

Strasbourg, 14 September 2001

Greco Eval I Rep (2001) 7E Final Public

First Evaluation Round

Evaluation Report on Estonia

Adopted by GRECO
at the 6th Plenary Meeting
(Strasbourg, 10-14 September 2001)

I. INTRODUCTION

1. Estonia was the twelfth GRECO member to be examined in the first Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr. William KEEFER, Assistant Commissioner for Internal Affairs, (United States Customs Service, police expert), Mr. Pekka KOPONEN, State Prosecutor, Office of the Prosecutor General (Finland, prosecution expert) and Mr. Adam WRZOSEK, Chief Inspector, Financial Intelligence Service, Ministry of Finance, (Poland, policy expert). This GET, accompanied by a member of the Secretariat, visited Tallinn from 17 to 20 April 2001. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document GRECO Eval I (2001)5E).
2. The members of the GET highly appreciated the hospitality extended to them by the Estonian authorities and the Ministry of Justice in particular which made the arrangements of the visit. The GET further wishes to stress the remarkable quality of the Estonian Official State Web Centre (<http://www.riik.ee/en>) and the work of the Estonian Legal Translation Centre (<http://www.legaltext.ee/indexen.htm>). Given the number of screening mechanisms applying to Estonia, the GET also appreciated the kindness of national representatives/practitioners during the discussions.
3. The GET met with officials from the following Estonian Governmental organisations/bodies: Ministry of Justice (penal law department, audit department etc.), Public Prosecutor's Office, Tallinn City Court, Riigikogu (parliamentary) Constitutional Committee, Legal department and Diplomatic Immunity and Privileges Division of the Ministry of Foreign Affairs, State Audit Office, Estonian Police Board, Security Police Board, Public Procurement Office, Audit Division of the Ministry of Finance, Tax Board, Customs Board, the Legal Chancellor's Office. Moreover, the GET met with members of the following non-governmental institutions: University of Tartu, Jan Tönisson Institute (which is the national chapter of Transparency International), Open Estonia Foundation, Estonian Banking Association, Estonian Bar association, Estonian Journalists Association. During the visit, the GET also expressed the wish to meet with representatives/members of the parliamentary Anti-Corruption Committee. Despite several attempts by the Ministry of Justice, it appeared to be impossible to arrange such a meeting. The list of persons met by the GET appears at Appendix I.
4. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would 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).
5. The principal objective of this report is to evaluate the measures adopted by the Estonian 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 Estonia, 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 preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Estonia is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations to Estonia in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a. The phenomenon of corruption and its perception in Estonia

6. The Republic of Estonia is a small country on the eastern shores of the Baltic Sea, 80 km south of Finland. It borders Russia to the east and Latvia to the south. The total population of Estonia is approximately 1.5 million including 65% of ethnic Estonians and 28% of Russians. The country is ruled by a mixed Presidential-Parliamentary regime. The administrative organisation comprises 3 levels: central, regional units of central government and local government¹. The autonomy of local governments is strongly guaranteed in both theory and practice; in the light of the information provided, according to the Constitution, all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law.
7. In 1991, Estonia regained independence after fifty years or so of Soviet Union membership. The present Estonian constitution establishes the principle of legal continuity of the first Republic of Estonia, which was proclaimed independent in 1918. However, 1991 is often considered as the birth date of a new, young Estonian State. Since its Independence Day, Estonia has been rebuilding the political system as well as economic and social structures and has already achieved stability of institutions guaranteeing democracy and the rule of law. Administrative reform and modernization have been associated with very radical changes in personnel policy. At the moment one of the most noticeable features is a big share of relatively young but well educated people working in Estonian political management and civil service. They are obviously too young to be marked by communism and have almost no professional experience of the Soviet era.
8. In terms of geopolitics Estonia is eager to be closely linked with West European countries, particularly Scandinavia. It cooperates with the countries of this region in the framework of the Baltic Sea Region, including its Task Force on Organized Crime². Estonia is candidate for European Union³ membership. It is admitted that Estonia's situation makes it a transit country for criminal activities, notably smuggling and trafficking between Russia and Scandinavia. In terms of culture (not separated from the history of the country) Estonia seems to be much closer to the tradition and protestant values of Baltic Germans and Scandinavians than to the Russians, although fifty years of communism and Soviet occupation could have affected the mentality of

¹ The representative body of a local authority is the council, members of which are elected for a three-year term. The council is headed by the chairman. The executive body of a local authority is set up and managed by the mayor or the head, who is elected by the local council for a three-year term.

² It should be mentioned that a screening of the States members to the Baltic Sea Region took place as regards corruption. A *Situation Report on Corruption in the Baltic Sea Region* - dated March 2000 - is available at <http://www.balticseataaskforce.dk/Situation%20report%20on%20corruption.PDF>. For Estonia, see pp 13-16.

³ And like other candidate countries, Estonia experiences a certain level of „euroscepticism“ at the moment.

certain parts of Estonian society. More than one third of the population is composed of non-ethnic Estonians, of which 22% have Estonian citizenship⁴.

9. As far as the Estonian economy is concerned, according to the European Commission assessment "Estonia is a functioning market economy. Its open policy towards trade and capital movements, combined with large private sector and an attractive business environment, has provided strong incentives for the development of economic activity"⁵. The country's economy is growing at a rate of around 6,5% a year, inflation is low (ca. 4%), the tax policy encourages investment and most of state industry has been efficiently sold off. The banking sector is well developed and strong; foreign-owned banks control more than 90% of domestic banks' assets. Foreign trade is rising resulting from a very liberal external trade and payments regime. On the other hand, the unemployment rate is relatively high (c.a. 13% totally, but around 6% in Tallinn) and the GDP per capita is still less than half of the EU average. It is connected with relatively low salaries especially in the public sector.
10. Estonia has adopted overall governmental anti-corruption policies which aim at enhancing the transparency of decision-making and promoting public confidence towards State authorities. The present government coalition considers combating corruption and maintaining high ethical standards as priorities. A governmental decision of 25 July 2000 establishes the basic principles of crime control up to the year 2003, among which the necessity to ensure fast and efficient application of criminal procedure against corruption and other crimes. The GET further noted that the Estonian National Programme for the adoption of the [EU] *acquis* 2001, which reflects the EU annual progress reports⁶, provides for 5 priorities of the fight against Corruption, the implementation of which is to be supervised by the Security Police⁷. According to a strategy adopted in 1997 and updated in 1999, the above-mentioned programme also extensively focuses on preparation of civil servants for EU integration and a *Phare* project was approved which relates to expertise and training concerning the fight against corruption. A further training programme on methodology on the investigation of corruption, fraud and misconduct of officials is also planned in co-operation with police and justice authorities from other countries.
11. The anti-corruption amendment to the Government Act from June 2000 should also be mentioned. This amendment provides requirements for establishing internal inspection systems in the ministries, in their subordinate institutions, State agencies and municipal governments. Additionally, the Code of Ethics of Public Service was also adopted in 1999. In May 2000 the Ministry of Economy started a project *Good Practice in Internal Audit*. This project helps to create and introduce the system of internal (financial and performance) audit in the Estonian public sector.
12. These efforts have received support from the civil society. In December 1999 the Estonian Law Centre (foundation) launched a 2-year project *To Set Measures Against Corruption in Transition*

⁴ See *Estonia 2000 Regular Report*, issued by European Commission on 8th November 2000, p. 8.

⁵ See p. 22.

⁶ item 24 *Cooperation in the field of justice and Home affairs* under the chapter 3 on *Abilities to assume the obligations of membership* (for the Progress report: <http://europa.eu.int/comm/enlargement/estonia/index.htm>; for the Estonian Programme: <http://www.eib.ee/english/index.html>)

⁷ - Set up internal control units in government offices and intensify the work of the existing internal control units;
- Expose the cases of corruption in the law enforcement system, larger local government units and ministries;
- Expose the cases of corruption in other government offices, especially in connection with illegal arms, alcohol, fuel, drugs and radioactive material trafficking and with the illegal issue of documents proving citizenship;
- Expose the cases of corruption related to public procurement and large State investments;
- Expose the persons involved in money laundering and identify their connections to the cases of corruption.

Community. The project is directed towards analysis of legal aspects in the process of limiting corruption. The main tasks of the project are to identify corruption risk areas and to propose a legally sound measurement of this.

13. No doubt, one of the most important elements of the overall anti-corruption legal system in Estonia is the Anti-corruption Act which entered into force on 19 January 1995, and was extensively amended in 1999 (see the full text, doc GRECO Eval I Inf (2001) 2E). It provides the legal bases for preventing corruption and for prosecuting officials involved in corruption. It should be viewed together with the Public Service Act and Salary Scale Act, which respectively regulate the behaviour of the executive and the civil service and establish official scales and amounts of salaries, the State Property Act, the State Procurement Act and the Criminal Code. In addition, the following legal acts were adopted by the Parliament: Money Laundering Prevention Act, Credit Institutions Act and *last but not least* Public Information Act, which guarantees transparency and promotes public confidence towards State authorities. At the moment, a new penal code and penal procedure code are being drafted to harmonise the various legal amendments of the recent years.
14. Estonia is one of the three countries having ratified the Council of Europe Civil Law Convention on Corruption. The Act ratifying the Criminal Law Convention on Corruption has been approved by the Government and will be voted by the Parliament in the nearest future. Estonia has expressed the wish to sign the OECD Convention on combating bribery of Foreign Public Officials in international business transactions⁸. The ratification of the 1997 EU Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union is scheduled for the period 2002-2003⁹.
15. The Estonian penal legislation - as amended by the Anti-corruption Act - contains legal provisions on several offences under which corruption may be sanctioned: accepting a bribe, arranging a bribe, giving a bribe and bribing foreign officials (including officials of international organisations). Atypically, the penal Code provides for the criminalisation of corruption *per se* (§ 164²)¹⁰. Provisions also criminalise trading in influence, unlawful acceptance of remuneration by an official, counterfeiting or falsification related to office, the violation of restriction on employment and activities or procedural restrictions established by the Anti-corruption Act, failure to give notification of a relationship involving a risk of corruption and submission of false information to a person, agency or committee in charge of verifying declarations of economic interests.
16. The above-mentioned provisions are those of Chapter 8 dedicated to *Criminal Official misconduct*¹¹. In the light of the definition of the concept of "official"¹², it seems that this chapter could also apply to corruption in the private sector, except the provisions relating to the *Act of Corruption* which strictly apply to the functions listed in the Anti-Corruption Act (mentioned above). The definition of the Penal Code also applies to members of Parliament. The GET further

⁸ Discussion is under way at the OECD concerning involvement of new states, i.e. Estonia, in the Working Group on Bribery in International Business Transactions.

⁹ According to the National Programme for the adoption of the [EU] acquis 2001.

¹⁰ "making of undue or unlawful decisions or performance of such act, or failure to make reasoned and lawful decisions or perform such act by an official through the use of his or her official position for receiving income derived from corrupt practices or other self-serving purposes".

¹¹ See Appendix IV.

¹² "An official is a person who has an official position in an agency, enterprise or organisation based on any form of ownership and to whom administrative, supervisory, managerial, operational or organisational functions, or functions relating to the organisation of movement of tangible assets, or functions of a representative of state authority have been assigned by the state or the owner" (definition given by § 160).

noted that the Security Police, which is the main law enforcement body responsible for investigating corruption, also deal with “offences in office”, which do not fall under Chapter 8 of the penal code: dispossession with misuse of office (§141¹), smuggling by an official taking advantage of one’s position (§76 sec. 3 p. 1), tax frauds and defrauds with assistance from officials. Also in the service of defence: misuse of power (§259) and neglect of official duties (§260).

17. The committing of an *Act of Corruption* by “a group of persons” is one of the aggravating circumstances foreseen under §164. For the time being legal persons can be held liable for administrative offences, but not for criminal offences. The GET was informed by the Ministry of Justice that the new Penal Code, which is likely to be adopted in 2002, will introduce the criminal liability of legal persons.
18. The GET also noted with interest that *Failure to perform duties related to collection, depositing or verification of declarations of economic interests [...] is punishable by up to two years’ imprisonment* (§162³).
19. The Estonian Penal system (Art. 53 and 54 of the Penal Code) provides for a distinction between first, second and third degree offences, on the basis of the applicable scale of sanctions. Consequently, most corruption-related offences are second degree offences for which the punishment is imprisonment for up to 8 years, detention or a fine. However, corruption offences *stricto sensu* are third degree offences (for which the punishment is a fine or the deprivation of the right of working in a certain position). The limitation time for the prosecution of second degree offences is 5 years, and 2 years for third degree offences.
20. Money laundering has been established as a separate criminal offence, and can be prosecuted independently from the predicate (corruption) offence. Estonia has recently set up a Financial Intelligence Unit (within the structure of the Estonian Police Board) on the basis of Chapter 6 of the Money Laundering Prevention Act which entered into force on 1st July 1999¹³. The FIU is centralising information on suspicious transactions from the bodies subject to the reporting obligation (credit institutions, financial institutions including insurance operators, investment funds, professional securities market participant). The FIU cooperates with pre-trial investigation authorities, the Prosecutor’s Office and the courts for the purposes of preventing and sanctioning money laundering or criminal offences related thereto, and to facilitate pre-trial investigations.
21. The corruption problem is considered relatively limited in Estonia by both national authorities and the European Union. According to the Estonian authorities (and the analysis of the Security Police), there are two main phenomena of corruption: bribery in the activities of local administrations/authorities where business and officials are sometimes closely interconnected¹⁴, and bribery in the activities of the Border Guard and the Customs Board (connected with smuggling, and VAT and excise fraud). This opinion has been confirmed by the officials from the Ministry of Finance and the Customs Board during the evaluation visit to Estonia. Unfortunately, the GET did not meet representatives of the Border Guard. According to the Corruption Analysis Centre of the Jan Tõnisson Institute (acting as the National chapter of Transparency International), *corruption exists on all levels of Estonian society, from the highest to the lowest*. The public procurement sector in particular is considered a *grey area* by this NGO due to a lack

¹³ The GET was informed that after the entry into force of the Act, a lot of money had stopped to flow to Estonia.

¹⁴ The replies to the questionnaire indicated that “the decisions where corruption is suspected, made by the heads of local governments and contracts signed with their own companies or with companies belonging to their relatives. Since the end of the nineties, we can notice that the number of such offences increases.”

of research and the absence of major successful investigation on corruption in connection with public procurement (despite the growing annual number of tenders and complaints to the Public Procurement Office)¹⁵.

22. The GET noted that Estonian authorities produce and have at their disposal detailed data on corruption cases¹⁶. The number of registered and officially reported corruption offences has remained roughly at the same level over the last years. According to the last figures available there were 23 persons sentenced for accepting bribes and 17 persons sentenced for giving bribes in 2000¹⁷. According to the data provided by the Security Police, whose tasks include the detection of corruption (in particular of high officials), 54 criminal cases on corruption were taken to court in 2000. In the opinion of the Security Police, the majority of the above mentioned cases resulted from the ineffectiveness of the internal inspection systems in several governmental institutions¹⁸. The total number of cases relating to corruption-type acts as recorded by Estonian authorities fluctuates from 54 to 113 between 1998 and 2000. Most cases have led to convictions (see Appendix 3)¹⁹.
23. According to the Transparency International Corruption Perception Index for 2000, Estonia is the least corrupt of all CEE countries subject to the study (with a relatively good index of 5.7 out of 10). A similar conclusion was made by *The Economist*: foreign businessmen consider Estonia as the least corrupt of all ex-communist countries. This encourages investments and attracts capital²⁰. The assessment of the World Bank is similar and concludes that *"the average level of corruption in Estonia is relatively low when compared to other CEE countries, although relatively high with regard to political corruption"*²¹.
24. The general perception of corruption in Estonian society is variable.²² The GET noticed the existence of a certain level of tolerance in Estonia, especially in the light of the discussions held with NGOs and other independent bodies like the Bar Association. Furthermore, the GET also noticed in the course of various discussions, a somehow very strict understanding of corruption, i.e. corruption as an act distinct from bribery or trading in influence, instead of "corruption" as an overall concept. This situation might reflect or partly be a consequence of the way the various forms of corruption are criminalised since corruption is subject to criminal sanctions *per se*, besides the usual bribery or trading in influence.

¹⁵ See Jan Tonisson Institute, *Country Study Estonia*, Tallinn 2001, p. 18.

¹⁶ See also the data available on registered cases, prosecuted cases etc. at the Statistical Office of Estonia: <http://www.stat.ee/statistics>.

¹⁷ See Estonian answers to the GRECO questionnaire, p. 1.

¹⁸ See *Security Police Annual Review 2000*, p. 23.

¹⁹ These more detailed figures were kindly provided by the Ministry of Justice after the visit.

²⁰ See *The Economist*, 24.02.2001, p. 36.

²¹ See World Bank, *Anticorruption in Transition – A Contribution to the Policy Debate*, 2000, p. 13

²² People as well as Estonian media believe that political leaders, public officials, especially those dealing with public procurement, and police force officers are the most corrupt groups in Estonia, but recent empirical researches sometimes point at other findings. According to the results of a public opinion poll dated December 1998, corruption has not been spreading especially among politicians and civil servants but is more prevalent within the private sector. More than 69% of respondents declared that during the last five years they had no direct personal contacts with corrupt behaviours. It also appears from the opinion poll that people are very much aware about corruption issues, but at the same time that people are much more tolerant towards minor acts of corruption (e.g. the taking of bribes by traffic policemen).

b. Bodies and institutions responsible for the fight against corruption

b1. The police and border guard

25. The Estonian police anti-corruption effort is divided between the Security Police Board and the Police Board. The Estonian Border Guard is not concerned with general control of corruption. But keeping in mind Estonia's position as a transit country for crime, the GET considered it useful to include this authority in the scope of the report as far as internal corruption control²³ is concerned.

i) The Security Police

26. The Security Police (SP) was established as an independent board within the Ministry of Internal Affairs in 1993. Their role includes intelligence gathering, anti-terrorism, counter-intelligence, and anti-corruption efforts. They are in general responsible for corruption cases (in particular those involving "higher officials"). This became a priority of the Security Police in 1999 following the extension of the SPs jurisdiction in 1998. Headed by a Director General, the SP comprises four regional departments. The total number of the Security Police is classified, but approximately 40 are believed to be currently assigned to anti-corruption matters. The Security Police are young. In 2000, the average age was 31 and the average length of service just over 5 years. Most have a higher education. The Security Police appears to be a well-trained and well-equipped modern police force. The Security Police have specialized training in corruption investigations.

27. The Security Police handled significant corruption cases treating white-collar crimes (30 cases in 1999) and corruption within the customs and border guard (50 officials were sent to court in 1998 and 1999). In 2000, the Security Police completed 54 preliminary investigations involving corruption offences. The majority were bribery cases. The accused included local mayors and minor police officials, as well as a number of customs and border guard officers. The GET took note of an amendment to the Criminal Procedure Code which entered into force on 16 July 2000. Pursuant to this amendment, pre-trial investigations concerning corruption cases (in the meaning of Art. 164² of the Penal Code) relating to municipal officials do not fall under the Jurisdiction of the Security police any more.

ii) The Estonian Police

28. The Estonian (general) Police (EP) is directed by the Police Board (PB) and headed by a Director General and Deputy Director General. It comprises four national units (Central Criminal Police, personal protection police, forensic service and criminalistics centre, and the police school where all Estonian police officers are trained). The EP also comprises seventeen police prefectures throughout the country which are responsible for: maintaining public order in their area, preventing/detecting/combating criminal and administrative offences, conducting preliminary investigations of criminal matters and pursuing administrative offences.

29. The EP includes about 3600 officers (down from more than 7000 in 1993). Almost half of the police force is under 30. The police prefectures vary in size according to population and crime level. Approximately 100 members of the Central Criminal Police (Organised Crime Department and Economic Crime Department) address serious, widespread crimes, organized crime, money laundering. The Estonian Police Board is traditionally in charge of small corruption offences, and since the above-mentioned change, also of corruption cases involving municipal officials. The GET noted that the workload of the EP appears to become heavy, in particular with additional

²³ Information was kindly forwarded by the Estonian Ministry of Justice after the visit.

efforts to effectively address local corruption.²⁴ Recently, part of the Estonian Police's jurisdiction over tax crimes was transferred to the Tax Board.

30. In relation to this, the GET was informed that all police officers undergo some anti-corruption training in the police school; however, there are no annual training requirements. Police officers are evaluated by their superiors every three years.
31. At central level, the PB comprises an Internal Control Division which is responsible for the investigation of misconduct. It is staffed with 8 officers, 6 of which are in charge of surveillance and criminal proceedings. In 2000, 20 cases were opened (8 bribery cases and 12 misconduct cases). In its work, the Division makes use of informants, wire-tapping, under-cover and surveillance operations. It also had discussions with the various services and prefectures to develop reporting. The GET noted that the PB apply the concept of corruption strictly (bribery is not corruption).

iii) *The Border Guard*

32. The Estonian Border Guard (EBG) has a military structure but is placed under the umbrella of the Ministry of Internal Affairs. Its legal powers are similar to those of the Police. The EBG's structure comprises eight regions. Service in border regions is supervised and managed by regional headquarters, structured by 42 Border Guard stations, 39 border points, a Border Guard patrol boats division and the Border Guard aviation. The total staff is composed of 2100 persons.
33. According to the information provided to the GET, there seems to be an extensive set of preventive and other measures to preserve integrity and control corruption within the Border Guard.²⁵ The EBG acknowledge that in the past an urgent need for staff has led to some hurried and neglected recruitment.
34. The material provided to the GET indicated that all border guards who have committed crimes were released from service and punished by court²⁶. It is also indicated that none of the convicted officials ever served imprisonment, only periods of probation. At the same time, it is said that the newer criminal policy is in favour of severity in case of repeated offences. Offences generally committed by border guard officials are acceptance and arranging of bribe, and misuse of office. There have been no cases of corruption *stricto sensu* (i.e. in the meaning of the Penal Code). The Border Guard have done some analysis of the reasons for and circumstances of bribery and it appears that most frequently border guard officials were subject to criminal behaviour in their

²⁴ Crime statistics have been steadily rising since 1996, with more than 44% of all crimes occurring in Tallinn. The clearance rate has steadily increased since 1996, despite staff erosion and unfilled positions, although it remains very modest. All anti-corruption law enforcement except that committed by "higher officials" is pursued by approximately 1000 "criminal" police officers throughout the prefectures. Official crime statistics over the last two years show that corruption offences have remained relatively static, while tax offences have significantly increased and drug offences have exploded, from 297 registered offences in 1999 to 1581 offences in 2000.

²⁵ Control during the service (including the social environment of each staff and precluding relationships), on-going training policy, rotation of staff, efforts in favour of effective internal audit, salary reform, making criminal policy more severe over repeated offences, awareness raising on ethics, better detection of offences and liquidation of criminal channels.

²⁶ 1995, 11 cases, 8 border guard officials were convicted: 1st case: 1 border guard official was convicted for misuse of office 10 cases: 7 border guard officials were convicted for accepting bribe; 1996 2 cases, 36 officials were convicted: 1st case: 21 officials misused their office, accepted and gave bribe; 2nd case: 15 officials accepted bribe; 1997 3 cases and 17 officials were convicted: 2 cases: 9 officials accepted bribe; 1 case: 8 officials committed the negligence related to office; 1998 1 case: 1 official accepted bribe and was participant in unlawful crossing the State Border; 1999 4 cases and 13 officials were convicted: 3 cases: 11 officials accepted bribe, 1 case: 2 officials committed the fraud and misuse of office; 2000 2 cases and 3 persons were convicted for accepting bribe.

third year of service. According to this analysis, Customs officials were often the first to propose transactions based on bribery (including as active bribers of border guards). The GET also noted that the additional information²⁷ provided after the visit pointed at positive elements, but also at clear insufficiencies.

b2. Criminal investigation of corruption

35. Criminal proceedings are commenced by a preliminary investigator or prosecutor. According to the Criminal Procedure code, pre-trial investigative authorities, within the limits of their competence are: the Police Board, the Central Criminal police and police prefectures; the Security Police Board; prisons and the expulsion centre; border guard authorities; customs offices; the headquarters of the Defence Forces; the tax board. In practice, for most corruption cases, pre-trial investigation is conducted by the officials of the Police Board, the Central Criminal police, Police Prefectures and the Security Police Board. The latter, as already mentioned, has a general jurisdiction over corruption cases, with a few minor exceptions (e.g. Defence forces investigate their own cases).
36. A preliminary investigator shall decide on the direction of the investigation and performance of investigative activities independently, but under the supervision of the Head of investigation who can form investigative teams, give instructions or orders, transfer the matter from one preliminary investigator to another etc.). Instructions and orders are mandatory but can be challenged by submission of a complaint to a prosecutor.
37. All preliminary investigators may undertake "surveillance activities" as defined in the Surveillance Act. However, only the Police Board and Security Police may conduct "exceptional surveillance activities." These include: covert entry into dwellings, databases and vehicles; wiretapping and certain forms of controlled deliveries which were not permitted under Estonian law until 1995, and must now be authorized by a court (like other special investigative means) and supervised by the Chief Public Prosecutor.
38. Pre-trial records of investigation can be used as evidence in certain situations (e.g. when the whereabouts of the witness is unknown) and also anonymous witnesses can be heard. Under current practice, the preliminary investigator may determine that a witness who fears reprisal will be granted anonymity as a court witness. The Tallinn City Court (which has jurisdiction over all organised crime cases) has at its disposal session rooms properly equipped for this kind of testimony. Estonia has no current witness protection programme but an agreement was concluded with Latvia and Lithuania in this field (not yet applicable) to compensate the difficulty in hiding protected witnesses in these relatively small territories.
39. The GET was informed that all officials who become aware of a crime in the course of their duties are obliged to report and that according to the Code of Criminal Procedure there is no difference in informing either a prosecutor, the police or a court as they are obliged to take measures for registering and investigating a crime.

²⁷ "Training of personnel is not adequate due to the limited possibilities in the Suurupi training college. More than 10% of the Border Guards did not get the basic training at the moment. A strong support and training is also needed from other services as Police, Customs and citizen and migration board (...).

"The Border Guards have an excellent regional co-operation between their own services, and an excellent international co-operation, especially in the Baltic area. However co-operation, mutual assistance and exchange of information and data with other civil agencies as Customs, police and migration is not fully satisfactory. The agreement with Customs signed in 1994 is not working. There is no training, no co-operation and no assistance. The same remarks apply to co-operation with the Police".

b3. Prosecution Services

40. The Prosecution service consists of the Prosecutor General's Office and County and City Prosecutor's Offices. At the moment there are about 170 prosecutors in Estonia, 24 of these being State Prosecutors. The Prosecutor General is appointed for 5 years by the Government on the proposal of the Minister of Justice, with the opinion of the Legal Commission of the Parliament. The Senior County and City Prosecutors are appointed for 5 years and all other prosecutors, including State Prosecutors, until retirement age by the Minister of Justice.
41. The prosecution service is regulated by the Prosecutor's Office Act and the Code of Criminal Procedure. There are no specialised prosecutors in Estonia for the time being. The GET was informed that the creation of three prosecutors specialised in economic affairs is envisaged.
42. In Estonia, prosecution is mandatory and a prosecutor is in principle autonomous in his/her consideration of charges. When a prosecutor decides not to prosecute in an actual case, a complaint can be made to a higher prosecutor against this decision. The higher prosecutor can decide to reopen the case. If the Prosecutor General should consider that there is no reason for pressing charges, an individual citizen has no right to bring a charge of his/her own. The possibility for the Chief Public Prosecutor or a senior prosecutor to take a case from a prosecutor and pass it over to another prosecutor or take it over personally is foreseen by law ("substitution"). Although the grounds ("with good reason") for a substitution are vaguely described in the Prosecutor's Office Act, the substitution must be written, set out the extent of the substitution and justify the need for substitution. Substitution has sometimes been used to bring complicated cases before the Tallinn City Court.
43. The representative of the Public Prosecutor's Office insisted strongly about the fact that a given prosecutor cannot be instructed in a given case. He also stressed that this never happened. The GET was also informed that the new draft Penal Procedure Code will strengthen the responsibilities of the prosecution.
44. Bringing a civil action is possible, but possibilities for free legal aid are limited, a situation which limits the significance of this right at the moment. The GET further noticed that the current system of training of legal advisers is considered unsatisfactory by certain practitioners they met.
45. The willingness of suspected or convicted perpetrators to co-operate with the law enforcement officials and their participation in the solving of the case can be taken into consideration. The details of this discretion were left somewhat open, but apparently the system works successfully. Simplified proceedings can be used to speed up the procedure, but these do not include formal mitigation of the sentence.
46. The GET was informed that the distribution of files among prosecutors is done on the basis of a planning prepared by the senior prosecutor in each county and city prosecutor's office. This planning indicates which investigator is linked with which prosecutor.
47. A significant legislative revision of the Code of Criminal Procedure is underway in the Riigikogu. The current law authorizes the Police Board, the Security Police, the Border Guard Board, the Customs Board, the Tax Board (and other agencies not relevant here) to conduct pre-trial investigations "within the limits of their jurisdictional competence." The GET notes that the statutory rights of preliminary investigators under the current code are impressive. A preliminary

investigator decides on the direction of the investigation and performance of investigative activities independently, except where obtaining consent from a prosecutor or permission from a court is legally required. If a preliminary investigator disagrees with the instructions of a prosecutor concerning charging a criminal offence or other aspects of a criminal matter, the preliminary investigator has the right to petition to a higher-ranking prosecutor with his or her written objections. In such cases, the prosecutor must "annul" the instructions of a lower ranking prosecutor, or assign the task of investigation to another preliminary investigator. A preliminary investigator has the right to submit written requests for assistance to other pre-trial investigation authorities. These taskings are binding on other authorities. Compliance with the orders of a preliminary investigator is mandatory for all enterprises, agencies, organizations, officials and persons.

48. According to the Code of Criminal Procedure the supervision over the legality of commencement of criminal proceedings and the preliminary investigation is exercised by the Chief Public Prosecutor, and prosecutors at local level. For that purpose a complaint against the activities of a preliminary investigator can be submitted to a prosecutor, who shall adjudicate the complaint within 10 days. The prosecutor has the right to decide on the resumption of the proceedings. He can annul the preliminary investigator's decision to terminate proceedings.
49. Large supervisory powers are granted by the Code of criminal procedure (§ 120) to the prosecutor. They include the right to require explanations and criminal files, to annul or alter unlawful orders of preliminary investigators, to sanction searches and other activities, to return a file for further investigation, to remove a preliminary investigator from a matter and to refer the matter to another investigator. However, it seems that in practice the prosecutor has not a very active part in the pre-trial investigations. The police is generally responsible for the investigation. According to the legislation in force, police shall even make a summary of charges. The prosecutor has naturally the right to change this summary of charges. He can also later make amendments or changes in the summary of charges.
50. Pre-trial investigations must be concluded within two months and a prosecutor can extend the investigation by up to four months. Further extensions require the approval of senior prosecutors. The prosecution limitation period varies on the seriousness of the crime: 2 years for a 3rd degree crime, 5 years for a 2nd degree crime and 10 years for a 1st degree crime. This period is running until a case is given to the court (a legal situation which does not seem to be clear in the Estonian practice). The GET was also informed that the New Penal Code (which will enter into force in 2002) will amend the current mechanism, providing that the period will run until the court decision is made.
51. The GET was told that cooperation between the police and prosecutors improved following the adoption of the new Prosecution Act granting the possibility for prosecutors to intervene at any stage of the procedure. On the other hand, well-informed Estonian practitioners shared with the GET their strong doubts about the lack of reliability of the repressive system when it comes to the sanctioning of unlawful public operations (e.g. railway privatisation at the time of the visit). The reason for this would be the lack of professionalism (notably experience with procedures) of judicial authorities and the prosecution.
52. The GET could not determine the scope of the principle of secrecy of procedure (which avoids interference in the course of investigations and prosecution) as this question was not perfectly clear to the practitioners concerned met by the GET. The GET was also informed that the Code of Criminal Procedure foresees that a judge, lay judge, prosecutor, preliminary investigator etc.

shall not participate in a criminal proceeding and shall be removed if he/she is directly or indirectly personally interested in the criminal matter, or if other circumstances give reason to doubt his/her impartiality.

b4. The courts

i) General description

53. The Estonian judiciary is unified under the Ministry of Justice which exercises overall administrative supervision over judges, the Prosecutor General's Office, but also notaries and of course, the other justice staff. Women are strongly represented in the Estonian Judiciary and the salary of a judge is about three times the Estonian average one.
54. The Estonian court system is divided into three levels: County Courts, City Courts and Administrative Courts (first instance), District Courts (second instance) and the Supreme Court. The legislation concerning the court system can be found in the Constitution (Chapter 13), the Courts Act, the Status of Judges Act and in the Code of Criminal Procedure for criminal matters. At the moment there are some 220-230 judges in Estonia. They are appointed until retirement age (in practice pension age or a few years past it). Judges in the Supreme Court are appointed by the Parliament, the Chief Justice on the proposal of the President and the other judges on the proposal of the Chief Justice. All other judges on lower instances are appointed by the President on the proposal of the Chief Justice of the Supreme Court. Estonia also applies the system of Lay judges (including for civil and criminal matters) who are selected by local government councils for a mandate of 5 years.
55. During the immediate post-transition period, the urgent need for judges has led to rapid recruitments where candidates have been dispensed of passing the tests by the examination board in the light of the candidates' background (lecturer of law, prosecutor, holder of office requiring legal education etc.). This system still seems to be used, although not frequently. The limited attraction of the profession and the consequent lack of candidates limits the scope of competition. The GET was informed about the current systematic 3 months screening of new judges. Furthermore, an initial period of three years is applied which allows for a simplified legal dismissal procedure on the grounds of inaptitude of a judge.
56. A court of first instance consists of one judge alone when the case at hand is an offence of second or third degree, when the most severe punishment prescribed is imprisonment for 3 years. Serious criminal offences are adjudicated by a court with a panel of one judge and two lay judges. The offences dealing with membership in or formation of a criminal organisation are adjudicated by a panel of 3 judges in Tallinn City Court (which has exclusive jurisdiction over organised crime cases). The GET was told that the possibility to delocalise a case to Tallinn is a positive measure because judges of the capital are better experienced. The GET was also informed that external experts are extensively used, in particular accountants.
57. At the moment, the only (very wide) specialisation of judges in Estonia concerns criminal and civil cases.
58. The GET took note that in certain corruption cases involving higher municipal and other officials, the Tallinn District Court and the Supreme Court have confirmed the sentences of first instance courts and that these decisions are sometimes considered a major contribution to the credibility of

judicial bodies in the fight against corruption²⁸. The GET also took note of the cooperation described as good and constructive between courts and the Ministry of justice.²⁹ The GET was also informed about the existence of a code of conduct for judges. The senior judge met by the GET insisted on the absence of political influence on judges and the guarantee offered by lifetime appointment.

ii) *Efforts to overcome difficulties in the judiciary*

59. The major problem faced by the Estonian judiciary at the moment is the important (and increasing) burden of work of courts. This is partly the result of the lack of experienced judges who, in addition and when confronted with complicated cases, tend to adjourn proceedings more than necessary. The Ministry of Justice initiated a policy encouraging jurisdictions to use as much as possible transactional settlements. Estonia also envisages at the moment to further develop the legal bases for simplified criminal proceedings, in particular in the light of the Italian experience which would serve as a model.
60. It was confirmed to the GET that for the time being and despite the efforts of the Ministry of Justice to set up medium term training programmes (training strategy for judges and prosecutors 2001-2004), there is no proper curriculum for the training of judges and prosecutors, nor special school or training section at the Law faculty of Tartu³⁰.
61. Besides its administrative and legislative functions, the Ministry of Justice also deploys efforts in favour of preserving justice integrity (through auditing and the mechanism of declaration of economic interest, which is also in force in the judiciary). The Ministry of Justice is centralising at a first stage the declarations on income and property of judges, prosecutors and notaries on behalf of the Parliamentary Anti-Corruption Committee (see below). The declarations of judges are published. The representatives of the Ministry of Justice indicated to the GET that the system is not yet working correctly.³¹

b5. Other institutions and actors

- i) *The Parliamentary Special Committee on Anti-Corruption Activities and the mechanism of declaration of economic interests*
62. Like other parliaments, the Estonian monocameral parliament (Riigikogu) has the faculty to set up ad hoc and special committees to perform certain tasks, in particular supervisory functions.³² The

²⁸ Security Police of the Republic of Estonia, *Annual Review 2000*, p. 25.

²⁹ This cooperation is based on regular assessments of the activity, the needs, the necessity to simplify procedures etc. This situation had led to considerable improvement of the working conditions of judges and courts in the whole of Estonia.

³⁰ This is considered a serious problem. The training (after the initial legal training provided by the Law Faculty) is assured by the relevant NGOs (Estonian Law Centre and Open Estonia Foundation), sometimes on the basis of two days seminars. Training activities are attended by the practitioners concerned on a voluntary basis. Another major gap seem to be the lack of real needs assessment. For the time being, there seem to be a focus on primary, basic disciplines, so that topics such as money laundering and tax crimes are not taken into account.

³¹ The content of declarations is often unsatisfactory even as regards basic information (e.g. unclear indications relating to bank accounts). As a result of this situation, the practice is that for smaller problems and "mistakes" the declarations are accepted, the declarations being sent back only where there are big "mistakes".

³² The following bodies have been established so far: Investigation Committee on Ascertaining the Circumstances of the Bankruptcy of Maapank and on Ensuring the Impartiality of the Bankruptcy Proceedings, Select Committee on the Supervision of Security Activities, European Affairs Committee, Committee of Investigation on Ascertaining the Issues Related to the Termination of the Activities of the Former State Security board and most of all Select Committee on the Application of Anti-Corruption Act.

Parliament has set up in November 1996 the *Committee on the Prevention of Corruption*³³. It became the *Special Committee on Anti-corruption Activities* in April 1999 to perform the tasks provided by the Anti-corruption Act and to assist the implementation of corruption preventive measures. It comprises a Chairman and a vice-Chairman, and five members. The Committee is the depository of economic interests' declarations. According to the Anti-Corruption Act, members of the Riigikogu, the Chief Justice of the Supreme Court, the Prime Minister, the President of the Republic, the President of the Bank of Estonia and the Auditor General submit to the Committee a declaration of economic interests (the other categories of officials listed in the Anti-Corruption Act are subject to another regime, declarations being collected by an official or a body specially appointed for that purpose). The Committee checks the correctness of these declarations. The additional role of the Committee is to supervise the activities of MP's, especially related to the restrictions on their employment. The information gathered by the Commission concerning the implementation of the Anti-corruption Act is passed to the Parliament as well as to the public. A first report ("An Overview of the Application of the Anti-Corruption Act") was prepared and presented early 2000. Besides numerical data, and recalling the necessity of implementing preventive measures as a priority, the document also underlined problems that emerged in the application of the Act³⁴.

63. The processing of the declarations of economic interests was first assessed in Summer 2000 by the State Audit Office. The latter was rather critical with this mechanism and came to the conclusion that the system of controlling the declarations was not working properly³⁵. The GET could not meet with elected or staff members of the Committee³⁶. The GET had heard strong criticisms about the functioning and efficiency of this Committee, which, according to the GET's interlocutors, lacked methodology and means to check the faithfulness of declarations, conducted purely formal revisions, made no analysis of collected data and had never contributed to the disclosure of any corruption case.

ii) *Legal Chancellor*

64. The Estonian Legal Chancellor (LC) can be considered as an Ombudsman. This institution, which dates back to 1937, was restored with Chapter XII of the Constitution of 1992. Its functioning is at present regulated in a better way and in detail by the Legal Chancellor Act, which entered into force on 1st June 1999. The LC is appointed by the Parliament on proposal of the President for a term of seven years. His duties include challenging legislation before the Supreme Court, supervision of activities of state agencies. The LC has the right to make proposals for the elimination of deficiencies discovered in the course of examination of these activities. He/she has

³³ It was chaired by the Politician who made public and investigated the corruption cases of the Tallinn city government (see also SIGMA, Public Management Forum, vol. II, N°5, 1996.

<http://www.oecd.org/./puma/sigmaweb/pmf/2PMF5/25PMF5.HTM>)

³⁴ see Riigikogu Toimetised 1/2000 (<http://www.parliament.ee/rva/rito1/artiklid/summary.htm#5-2>):

- necessity for the Parliament to pay attention also to restrictions on the employment and activities of officials
- the Anti-Corruption Act stipulates clearly what an official must not do, but it does not extend to all the officials listed in the Act
- form of declarations of economic interests that needs to be amended
- topic of corruption covered by the media in connection with scandals
- lack of domestic scientific publications on corruption
- necessity to analyse more often the impact of laws and need of feedback between legislator and implementers of laws

³⁵ It emphasised that the public institutions lack resources to revise the declarations substantially; that there was no methodology to revise the declarations; that no substantial revision of the declarations is carried out.

also the right to request disciplinary action against an official who obstruct his/her activities³⁷. On the other hand, the LC may not initiate a criminal procedure.

65. Petitions can be filed by institutions and organisations and by persons who complain to the LC against activities of state agencies when they consider that their constitutional rights and freedoms are endangered.³⁸ In 1996 and 1999, the proposals of the Legal chancellor to bring legislation of general application addressed mainly local governments. The GET was told that the LC plays an important role in the adjusting of legislation³⁹ and sometimes in initiating the police work.
 66. The Office of the LC comprises 25 staff, of which 16 are lawyers. In proceeding a petition, the LC can request additional information, require explanations from a State agency, take oral testimony, use unrestricted access to the documents, materials and areas in possession of State agencies, and use experts.
 67. The Office of the LC does not seem to be concerned with anti-corruption policies or corruption detection, although discussions held with the representative of this institution indicated that the LC had contacts with the Parliamentary Anti-Corruption Committee. The extent of such discussions seemed to be unknown by the interlocutor of the GET.
- iii) Auditing by the Ministry of Finance and the State Audit Office*
68. In Estonia, the enhancement of auditing has become an important matter with the entry into force of the Government of the Republic Act amendment Act in July 2000 and pressure from the European Union. The auditing effort is divided between two authorities: the Financial Control Department (FCD of the Ministry of Finance and the State Audit Office (SAO).
 69. The Financial Control Department (FCD) is at the top of the internal audit system including financial control of all government organisations. The mechanism is based on a pyramidal scheme. All bodies and agencies working under the ministries and county governments are obliged to designate independent persons to perform auditing functions (in practice it is usually the head of the internal audit division which is staffed with a variable number of persons). These persons are preparing reports which are centralised by the ministries and county governments. At this level, intermediary reports are then prepared by internal audit units which are to be centralised by the FCD.
 70. At the time of the visit, the FCD comprised an Audit Division (8 persons) whose staff has the power to carry out extraordinary direct audits at any of these levels (the decision is to be taken by the Secretary General of the Ministry of Finance). But generally, direct audits take place on the basis of an annual plan and according to a best practice manual. FCD auditors can organise interviews and request the presentation of documents, but they have no investigative powers.
 71. The State Audit Office (SAO), which keeps legal continuity from the pre-war times of the first Republic of Estonia, is an independent institution foreseen by the Constitution. It was re-

³⁷ See also *Immunities*.

³⁸ Detailed statistics are available and as a visible result of the 1999 reform, the number of petitions which ranged between 300 and 386 cases for the period 1994-1998 exploded in 1999 with 719 petitions. The structure of the workload was relatively homogeneous over the years. For 1999, the 719 petitions concerned: property reform (76), court decisions (64), parking of cars (60), conformity of laws with the constitution (35), rights of prisoners (32), activities of police (30) and activities of local governments (30).

³⁹ The LC played a noticeable role in the redrafting of the State Secret Act.

established on 1st November 1990 on the basis of the State Audit Act to perform functions⁴⁰ which are often attributed to jurisdictions (Court of accounts etc.) in other countries. The Auditor General (AG) is appointed by the Parliament for a term of five years on the proposal of the President and he/she enjoys constitutional immunity. The independence and impartiality of the SAO is also secured by the two-thirds majority decision-making process.

72. Both the FCD and SAO can carry out direct audits in governmental organisations on certain occasions, but they rely in general on the work carried out and data collected by the auditing body of each authority.
73. The performance of audit results from a mixture of centralism and decentralisation. It is initiated by the Heads of institutions and depends:
 - on the areas of priorities within each structure/substructure according to their own plan⁴¹
 - on national audit programmes drafted by the Auditor general
74. The SAO officer involved in audit is responsible for the accuracy of his report and objectivity and soundness of proposals resulting from the audit. In its activity, the Estonian SAO, as well as the FCD and internal auditors in government organisations, take internationally recognised accounting and audit standards into account.
75. It was said to the GET that senior managers have only a very limited idea of the concept of auditing, its methodology and scope etc. For the time being, the number (and availability) of independent licensed auditors⁴² is very low. Estonian authorities and public bodies have to make use of ad hoc solutions depending on availability of internal staff and independent institutions. Consequently, the required independence is only seldom guaranteed. This could be a special crucial point when it comes to the results of auditing carried out at the level of local governments since the concentration of political/institutional influence tends to compromise in general the transparency (and legitimacy) of local public decisions. Those local authorities are a sector at risk, and that risks turned into illegal acts was confirmed on various occasions in Estonia. The interlocutors also deplored the absence of a proper control at and over sub-national level.

⁴⁰ The major tasks of the SAO is to audit:

- the economic activities of state agencies, state enterprises and other public entities
- the use and preservation of state assets;
- the use and disposal of the state assets which have been transferred under the control of local governments;
- the economic activities of public companies if more than 50% of their share capital is owned by state or in case that their liabilities (credits, loans) or other obligations are guaranteed by state;
- the terms and procedures of licensing by the state authorities.

Performing its tasks SAO focuses on the following areas: national supervisory authorities, national programs, public aid, education, public health and funds allocated from the state budget. SAO also contributes to the disclosure of corruption.

⁴¹ For instance, the mechanism of internal auditing of the Ministry of Justice is specific to this body since the control exercised by the (SAO) applies strictly to governmental bodies, hereby excluding the courts and prosecution services of its scope. The Ministry of Justice comprises 5 auditors (2 performance auditors and 3 financial auditors) but can count – like many other authorities - on the services of one licensed auditor only. Ad hoc solutions have to be found to implement the national audit policy. 5 to 6 audits had been carried out at the time of the visit and have dealt with assessment of management, costs, effectiveness etc. Audits in 2001 are focusing on the court and prosecution system, those of 2002 will be devoted to the prison system and the functioning of the Ministry of Justice. It was said that although a financial audit could lead to a criminal case, this had never occurred at the date of the visit.

⁴² Auditors are organised as an independent profession. The functions of auditors are regulated by the Authorised Public Accountants Act (entered into force on 1st July 1999). This Act provides for the rights and obligations of auditors (professional secret, liability, restriction on activities etc.), and for the supervision and administration (including training) of auditors by the Board of Auditors.

76. The FCD and SAO do not consider themselves as investigative bodies and if misconduct is found by the lower levels auditing bodies, the problem can be solved either internally, for instance after a "red line" report to the Minister, or externally with a report to the FCD or even to the competent investigative authority.
- iv) *Public Procurement Office*
77. The Public Procurement Office (PPO) was set up within the structures of the Ministry of Economic Affairs by the Government in March 1996. The PPO is responsible for coordination of activities relating to public procurement (notably supervising the compliance of procurements with the relevant legislation (on 1st April 2001, a new Public Procurement Act came into force, providing for new public procurement procedures and the rights and obligations of subjects involved in public procurements). It also gives ad hoc consultations and administrates a database of all tenders. The representatives of the PPO indicated to the GET that the Office is not involved in training of administrative staff.
78. According to the Public Procurement Act, a tenderer who receives an invitation-to-tender and who finds that the contracting authority has violated the tenderer's rights or damaged the tenderer's interests in the procedure (before acceptance of the successful tenderer) may file a protest with the Public Procurement Office. The Act consecrates the supervisory function of the PPO, leaving the decision making power to administrative courts to declare a tender illegal or affected by corrupt-like behaviour (until the 1st of April 2001, tenderers could also introduce complaints to an Arbitral tribunal⁴³). Since April 2001, only administrative and civil courts will further be responsible for examining the validity and execution of contracts. Fines are foreseen by the new Act for violation of public procurement procedures.
79. According to the new law, the PPO can require access to documents when reviewing protests, it can suspend or cancel a tendering procedure if an irregularity is detected, it can file an appeal with an administrative court in the tendering procedure etc. In practice, the corresponding decisions are made by the Director of the PPO, the deputy Director and an official of the same agency authorised by the Director.
80. The GET had mixed feelings about the PPO. On the one hand, the legal framework for efficient activity of the Office is provided and the 20 staff are experienced (including in foreign and international standards) and well supported by the existing structures⁴⁴. On the other hand, they indicated that the current division of tasks with the State Audit Office - which also exercises a certain level of supervision over public procurement - is not clear when it comes to the supervision of execution and renewal of contracts. The representatives met by the GET furthermore indicated that public procurement is a highly political matter in Estonia⁴⁵. The GET noted their embarrassment when it asked them about possible influence of this politicisation on the effectiveness of the PPO's activities. Likewise, they could not provide the GET with information about the most frequent forms/extent of tenders subject to corruption-like behaviours, although the Team noticed their awareness of the usual infringements to tendering procedures (ad hoc advertisings etc.). At the moment, the PPO has not been dealing with typologies of corruption, studies or other forms of proactive work.

⁴³ For the period 1998-2000, the following figures are available: 1998: 1684 tenders (104 contested procurements); 1999: 1852 (220); 2000: 1805 (173). The detailed figures show that there is a balance between complaints satisfied, protests solved by mutual agreement and procurement procedures annulled (respectively 24, 38 and 16) by the PPO

⁴⁴ The PPO has its own homepage: <http://www.rha.gov.ee>.

⁴⁵ „Some companies finance political parties, so...”.

v) *The Customs Board and Tax Board*

81. With 1400 staff distributed among 6 Functional Departments at the level of headquarters and 5 Regional Customs houses, the Customs Board (CB) experiences full employment (but the GET was told that it remains difficult to find good staff). For one vacancy notice, there are 30 applicants. The Board is working closely with the Russian, Latvian, Swedish and Finnish boards as transit flows are considered a significant problem. The State Budget is based to a large extent on Customs excises and duties (70%).
82. To insure integrity of its functioning, the CB established two departments:
- the Internal Control Department conducting financial audits (to examine cash transactions), performance audits and dealing with the legal aspects of auditing (to monitor the application of the anticorruption acts). The Department controls economic interests of staff, including through data comparison with the Tax Board and Security Police. It has no investigative powers as such and asks the police to carry out such operations, e.g. telephone tapping;
 - the Investigation Division of the Enforcement Department and the investigation units of the 5 Regional Customs Houses, dealing with pre-trial investigations (cases of smuggling and customs fraud) and participating in the investigation and detection of corruption cases involving Customs officials in cooperation with the Security Police, the Estonian Police and Border Guard.
83. In the last several years, approximately 50 employees were found involved in corruption. The GET was also informed that the CB also closely cooperates with the (better paid) border guards (exchange of data, joint operations etc.). Various measures for preventing corruption and bribery in the course of the duties of officials have been adopted ("4 eyes control", special places to check carriers, division of tasks, rotation of staff, 6 months probation time etc.).
84. The Tax Board (TB) is represented in Estonia through 18 local offices, 70 % of businesses being located in Tallinn. At central level, the TB comprises various Departments, among which the Tax Fraud Combating Division and an Internal Audit Department. The latter performs supervisory control over all higher officials when necessary, whether relating to corruption, negligence related to office, errors etc. In cases of corruption, the Department cannot carry out pre-trial investigations (the law does not provide for such power), which are done either by the Security Police or the Police prefectures on the basis of material forwarded to them by the Internal Audit Department. Basic staff is supervised by local units.
85. An Investigation Department (the Tax Fraud Investigation Centre) was further created on 1st April 2001 with the attribution of investigative powers to the TB. This Department will be staffed with (better paid) police officers. The GET was told that the decision of setting up this Department was motivated by the lack of efficiency of the existing policy: 2 cases were started in 1997 and 2 cases in 2001 against TB employees (including high rank officials). The cases of 1997 have not been solved at the date of the visit and prescription was close. The Department was set up thanks to the vague formulation of the Statute of the TB⁴⁶. It is expected that the use of police officers will help obtain information easier from the police (also to compensate the impossibility for the TB give rewards in exchange of information). Like the Customs, the TB have taken various measures to prevent and other misconducts (division of tasks, 24 hours service to receive reports of misconducts, 6 months probation time, identification of persons accessing databases).

⁴⁶ The law says that *the Tax Board can take the measures necessary to...*

vi) *NGOs & civil society*

86. Since the adoption in 1996 of specific legislation on Non Governmental Organisations (NGOs) and foundations, approximately 1300 to 1500 NGOs and foundations have been established in Estonia⁴⁷. One of the most influential and opinion making NGOs in Estonia seems to be the *Jan Tõnisson Institute* (hereafter JTI). The JTI started dealing with the phenomenon of corruption in 1998 and created a corruption research centre. It now acts as the Estonian Chapter of Transparency International and produces an annual report on corruption in Estonia. In 2000 the society *Corruption Free Estonia*, a coalition for developing coordinated activities in order to combat corruption, has been founded on the initiative of the JTI. It has been established on the basis of the a/m law on NGOs and gathers the representatives of state institutions, local governments, other NGOs and media. The aim of this society is to raise public awareness, to inform about the essence and danger of corruption and to increase the level of responsibility of state officials and politicians.
87. Another NGO which is playing a significant role is the Estonian Law Centre (ELC). It was established 1995 with funds of the World Bank in order to provide a training structure for a variety of civil servants (including members of the judiciary and those responsible for the drafting of legislation). The ELC has also contributed to the development of professional ethics. It also provides legal services. The Centre has progressively strengthened its legitimacy and nowadays acts like an Estonian public institution, notably thanks to strong partnerships with the Supreme Court, the University of Tartu etc. The ELC has also established various working groups screening the functioning of Estonian institutions and society at large. One group is dealing with corruption.

vii) *Media*

88. There is freedom of the press in Estonia. The law provides for the allocation of licences for private broadcasters but no licence, permit or registration is required to set up a newspaper. A vast majority of domestic media is controlled by Scandinavian companies, but it has not decreased editorial independence. Publicly owned media still exist but are coping with financial and organisational problems. This dependence on state allowances could be an obstacle to objectiveness and criticism.
89. According to the representative of the Estonian Newspaper Association, there is a small number of active independent freelance journalists in Estonia. Most of the journalistic staff have been working for media companies which, regardless of their foreign ownership, have easy to identify, unequivocal political profiles. Some particular journalists are known for reporting actively on corruption affairs. Nevertheless, investigative journalism as such is not developed and it is not the media which will disclose or reveal corruption-related cases. On the other hand, the media follow closely and report widely main cases relating to financial scandals and/or corruption. One can also observe a tendency of the press to look deeper in the activities of the police. Estonian media also acknowledge the worrying level of corruption at local government level, a situation that is partly a consequence of a lack of control by the – relatively little developed – local media and newspapers⁴⁸.

⁴⁷ See Jan Tonisson Institute, *Country Study Estonia*, Tallinn 2001, p. 36.

⁴⁸ *Ibid*, p.6.

viii) *The Private sector*

90. The replies to the questionnaire indicated that in recent years the participation of tertiary sector in the fight against corruption has increased. The business paper "Äripäev" has been very active in handling topics on corruption. The discussions with a representative of the Estonian Banking Association (EBA - which represents six commercial banks) indicated that the banking sector in Estonia seems relatively well developed and strong. Approximately 85 per cent of assets of these banks belong to foreign credit legal institutions. There is also noticeable growth of awareness of the money-laundering problem as well as of other crimes, including corruption, connected with money laundering. The EBA representative provided information indicating that the Association is co-operating very actively with the Financial Intelligence Unit as well as with the police forces in implementing the provisions of the Money Laundering Prevention Act. The EBA also participates in the work of the Financial Fraud Working Group of European Banking Federation.

d. Immunities from investigation, prosecution and adjudication for corruption offences⁴⁹

91. According to the Estonian constitution immunities are enjoyed by the following entities:

- Members of the *Riigikogu* (Estonian Parliament);
- President of the Republic;
- Members of Government (Prime Minister and ministers);
- Auditor General;
- Supreme Court judges, including the President
- Judges (other than Supreme Court ones)

92. Criminal charges against the first four categories of persons may be brought only on the proposal of the Legal Chancellor (LC) and with consent of the majority of the membership of the Parliament. In practice, the LC examines whether the procedure initiated by the prosecutor is legal. He/she then proposes the lifting of immunity to the Parliament.

93. The legal Chancellor himself enjoys constitutional immunity. Criminal charges against him may be brought only on the proposal of the President of the Republic and with consent of the majority of the membership of the Riigikogu.

94. The last category of persons benefiting from immunities are the judges. Estonian Law makes a distinction in this respect between Supreme Court Judges and all other Judges. Criminal charges against an ordinary judge during his term of office may only be brought on the basis of proposal of the Supreme Court and with the consent of the President of the Republic. Supreme Court Judges, for their part, can only be indicted during their term of office on the basis of a proposal by the Supreme Court itself and following a decision by the majority of the Riigikogu.

95. The Legal Chancellor and President of the Republic have the right to examine the materials of criminal matters⁵⁰.

96. The only cases which have arisen so far concerned one judge and two Parliamentarians (abuse of parliamentary powers as a bank employee and misconduct with foreign currencies by the

⁴⁹ Examination carried out on the basis of information provided by the Estonian delegation during the consideration of the report in plenary.

⁵⁰ These provisions follow immediately those of the Criminal Procedure Code referring to the pressing of charges against persons enjoying immunities. Nevertheless, they seem to be a general exception to the secrecy of criminal proceedings.

former President of the Bank of Estonia). In these three cases, the immunity was lifted and the accused were found not guilty. Two Acts of 1995 (Constitution, Institution of Court Proceedings against the President and Members of Government Act; Institution of bringing criminal charges against the MP, Auditor General etc. Act) and the Code of Criminal Procedure provide the exact mechanism for the lifting of immunities and extent of control of the Legal Chancellor and President. Information provided after the visit seem to indicate that immunities are granted against prosecution only⁵¹ (investigations are free), and that immunities apply to acts committed by the official concerned in and outside the exercise of their duties.

97. Finally, the special immunity of an Estonian diplomat who represents Estonia abroad could be lifted if he/she is suspected of corruption in the state where the diplomat was posted. No cases have occurred so far.

III. ANALYSIS

a. General policy on corruption, risks and threats assessment

98. The GET considered that in many aspects, the efforts deployed by Estonia to counter corruption are encouraging. It should be stressed that corruption within the country is not endemic and in comparison with other post-Soviet or post communist states, the problem is relatively limited. This is partly a consequence of favourable economic environment, people's determination to build a new state, as well as the existence of a variety of relatively reliable state control mechanisms. Furthermore, Estonian authorities are determined to fight corruption. Nevertheless, the GET noted that a number of threats still exist which are insufficiently taken into account. An appropriate definition and assessment of these threats would enable to adjust the state anti-corruption policy and avoid the risk of wasting the previous positive results.

a1. The influence of organised crime on Estonia

99. Estonian territorial closeness to Russia and Scandinavia could be regarded as a big chance and at the same time a big challenge associated with serious threats, particularly in the perspective of Estonia's accession to the EU (if the country will be used as a base for criminal business activity in the entire Union). For the moment, the Estonian route may be used by multinational criminal organisations, particularly those operating from Russia, for smuggling high-taxed goods (alcohol, cigarettes), drug trafficking and illegal migration. The impact of this kind of criminal activity depends on the level of acceptance of corruption in certain State bodies (in particular the customs administration and border guard). Therefore the problem of corruption in these spheres is likely to increase.
100. The activity of organized crime which is connected with the most dangerous and destructive political corruption influencing State structures and the economy has remained at a relatively low level. It seems that the services responsible for prevention in this field, in particular the Security Police, have been performing their duties effectively. However, awareness of a possible increase of the risk associated with organized crime impact should be stronger⁵². Given the fact that

⁵¹ In the light of Art. 121 of the Penal Procedure Code, it seems that the rules on immunity only apply to the pressing of charges, not to the investigation: „The Public Prosecutor shall notify the Legal Chancellor or President of the Republic of an order on bringing criminal charges [the officials enjoying immunities] prepared by a preliminary investigator.

⁵² Although the Security Police indicated to the GET that they saw no link between organized crime and corruption in Estonia, the facts do not fully support this view. In 1998, the Security Police uncovered a massive fuel tax fraud involving the Koshelev organized crime group in Tallinn, who bribed customs inspectors to falsify export records. While good work by the security Police may have eradicated this particular criminal group, other criminal groups are likely to imitate it.

criminal organizations aim at consolidating their position and take part in political and economic life (through high level corruption), the anti-corruption efforts of the police may not be sufficient.

101. The GET is of the opinion that the absence of visible links between corruption in Estonia and (cross-border) organized crime might be an illusion. The GET would welcome the intensification of research to check the existence of such links and to determine, consequently, the services especially exposed to the influence of organized crime and large-scale corruption. Depending on the results, specific anti-crime policies would be needed for these sectors at risk.

a2. The tolerance of corruption within Estonian society

102. Despite undeniable results achieved and high ethical standards which have strongly emerged after the Independence Day and which seem to prevail at the moment in the vast majority of Estonian society, the GET noticed a certain level of tolerance of corrupt behaviour. In the opinion of the GET, this level is likely to increase if nothing is done to counter the obvious insufficiencies of the various control mechanisms, by tackling the culture of corruption and ensuring an effective deterrent policy. It would be useful to involve NGOs and the media in campaigns against tolerance of acts of corruption.
103. First, there is the - more or less - open phenomenon of minor acts of corruption connected with the activity of low-level officials (e.g. bribery of traffic police officers). The tolerance of such phenomenon should be considered as part of the "anti-values system" dominant in the Soviet era. The source of this is a conviction that any means of making additional easy money can be justified by low salaries. In relation to this, the GET noted the strong demand for positions in the customs administration, police or border guard.
104. Second, there is the phenomenon of corruption at local level, which was admitted and emphasised time and again by the various representatives met by the GET during the visit. The same representatives deplored the absence of a reliable control by most central State authorities over local authorities' activities (e.g. audit mechanisms left in the hands of persons appointed by local authorities). The activities of the Estonian services responsible for combating political corruption and serious economic crime clearly need to be intensified.
105. Third, the GET confirmed that corruption remains – to a certain extent - a "grey area" in Estonia, to use the words of the Security Police. Some sectors appear occasionally and incidentally to be widely undermined by corruption⁵³. In addition to this, insufficient research on corruption was underlined on various occasions during the meetings. It might be useful for research to examine potential links between corruption and organised crime.
106. Fourth, there seems to be a policy of repressive tolerance towards officials found guilty of acts of bribery, as sanctions seem to be rarely applied, a factor which does not contribute to the deterring effect of the sanctioning mechanism. This could probably be a consequence of the apparent lack of common understanding of corruption in Estonia.

⁵³ „The Security Police is currently proceeding a criminal case that concerns violations of law in ARK (the Register Centre of Motor Vehicles). It appears that over the years reliable schemes of giving-taking-mediating bribes were worked out in ARK, and it turned out that the mediators of bribes were also state officials, among them the officials from of the law enforcement agencies. Unfortunately, this criminal case shows that corruption and other violations of law connected with it have started to take root in the opinion of people and a lot of people find bribery to be a natural phenomenon”, in *Annual Review 2000*, p. 24.

107. The GET noticed that a number of Estonian control bodies do not feel really involved in the fight against corruption, leaving the responsibility for this to the Security Police (as it is foreseen by the governmental strategy). However, the GET believes that bodies such as the State Audit Office, the Ombudsman, the Public Procurement Office, the Financial inspectorate, the tax board, Customs and Border guards and the various internal inspectorates etc. could play a significant role in the (early) detection of corrupt practices in their various forms. They have the technical capacity for this and some of them could also provide training to the others, as well as to members of the judiciary and the police. An active role of these bodies would help compensate the current gaps of the supervisory mechanisms, such as the supervision of the declaration of economic interests.
108. In view of the above, the GET recommended to make the existing efforts against corruption more coherent and more effective. A global governmental initiative should aim at developing early detection strategies; enhancing research on infected and vulnerable sectors; promoting implementation of the Code of conduct and the principle of mandatory reporting among all law enforcement officers; restoring a proper control over the most affected sectors and encouraging the use of multi-discipline task forces able to formalise strategic proposals. Moreover, such global initiative should support awareness and understanding raising events about the impact of corruption, review recruitment, salary schemes, administrative decision-making process and charge a multidisciplinary working group with the overall responsibility for the fight against corruption and entrust it with the task of coordinating global anti-corruption policies.

b. The repressive system

b1. Law enforcement agencies

109. The GET is of the opinion that the current provisions regulating investigative activities, in particular of the Police Board, the Security Police, the Border Guard Board, the Customs Board, the Tax Board virtually guarantee investigative autonomy and independence, while providing a means to appeal disagreements with prosecutors. During the meetings held in Tallinn, Estonian practitioners of the police and judiciary shared with the GET their satisfaction with the current situation, at least at the level of the biggest cities. The GET expresses its hope that the existing provisions will be retained in the new penal procedure code which is to be adopted in the course of 2001.
110. In general, the police are well equipped. Given the fact that the biggest anti-corruption effort was attributed to the Security Police, this body is performing its tasks as well as it can, given certain isolation in the detection and investigation efforts. As far as the Police board is concerned, police prefectures appear to be solely reactive in their response to corruption. In this respect, the GET would like to underline that the use of exceptional investigative techniques can be very effective in corruption investigations, both in apprehending private and public violators and in deterring potential bribers. Their use in appropriate circumstances should be expanded and promoted.
111. The working relationship between the police and prosecutors is well regulated by statute and appears to be successful in practice. However, the pace of some preliminary investigations of tax and corruption cases has been problematic, and it remains to be seen whether the new Criminal Code and Code of Criminal Procedure will significantly speed up investigations. Despite impressive anti-corruption legislation in Estonia and dedicated police and prosecutors, the GET considered that the results of corruption investigations and prosecutions are not impressive. Of the 54 convictions involving "Offences in Office" handled by the Security Police between 1995

and 1999, only five defendants were imprisoned. The single prosecution of a judge resulted in an acquittal. The prosecution of two parliamentarians also led to acquittals. Although a large number of customs and border guard officers and some traffic police have been prosecuted, there has been no major police corruption case. Internal audits and the declarations of economic interest filed by public officials have apparently not yet led to any criminal convictions. The GET took note of the criticism sometimes expressed during the meetings about the efficiency of the police work. But the judiciary also experiences difficulties (see below). In the immediate, the steady stream of new and revamped criminal legislation in a young and inexperienced law enforcement workforce requires an enormous training and education effort.

112. Therefore, the GET recommended to set up a working group of police, prosecutors, judges and other experts who would design and implement a comprehensive and effective master training plan for the new legislation concerning serious crime.
113. Although corruption within the 207 local governments in Estonia is a serious problem, the experienced Security Police no longer have jurisdiction over acts of corruption (in the meaning of the relevant provisions of the Penal Code) by local officials. The GET considers that the new situation would be somewhat confusing when it comes to the distinction of jurisdiction⁵⁴, at least at the beginning. Furthermore, although the GET considered that local police prefectures are likely to have a better knowledge of local circumstances, the local police and the Central Criminal police may be insufficiently experienced to address this problem otherwise than through small bribery cases (which fall traditionally under their jurisdiction). In addition, they have not been provided with in-depth training in corruption and economic-financial affairs. The GET considered that there is a risk to leave the control over a sector which is already out of effective central supervision, under the sole responsibility of local police (with a risk of political interference, combined with an insufficient internal control).
114. Therefore, the GET recommended that the Police Board should intensify the work with the Riigikogu and other bodies intervening in the detection of corruption and economic/financial crimes in order to streamline the current Police Prefecture system to make it more responsive to the investigation of local corruption. Such a dialogue shall also facilitate the coordination work by the Security Police (as foreseen by the Estonian National Programme for the EU acquis) and the transfer of know how to the benefit of police prefectures.
115. The GET further recommended that the Economic Crime unit of the Central Criminal Police should also be given a greater specialisation in corruption matters. Smaller units reporting to the Central Criminal Police should also be formed in the prefectures with training and equipment to address local corruption offences linked with economic crime (including public procurement, public accounting and finances etc.).

b2. Tax board, Customs, border guards

116. The GET took note of the Tax Board control and anti-corruption activities, which are based on clear procedures, combined with relatively non complicated, fully computerised tax collection system aiming at eliminating corrupt behaviour of tax inspectors (division of tasks, restricted access etc.). The Tax Fraud Investigation Centre being apparently a kind of tax police force, it has the right to investigate a tax crime as well as a corruption case within the fiscal authorities structures. The fact that in practice, as the GET was informed of, corruption cases are forwarded

⁵⁴ For instance which authority will be responsible for investigating bribery of local officials? What about tax fraud linked with corruption?

to the police for further investigation in order to avoid conflicts of interests is an example of Estonian efforts to strengthen the anti-corruption system's impartiality.

117. The GET also took note of the efforts of Customs and the Estonian Border Guard (EBG) to prevent corruption (performance audits, control of economic interests – including through data comparison, rotation, awareness-raising on ethics etc.). However, one area of consensus in Estonia is the continuing vulnerability of these two authorities to corruption. A series of cases in the late 1990's illustrated the scope of the problem. It was unclear to the evaluators whether significant restructuring or retraining was done in light of the scope of corruption revealed by these cases. In particular, information provided by the Border Guard indicates the continuing lack of training and the variable level of cooperation between the EBG and other law enforcement authorities.
118. The two agencies operate under separate Ministries with incompatible information technologies and disparate pay scales. These agencies have distinct but overlapping responsibilities in an environment where they face daily contact with potential smugglers and other corrupting influences, including interagency bribery between Customs and Border Guards. This would suggest that the Ministries of Finance and Internal Affairs undertake a comprehensive review of the Customs Board and the Border Guard Board, with a goal to reduce future vulnerability. The GET was also of the opinion that a more coordinated command of the Customs and the Border Guard could be an interesting measure given the size of the country, allowing for coherent internal anti-corruption monitoring and control. Consolidation would facilitate a national rotation policy, which has been proven to reduce corruption opportunities. Consolidation would also eliminate any perceived and actual disparities between these two critical agencies. The GET further noticed that the quality of the cooperation between the Border Guard and Customs was variably described.
119. Therefore, the GET recommended to initiate an immediate review by a high level working group of the current relationship between Customs, EBG but also Police, including coordination, assistance, training etc. This group should make specific and binding recommendations both interim and long term to improve substantially the coordination and cooperation between the two bodies.
120. The GET further recommended to strengthen the efforts in favour of a modernisation of the EBG in terms of premises, training, anti-corruption policies and investigations, management etc.

b3. The judiciary

121. The independence of the courts and individual judges is guaranteed by legislation, first of all by the appointment system. The Ministry of Justice plays a purely administrative role in relation to the courts. The organisational system apparently contains no danger to the independence of the judges, especially necessary in the cases involving higher-level corruption. Some sources of information even considered that the dismissal of incompetent judges is made too difficult. The independence of the prosecutors differs from that of the judges. The Prosecutor's Offices are governmental institutions under the administration of Ministry of Justice, but the Ministry of Justice does not take any part in the consideration of actual cases. Concerning the administration there were opinions presented that actually more internal auditing and control might be needed⁵⁵. This was taken into account by the Ministry of Justice for the programme of audit for 2001. In general, and as far as statutory rules are concerned, it was said that the judiciary is performing

⁵⁵ see Country Study Estonia, Transparency International Estonia, 2001.

independently. The GET took note of the mechanism of declaration of economic interests, also applicable to judges and prosecutors, and of the publication of judges' salaries.

122. The GET considered that the distribution of cases among prosecutors on the basis of a planning constitutes a positive measure. It further noted that the substitution of prosecutors has to be justified in written form and that this procedure has been used to handle complicated cases in Tallinn where the expertise of prosecutors and judges is higher, not to mention the availability of specialised judges (and in a near future specialised prosecutors) in economic and financial affairs.
123. The mandatory prosecution applied in Estonia limits in principle the amount of consideration available for the prosecutor. This being so, the GET noted that the number of corruption cases in Estonia is not very high, a fact which may cast some doubts about the manner in which the said principle is applied in practice.
124. The GET also noted the central role of courts in the proceedings in criminal cases. The court has the power e.g. to terminate the proceedings, but on the other hand it can extensively decide on the evidence on preliminary stage of the procedure. The judge can decide whether all evidence necessary is collected. The court is also required to take all measures needed for comprehensive, thorough and objective investigation of the facts. In cases dealing with corruption offences these powers could be used to make sure that prosecution is not restricted for unacceptable reasons. The court can send the case back to the prosecutor for a new summary of charges. Nevertheless, the information received by the GET indicated that these powers are not used to this extent in practice, and that they are likely to be reduced by the new draft penal procedure code.
125. In the opinion of the GET, the protection of witnesses and victims in criminal cases is adequately dealt with in Estonia. The cooperation of the accused in the solving of the case can be taken into consideration. In the opinion of the GET, possibilities of transactions can be a positive factor when it comes to the solving of complicated, corruption related cases where information and testimonies can be negotiated. Although the details of the discretionary appreciation by the courts were left somewhat open during the discussions held in Tallinn, it seems that the system works successfully.
126. The major challenge to be faced by the Estonian courts and prosecutorial bodies is the lack of training and the lack of an adequate training system despite the intense efforts deployed by the Ministry of Justice⁵⁶ and the Estonian Law Centre. The GET was fully aware of the situation of Estonia as a transition country, particularly if one considers the sometimes-radical reforms put into place. But the lack of training and training facilities is a crucial point, as corruption cases, in their more sophisticated forms, require special skills also in the legal proceedings and in the making of the final judgement⁵⁷. Otherwise, a well defended corrupter or corruptee would use any mistake or gap in the procedure to be innocented. Given the fact that major corruption cases often deal with financial, business and accounting matters, specialised training also is an

⁵⁶ See Strategy for the training of judges and prosecutors for the years 2001-2004. The Ministry of Justice tries to meet these requirements and needs with quite comprehensive training programme but the evaluation team received mixed information on this topic and the progress made so far. These problems are also mentioned in the annual reports of the European Commission.

⁵⁷ The lack of experienced prosecutors in Estonia is perhaps even more crucial. In the adversarial procedure, the prosecutor is the key person of the proceedings and an inexperienced prosecutor could harm the outcome of any complicated corruption case. The number and percentage of acquittals in corruption cases is not alarming in itself, but according to what the GET was told, there were many acquittals in the most remarkable and complicated cases.

important element in a training policy. The GET could not really determine why the Ministry of Justice, in cooperation with the University of Tartu, have not set up a permanent training centre (e.g. at the level of this university) with an adequate and mandatory two or three years, post legal studies training curriculum. There seem to have been various attempts since 1996, but they always failed. The current situation is unsatisfactory at many regards as training of judges and prosecutors, but also lawyers, is taking place on a voluntary basis and the needs for training are rising steadily. Furthermore, the current system has shown its limits.

127. The GET therefore recommended to establish an institutionalised training structure (school of magistrates) for new judges and prosecutors who have passed the selection and to introduce a sound and coherent training curriculum. This School would also provide on-going training.
128. Furthermore, the GET considers that the level of specialization is insufficient (3 prosecutors foreseen). The GET took note of the possibilities to use external expertise in court and judicial proceedings. The size of the country hardly justifies a wide diversity of judges and prosecutors specialised in certain types of crime. But it is likely that growing business and economic development in Estonia will call for a greater number of specialists in these areas, including corruption. It may be wise to improve the specialization in corruption offences as part of the specialization in economic crime. Specialized prosecutors ought to be available also in the other parts of the country. Both the prosecutor's own contribution to the proceedings and the co-operation between prosecutor and pre-trial investigator would draw benefits out of the fact that the prosecutor is dedicated for this kind of offences. The improved skills of these prosecutors would also allow expanding the role of the prosecutor during the pre-trial investigations.
129. In view of the above, the GET recommended to envisage the creation of a higher number of judges and prosecutors specialised in economic crime matters, including corruption.
130. An additional problem results from the application of statutory limitations combined with easy suspension of proceedings. This facility is often used or accepted by judges and prosecutors (despite the pressure from the media in corruption cases). Although this facility might be compensation for the lack of experience of judicial staff and ever-changing legislation, it could undermine the effectiveness of the criminal procedure. Indeed, in Estonia the limitation periods run until the case is filed to the court. However, according to GET's interlocutors, limitation periods are not interrupted until the judgement in the first instance court is delivered. Such practice would encourage requests for suspensions of proceedings to avoid the conviction. Consequently, in the opinion of the GET, the current system should be clarified. The GET expressed further concern about the reform envisaged by the new draft Penal Code (to be adopted in 2002), according to which limitation periods will be interrupted only by the final court decision on guilt. The GET observed that the Estonian authorities should reconsider the system of statutory limitations in order to avoid that prosecution of corruption offences – a complex form of crime, difficult to detect and prove – are regularly abandoned because limitation periods are over.

c. Mechanisms to counter corruption

c1. The State Audit Office (SAO) and auditing

131. The GET acknowledged the efforts made by Estonia to develop the reliability and transparency of State institutions. The GET was aware of the country's limited experience with auditing. The GET also noted the efforts accomplished to develop training in auditing. But the current system

appeared rather complicated to the GET as the concept of auditing is used for various purposes which should perhaps be distinguished in a better way. At the moment, it seems that the various ministries and regional/local authorities, the Financial Control Department of the Ministry of Finance (which supervises the functioning of the whole), and the State Audit Office (which is supposed to control independently and *a posteriori* the use of public finances) are all carrying out similar tasks, focusing on financial and/or organisational analysis without effective control. Neither the activities of the Financial Inspectorate nor those of the SAO are likely to lead to repressive procedures for misuse of public funds as none of these bodies considers itself responsible for initiating financial investigations. The GET believed that this could be a consequence of the lack of familiarisation of decision makers with the purposes, methods and functions of auditing.

132. At the moment, the position of State Auditor seems to enjoy a good reputation. In addition, the two-thirds decision-making process is a protection against arbitrary decisions. The GET expresses the hope that this decision-making process will be kept in future. The fact that the SAO's budget depends on decisions made in the Ministry of Finance does not jeopardise its independence and all positions foreseen by the annual budget are not filled. The actual number of staff is considered sufficient, as long as the SAO is not dealing with the supervision of local governments which have their own audit system, which is considered a problem. The annual report is published systematically, with the exception of information falling within the scope of the State Secret Act.⁵⁸
133. The GET observed that the SAO is relatively well qualified and empowered by law (except the legal impossibility to examine account books) to detect corruption through the misuse of public funds. Sometimes, it also receives information from the public, the media and the police. However, the SAO does not feel involved in the control of corruption. Neither is it involved in the providing of specialised training of other agencies' practitioners. The representative met by the GET emphasised that the public expects from the SAO to play an important role in the detection of corruption, but that such expectations are "totally" illegitimate. At the moment, the SAO is unwilling to be engaged in concrete cases which require investigative approaches (e.g. it was said that forwarding information to the police is not an objective of the SAO). The GET acknowledged the significant role that the SAO is playing in developing transparent and reliable public management and accounting standards. But it came to a conclusion that it should also better meet the expectations of Estonian society and intervene actively in sectors at risk.⁵⁹ In relation to this, the GET fully understands the legitimate wish of Estonia to guarantee the autonomy of local governments, but it wishes to underline – notably in the light of the concern shared with it by well informed Estonian practitioners - that the lack of effective supervision over local authorities is not desirable either in any society.
134. Given the fact that control over local governments appears to be highly unsatisfactory (a situation which leads to abuses in practice), the GET recommended to the Estonian authorities to familiarise public decision makers with the purposes of audit and to re-examine the role of the SAO and Financial Control Department (FCD) of the Ministry of Finance. It further recommended to submit local governments to appropriate auditing procedures.

⁵⁸ Although this Act was mentioned on a few occasions during the meetings, the GET could not obtain accurate information about the kind of information subject to secret and the extent to which this Act can be an obstacle for the efficiency of Estonian anti-corruption policies.

⁵⁹ The number of ad hoc audits (which can easily be carried out thanks to the limited size of the SAO) is relatively low.

c2. The Parliamentary Anti-Corruption Committee

135. The GET welcomed the creation of this Committee and the system of declaration of economic interests. However it noted with regret that this specialised anti-corruption body in Estonia and the system under its supervision were subject to strong criticism (by the State Audit Office, NGOs, parliamentarians themselves etc.). On the one hand, such criticism can be considered a sign of the desire of effective watchdogs, and the GET wishes to insist on this. On the other hand, and given the fact that the Committee enjoyed an existence of over 5 years at the time of the evaluation, the GET believed that this criticism was a serious handicap for the credibility of effective anti-corruption policies. In relation to this, the GET noted that the Estonian Penal Code provides for criminal liability of persons failing to collect or verify declarations of economic interest. According to the information provided to the GET, the current system lacks methodology and means to check the faithfulness of declarations. Revisions are not substantial but purely formal. There is no analysis of collected data and no case of corruption has ever been revealed through this mechanism. The GET also emphasised that the current system is not homogeneous, and allows for screening procedures which can be politically or otherwise affected, including in sectors knowingly affected by corruption. The GET had ample doubts as to whether the Committee was really ensuring an overall monitoring of all bodies concerned by the control of declarations and restrictions on Employment and activities.
136. The GET therefore recommended to urgently strengthen and improve the application of the Anti-corruption Act as concerns the control over declarations of interests and other forms of limitations upon conflicting interests. The Parliamentary Anti-Corruption Committee should be strengthened in order to carry out its tasks effectively, including the overall monitoring of the Anti-Corruption Act's application.

c3. The Public Procurement Office

137. The GET considers that the PPO would be in a position to contribute very actively to the detection of corruption as well. It is more than sufficiently staffed and it is well empowered. It seems to possess an adequate level of expertise, which is not shared with other institutions in the form of training sessions. The PPO seems to perform its duties, at least from a quantitative point of view, trying to solve procedural problems in a non-judicial, professional and swift way. In-depth studies would be necessary to assess its functioning and independence from a qualitative point of view. The PPO was audited by the State Audit Office. The findings of the latter confirm that public procurement is a sector affected by corruption and that the PPO suffers occasionally from some kind of political interference. However, the GET could not determine how interferences take place. In this respect, perhaps does a certain overlapping of tasks with the State Audit Office constitute a dual safeguard. The GET expressed its hope that the new legislation of April 2001 and the subsequent increase of jurisdictional responsibility in the annulment of tenders and execution of contracts will improve the situation.
138. In view of the above, the GET recommended to Estonian authorities to free the PPO from improper influences and to review the decision-making process. The PPO should be more actively involved in proactive work (e.g. typologies summaries) and purveying of specialised training for members of other agencies to support the new burden of work of administrative courts

c4. NGOs and the Media

139. The GET noted that some NGOs have become regular co-operation partners of public authorities. Some of them have even established working groups on corruption. The GET noted that according to some NGO representatives, the co-operation and contacts could be further enhanced in the perspective of planning joint instruments aiming at decreasing corruption in Estonia.
140. The GET considers that corruption is covered frequently by the Estonian nationwide media, in particular when a concrete case is in the hands of justice. The press with many of its outstanding journalists has been the leader of anti-corruption campaigns in Estonia. Following press publications and disclosures of corruptive behaviour of authorities many top-level public officials including a prime minister have been forced to resign from their posts. Furthermore, for a transition country, the media seem reasonably moderate when it comes to deal with corruption. The media plays a smaller role in the disclosure of affairs, as very few cases were investigated by journalists and *"There are no professional investigative teams working in Estonian media"*⁶⁰. Neither is there a significant number of free-lance journalists, as the financial situation of newspapers (and journalists) could be better. The problem is crucial for local newspapers. Consequently, the coverage of local affairs is not fully assured, depriving Estonian society of effective watchdogs at local level which could compensate the ineffectiveness of official supervisory mechanisms at the moment.
141. In view of the above, the GET pointed out the usefulness of investigative journalism (in particular in economic and financial affairs), in the combat against corruption and encouraged the Estonian authorities to ensure a maximum level of transparency by ensuring that journalists have access, as far as is practicable, to information held by public authorities.

d. Immunities

142. In relation to the topic of immunities as an obstacle to investigation, prosecution or adjudication of corruption cases, the GET noted that the current system applies to a reasonable number of categories of officials who are considered as essential by the Estonian institutions. The immunities prevent prosecution only (and not investigations) which allows to gather preliminary evidence in a case of corruption. The Legal Chancellor limits its role to checking the legality only (not the opportunity) of the criminal procedure initiated and Parliament is able to lift immunity by the simple majority. These would be positive and reasonable aspects ensuring the balance between necessary protection of State authorities against vexatious accusation and the possibility to prosecute them for corruption.
143. On the other hand, the GET was concerned about the fact that the procedure for lifting the immunity of judges involved either the President of the Republic or the Riigikogu. In these circumstances, it cannot be excluded that decisions on the lifting of immunities of judges are taken for political or other inappropriate considerations. As a consequence, there is a risk of political influence over this procedure.
144. The GET therefore recommended to the Estonian authorities to ensure that in the case of judges, decisions concerning immunity are free from political consideration and based on the merits of the request submitted by the Prosecutor and approved by the Supreme Court.

⁶⁰ See Jan Tonisson Institute, *Country Study Estonia*, Tallinn 2001, p. 34.

IV. CONCLUSIONS

145. Estonia has made considerable efforts in very recent years to ensure the existence of a reliable state system and administration in parallel to the rebirth of the country. Favourable social/cultural factors support the reform process, as well as certainly does the strong foreign support. The institutional setting up has reached a level where more could be too much for a country of 1.4 million inhabitants. The basic functions to keep corruption under control are available: specialised police, audit mechanism, State Supreme Audit, mechanism to avoid conflicting interests, public procurement office, effective and constructively critical civil society etc., not to mention the potentialities of the Estonian Ombudsman, which is an additional watchdog. Many of these institutions do not feel concerned by detecting and prosecuting corruption. For the time being, the system relies a lot on the Security Police to combat corruption (even the detection of corruption).
146. As for the vast majority of transition countries, legislative turnover is high in Estonia. The lack of experience with, and knowledge of new legal provisions, and procedures remains a significant problem despite an excellent information and publishing system. This was illustrated by the general uncertainty shown by officials in the course of the discussions held with the GET. The GET also observed some tolerance vis-à-vis certain forms of bribery, the existence of “grey areas” and the existence of corruption in certain sectors without adequate mechanisms to control it.
147. The radical decision of privileging new and young staff to make a clear break from the habits of the former regime is a long-term investment. The lack of experience is partly compensated by the rapid growth of modern forms of public management and a social/economical control network strengthened by an active and mature civil society.
148. In view of the above, GRECO recommended to Estonia:
- i. to make the existing efforts against corruption more coherent and more effective. Governmental action plans should aim at developing early detection strategies; enhancing research on infected and vulnerable sectors; promoting implementation of the Code of conduct and the principle of mandatory reporting among all law enforcement officers; restoring a proper control over the most affected sectors and encouraging the use of multi-discipline task forces able to formalise strategic proposals. Moreover, such global initiative should support awareness and understanding raising events about the impact of corruption, review recruitment, salary schemes, administrative decision-making process and establish a working group responsibility involving all agencies and institutions concerned with the fight against corruption and entrusting it with the task of coordinating global anti-corruption policies;
 - ii. to set up a working group of police, prosecutors, judges and other experts who would design and implement a comprehensive and effective master training plan for the new legislation concerning serious crime;
 - iii. the Police Board should intensify the work with the Riigikogu and other bodies intervening in the detection of corruption and economic/financial crimes in order to streamline the current Police Prefecture system to make it more responsive to the investigation of local corruption. Such a dialogue shall also facilitate the coordination work by the Security Police (as foreseen by the Estonian National Programme for the EU acquis) and the transfer of know how to the

benefit of police prefectures. Specialised training of local police prefectures would be needed;

- iv. the Economic Crime unit of the Central Criminal Police should also be given a greater specialisation in corruption matters. Smaller units reporting to the Central Criminal Police should also be formed in the prefectures with training and equipment to address local corruption offences linked with economic crime (including public procurement, public accounting and finances etc.);
 - v. to initiate an immediate review by a high level working group of the current relationship between Customs, EBG but also Police, including coordination, assistance, training etc. This group should make specific and binding recommendations both interim and long term to improve substantially the coordination and cooperation between the two bodies;
 - vi. to strengthen the efforts in favour of a modernisation of the EBG in terms of premises, training, anti-corruption policies and investigations, management etc;
 - vii. to establish an institutionalised training structure (school of magistrates) for new judges and prosecutors who have passed the selection and to introduce a sound and coherent training curriculum. This School would also provide on-going training;
 - viii. to envisage the creation of a higher number of judges and prosecutors specialised in economic crime matters, including corruption;
 - ix. to familiarise public decision makers with the purposes of audit and to re-examine the role of the SAO and Financial Control Department (FCD) of the Ministry of Finance and to submit local governments to appropriate auditing procedures;
 - x. to urgently strengthen and improve the application of the Anti-corruption Act as concerns the control over declarations of interests and other forms of limitations upon conflicting interests. The Parliamentary Anti-Corruption Committee should be strengthened in order to carry out its tasks effectively, including the overall monitoring of the Anti-Corruption Act's application;
 - xi. to free the PPO from improper influences and to review the decision-making process. The PPO should be more actively involved in proactive work (e.g. typologies summaries) and purveying of specialised training for members of other agencies to support the new burden of work of administrative courts;
 - xii. to ensure that in the case of judges, decisions concerning immunity are free from political consideration and based on the merits of the request submitted by the Prosecutor and approved by the Supreme Court.
149. Moreover, the GRECO invites the authorities of Estonia to take account of the observations made by the experts in the analytical part of this report.
150. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Estonia to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.

APPENDIX I

List of institutions and representatives met by the GET

Ministry of Justice	Mr P. PÄRNA (Deputy secretary general) Mrs E. JÖKS (Court Department) Mrs Ü. RAIG (Penal Law Department) Mrs M. MÄNDMAA (Audit Department)
Public Prosecutor's Office	Mr P. GONTSAROV
Tallinn City Court	Mrs H. SÄRGAVA
Parliament	Mr I. TALLO (Constitutional Committee)
Ministry of Foreign Affairs	Mrs M. TIPPO Mrs M. KALJURAND
State Audit Office	Mr J. PARTS (Auditor General)
Estonian Police Board	Mr Rene VIHALEM Development and Information Department, Police Board (PB) Mr Indrek TIBAR Economic Crime Department, Central Criminal Police Mr Aivar PAUL - FIU, Crime Department Mr Peeter ŠULTS Police Internal Control Division, Personnel Department Mr Riho KUPPART - Financial Department Ms Piret PALUSOO - Personnel Department
Security Police Board	Mr Meelis RATASSEPP
Public Procurement Office	Mrs S. ANSO Mrs T. LOOSAAR Mr A. VEEL
Ministry of Finance	Mr I. LIIVER (Audit Division)
Tax Board	Mr R. OSANIK
Customs Board	Mr J. MEIDLA
The Legal Chancellor's Office	Mr E. MARKVART
University of Tartu	Mr M. GALLAGHER
Jan Tõnisson Institute	Mr A. LAIUS
Open Estonia Foundation	Mr M. HELLAM
Estonian Banking Association	Mr P. KILEMIT
Estonian Bar Association	Mr A. ALVIN
Estonian Journalists Association	Mr. A. ALAKÜLA

APPENDIX II

Official misconduct crimes initiated by the police and security police (police statistics)

	Misuse of official position (Article 161)				
		33	-	-	12
		26	3	-	13
		34	3	1	7
		55	1	-	22
		23	1	-	14
		31	1	5	8
	61	31	1	7	12
	83	34	2	4	23

APPENDIX III

Statistics on offences related to office (court statistics)

Year 1998

Art 161. Misuse of official position: 7 persons were acquitted, 12 were convicted (2 were punished conditionally, 10 were punished by fine)

Art 161¹. Abuse of authority: 1 acquitted and 14 convicted (1 person was punished by 4 years imprisonment, 5 persons were punished by 1 year imprisonment, 6 were punished conditionally, 1 person was punished by fine)

Art 162. Negligence related to office: 3 acquitted and 5 convicted (3 were punished conditionally and 2 persons were punished by fine)

Art 164. Accepting a bribe:

Art 164 para 1: 1 acquitted and 13 convicted (1 person was punished by imprisonment 1 year, 1 person was punished by imprisonment up to 1 year, 10 were punished conditionally, 1 was released)

Art 164 para 2: 2 acquitted, 1 termination of criminal proceedings and 18 convicted: 2 persons were punished by imprisonment 1 year, 1 person was punished by imprisonment up to 1 year, 12 were punished conditionally, 3 persons were punished by fine

Art 164¹. Arranging a bribe:

Art 164¹ para 1: 2 convicted: 1 was punished conditionally, 1 person was punished by fine

Art 164³. Failure to submit declaration of economic interests subject to disclosure, or presentation of false information therein: 2 acquitted, 1 convicted and punished by fine.

Art 165. Giving a bribe: Art 165 para 1: 8 convicted: 6 were punished conditionally, 2 released

Art 166. Counterfeiting or falsification related to office: Art 166 para 1: 3 convicted: 1 was punished conditionally, 2 were punished by fine

Art 166 para 2: 2 convicted and punished conditionally

Year 1999

Art 161: 3 acquitted, 1 termination of criminal proceedings, 8 convicted (5 persons were punished by fine, 3 persons were punished conditionally)

Art 161¹: 10 convicted and punished conditionally

Art 162: 2 acquitted, 6 convicted (1 person was punished by fine, 3 persons were punished conditionally, 1 person was punished by 3 years imprisonment, 1 person was punished by arrest)

Art 164 para 1: 8 convicted (7 persons were punished conditionally, 1 person was punished by 1 year imprisonment)

Art 164 para 2: 1 acquitted, 4 were convicted and punished conditionally

Art 164¹ para 2: 1 was convicted and punished conditionally

Art 165 para 1: 5 convicted (1 person was punished by fine, 3 persons were punished conditionally, 1 person was punished by imprisonment 1 year)

Art 165 para 2: 1 was convicted and punished conditionally;

Art 166 para 1: 5 convicted (2 persons were punished by fine, 3 persons were punished conditionally)

Art 166 para 2: 1 was convicted and punished by fine

Court statistics in 1998

	Cases	Convicted	Acquitted
Misuse of official position	19	12	7
Abuse of authority	15	14	1
Negligence related to office	8	5	3
Accepting bribe	34	31	3
Arranging bribe	2	2	-
Failure to submit declaration of economic interests subject to disclosure, or presentation of false information	3	1	2
Giving bribe	8	8	-
Counterfeiting or falsification related to office	5	5	-
Total	94	78	16

Court statistics in 1999

	Cases	Convicted	Acquitted
Misuse of official position	11	8	3
Abuse of authority	10	10	-
Negligence related to office	8	6	2
Accepting bribe	13	12	1
Arranging bribe	1	1	-
Giving bribe	6	6	-
Counterfeiting or falsification related to office	6	6	-
Total	55	49	6

Court statistics in 2000

	Cases	Convicted	Acquitted
Misuse of official position	12	7	5
Abuse of authority	6	6	-
Negligence related to office	19	13	6
Accepting bribe	35	24	11
Arranging bribe	2	2	-
Act of corruption	1	-	1
Failure to submit declaration of economic interests subject to disclosure, or presentation of false information	1	-	1
Giving bribe	25	17	8
Counterfeiting or falsification related to office	12	12	-
Total	113	81	32

Approximate idea of sums involved in bribe cases (on the basis of limited number of cases in the Supreme Court): Customs officials: 1000 - 5000 EEK, Traffic police/ officials of motor vehicles centre: 100 - 1000 EEK.

APPENDIX IV

Provisions on Corruption of the Estonian Penal Code

Chapter 8

Criminal Official Misconduct

§ 160. Definition of official

(1) An official is a person who has an official position in an agency, enterprise or organisation based on any form of ownership and to whom administrative, supervisory, managerial, operational or organisational functions, or functions relating to the organisation of movement of tangible assets, or functions of a representative of state authority have been assigned by the state or the owner.

(2) Upon implementation of section 164² of this Code, the persons listed in section 4 of the Anti-corruption Act (RT I 1995, 14, 170; 68, 1142; 2000, 25, 145) are deemed to be officials.

(19.01.95 entered into force 20.02.95 - RT I 1995, 14, 170)

§ 161. Misuse of official position

Intentional misuse by an official of his or her official position, if it significantly violates the rights or interests of a person, enterprise, agency or organisation which are protected by law or to national interests, is punishable by a fine or up to three years' imprisonment.

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539; 08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 161¹. Abuse of authority

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539)

An official who illegally uses a weapon or violence or commits torturous or insulting acts against a victim while performing official duties shall be punished by up to six years' imprisonment.

§ 161². Use of confidential information concerning securities of issuers

A person possessing confidential information who performs transactions with the securities of an issuer in the person's own name or through a third person by using such information, releases confidential information to third persons without authorisation or advises third persons to perform transactions on the basis of confidential information shall be punished by a fine or detention or up to three year's imprisonment with deprivation of the right of employment in a particular position or operation in a particular area of activity.

(18.01.2000 entered into force 25.02.2000 - RT I 2000, 10, 55)

§ 162. Negligence related to office

An official who fails to perform or performs inadequately his or her official duties due to unconscientious or careless attitude towards the duties, thereby causing major proprietary damage or other serious consequences for the rights or interests of a person, enterprise, agency or organisation which are protected by law or to national interests, is punishable by a fine or deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to one year imprisonment.

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539)

§162¹. Violation of restrictions on employment and activities, or procedural restrictions established by Anti-corruption Act

Violation of restrictions on employment and activities, or procedural restrictions established by the Anti-corruption Act is punishable by up to two years' imprisonment together with deprivation the right of employment in the particular office or operation in a particular area of activity or employment in the public service if:

1) significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) an administrative punishment has been imposed on the offender for the same act.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 162². Failure to give notification of relationship involving risk of corruption

Failure to give notification of a relationship involving the risk of corruption is punishable by a fine or up to one year imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity or employment in the public service if:

1) significant proprietary damage or other serious consequences to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) an administrative punishment has been imposed on the offender for the same act.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 162³. Failure to perform duties related to collection, depositing or verification of declarations of economic interests

Failure to perform or unsatisfactory performance of the duties of collection, depositing or verification of declarations of economic interests by the head of an agency or another person responsible for the collection, depositing or verification of declarations of economic interests is punishable by up to two years' imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity or employment in the public service if significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 163. (Repealed by the Decree of the Presidium of the Supreme Soviet of the Estonian SSR of 5 November 1962.)

§ 164. Accepting bribe

(1) An official who, personally or through an intermediary, receives property, proprietary rights or other proprietary benefits as a bribe for the performing or refraining from performing an act in the interests of the person who gives the bribe, and the official is required to perform or can perform such act using his or her official position, shall be punished by up to four years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

(2) Same acts are punishable by up to seven years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity if committed:

1) repeatedly, or

2) by a group of persons, or

3) on a large-scale basis, or

4) using extortion.

(17.04.96 entered into force 24.05.96 - RT I 1996, 31, 631)

(3) A person who receives a bribe shall be released from punishment if he or she, voluntarily, is the first to submit a written notification of the events after having received property, proprietary rights or other proprietary benefits but before he or she performs or refrains from performing an act in the interests of the person who gives the bribe.

(08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 164¹. Arranging bribe

(1) Arranging a bribe is punishable by up to four years' imprisonment.

(2) Arranging a bribe is punishable by up to seven years' imprisonment if committed:

1) repeatedly, or

2) by a person who has a criminal record for bribery, or

3) using an official position.

(3) A person who arranges a bribe shall be released from punishment if he or she arranges the bribe under extortion or if he or she, voluntarily, is the first to submit a written notification of the events after having arranged the bribe but before the person who receives the bribe performs or refrains from performing an act in the interests of the person who gives the bribe.

(08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 164². Act of corruption

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(1) For the purposes of this Act, an act of corruption is the making of undue or unlawful decisions or performance of such acts, or failure to make reasoned and lawful decisions or perform such acts by an official through the use of his or her official position for receiving income derived from corrupt practices or other self-serving purposes.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(2) An act of corruption is punishable by a fine or deprivation of the right of employment in a particular position or operation in a particular area of activity.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(3) An act of corruption, if it causes significant damage, is punishable by a fine and deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to three years' imprisonment.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

(4) Same act is punishable by up to six years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity if:

1) it is committed repeatedly, or

2) it is committed by a group of persons, or

(17.04.96 entered into force 24.05.96 - RT I 1996, 31, 631)

3) it causes major damage, or

4) it is committed by using extortion.

(19.01.95 entered into force 20.02.95 - RT I 1995, 14, 170)

§164³. Failure to submit declaration of economic interests subject to disclosure, or presentation of false information therein

(1) Failure to submit a declaration of economic interests subject to disclosure in accordance with the requirements during the term, or presentation of incomplete or false information therein is punishable by a fine or detention.

(2) The same act is punishable by a fine or up to one year imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity or employment in the public service if significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.

(19.01.95 entered into force 20.02.95 - RT I 1995, 14, 170; 27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 164⁴. Failure to submit declaration of economic interests not subject to disclosure, or presentation of false information therein

Failure to submit a declaration of economic interests not subject to disclosure in accordance with the requirements during the term or presentation of incomplete or false information therein shall be punished by a fine or up to one year imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity or employment in the public service if

1) significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) administrative punishment has been imposed on the offender for the same act.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 164⁵. Submission of false information to person or agency or committee which verifies declarations of economic interests

(1) The submission of incomplete or false information or failure to submit information in good time to a person or agency or the committee set out in the Anti-corruption Act which exercises lawful supervision over declarations of economic interests is punishable by detention or up to six months' imprisonment.

(2) The same act is punishable by imprisonment between six months and two years together with deprivation of the right of employment in the particular office or operation in the particular area of activity if significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 164⁶. Influence peddling

The acceptance of remuneration by an official who promises to influence another official to make a decision favourable to the person who gives the remuneration shall be punished by up to two years' imprisonment.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 165. Giving bribe

(1) Giving a bribe is punishable by up to four years' imprisonment.

(2) Giving a bribe is punishable by up to seven years' imprisonment if committed:

1) repeatedly, or

2) by a person who has a criminal record for bribery.

(3) A person who gives a bribe shall be released from punishment if a bribe is extorted from him or her or if he or she, voluntarily, is the first to submit a written notification of the events after having given the bribe but before the person who receives the bribe performs or refrains from performing an act in the interests of the person who gives the bribe.

(08.01.96 entered into force 05.02.96 - RT I 1996, 6, 101)

§ 165¹. Giving bribe to foreign official

(1) Giving a bribe to an official of a foreign state or an international organisation is punishable by up to four years' imprisonment.

(2) Same act is punishable by up to seven years' imprisonment if it is committed:

1) repeatedly, or

2) by a person who has a criminal record for bribery.

(3) A person who commits an act specified in subsection (1) of this section shall be released from punishment if a bribe is extorted from him or her or if he or she, voluntarily, is the first to submit a written notification of the events after having given the bribe but before the person who receives the bribe performs or refrains from performing an act in the interests of the person who gives the bribe.

(13.05.98 entered into force 19.06.98 - RT I 1998, 51, 756)

§ 166. Counterfeiting or falsification related to office

(1) Counterfeiting or falsification of a document, if such act is related to an office and significantly violates the rights or interests of a person, enterprise, agency or organisation which are protected by law or to national interests, is punishable by a fine and deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to three years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539)

(2) Counterfeiting or falsification of an invoice, other payment document, declaration, balance sheet or other accounting document necessary for verification of the correctness of taxes, if such act is related to an office and is committed with the purpose of paying less taxes or if less taxes are paid as a result, is punishable by a fine and deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to three years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

(14.12.94 entered into force 13.01.95 - RT I 1995, 5, 40)

§ 166¹. (Repealed.)

§ 166². Violation of prohibition to engage in enterprise or work in particular profession or position

Violation of a prohibition to engage in enterprise or work in a particular profession or position, if such prohibition is provided by law or imposed by a court, is punishable by a fine or up to two years' imprisonment.

(13.05.98 entered into force 19.06.98 - RT I 1998, 51, 756)

§ 166³. Unlawful acceptance of remuneration by official

The acceptance of a more than adequate remuneration determined by an Act or other legislation for the provision of services or making of decisions by an official, or acceptance of remuneration for services without charge is punishable by up to two years' imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity if

1) significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) administrative punishment has been imposed on the offender for the same act.

(27.01.99 entered into force 28.02.99 - RT I 1999, 16, 276)

§ 167. Disclosure of data not subject to disclosure

An official who discloses data which do not contain state secrets but are not subject to disclosure, and thereby causes major proprietary damage or other serious consequences, shall be punished by a fine or up to two years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

§ 167¹. Violation of procedure for maintenance of state or local government databases or for use of data therein

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 423)

Violation of the procedure for maintenance of state or local government databases or for use of data therein, if the fundamental rights of a person are thereby violated or significant damage is caused to national interests, is punishable by a fine or up to two years' imprisonment.

(19.05.93 entered into force 27.06.93 - RT I 1993, 33, 539; 12.03.97 entered into force 19.04.97 - RT I 1997, 28, 423)

§ 167². Submission of false information concerning public issue of securities, and failure to comply with requirement of equal notification of investors

(1) An issuer, or an official or employee thereof, who knowingly discloses, submits or disseminates false information concerning a public issue of securities shall be punished by a fine or detention, with or without deprivation of the right of employment in a particular position or operation in a particular area of activity.

(2) An issuer, or an official or employee thereof, or an employee of a company engaged in brokering of securities who violates the requirement of equal notification of investors, and an administrative punishment has been imposed on the offender for a similar act, shall be punished by a fine or detention, with or without deprivation of the right of employment in a particular position or operation in a particular area of activity.

(03.04.96 entered into force 24.04.96 - RT I 1996, 26, 528).