

Table of Contents

Foreword <i>Drago Kos</i>	5
Preface <i>Albin Eser</i>	7
I. Subject and Methodological Approach	13
A. Empirical background	13
B. GRECO's goals and procedures	13
C. Theoretical and methodological aspects	17
D. Structure of this study	21
II. Core Criminal Law Provisions that Prohibit Corruption	22
A. Comparative overview of the core criminal law of the GRECO Member States	22
1. Active and passive bribery	22
a) The "subject" of corruption: the public official	22
(i) Statutory-formalistic versus functional notion	23
(ii) Elected persons as public officials	24
(iii) Foreign public officials	25
b) The "object" of corruption: the undue advantage	26
(i) Tangible goods or intangible advantages	26
(ii) The recipient of the undue advantage	27
c) The connection between the (offered or granted) advantage and the (intended or performed) official act	28
d) The legal nature of the influenced action	30
2. Other instruments of the core criminal law relevant to corruption	32
a) Trading in influence	32
b) Money laundering	33
c) Public procurement	33
3. Criminalisation of bribery in the private sector	34
4. Criminal liability of legal persons	35
5. Sanctions and other legal consequences of criminally corruptive conduct	36
6. "Negative prescription" - The period of limitation	37
B. National corruption law in relation to the requirements of the Criminal Law Convention on Corruption – Deficiencies and corrections	38
1. Completeness in the penalisation of corruptive conduct	38
	9

2.	The notion of the public official	39
a)	Statutory-formalistic or functional notion	39
b)	Foreign public official	40
3.	The undue advantage	41
a)	Gaps on account of a tangible understanding of “advantage”	41
b)	Ambiguities with regard to the advantage as “undue”	42
c)	Personal restrictions – Widening the concept of recipients to third parties	43
4.	The wrongful connection between advantage and conduct	44
5.	Contingency of bribery on the unlawfulness of the official’s act	45
6.	Trading in influence	45
7.	Corruption in the political sector	46
8.	Corruption in the private sector	47
9.	Sanctions and other legal consequences	49
10.	The period of limitation - “Negative prescription”	51
11.	Exemption from punishment	51
C.	Assessment	52

III. The Practical Implementation of the Anti-Corruption Laws - Status and Deficiencies with Regard to the Guiding Principles 3, 6 and 7 as Reflected by the GRECO Reports 53

A.	Law enforcement authorities and the effectiveness of means for gathering evidence - Guiding Principle 3	53
1.	The judicial system	54
2.	The independence of the law enforcement bodies	55
a)	The police	56
b)	The office of the prosecutor	58
3.	The possibilities of influencing the commencement, continuation or termination of criminal prosecution	60
4.	Operational means for gathering evidence	61
5.	Means for raising the incentive to co-operate with law enforcement bodies	63
6.	Coordination of the investigation	66
B.	Specialised bodies and means for dealing with corruption - Guiding Principle 7	66
1.	Specialisation and resources of the police and the office of the prosecution	67
2.	Specialisation of courts	69
C.	Immunities with regard to corruption - Guiding Principle 6	69
1.	Immunity of the head of state	70
2.	Immunities for members of the legislative power	71
a)	Protection of the parliamentary speech and vote	71
b)	Additional immunities	72

3.	Immunities for members of the executive power	74
4.	Immunities for members of the judicial power, including prosecutors	76
D.	Other deficiencies as reflected by GRECO Reports	78
1.	The organisation of the public sector	79
a)	Ensuring knowledge and loyalty to law and professional ethics	79
b)	Internal supervision	81
c)	Intra-administrative co-operation	81
d)	Public procurement	84
e)	Supervisory bodies – Audit authority	85
2.	Funding of political parties	86
3.	Role of the media – Access to information	88
4.	Proactive strategies	88

IV. Compilation of the GRECO-Recommendations and Observations in the First Evaluation Round 91

A.	Recommendations with regard to	91
1.	the appointment of judges and prosecutors	92
2.	the judiciary	92
3.	the prevention of intimidation	93
4.	the independence of the prosecution office	93
5.	the rights and duties of the public prosecutor	94
6.	the police	95
7.	the incentive for co-operation with the law enforcement bodies	96
8.	sentence-bargaining	96
9.	the co-ordination of the investigation	97
10.	the intra-administrative co-operation and the exchange of information	97
11.	information held in the private sector	98
12.	special investigation means	99
13.	special anti-corruption units	100
14.	the investigation units of the police	101
15.	the prosecution office	101
16.	general and special training of law enforcement bodies	102
17.	the judiciary	103
18.	the border police and the custom office	103
19.	the legal framework of immunities	103
20.	the list of categories of immunities	104
21.	the period of immunity	104
22.	lifting immunity	104
23.	the possibility of evidence being given in court with regard to proceedings in parliament	105
24.	sufficient anti-corruption laws	105
25.	speed up the criminal proceedings	105
26.	a comprehensive pro-active strategy	105

27. raising awareness among public officials and in the society	107
28. safeguarding lawful conduct of public officials	107
29. a sufficient control mechanism for the public sector	108
30. the systematic collection of data and research on corruption	109
31. public procurement	109
32. privatisation	110
33. the media and the access to public information	110
34. the Ombudsman	111
35. the auditing of public expenditures	111
36. funding of politics	111
37. the tax authorities	112
38. Non governmental organisations (NGOs)	112
B. Observations on	113
1. the prosecution	113
2. the police	114
3. special units	114
4. the means for gathering evidence	115
5. proceedings and the judiciary	115
6. specialisation of authorities against corruption	116
7. immunities of certain persons and organs	116
8. new legislation on corruption	117
9. the core criminal law	117
10. to penalties and limitations	117
11. to international cooperation	118
12. safeguarding lawful conduct of public officials	118
13. auditing	119
14. the funding of politics	119
15. data and research	120
16. miscellaneous	120
V. Concluding Considerations	121
A. Assessment of the GRECO Recommendations and Observations	121
B. The achievement of GRECO in the international harmonisation of standards	122
C. Outlook	125
Appendix. Scheme of criminal and procedural provisions	126