti-corruption standards, it is recognised in MONEYVAL evaluations that one of the underpinning features of a working anti money laundering and countering the financing terrorism (AML/CFT) system is the extent to which corruption is being addressed. Thus MONEYVAL reports describe briefly measures being taken to combat corruption, as corruption is a factor which can impact negatively on the effectiveness of implementation of AML/CFT standards.

21. MONEYVAL currently comprises 33 states and jurisdictions, which are subject to its evaluation processes and procedures, including evaluation reports and follow-up of the progress in the frame of a system of “Compliance Enhancing Procedures” – a graduated series of steps to exert further peer pressure on states to implement its recommendations. It is presently undertaking a 4<sup>th</sup> round of follow up visits re-assessing some important FATF Recommendations covered in the 3<sup>rd</sup> round and also those FATF Recommendations which received low ratings in the third round of evaluations.<sup>26</sup> In the financial area, one significant standard which MONEYVAL evaluates and which assists in the fight against corruption is the effective implementation of the FATF standard concerning politically exposed persons (PEPs). This standard covers the mandatory safeguards required to mitigate the risks which may be faced by financial institutions and others when handling accounts of foreign PEPs in a jurisdiction.<sup>27</sup> MONEYVAL also produces research documents on ways in which money can be laundered or used to finance terrorism, and horizontal reviews of the evaluations which incorporate the information gathered from the evaluations of member states and illustrate where there are specific and generic problems with implementation of AML/CFT standards.

22. The Committee of Ministers of the Council of Europe has done a substantial amount of work on corruption. As already explained above, in 1997 it passed “*The Twenty Guiding Principles for the Fight Against Corruption*.”<sup>28</sup> Guiding Principle no. 3 is intended “*to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations*”. In addition, Guiding Principle no. 9 aims “*to ensure that the organisation, functioning and decision making process of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness*.”

23. The Assembly and its Committee on Legal Affairs and Human Rights have also dealt with many matters relating to corruption. Recent examples include reports on alleged politically-motivated abuses of the criminal justice system<sup>29</sup>, the need to eradicate impunity<sup>30</sup>, the protection of whistle-blowers<sup>31</sup>, the role of the public prosecutor<sup>32</sup> and judicial corruption.<sup>33</sup> In the latter document, it was highlighted that judicial corruption was ‘*deeply embedded*’ in many Council of Europe member states. In its Recommendation on lobbying in a

<sup>23</sup> The most recent horizontal reports cover both themes of the third evaluation round. The first Theme entitled ‘*Incriminations*’ covers such areas as bribery of public officials and bribery in the private sector. The second theme is concerned with the ‘*Transparency of Party Funding*.’

<sup>24</sup> [40 Recommendations](#) of the Financial Action Task Force, adopted in October 2003.

<sup>25</sup> [Special Recommendations on Terrorist Financing](#) of the Financial Action Task Force.

<sup>26</sup> MONEYVAL will assess under the 2012 Revised FATF Recommendations in its next round of evaluations.

<sup>27</sup> The revised FATF Recommendations 2012 extend this standard to domestic PEPs on a risk sensitive basis.

<sup>28</sup> Committee of Ministers of the Council of Europe, [Resolution on the Twenty Guiding Principles for the Fight Against Corruption](#), Resolution (97) 24, 6 November 1997.

<sup>29</sup> Report by Ms Sabine LEUTHEUSSER-SCHNARRENBERGER (Germany, ALDE), [Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states](#), Committee on Legal Affairs and Human Rights, Doc 11993, 7 August, 2009.

<sup>30</sup> DÄUBLER-GMELIN, Herta (Germany, SOC), [The state of human rights in Europe: the need to eradicate impunity](#), Doc 11934, 3 June 2009.

<sup>31</sup> OMTZIGT, Pieter (Netherlands, EPP), [The Protection of ‘whistle-blowers’](#), Doc 12006, 14 September 2009.

<sup>32</sup> ARABADJIEV, Aleksandar (Bulgaria, SOC), [The role of the public prosecutor's office in a democratic society governed by the rule of law](#), Doc. 9796 24 April 2003.

<sup>33</sup> SASI, Kimmo (Finland, EPP), [Judicial Corruption](#), Doc 12058, 6 November 2006.



democratic society (European code of good conduct on lobbying)<sup>34</sup>, the Assembly recommended that the Committee of Ministers elaborate a code of good conduct on lobbying based on the following principles: i) lobbying should be very clearly defined, differentiating between lobbying as a professionally compensated activity and the activities of civil society organisations, not forgetting self-regulating entities in different economic sectors; ii) transparency in the field of lobbying should be enhanced; iii) rules applicable to politicians, civil servants, members of pressure groups and businesses should be laid down, including the principle of potential conflicts of interest and the period of time after leaving office during which carrying out lobbying activities should be banned; iv) entities involved in lobbying activities should be registered; v) prior consultations should be held with lobbying organisations on any draft legislation in this field; vi) well-defined, transparent, honest lobbying should be encouraged so as to improve the public image of persons involved in these activities. Although the Committee of Ministers noted, in its reply, that both GRECO and the Conference of INGOs supported the idea of drafting such a code<sup>35</sup>, it has not been written to date. In reference to the monitoring procedure as set up by the Parliamentary Assembly, the Assembly's Monitoring Committee has, over the past few years, indicated problems relating to malpractice and corruption in a number of states.<sup>36</sup> It should be noted that in January 2012 our Committee created a new sub-committee on the Rule of Law.

### 3. A multifaceted phenomenon: overview of some recent emblematic corruption cases in the public sector

24. Corruption affects all member states of the Council of Europe. Not one of them is absolutely free from corruption. Nevertheless, it cannot be denied that some are more institutionally corrupt than others. The 2012 year end Transparency International Corruption Perceptions Index (CPI), which measures the perceived levels of corruption of the public sector on the basis on expert opinion, places five member states of the Council of Europe beyond the hundredth out of 174 states listed: Armenia (105); Albania (113); Russia (133); Azerbaijan (139) and Ukraine (144)<sup>37</sup>. Other member states of the Council were ranked highly, such as Denmark and Finland, which were considered to be "very clean" and ranked joint 1<sup>st</sup> and Sweden, which was ranked 4<sup>th</sup>. Corruption also affects all branches of power. The following recent cases illustrate this phenomenon of corruption in the public sector.

#### 3.1. Corruption in the executive and law enforcement bodies

25. Several cases of alleged corruption involve the highest level of the executive. One of the most recent ones concerns Mr Jérôme Cahuzac, until recently France's budget minister, who admitted, a few days after resigning from his post, to holding a secret bank account abroad. The funds have allegedly been transferred by pharmaceutical companies at the time when Mr Cahuzac served as an advisor to the minister of health. Besides this case, many examples can be mentioned, such as the current criminal investigation into a former finance minister of Greece, who allegedly removed some of his family members from the so-called Lagarde list (exposing alleged tax evaders from Greece). The pending French case of Woerth should also be considered. In 2012 Eric Woerth, another former French budget minister and treasurer of the Union for a Popular Movement Party, was charged with corruption-related offenses. The charges concern the alleged influence peddling and alleged illegal campaign donations by *L'Oreal* heiress Liliane Bettencourt. The influence peddling charges relate to allegations that Woerth secured the *Legion of Honour*, France's highest award, for Bettencourt's financial manager, Patrice de Maistre, after he secured a job for Woerth's wife to help manage the heiress's fortune. In Slovenia both the Prime Minister, Janez Jansa, and the leader of the main opposition party, Zoran Jankovic, have come under criticism by the country's Commission for the Prevention of Corruption for failing to declare substantial assets. Since the publication of these reports pressure has been brought to bear on the Prime Minister to resign.

26. Corruption in the executive branch may also involve the lower level of the executive and affect each of its branches, from the head of state to the traffic officer, from the police to the cadastre. The Commissioner for Human Rights of the Council of Europe has noted its significant presence in the police and in the prison system: "*policemen are badly paid in several countries and some of them try to add to their income by asking for bribes. The result is that people without money are treated less favourably than others. I have also met*

<sup>34</sup> Lobbying in a democratic society (European code of good conduct on lobbying), [Recommendation 1908 \(2010\)](#), 26 April 2010.

<sup>35</sup> Reply from the Committee of Ministers, adopted at the 1098<sup>th</sup> meeting of the Ministers' Deputies (17 November 2010), [Doc. 12438](#).

<sup>36</sup> Most recent examples include [Albania](#), [Armenia](#), [Azerbaijan](#), [Bosnia and Herzegovina](#), [Bulgaria](#), [Georgia](#), [Montenegro](#), the [Russian Federation](#), [Serbia](#) and [Ukraine](#).

<sup>37</sup> <http://cpi.transparency.org/cpi2012/> See also Appendix 1 & 2.

prisoners who have had no family visits because their relatives could not pay the unofficial 'fee'<sup>38</sup>. An example of police corruption includes the conviction, in January 2013, of the Ukrainian former Police Chief, Olexiy Pukach, who confessed to killing a journalist on the alleged instructions of the late Interior Minister Yuri Kravchenko. Whether the chain of command really ended with the late Minister, who had conveniently committed suicide (shooting himself in the head twice, from two different angles) remains unknown. There have been strong doubts cast over the suicide of the late minister, in particular the method of suicide, which was supposed to have occurred by two bullet shots to the temple of the head, which medics have noted as being impossible to self-inflict. These concerns were noted in the report by Rapporteur Leutheusser-Schnarrenberger.<sup>39</sup>

27. Another form of corruption in law enforcement bodies results in usage of their resources for the benefit of a particular interest. In the run up to the parliamentary elections in 2011, Transparency International (TI) Russia<sup>40</sup> found the political campaign rife with examples of such abuses, in particular the apparent use of government infrastructure and civil servants to boost the ruling party's candidates, a clear infringement of electoral laws. The cases of voter intimidation, some of which have been taken to court by TI Russia, have not resulted in appropriate punishment and all the public officials engaged in these cases have kept their jobs, despite evidence of violating election laws.

### 3.2. Corruption in the judiciary

28. There have also been a number of recent incidents of judicial corruption. The *Volkov v Ukraine*<sup>41</sup> case before the European Court of Human Rights, for example, concerned a judge of the Ukrainian Supreme Court who had been removed from office by a method which was held to be in violation of the European Convention on Human Rights, which concerned a breach of the right to a fair trial. The European Court, in its judgment pinpointing the personal responsibility of certain officials, instructed Ukraine to reinstate the applicant in his high judicial office. According to the National Integrity System study, carried out by Transparency International in 2011 in Ukraine, "*independence of the judiciary is not sufficiently guaranteed, either in law or in practice. The judicial branch is not able to function effectively due to the lack of accountability mechanisms and judicial integrity is undermined by absence of provisions on conflict of interests and financial disclosure.*"<sup>42</sup> The International Commission of Jurists (ICJ) made a similar observation about the situation in the Russia Federation, where "*threats to judicial independence are reported to be particularly acute in cases where powerful political or economic elements have an interest in the outcome of a case.*"<sup>43</sup> An Assembly rapporteur was told some years ago in Moscow that in order to successfully fight corruption among judges, it was inevitable that their independence had to be limited.<sup>44</sup> In Bulgaria, senior political figures such as the Prime Minister, Boiko Borisov, were so convinced that certain members of the judiciary were corrupt that they publically denounced their judicial ability and proclaimed them to be unfit for office. Such political interventions of course also raise issues of judicial independence. In Turkey there is the example of Erkan Canak, a former High Criminal Court judge, who shall be tried for allegedly accepting a bribe.

29. Corruption of the judiciary as well as undue influence on the judiciary, often leads to injustice. According to Transparency International, "*in Bulgaria, which ranks on the very bottom of the CPI amongst the EU member states*<sup>45</sup>, *several individuals accused of involvement with organised crime groups have consistently been acquitted. Recently, two businessmen, commonly referred to as the Galev brothers, allegedly engaged in fraud, drug trafficking and other crimes, were acquitted, due to what was believed to be undue influence on the judiciary, despite the presence of substantial proof against them*". Corruption in the judiciary can lead both to the acquittal of dangerous criminals and to the prosecution and conviction of perfectly innocent persons, for example when a business competitor pays law enforcement officials to

<sup>38</sup> Hammarberg, Thomas, [Corruption erodes human rights protection](#), thematic article published in the 20<sup>th</sup> general activity report of the GRECO (2011), 23 March 2012, p. 18.

<sup>39</sup> LEUTHEUSSER-SCHNARRENBERGER, Sabine (Germany, ALDE), [Investigation of crimes allegedly committed by officials during the Kuchma rule in Ukraine – the Gongadze case as an emblematic example](#), Doc 11686, 11 July 2008 (see paragraph 91).

<sup>40</sup> <http://blog.transparency.org/2011/12/23/civic-activism-heats-up-in-russia/>

<sup>41</sup> ECtHR, [Volkov v. Ukraine](#), 9 January 2013, no. 21722/11.

<sup>42</sup> Ukraine ranks on the very bottom of the CPI amongst the Council of Europe member states; see Appendix 1 & 2.

<sup>43</sup> ICJ, [The State of the Judiciary in Russia](#), 2010, p.7.

<sup>44</sup> LEUTHEUSSER-SCHNARRENBERGER, Sabine (Germany, ALDE), [The circumstances surrounding the arrest and prosecution of leading Yukos executives](#), Doc 10368, 29 November, 2004 (see paragraph 61).

<sup>45</sup> Bulgaria is ranked 34<sup>th</sup> amongst the Council of Europe member states. See Appendix 1.

fabricate a case against this person, or when law enforcement officials fabricate cases in order to retaliate against business persons who refuse to “share” profits with them.<sup>46</sup>

30. In many instances, judicial corruption also encompasses individuals connected to the judicial process, such as prison wardens and the police. A number of cases in Azerbaijan, investigated by our Committee colleague Mr Christoph Strässer (Germany, Socialist Group), rapporteur on follow-up to the issue of political prisoners in Azerbaijan, combine both judicial and political corruption issues: for example, a journalist, Mr Faramaz Novruzoglu, was given a long prison sentence for “*inciting mass disorders*” after publishing articles criticising corrupt practices of persons linked to the Government.<sup>47</sup>

31. The undeniable presence of corrupt practices - also among judges and prosecutors - must not, in my view, be used as an excuse to limit the independence of the courts. Experience shows that once a mechanism is put into place in order to “control” the actual judicial activities of judges (as opposed to their administrative circumstances), that mechanism will be used and abused for transmitting all kinds of undue influence, including for political and, again, corrupt purposes. The best safeguard against judicial corruption is the development over time of a proud, independent “*esprit de corps*” among judges and prosecutors, who must enjoy proper recognition for their important task, including in the form of decent wages and a system of judicial self-administration by elected peers.

### 3.3. *Corruption in the parliament*

32. In the United Kingdom, the scandal concerning expenses of parliamentarians, which was uncovered by the press, is another example of corrupt practices in politics. The illicit and corrupt practices have resulted in a series of resignations, criminal charges and prison terms, including politicians from both major political parties and in both the House of Commons and the House of Lords.<sup>48</sup>

33. In the European Parliament, journalists posing as lobbyists reportedly offered considerable amounts of cash for the introduction of amendments to legislative texts concerning financial markets supervision. Three MEP’s took the bait. One, an Austrian, has in the meantime been sentenced to a long prison term. Another, a Slovenian, was forced to resign from his seat in the European Parliament. A third, a former Foreign Minister of Romania, has yet to face any consequences, but he denies any wrongdoing.<sup>49</sup>

34. Recent examples of corruption in parliaments also include the Azerbaijani so-called “Gulargate”. On 25 September 2012, a video posted on YouTube appeared to show a ruling party MP, Gular Ahmedova, requesting a bribe of USD 1.3 million in exchange for securing a seat in parliament for an academic named Elshad Abdullayev. The head of the presidential administration is alleged to be involved in the scandal. Ms. Ahmedova resigned from parliament and was expelled from the party. New extracts of the video have been released regularly on Internet by Elshad Abdullayev, widening the scandal.

35. The link between lobbying and corruption is another area which may merit attention. I agree with the analysis of Transparency International, according to which, when undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the deliberative process of law making. However, the research of this NGO found that out of the 25 European countries, only six had regulated lobbying to any degree. And those that have regulations often lack enforcement mechanisms and sanctions for non-compliance or include inadequate measures, requiring only the voluntary registration of lobbyists, for example. Hungary, which is currently undergoing a rapid reversal of earlier positive political developments, is an example: it had regulated lobbying through legislation from 2006 to 2010. However, this was rolled back in 2011. The lack of transparency in lobbying encourages corruption and undermines citizens’ trust in the parliament, as demonstrates a poll on the EU which states that 80% of those surveyed believe there should

<sup>46</sup> This is reportedly common practice in the Russian Federation. Concrete cases are described in the above-mentioned reports by Ms. Leutheusser-Schnarrenberger and the report by Christos Pourgourides (Cyprus, EPP) on “Fair trial issues in espionage cases and cases concerning state secrecy”, [Doc. 11031](#). The unofficial “price list” for corrupt practices published by the Russian “Commission for Combating Corruption” ([korrupciaszfo.ru](#)) called “Tariffs for Corrupt Government Services (2011)” (available at: [http://newtariffs.ru/blog/tarify-chinovnikov-na-korrupcionnye-uslugi-dlya-biznesa-v-rossii](#)) details under “Courts services” to “Organise a judicial proceeding against a competitor – from \$ 100,000”. Alternatively, “Tax services” include “Tax audit of competitor with a raid – from \$ 50,000, a bargain by comparison.

<sup>47</sup> STRÄSSER, Christoph (Germany, SOC), *The follow up to the issue of political prisoners in Azerbaijan*, [Addendum to the report](#), Doc 13079, 22 January 2013 (paragraph 8).

<sup>48</sup> For further information, see [http://news.bbc.co.uk/2/hi/in\\_depth/uk\\_politics/2009/mps%27\\_expenses/default.stm](#)

<sup>49</sup> For further information, see [http://www.bbc.co.uk/news/world-europe-12880701](#).

be mandatory regulation of lobbying to ensure a balanced participation of different interests in decision-making.<sup>50</sup>

36. The Council of Europe and the Parliamentary Assembly itself has not been spared allegations of inappropriate lobbying. The Berlin-based NGO “European Stability Initiative”, in a series of reports referring to Azerbaijani “caviar diplomacy”<sup>51</sup> alleges that the success of the Azerbaijani delegation in averting criticism of the human rights situation and in particular on the issue of alleged political prisoners is somehow linked to the lavish invitations extended to parliamentarians and gifts (*inter alia* of caviar) allegedly offered to parliamentarians and staffers. I believe many of us were quite aware of the unusual intensity of lobbying surrounding the two reports by our colleague Christoph Strässer. I refrain from making any further comments here, but I do believe that we would have been exposing ourselves to criticism if we had simply ignored these recent events.

#### 4. Consequences of corruption for the rule of law

37. Corruption jeopardizes the good functioning of public institutions and diverts public action from its purpose, which is to satisfy the public interest. As it has been highlighted by the Open Society Justice Initiative during the Paris hearing, “*when left unaddressed, large-scale money laundering and related corrupt acts through pristine appearing financial instruments and institutions undermine the rule of law and respect for human rights, by allowing certain wealthy and politically powerful elites to take and self-deal amongst themselves – to the detriment of the people – at will and often with impunity*”. The preamble of the Criminal Law Convention on Corruption states that “*corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.*”<sup>52</sup> With regard to the rule of law, in particular, it is very clear that the threats that corruption poses to it are numerous. Indeed, corruption affects every single component element of the rule of law as it has been defined by the Venice Commission.

38. Corruption disrupts the legislative process by using the lack or the absence of lobbying activities regulation, of code of conduct and ethics for legislators and of clear rules to prevent conflicts of interest and leads to the adoption of standards which meet the particular interests of the corrupters, instead of meeting the general interest. The possibility that the law be amended or not be enacted to suit the requirements of those who can afford to corrupt is inconsistent with the principle of legality, which requires a transparent, accountable and democratic process for enacting laws, as well as with legal certainty, which implies predictability.

39. Corruption, which allows avoiding law enforcement or requires paying for it, does not only abolish legal certainty, which also covers the enforcement of the law, but also introduces arbitrariness, as the decision making process is no longer based on the uniform application of the law. Moreover, it causes a breach of equality before the law as well as discrimination of those who cannot afford to corrupt, or to defend against corrupt practices instigated by others.

40. According to the Venice Commission, there is no rule of law without access to justice before independent and impartial courts, including judicial review of administrative acts. It is obvious that corruption impedes access to justice in several ways. It may prevent filing a complaint or applying to the courts without paying an amount of money to the official in charge of registering the application. It may also prevent success before a judge corrupted by the opponent. Discrimination and denial of access to justice are, as such, violations of the European Convention on Human Rights.<sup>53</sup> In addition, they prevent courts from punishing other violations of human rights whose victims cannot afford to pay bribes in order to obtain justice. Therefore, corruption erodes the protection of human rights in general, as evidenced by Mr Thomas Hammarberg, former Commissioner for Human Rights of the Council of Europe, who “*visited all 47 member states of the Council of Europe – and repeatedly witnessed the devastating effect that corruption has on human rights.*”<sup>54</sup>

<sup>50</sup> For more information on the EU Citizens Project and the Poll see: <http://www.eu-citizens.org/noticia10.php>.

<sup>51</sup> European Stability Initiative, *Caviar Diplomacy, How Azerbaijan silenced the Council of Europe*, Berlin, 24 May 2012 and *A portrait of Deception*, Berlin, 22 January 2013. For further information, see also <http://www.economist.com/blogs/charlemagne/2013/03/azerbaijan>.

<sup>52</sup> *Criminal Law Convention on Corruption*, adopted on 27 January 1999.

<sup>53</sup> In particular Article 6, 13 and 14 ECHR.

<sup>54</sup> HAMMARBERG, Thomas, *Corruption erodes human rights protection*, thematic article published in the 20<sup>th</sup> general activity report of the GRECO (2011), 23 March 2012, p. 18.



41. Moreover, corruption has a snowball effect: it undermines the rule of law and the lack of rule of law is a fertile ground for corruption. As Ms. Anne Koch, representative of Transparency International stated *“With a collapse in the rule of law, the social contract ceases to exist, and the ordinary members of a society view all of the institutions that govern them as agents of a corrupt system, that they themselves must deal with in a corrupt way. So the poison of corruption and illegality becomes endemic to the system.”*

42. In addition to its effects on the components of the rule of law, corruption undermines citizens' trust in the institutions. This is the case for the judiciary, as highlighted by the International Commission of Jurists, according to which *“a judge that can be bribed or influenced by one party or outside interest cannot be relied on to be vigilant against torture of a detainee, or to make the best interests of a child the primary consideration in a custody dispute, or to provide an appropriate remedy for an act of racial discrimination”*. This is also the case for both the executive and the parliament. Transparency International considers indeed that *“corruption is now, increasingly, being laid bare, with a commensurate loss of trust in the political system and in politicians.”* Although the citizens' perceptions of corruption are sometimes exaggerated, the crisis of confidence in institutions caused by corruption is huge in Europe<sup>55</sup> and seriously undermines these institutions. The representative of Transparency International, Ms Koch, invited to the Paris hearing has, for example, noted that the government of Bulgaria recently resigned after a series of rapidly escalating street protests by people tired of rising electricity prices, tougher austerity measures and a prevailing sense of corruption and impunity among the elite.

43. Former Commissioner for Human Rights Mr Hammarberg has rightly pointed out another aspect of corruption, namely its very high cost for the general public: *“Huge amounts of money are spent on bribes and lost in unpaid taxes, thereby also reducing the capacity of a State to invest in the infrastructures and policies necessary to ensure decent living conditions and equal opportunities for its population”*<sup>56</sup>. In a time of economic crisis, this cost is even more difficult to bear as it is clear that corruption exacerbates the crisis. As highlighted by Transparency International, *“a number of countries in Southern Europe, particularly those currently at the sharp end of the financial crisis (Greece, Italy, Portugal, Spain and Cyprus), are showing serious deficits in public accountability and deeply rooted problems of inefficiency and malpractice which are neither sufficiently regulated nor sanctioned.”*

## 5. Means to fight corruption

44. Corruption is an old and vast phenomenon, but not an inevitable one. I am strongly convinced that it is vital to fight against it because, as highlighted by Transparency International, *“when institutions fail to adopt and implement appropriate regulations and a culture of integrity, corruption is likely to thrive, thereby undermining equitable growth, social cohesion and the rule of law”*. Ways and means to eradicate this phenomenon exist and I would like to draw your attention to those which seem to be particularly promising.

45. An obvious way to fight against corruption is to implement GRECO's and MONEYVAL's recommendations. Many countries have been seen to be lacking in their evaluation reports and subsequent compliance reports for a variety of different reasons. In the case of France, for instance, which has ratified the Criminal Law Convention on Corruption in 2008, GRECO pointed out in its conclusion in the Third Round Evaluation Report that *“France has severely restricted its jurisdiction and its ability to prosecute cases with an international dimension, which given the country's importance in the international economy and the scale of many of its companies is very regrettable.”*<sup>57</sup> Insofar as compliance procedures are concerned, GRECO considered, for instance in the case of the Russian Federation, that the country has only implemented satisfactorily or dealt with in a satisfactory manner just over a third of the 26 recommendations contained in the Joint First and Second Round Evaluation Report<sup>58</sup> (the third evaluation report not having yet been compiled). Recently GRECO strongly voiced its disapproval in the Ukraine's reluctance to implement its recommendations: *“The total number of recommendations that have been complied with – just under half of the recommendations issued – is not impressive and it is noticeable that several fundamental issues, such as the independence of the judiciary, the existence of judicial and administrative processes in parallel, the independence of the auditing of local authorities, public service reform, the administrative decision making process and the liability of legal persons in respect of corruption offences, to mention some of the areas highlighted by GRECO in the Evaluation report, still need considerable attention.”*<sup>59</sup> Much work still needs to

<sup>55</sup> According to the [Special Eurobarometer on corruption](#) published in February 2012, 41% of EU citizens think that corruption is a major problem in their country and 47% of them think that the level of corruption in their country has increased over the past three years.

<sup>56</sup> See *supra*, note 54.

<sup>57</sup> GRECO, Third Round Evaluation, [Evaluation Report on France](#) – theme I, 2009, see paragraph 99.

<sup>58</sup> GRECO, Joint First and Second Evaluation, [Compliance Report on Russia](#) 2010, see paragraph 132.

<sup>59</sup> GRECO, [Second Addendum](#) to the joint first and second evaluation round on Ukraine, 2012, see paragraph 69.



be done in this respect, but the case Ukraine, in which anti-corruption measures have been used for political purposes, also shows that these issues ought to be treated carefully and with circumspection. The “abuse of office” charges brought against the former Prime Minister of Ukraine, Yulia Tymoshenko, is indeed an example to show that tough criminal law provisions intended to fight corruption can also be abused for the politically-motivated, selective prosecution of leading members of the opposition.<sup>60</sup>

46. To fight against impunity - too often enjoyed by the perpetrators of corruption the incrimination of all acts of corrupt (including active and passive corruption) is essential. The GRECO’s third evaluation round has underlined the importance of clear and precise incrimination. According to the thematic review of this third evaluation round, GRECO Round III evaluation reports disclose a generally good standard of compliance with the obligations laid down in the Corruption Criminal Law Convention and its additional protocol. However, *“one or two laws attract criticism for being anachronistic and therefore ill-equipped to deal with bribery in the 21st century. The reports for the laws of Greece and the United Kingdom provide good examples in this regard.”*<sup>61</sup> Moreover, at the time of the adoption of their Evaluation Reports, two member states had signed but not ratified the Corruption Criminal Law Convention (Germany and Spain), eleven member states had not signed or ratified its additional protocol (Andorra, Azerbaijan, Bosnia and Herzegovina, Czech Republic, Estonia, Finland, Georgia, Lithuania, Poland, Spain and Turkey) and five member states had signed but not ratified the same protocol (Germany, Hungary, Iceland, Malta and Portugal). It is important that these two legal instruments are quickly ratified by all member states and their provisions effectively implemented. As regards incrimination, particular attention should also be paid to the clear definition of offenses, including the requirement of a personal advantage.

47. The key to fighting corruption is transparency. The more information is made publicly available, the more effectively can NGO’s and the media “name and shame” corrupt practices and thereby contribute to bringing them to an end. As public sector corruption tends to “leak” into the private sector, for example by corrupt officials hiding their assets in legal persons run by “men of straw” on their behalf, or by stealing from state-owned or partially state-owned enterprises, transparency requirements cannot be limited to the public sector alone. A good way to tackle corruption in the public sector is to ensure that all assets are declared at the beginning and at the end of an official’s public mandate. Any unusual increase in wealth should give rise to a duty to explain. Recent developments in France show that it must be made clear from the outset that there is nothing intrinsically wrong with officials having substantial assets. But they must demonstrably result from legal activities, and be properly declared for tax purposes. In line with the law in some jurisdictions dealing with the fight against organised crime, I would favour the introduction of laws allowing for the freezing and even confiscation of any assets whose owners cannot establish the legality of the funds used for their acquisition. Corruption is all about money, all about greed. If we succeed in actually taking away the fruits of corruption, the practice will diminish very quickly.

48. Judicial reform aiming at reinforcing the independence of the judiciary is also key element in combatting corruption. Transparency International has found that the vast majority of European countries suffer from weak enforcement of court decisions. Also, there often exists a lack of transparency, the judiciary is not fully independent, and the executive branch can exert strong control over judicial appointments. According to this NGO, *“even in those member states where governments have been successful in tackling corruption, the judiciary has remained a problem. For example, in Georgia, despite impactful anti-corruption reforms, insufficient independence of the judiciary has been a key factor weakening the potential of good governance in that country. Despite having eradicated bribery in courts, the judiciary has suffered from undue influence exerted by the Prosecutor’s Office and the executive authority during the adjudication of criminal cases, as well as the cases where the political leadership’s interests have been at stake. The judiciary’s inadequate level of independence has also undermined its ability to exercise oversight vis-à-vis the executive branch.”*<sup>62</sup> Recent reforms in Hungary to restrict the independence of the judiciary are also especially disturbing and could hamper the fight against corruption.

49. Moreover, GRECO has stated that corruption is often made possible by the lack of independence and means available to bodies engaged in the prevention and fight against corruption and recommended to

<sup>60</sup> This is why the Venice Commission recommends to distinguish corruption from other offences and considers *“that national criminal provisions on “abuse of office”, “excess of authority” and similar expressions should be interpreted narrowly and applied with a high threshold, so that they may only be invoked in cases where the offence is of a grave nature, such as for example serious offences against the national democratic processes, infringement of fundamental rights, violation of the impartiality of the public administration and so on”* (see Report [CDL-AD \(2013\)001](#)).

<sup>61</sup> See MACAULEY, Roderick, [Fighting Corruption, Incriminations](#), Thematic review of the GRECO’s third evaluation round.

<sup>62</sup> See Transparency International, [Georgia NIS Report 2011](#).

reverse this trend.<sup>63</sup> Consequently, institutional reform should ensure independence of bodies engaged in the prevention and the fight against corruption and the means of these bodies should be reinforced.

50. Several experts invited to the Paris hearing underlined the fact that corruption in the public sector also has a cultural dimension. The International Commission of Jurists considers that “*perhaps the key safeguard against judicial corruption, as well as the most ephemeral and the most difficult to establish, is a cadre of judges with a strong sense of judicial honour and the responsibility that comes with judicial power*”. Such an ethical culture is also key for elected officials, parliamentarians and civil servants. It is based on education and continuing training and must be supported by a clear political commitment.

51. The protection of whistle-blowers, to which this Assembly has recently dedicated a separate report (above<sup>64</sup>), is an indispensable complement to judicial independence. Transparency International has highlighted its crucial importance by quoting the example of a whistle-blower “*who passed on details of MPs' expenses to a British newspaper which led to a major scandal in the UK concerning the widespread misuse of allowances and expenses of Members of the Parliament and eventually resulted in resignations and sentences of imprisonment*.” According to assessments performed by this NGO, there is still much to do in this area: “*Even where laws exist, [...] whistle-blowers do not have sufficient protection from reprisals in practice – aside from Norway and the UK where safeguards are more robust. In a number of countries in Europe, particularly in Eastern Europe and the Balkans, whistle-blowers suffer from stigma and may even risk or lose their lives (as did Sergei Magnitsky in Russia)*.” Sergei Magnitsky had blown the whistle on large-scale systematic theft from the Russian state by corrupt Russian officials. He was arrested and died in prison, which caused both national and international outrage. A motion for a resolution has been passed on this topic of refusing impunity for his alleged killers<sup>65</sup> and in December 2012, our Committee colleague, Mr Andreas Gross (Switzerland, Socialist Group) was appointed as rapporteur to investigate this case and the alleged high-level cover-up more closely. The role of civil society actors and investigative journalism must also be stressed in this connection. I can provide three examples of such initiatives: in the Russian Federation, the famous blogger and leader of the opposition movement, Navalny, enquires into corruption in the context of public procurement contracts;<sup>66</sup> in the Ukraine, television programmes and online media<sup>67</sup> investigate and bring to light political skulduggery and embezzlement of public/state funds; and similar investigations into ‘regional’ corruption scandals have been publicised in the Baltic states.

52. The proposed reforms should lead to end impunity for perpetrators of corruption and so to break the “*vicious circle*” described by Ms Anne Koch, representative of Transparency International: “*when it is successfully practised, it continues to be used, thus undermining the rule of law*.”

53. Another important way to fight against corruption consists in regulating lobbying activities through mandatory lobbying registers and code of conducts for lobbyists and those who meet lobbyists. Such codes of conduct are an important part of the anti-corruption framework for parliaments, as they impose binding and enforceable rules for what is clearly legal and acceptable - and what is not - for politicians, officials and their interlocutors. As underlined by Transparency International, the adoption of enforceable codes of conduct demonstrates a serious commitment to integrity by parliamentarians and helps to build trust by citizens in the political process. The assessment of the 25 countries by the above-cited NGO revealing that only eight have codes of conduct in place at present demonstrates that there is still much work to do in this area. On several occasions GRECO has deplored noncompliance with its recommendations in this area, for example concerning Hungary, which had not installed any clear guidance in relation to civil servants seeking or receiving gifts<sup>68</sup> or indeed any code of conduct for the civil service.<sup>69</sup> Lobbying regulations should be implemented taking into account the conclusions of the opinion of the Venice Commission on the role of extra-institutional actors in the democratic system<sup>70</sup>, as well as the guiding principles for the elaboration of codes of good conduct set out in [Recommendation 1908 \(2010\)](#).

<sup>63</sup> See, e. g., the [Evaluation Report on Ukraine](#) (Joint First and Second Evaluation Rounds), 21 March 2007, p. 11-21.

<sup>64</sup> See *supra*, note 31.

<sup>65</sup> Parliamentary Assembly of the Council of Europe, “[Refusing Impunity for the killers of Sergei Magnitsky](#)” Motion for a Resolution, 24 April 2012, Doc 12909.

<sup>66</sup> See <http://rospil.info/>. Mr. Navalny is currently undergoing a trial for embezzlement; See <http://www.bbc.co.uk/news/world-europe-22172224>

<sup>67</sup> E.g. [Ukrayinska Pravda](#).

<sup>68</sup> GRECO, Second Round Evaluation, [Compliance Report on Hungary](#), 2008, see paragraphs 31 – 34.

<sup>69</sup> GRECO, [Addendum](#) to The Compliance Report of the Second Evaluation Round on Hungary, 2010, see paragraph 16.

<sup>70</sup> Venice Commission, *Opinion the role of extra-institutional actors in the democratic system*, [CDL-AD\(2013\)011](#), 22 March 2013. This opinion analyses the various lobbying regulation systems and their advantages and disadvantages.

54. At the parliamentary level, other measures may be considered. In a speech held in March 2013 before the Congress of Local and Regional Authorities, the president of the NGO Anticor stressed the need to strengthen the rights of the parliamentary opposition and proposed, for example, to assign by law the chairmanship of the tenders committee to a member of the opposition.<sup>71</sup>

55. The recent scandal triggered by the aforementioned Cahuzac case revived in France and in Europe the debate on the declaration of assets of elected officials. The announced reform of the rules governing the establishment and control of these declarations<sup>72</sup> has received mixed reactions in the French political arena. Transparency International, as well as other NGOs such as Anticor, believes that a robust asset declarations system is an important safeguard of integrity in the public sector as it prevents and reveals conflict of interest among members of parliament and to avoid illicit enrichment among public officials. According to Transparency International, *“even though all European countries have some kind of asset, interest and income declaration system in place, there is considerable variation in their quality and comprehensiveness – 11 of the 25 countries do not cover all relevant aspects of MPs interest and/or disclose only partial information. Worrying examples include Slovenia and France, where MP’s declarations are not made available for public scrutiny at all, effectively eliminating their value as a public accountability mechanism”*.

56. The fight against corruption cannot be effective without a fight against another phenomenon that facilitates corruption, namely money laundering. Indeed, as it has been highlighted by the Open Society Justice Initiative during the Paris hearing, *“while the Transparency International Corruption Perceptions Index names several Council of Europe member states amongst its “cleanest,” some of these states – like the United Kingdom and Switzerland - are laundering the proceeds of criminal and corrupt acts on a vast scale”*. The abolition of bank secrecy, which is obviously used as a vehicle for corruption proceeds’ laundering, as well as the establishment of strict disclosure regime are efficient ways to fight against corruption. The fight against money laundering is an area which most requires international cooperation. The “money trail” as such, in the case of electronic transfers of funds in fact used for all “serious” sums of black money, cannot be “lost”, or erased. It must simply be followed, across the borders, following all the meanders and subterfuges imagined by the perpetrators, until the final beneficiary. This is not rocket science; it just requires the political will in all countries touched by the “money trail” to actually undertake this work seriously.

57. All these reforms must meet an overall strategy. The experts invited to the Paris hearing emphasised the importance of a comprehensive approach of corruption, including the legal framework and the practice and performance of the institutions. Mr Daniel Smilov drew the attention of the Committee to the fact that several Eastern European countries have systematically demonstrated very high levels of perception of corruption, despite of the fact that this problem had topped the governmental agenda. Mr Smilov wondered if that means that anticorruption efforts have been insufficient, or if that means that the strategy which has been pursued – focused essentially on institutional reforms – has been wrongly perceived and even counterproductive. The second hypothesis leads to worry about institutional practices and professional ethics.

## 6. Conclusions and proposals

58. The subject of “Corruption as a threat to the rule of law” is obviously complex.<sup>73</sup> Unfortunately, this report cannot propose all possible solutions. Nevertheless, a number of priority proposals can be made to eradicate this scourge.

59. The Council of Europe has developed useful legal instruments and mechanisms to prevent and fight corruption. Member states of the Council of Europe should be encouraged to ratify the relevant conventions of the Council of Europe as well as to implement GRECO’s and MONEYVAL’s recommendations. Parliaments should also contribute to the implementation of these recommendations by setting-up specific parliamentary scrutiny procedure. At the Assembly’s level, in addition to the representation in the meetings of GRECO<sup>74</sup> and MONEYVAL<sup>75</sup>, the Committee on the Honouring of Obligations and Commitments of this Assembly should pay particular attention to the implementation of these legal instruments.

<sup>71</sup> See <http://www.anticor.org/2013/03/26/anticor-au-conseil-de-leurope/>

<sup>72</sup> This reform has been announced by French president Hollande on 10 April 2013 (see <http://www.elysee.fr/assets/pdf/declaration-du-president-de-la-republique-4.pdf>)

<sup>73</sup> For a recent overview, see the Country Reports on Human Rights Practices for 2012, published by the US Department of State, which provides numerous examples of different forms of corruption in a number of Council of Europe member states: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

<sup>74</sup> See [CM decision adopted at its 717<sup>th</sup> meeting](#), on 13 July 2000 in accordance with Article 7.2 of the Statute of the GRECO

<sup>75</sup> See Article 4.1 of [Resolution CM/Res \(2010\) 12](#).

60. I also suggest promoting overall strategies against corruption including the following core elements:
- i) Reinforcement of independence and effectiveness of the judiciary. This includes, in particular, measures to enhance the quality, education and status of the judicial profession. Transparent appointment, promotion and dismissal procedures as well as appropriate disciplinary rules for judges that would be applied by bodies free from political interference and undue influence should be introduced.
  - ii) Reinforcement of transparency: the citizens' desire for greater transparency is legitimate. To restore the confidence in public institutions, we need to put in place sound rules for the declaration of assets, income and interests by members of Parliament, of Government and of senior officials and judges as well as to set up independent control agencies with sufficient means to sanction non-compliance with these rules. Transparency also include the regulation of lobbying activities, through the elaboration of mandatory and public lobbying, code of conducts for lobbyists and those who meet them. Moreover, the institutions should publish their financial information on their website and open public data should be encouraged.
  - iii) Protection of media freedom and independence: media are essential for the fight against corruption and should be free from governmental pressure in order to be able to track and reveal corruption cases.
  - iv) Empowerment of the civil society, which has an important role to play in mobilising groups and media on governance and democracy issues to track and denounce corruption.

61. These strategies should be implemented flexibly, taking into account the specificity of the situation in each country. Corruption problems should be dealt with together with issues such as democracy, constitutionalism and the separation of powers, as proposed by Mr Daniel Smilov at the hearing. In a non-competitive political environment with weak separation of powers, anticorruption measures should always be considered as a part of a larger reform package ensuring greater separation of powers and more intense political competition. In a highly competitive, democratic political environment, anticorruption measures should be considered together with measures augmenting "checks and balances" through the separation of powers, and reducing self-entrenchment efforts by representatives of the majority of the day. Anticorruption efforts should in any case be disentangled from party politics in order to avoid the suspicion that anticorruption is just a vote-mobilisation strategy.

62. Also, the Assembly has to pay special attention to the effective implementation of its own code of conduct. Likewise, the Council of Europe should be vigilant in ensuring that funds secured for the implementation of its programmes are properly used and are not diverted by corrupt officials.

63. Finally, I suggest that the Committee of Ministers become more engaged in the fight against the scourge of corruption, on the one hand by ensuring that this subject is included in the specific curricula of the training programs implemented by the Council of Europe bodies and, secondly, by setting up a working group to develop guidelines on codes of conduct and ethics aimed at public officials and judges.

Appendix I: Transparency International Corruption Perceptions Index (CPI) 2012

COE Rank	Global Rank	Country / Territory*	CPI 2012 Score		Surveys Used	Standard Error	90% Confidence interval		Scores range		Data sources												
							Lower	Upper	MIN	MAX	African Development Bank Governance Ratings	Bertelsmann Foundation Sustainable Governance Indicators	Bertelsmann Foundation Transformation Index	IMD World Competitiveness Yearbook	Political Risk Services International Country Risk Guide	World Bank Governance Indicators	World Economic Forum Executive Opinion Survey	World Justice Project Rule of Law Index	Economist Intelligence Unit Country Risk Service	Global Insight Country Risk Guide	PERC Asian Intelligence	Transparency International Bribe Payers Survey	Freedom House Nations In Transit
1	1	Denmark	90		7	2,0	87	93	83	98	0	89	0	95	98	0	86	89	88	83	0	0	0
1	1	Finland	90		7	3,0	85	95	83	100	0	89	0	90	100	0	91	87	88	83	0	0	0
3	4	Sweden	88		7	1,9	85	91	82	97	0	97	0	85	89	0	82	89	88	83	0	0	0
4	6	Switzerland	86		6	2,6	81	90	73	90	0	89	0	90	89	0	85	0	88	73	0	0	0
5	7	Norway	85		7	1,6	82	87	78	89	0	81	0	78	89	0	85	88	88	83	0	0	0
6	9	Netherlands	84		7	2,0	81	88	73	89	0	73	0	86	89	0	84	87	88	83	0	0	0
7	11	Iceland	82		6	4,1	75	89	71	98	0	89	0	80	98	0	81	0	71	73	0	0	0
8	12	Luxembourg	80		6	2,8	75	85	71	89	0	81	0	81	89	0	86	0	71	73	0	0	0
9	13	Germany	79		8	2,3	75	83	73	89	0	73	0	81	89	0	78	75	88	73	0	74	0
10	16	Belgium	75		7	2,4	71	78	71	89	0	73	0	73	89	0	71	72	71	73	0	0	0
11	17	United Kingdom	74		8	1,3	72	77	69	81	0	73	0	76	69	0	81	73	71	73	0	77	0
12	22	France	71		8	2,4	67	75	57	79	0	57	0	73	79	0	67	74	71	73	0	77	0
13	25	Austria	69		8	2,4	65	73	59	79	0	73	0	59	79	0	63	71	71	63	0	74	0
13	25	Ireland	69		6	3,5	64	75	54	78	0	65	0	76	69	0	78	0	54	73	0	0	0
15	29	Cyprus	66		4	2,4	63	70	62	71	0	0	0	0	69	0	62	0	71	63	0	0	0
16	30	Spain	65		7	2,9	60	69	52	73	0	65	0	58	69	0	52	73	71	63	0	0	0
17	32	Estonia	64		8	3,0	59	69	50	75	0	0	75	70	50	0	64	71	54	63	0	0	68
18	33	Portugal	63		7	2,5	59	67	54	73	0	65	0	58	69	0	59	61	54	73	0	0	0
19	37	Slovenia	61		8	3,9	55	67	45	73	0	0	71	45	50	0	54	55	71	73	0	0	68
20	41	Poland	58		10	2,0	55	62	47	65	0	65	62	47	50	0	55	65	54	63	0	63	58
21	43	Malta	57		4	2,4	53	61	52	63	0	0	0	0	60	0	52	0	54	63	0	0	0
22	46	Hungary	55		10	3,5	49	61	37	71	0	49	62	37	50	0	40	65	71	63	0	57	55
23	48	Lithuania	54		7	5,3	45	63	31	71	0	0	66	45	31	0	47	0	71	63	0	0	55
24	51	Georgia	52		6	6,0	42	62	32	70	0	0	49	0	0	47	68	70	0	32	0	0	44
25	54	Czech Republic	49		10	2,9	44	53	34	62	0	49	62	40	41	0	34	55	54	52	0	41	58
25	54	Latvia	49		6	4,0	42	55	31	58	0	0	53	0	31	0	44	0	54	52	0	0	58



25	54	Turkey	49		9	2,1	45	52	38	57	0	49	53	54	41	0	50	46	38	52	0	57	0
28	62	Croatia	46		8	3,1	41	51	32	54	0	0	53	35	41	0	32	47	54	52	0	0	50
28	62	Slovakia	46		8	4,3	39	53	30	62	0	41	62	30	41	0	30	0	54	52	0	0	55
30	66	Romania	44		8	3,7	38	50	32	60	0	0	58	32	60	0	34	43	38	42	0	0	50
31	69	FYR Macedonia	43		6	4,7	35	51	21	50	0	0	49	0	0	0	50	48	21	42	0	0	50
32	72	Bosnia and Herzegovina	42		7	2,3	38	46	35	54	0	0	40	0	0	35	54	39	38	42	0	0	44
32	72	Italy	42		7	2,4	38	46	37	55	0	41	0	39	41	0	37	55	38	42	0	0	0
34	75	Bulgaria	41		8	3,8	35	47	29	62	0	0	62	29	31	0	38	38	38	42	0	0	50
34	75	Montenegro	41		4	4,5	34	49	32	53	0	0	40	0	0	0	53	0	0	32	0	0	39
36	80	Serbia	39		7	2,6	35	44	31	49	0	0	49	0	31	0	35	35	38	42	0	0	47
37	94	Greece	36		7	3,6	30	42	21	49	0	41	0	35	31	0	30	49	21	42	0	0	0
37	94	Moldova	36		8	2,6	31	40	25	47	0	0	40	0	31	47	34	25	38	42	0	0	29
39	105	Armenia	34		6	2,7	29	38	21	40	0	0	40	0	21	35	38	0	0	32	0	0	37
40	113	Albania	33		7	2,0	30	36	23	39	0	0	36	0	31	0	32	23	38	32	0	0	39
41	133	Russia	28		9	2,2	25	32	21	43	0	0	28	27	31	0	29	31	21	22	0	43	23
42	139	Azerbaijan	27		6	2,5	23	31	21	38	0	0	28	0	21	0	30	0	38	22	0	0	23
43	144	Ukraine	26		8	1,8	24	29	18	32	0	0	28	25	31	0	29	18	21	32	0	0	29

\* No data is available with respect to Andorra, Liechtenstein, Monaco & San Marino.

**KEY:**

**CPI 2012 Score:** Relates to the degree to which corruption is perceived to exist

**Surveys Used:** Reflects the number of surveys or assessments used to calculate the CPI score for each country.

In 2012, there were 13 surveys and expert assessments used and at least 3 were required for a country to be included in the CPI.

**Standard Error:** Indicates differences in the values of the sources. The smaller the Standard Error the greater the agreement in the valuation of the sources.

**Scores range:** Maximum - Minimum Range - Provides the highest and lowest values of the sources.

**Appendix 2: Transparency International CPI 2012: Council of Europe member states in context of global ranking**

COE Rank	Global Rank	Country / Territory*	CPI 2012 Score
1	1	Denmark	90
1	1	Finland	90
3	4	Sweden	88
4	6	Switzerland	86
5	7	Norway	85
6	9	Netherlands	84
7	11	Iceland	82
8	12	Luxembourg	80
9	13	Germany	79
10	16	Belgium	75
11	17	United Kingdom	74
12	22	France	71
13	25	Austria	69
13	25	Ireland	69
15	29	Cyprus	66
16	30	Spain	65
17	32	Estonia	64
18	33	Portugal	63
19	37	Slovenia	61
20	41	Poland	58
21	43	Malta	57
22	46	Hungary	55
23	48	Lithuania	54
24	51	Georgia	52
25	54	Czech Republic	49
25	54	Latvia	49
25	54	Turkey	49
28	62	Croatia	46
28	62	Slovakia	46
30	66	Romania	44
31	69	FYR Macedonia	43
32	72	Bosnia and Herzegovina	42
32	72	Italy	42
34	75	Bulgaria	41
34	75	Montenegro	41
36	80	Serbia	39
37	94	Greece	36
37	94	Moldova	36
39	105	Armenia	34
40	113	Albania	33
41	133	Russia	28
42	139	Azerbaijan	27
43	144	Ukraine	26

\*No data is available with respect to Andorra, Liechtenstein, Monaco and San Marino

**KEY:**

**CPI 2012 Score:** Corruption Perception Index which relates to the degrees to which corruption is perceived to exist