OECD Anti-Corruption Network for Eastern Europe and Central Asia

“INVESTIGATION AND PROSECUTION OF CORRUPTION: BRIBERY, ILLICIT ENRICHMENT AND LIABILITY OF LEGAL PERSONS”

PROCEEDINGS OF THE REGIONAL SEMINAR

Held in Batumi, Georgia, 25 – 26 September 2012, and

Hosted by the Ministry of Justice of Georgia

Organisation for Economic Co-operation and Development
This seminar was made possible thanks to voluntary contributions provided to the ACN Work Programme by the United States, Switzerland and the United Kingdom.
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Foreword

The seminar “Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons” took place on 25 – 26 September 2012 in Batumi, Georgia. It was organised by OECD Anti-Corruption Network for Eastern Europe and Central Asia and hosted by the Ministry of Justice of Georgia.

This seminar was conducted as part of the Work Programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The ACN is a regional anti-corruption programme established in 1998. It is open for countries in Central, Eastern and South Eastern Europe, Caucasus and Central Asia, the OECD and EU member countries, other international organisations, multilateral development banks, civil society and business associations. The ACN Secretariat is based at the OECD Anti-Corruption Division. The Secretariat is guided by the ACN Steering Group and reports to the OECD Working Group on Bribery.

This was the third seminar for the ACN Law-Enforcement Network. The first seminar for investigators and prosecutors was held in 2010 in Bucharest, Romania and the second in 2011 in Kyiv, Ukraine.

For more information on the ACN, including on the ACN Law-Enforcement Network, visit www.oecd.org/corruption/acn.

The seminar in Batumi brought together 54 participants from 27 countries and international organisations. Speakers from France; Liechtenstein; Denmark; Hong Kong, China; Lithuania; the United States; Serbia; Italy; and Azerbaijan shared their national experiences. The UNODC presented work carried out under the Stolen Asset Recovery (StAR) Initiative.

This seminar discussed the following themes:

- Investigating and prosecuting bribery offences with complex elements;
- Criminalisation and enforcement of the offence of illicit enrichment;
- Investigating and prosecuting corruption by legal persons.

The seminar included presentations, round-table discussions and working in “investigative teams” where participants investigated a specific, hypothetical corruption case.

The seminar provided a forum to discuss effective legal and practical tools to investigate and prosecute corruption, illicit enrichment and corruption committed by legal persons. Attention was mainly dedicated to actual corruption and illicit enrichment cases and tools and techniques used in their investigation and prosecution and main challenges encountered. The seminar provided a good opportunity for networking and mutual learning for anti-corruption investigators and prosecutors in Eastern Europe and Central Asia and their peers in OECD countries.

These proceedings contain a summary of the presentations and discussions, the presentations made during the seminar, the agenda and the list of participants.
Summary of Discussion

Otar Kakhidze, Deputy Minister of Justice of Georgia, and Olga Savran, Manager of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, opened the seminar. Mr. Kakhidze highlighted reforms undertaken by Georgia to prevent and fight corruption and Georgia’s improving ranking in corruption and business perception surveys. He stressed the importance of a comprehensive approach to fight corruption, including establishing the rule of law, reforming public administration and vigorously prosecuting corruption. Ms. Savran stressed the increasing role of practical implementation, in particular of the standards laid out in the United Nations Convention against Corruption and the importance to support and build the capacity of practitioners in the region, including investigators and prosecutors.

Irakli Chilingarashvili, Head of Legal Unit of the Chief Prosecutor’s office of Georgia, chaired the first session. Nikoloz Chinkorashvili, Head of Anti-Money Laundering Unit at the Chief Prosecutor’s Office, chaired the second session. Daniel Thelesklaf, Director of the Financial Intelligence Unit of the Principality of Liechtenstein, chaired the third session.

The seminar provided an opportunity to investigators and prosecutors from Eastern Europe and Central Asia, as well as from OECD countries to share their experiences, to learn from each other and to improve the understanding of issues related to investigation and prosecution of corruption.

Investigating bribery offences with complex elements

The first session included four presentations related to the investigation and prosecution of complex corruption cases by Loïc Guérin, prosecutor at the Court of first instance of Paris, France, Daniel Thelesklaf, Director of Financial Intelligence Unit, Principality of Liechtenstein, Irakli Shulaia, Prosecutor at the Prosecutor General’s Office of Georgia and Flemming Denker, former Deputy State Prosecutor at the Office for Serious Economic Crime in Denmark.

Loïc Guérin presented a trans-border corruption case involving investigations in France, United States and the United Kingdom and recently adjudicated in France. The case discussed by Mr. Guérin involved companies and private persons from a variety of countries, a well as trans-border money follows with the view to bribe foreign public officials and win a 216 million USD worth public procurement contract for introducing ID cards. The presentation showed the importance to follow the money trail and challenges in looking for evidence in a well-organised trans-border case, often involving transactions, which are not based on contracts.

Daniel Thelesklaf discussed how instruments set up to fight money laundering can help in detecting and investigating corruption. Mr. Thelesklaf stressed that the phase of tracing and detecting proceeds of crime is key, and more emphasis should be placed on using money laundering instruments during this phase. The financial intelligence units (FIUs) can provide valuable assistance to criminal investigators and prosecutors in preparing the case to be investigated, based on analysis of financial information. Mr. Thelesklaf talked about the abilities of FIUs to understand bank statements and other financial information, as well as the abilities to quickly trace assets and the powers to seize them. Further, in trans-border corruption cases FIUs can advise how to overcome challenges caused by differences in tracing money flows in foreign countries. Mr. Thelesklaf presented a specific case where an FIU was able to
show, through financial analysis, that a person owning an account is the owner of an enterprise involved in corruption, and ultimately the FIU was able to freeze the money.

Irakli Shulaia presented the experience in detecting, investigating and prosecuting corruption in Georgia. Mr. Shulaia highlighted the approach taken, which includes identification of corruption risk areas, detailed analysis of these areas and addressing the risks identified by vigorous enforcement actions. Among corruption risk areas in Georgia Mr. Shulaia named public procurement; licensing; cleansing services; and building and construction area. He then provided examples of criminal cases with court verdicts in these areas, including involving prosecution of a deputy minister of education.

Flemming Denker discussed the role of investigators and prosecutors in Denmark throughout criminal proceedings, from initiating a case till bringing it before the court and during the trial. Mr. Denker stressed the key role of police and prosecutors working very closely throughout this time. It is also important to investigate the corruption crimes in an effective manner, assessing the importance of evidence collected. Mr. Denker also noted the role of informal and operational international co-operation channels, such as EUROPOL or joint investigative teams (JITs), along with mutual legal assistance requests. Through the example of a case investigated in Denmark, Mr. Denker showed the mechanisms of investigation and prosecution of trans-border bribery, in particular the importance of tracing money flows abroad and of good co-operation among law enforcement bodies in the involved countries.

The discussion showed that OECD countries often have experience in investigating corruption crimes involving such novel elements as offer or promise of a bribe, non-material benefits, and bribes given in the interest of third parties. While few participants from ACN countries also referred to cases with these elements in their countries, overall there seems to be less practical experience in the ACN region. The discussion therefore focused on criminalisation, for example, why and how to criminalise offer and promise of bribe and how it is different from an attempt to commit crime. Further, participants discussed effective methods to detect and investigate corruption, stressing the importance of information and assistance that can be provided by FIUs, the role of tracking the flows of corrupt money, collaboration with suspects, in view of obtaining further valuable evidence, use of good informants and trained undercover agents, special investigatory means (surveillance, etc.) and JITs. Mandatory reporting of corruption allegations by accountants and prosecuting bribe-givers for false accounting or other wrongdoing by companies were mentioned as potentially useful tools to detect corruption.

Criminalisation and Enforcement of the Offence of Illicit Enrichment

The second session addressed reversal of the burden of proof through criminalisation and enforcement of the illicit enrichment offence and other approaches. This topic was introduced through Lindy Muzila’s presentation of the results of the world-wide study on illicit enrichment conducted by the Stolen Asset Recovery (StAR) Initiative of the UNODC and the World Bank. This was further explored through presentations of selected country experiences: Eric Yang, Principle Investigator of the Independent Commission against Corruption (ICAC), Hong Kong, China, presented practical example of the offence and its enforcement. Saulius Urbanavičius, First Deputy Director of the Special Investigation Service in Lithuania, presented the Lithuanian experience. Speakers used their own cases to illustrate how the offence in question has been investigated and prosecuted in their countries.

Lindy Muzila shared the findings of the study which gave a broad overview of existing approaches to reversal of the burden of proof around the world. The focus was made on positive experience, such as India; Pakistan; Argentina; and Hong Kong, China. These countries considered that introduction of illicit
enrichment offence has helped them in detection of corruption and made prosecution more effective and successful. She also pointed out to a number of challenges, such as dual criminality in co-operation with jurisdiction where the offence of illicit enrichment does not exist. To conclude Ms. Muzila stressed that the global experience in illicit enrichment remains limited, with mixed feed-back. However, the study showed that illicit enrichment can be implemented in full respect of Human Rights, and while it can be a useful anti-corruption and asset recovery tool, mechanisms and resources need to be put in place before implementation. The most important finding was that what matters is the quality and clarity of the illicit enrichment provision itself.

Eric Yang presented his own case in which a high-ranking public official was investigated and prosecuted under the offence of illicit enrichment. In his presentation, he walked the participants through an entire investigation illustrating step-by-step how introduction of the illicit enrichment offence made the jobs of the anti-corruption investigators and prosecutors easier with corruption being a difficult crime to detect and prove due to its hidden nature, the fact that often both parties are satisfied, the society does not view it as dangerous crime. As did the speakers in the previous panel, he stressed the importance of following the money and conducting financial investigations, international co-operation and collection of evidence to forestall possible defences.

Saulius Urbanavičius presented the Lithuanian experience of introducing an offence of illicit enrichment in 2010: the history, the rationale behind it and the different elements of the offence. He further shared that the practice is still forming and that the experience is currently too limited to draw meaningful conclusions on the effectiveness of this new tool. In this respect, he shared that in almost two years since the law entered into force total of 94 investigations were undertaken and so far only in eight of them the defendants were charged and in two of them there are already court verdicts but they have not gone through all of the appellate instances. Mr. Urbanavičius shared that the prosecutors still struggle with the concept and are overall reluctant to qualify this offence, since it is difficult to prove illegal origin of the property gained and problems arise in connection to the rights not to testify against oneself. He also identified a number of practical problems when collecting evidence, such as the fact that small loans only accounted for by unofficial papers, loans from foreign citizens are impossible to check, loans received from foreign enterprises are often registered in tax free zones and establishing actual market value of the immovable property in relation to declared value is very complicated.

Presentations were followed by a round-table discussion focusing on experience of other participants and approaches taken in their countries. The practitioners thought these offences to be most complex and challenging and were eager to see how other countries in the region and beyond were dealing with similar challenges. For example, countries which recently introduced illicit enrichment, i.e. Lithuania, Kyrgyz Republic, had a lot of practical questions to those who have already had experience in investigating and prosecuting such cases. Issues discussed included illicit enrichment vs. presumption of innocence and the right not to testify against oneself, various approaches to reversal of the burden of proof. The use of asset declarations of public officials for investigative and evidentiary purposes and other complimenting elements, such as in rem forfeiture actions against stolen property were also discussed.

Investigating and prosecuting corruption of legal persons

The third session focused on liability of legal persons for corruption and specific features and existing experiences in investigation and prosecution of such crime. These issues were discussed by Peter Koski, Deputy Chief, Public Integrity Section, the Department of Justice of the United States; Mirjana Jakovljevic, Deputy Higher Prosecutor at the Belgrade Higher Prosecutor’s Office, Serbia; Donata Costa, Prosecutor at
the Tribunal of Monza in Italy; and Sahib Ismayilov, Prosecutor of the Anti-Corruption Department at the Prosecutor General’s Office in Azerbaijan.

Peter Koski presented a specific case in the United States where a company was held liable for giving a bribe in order to influence adoption of a law and where strong circumstantial evidence was gathered to uncover it. In this case, civil and administrative sanctions against the company were applied in order not to cause damage to its employees. All federal contracts with this company were cancelled and it was disbarred from future contracts. Further, Mr. Koski presented principles of corporate responsibility, a useful checklist for investigators and prosecutors of factors to consider when determining sanctions to be applied to the company.

Mirjana Jakovljevic presented the legal framework for fighting corruption, investigating and prosecuting corruption, as well as specifically corruption offences committed by legal persons in Serbia. Ms. Jakovljevic then described features of criminal proceedings in the cases where charges are to be laid against a legal person. She outlined how the Law on Seizure and Confiscation of Proceeds from Crime is relevant for investigation and prosecution of corruption. Ms. Jakovljevic informed on the Special Department for Combating Corruption formed within the Republic Prosecutor Office of Serbia.

Donata Costa noted that the concept of the liability of legal persons was introduced in Europe relatively recently compared to the United States. The criminal system in Europe had become inadequate to modern economic realities and the dominant role of companies and legal entities in the business world. Therefore, most of European countries starting with 1990s have introduced liability of legal persons. Italy has introduced administrative liability of legal entities. Ms. Costa described main elements of the liability of the legal entities introduced in Italy and conditions that have to be met simultaneously in order that the liability of legal persons can be applied. Ms. Costa stressed that while it is called “administrative”, the liability of legal persons in Italy presents typical features of the criminal liability (it depends on the commission of a crime, it is established by means of a criminal proceedings and provides for very heavy sanctions). She also presented a specific bribery case investigated involving both natural and legal persons and currently under trial. Ms. Costa noted that in bribery cases it is important to collect strong evidence, since persons involved are reluctant to admit the truth, in particular high level officials, and often such evidence can be found in the financial and accounting documents of the company.

Sahib Ismayilov introduced the legal and policy framework and specialised institutions for fighting corruption in Azerbaijan. Further, Mr. Ismayilov outlined the March 2012 changes to the Criminal Code in Azerbaijan introducing the criminal liability of legal entities and penalties for it. Legal persons in Azerbaijan can now be subject to criminal liability also for corruption crimes. Mr. Ismayilov presented the sanctions that can be applied and factors to be considered, when determining the level of responsibility of the legal person. Also, amendments were made to allow confiscation of property of equal value, if the property subject to confiscation is no longer available.

The discussion addressed conditions to be met and factors to take into account when holding a company liable, for instance impact of such a decision on the economy or employees of this enterprise. The discussion also showed that it is a topical issue for the ACN region. Participants agreed that corruption does take place through legal persons. Nevertheless, the experience in the ACN region varies. In some countries new legislation is considered. Other countries already have introduced the liability of legal persons, but have not applied it in practice, while in few others there are corruption investigations ongoing with legal persons involved and the number of such cases is increasing. Participants named among main challenges the difficulties to identify the natural person related to companies registered in offshore centres, to follow quickly created and liquidated companies and schemes with many companies established abroad.
**Working groups**

Compared to previous ACN peer learning seminars, the format of the seminar has been improved to allow more time for discussions and interactive participation within the working groups – more than half of the seminar time was devoted to it; this approach was positively evaluated by the participants. The working groups worked on a case study which included all elements of the bribery offence discussed during the seminar, as well as illicit enrichment and corruption perpetrated by legal persons. This exercise was developed on the basis of the ACN Training Manual on Investigation and Prosecution of Corruption Offences.

All participants were assigned to “investigative teams” with the task to undertake investigation applying most favourable legislation from jurisdictions of their teams. An “international advisor”, one of the speakers, was assigned to each team and provided critical opinion and advice. More specifically, each “investigative team” needed to complete the following steps: (i) discuss and list all of the possible offences which could be investigated based on the presented facts; (ii) select one offence that could be successfully investigated and prosecuted with limited resources and the necessary discretion; (iii) identify the elements of this offence; (iv) decide what evidence needed to be gathered to prove each element and how such evidence could be collected; and finally (v) select one of the team members to present the results of the investigation.

This work and the presentations of the teams resulted in intense debates on what tools would work best and what offences should be selected for investigation and prosecution. While during the discussions which followed a panel on illicit enrichment many participants expressed reluctance towards the usefulness of such an offence, almost all of the working groups chose to pursue illicit enrichment charges when working on the case-study and were able to build their cases to effectively present charges. Some chose to go after the legal persons and were open to new investigative methods of collection of evidence. Most participants demonstrated willingness and readiness, at least in theory, to go after more complex and new offences. A few “investigative teams”, however, chose the offence of bribery and were arguing that this is the most reliable offence and would work best relying on the old tested investigative methods. The most common argument in favour of this “tested offence” was the reluctance of courts to look at the new types of corruption crimes and therefore they chose to avoid potential difficulties in getting a conviction.

**Discussion on performance appraisal of prosecutors and investigators**

Assel Satvaldinova, General Prosecutor’s Office of Kazakhstan, presented a project of competency framework for performance assessment of prosecutors developed by the General Prosecutor’s Office of Kazakhstan. The framework is a form of checklist against which to assess the competences of management of prosecution services and individual prosecutors. It consists of a set of competences for the managers (ability to take decisions, ability of human resources management and motivation for work, conceptual thinking, initiative and creative approach to work, etc.) and for prosecutors (results-oriented, flexible, level of training and interest in improvement, work discipline, etc.), as well as methodology for rating the performance. Ms. Satvaldinova explained that there is a trend to “rush for results” and it is hoped that this new system will allow increasing the effectiveness of prosecutors’ work by focusing more on quality and including also personal development.

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1 “Investigation and Prosecution of Corruption Offences: Materials for the Training Course” is available [here](#).
The discussion highlighted different aspects and approaches taken to assessment and recruitment of prosecutors and investigators in ACN and OECD countries. There was an overall agreement that these are important issues. It was noted also that there should be such performance assessment that does not affect the independence of prosecution. It was also noted that criteria as conviction rate may not be appropriate. The test period is important to allow the new investigator/prosecutor to show his abilities and it is important to collect feedback from other colleagues during this time.

**Assessment of the seminar and future priorities**

At the final session, the participants pointed out the following positive outcomes of the seminar:

- Discussion on criminalisation and enforcement of illicit enrichment;
- Working in groups investigating a specific case;
- Sharing experience, networking, comparison of legal solutions is different countries;
- Launching discussion on performance evaluation of prosecutors and investigators;
- Practical examples of pursuing legal persons for corruption.

Further, the participants suggested the following topics for future work:

- International anti-corruption conventions and regional instruments: differences in interpretation and practical application;
- International legal co-operation and asset recovery;
- Illicit enrichment vs. presumption of innocence;
- Corruption involving “facilitators” - enterprises set up to realise corruption crimes;
- Techniques and methods used for detection and investigation of corruption in actual cases;
- More time should be allocated to practical exercises;
- Performance evaluation of prosecutors and investigators.
Opening session

Investigating and prosecuting corruption in Georgia

Mr. Otar Kakhidze
Deputy Minister of Justice
Georgia

Fight Against Corruption in Public Services:
Chronicling Georgia’s Reforms

“Since 2003, Georgia has had unique success in fighting corruption in public services.

[It] destroys the myth that corruption is cultural and gives hope to reformers everywhere who aspire to clean up their public services.”

World Bank 2012

EUROBAROMETER 2012

OVER THE LAST 12 MONTHS, HAS ANYONE ASKED YOU, OR EXPECTED YOU, TO PAY A BRIBE FOR SERVICES?

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<thead>
<tr>
<th>Country</th>
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<td>Finland</td>
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</table>
Number of citizens personally affected by corruption in their daily lives 4 times lower in Georgia than in the EU

You are personally affected by corruption in your daily life

IN YOUR COUNTRY, DO YOU THINK THAT GIVING AND TAKING OF BRIBES, AND THE ABUSE OF POSITIONS OF POWER FOR PERSONAL GAIN, ARE WIDESPREAD AMONG ANY OF THE FOLLOWING?

<table>
<thead>
<tr>
<th>Category</th>
<th>Georgia %</th>
<th>EU average %</th>
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<tbody>
<tr>
<td>Public tenders</td>
<td>16.8</td>
<td>47</td>
</tr>
<tr>
<td>Politicians at national level</td>
<td>12.5</td>
<td>57</td>
</tr>
<tr>
<td>Customs services</td>
<td>10.3</td>
<td>31</td>
</tr>
<tr>
<td>Building permits</td>
<td>10.1</td>
<td>46</td>
</tr>
<tr>
<td>Business permits</td>
<td>9.1</td>
<td>33</td>
</tr>
<tr>
<td>Politicians at regional level</td>
<td>8.4</td>
<td>48</td>
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<tr>
<td>Inspectors (health, construction, food quality, sanitary)</td>
<td>8.4</td>
<td>35</td>
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<tr>
<td>Public health sector</td>
<td>6.9</td>
<td>30</td>
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<tr>
<td>Judicial services</td>
<td>6.4</td>
<td>32</td>
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<tr>
<td>Private companies</td>
<td>6.1</td>
<td>32</td>
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<tr>
<td>Politicians at local level</td>
<td>5.2</td>
<td>46</td>
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<tr>
<td>Public education sector</td>
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<tr>
<td>Police services</td>
<td>4.8</td>
<td>34</td>
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</table>
IFC Business Perception Survey 2012

Only 1 respondent out of 920 (0.11%) mentioned corruption as a problem while dealing with budgetary organisations

Problems in Relations with Budgetary Organizations

<table>
<thead>
<tr>
<th>Problem</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>No problems</td>
<td>66%</td>
</tr>
<tr>
<td>High service fee</td>
<td>13%</td>
</tr>
<tr>
<td>Takes too much time</td>
<td>10%</td>
</tr>
<tr>
<td>Unqualified staff in state bodies</td>
<td>9%</td>
</tr>
<tr>
<td>Bureaucratic environment</td>
<td>6%</td>
</tr>
<tr>
<td>Unfair decisions</td>
<td>3%</td>
</tr>
<tr>
<td>Corruption</td>
<td>0.11%</td>
</tr>
</tbody>
</table>

Survey on Customs Clearance Procedures, IFC 2012

- Corruption has been practically eliminated:
  - Only 2 respondents out of 515 (0.4%) interviewed mentioned that they had to pay bribes in relations with the CCZ

Has paid a bribe
Has never paid a bribe
Life in Transition Survey, EBRD 2011

2nd Place in Customer Service Efficiency

92% of Citizens are Satisfied with the Procedures of Official Documents Issuance: 1st place

Corruption Perception among Citizens is one of the Lowest – 4%

Experience vs. Perception of Corruption in Post Soviet Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Experience %</th>
<th>Perception %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kyrgyzstan</td>
<td>62</td>
<td>65</td>
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<td>Kazakhstan</td>
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<tr>
<td>Uzbekistan</td>
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<td>40</td>
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<tr>
<td>Tajikistan</td>
<td>16</td>
<td>20</td>
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<tr>
<td>Ukraine</td>
<td>20</td>
<td>19</td>
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<tr>
<td>Moldova</td>
<td>28</td>
<td>22</td>
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<tr>
<td>Latvia</td>
<td>25</td>
<td>13</td>
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<tr>
<td>Lithuania</td>
<td>25</td>
<td>17</td>
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<tr>
<td>Estonia</td>
<td>20</td>
<td>11</td>
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<tr>
<td>Russia</td>
<td>18</td>
<td>13</td>
</tr>
<tr>
<td>Belarus</td>
<td>17</td>
<td>9</td>
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<tr>
<td>Estonia</td>
<td>9</td>
<td>9</td>
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<tr>
<td>Latvia</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Georgia</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>
Albania is a member of NATO since 2009

The least corrupt country among Nato-aspirant states in Europe

Experience Versus Perception of Corruption
NATO Aspirant Countries (%)

Average Experience  Average Perception

Albania Montenegro Bosnia and Herz. Macedonia Georgia

Global Corruption Barometer,
2010, Transparency International

77% of Citizens Think that Corruption Level DECREASED Significantly for the last 3 Years

78% of Citizens Perceive Gov’s Actions Towards Fighting Corruption as EFFECTIVE

The Most EFFECTIVE Government in the Fight Against Corruption
Transparency International, 2010
HOW DID GEORGIA ACHIEVE IT?

How Georgia Defeated Corruption

- Vigorous Prosecution of Corruption Cases
- HR Policy
- Service Delivery Process E-Governance
- Amending Legislation
- Anti-Corruption Strategy
- Vigorous Prosecution of Corruption Cases
- 2003
- 2012
A Failed State

CORRUPTION

- Integral part of the daily life of Georgians;
- Rule in all public institutions and norm in the mentality of every citizen

- Corrupt Police
- Corrupt Tax and Customs
- Corrupt Education
- Corrupt Judiciary
- Corrupt Civil Service
- Corrupt Society

Measuring Level of Corruption

Georgia rated 127 out of 133 countries

Transparency International, 2003

More than 70% of Companies had to pay bribes - informal payments.

IFC Enterprises Survey, 2002

- Modernization of Public Service
- Development of Administrative Service
- Reforming Procurement System
- Reform of Public Finance System
- Development of Tax and Customs Systems
- Enhancing Justice Administration
- Increased Interagency Coordination for Prevention of Corruption
- Improved System of Political Party Financing; Prevention of Political Corruption

## Amending Legislation

- International Agreements & Criminalization of Corruption
- Law on Conflicts of Interest and Corruption in Public Service and Law on Public Service
- Law on Chamber of Control
- Amendments to Public Service Law
- Legal Initiatives for Elimination of Procedural Barriers
Implementation of GRECO Recommendations

Amendments to the Criminal Code, September 2011

Legislative initiative on party financing, December 2011

Involvement of NGOs in drafting

Zero Tolerance against Corruption

Number of Prosecuted Persons within the Justice System (2003 – 2010)

<table>
<thead>
<tr>
<th>Position</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policeman</td>
<td>1064</td>
</tr>
<tr>
<td>Investigator</td>
<td>109</td>
</tr>
<tr>
<td>Prosecutor</td>
<td>20</td>
</tr>
<tr>
<td>Judge</td>
<td>30</td>
</tr>
<tr>
<td>Total</td>
<td>1223</td>
</tr>
</tbody>
</table>

Number of Civil Servants Prosecuted (2003 – 2010)

<table>
<thead>
<tr>
<th>Position</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister</td>
<td>15</td>
</tr>
<tr>
<td>Deputy Minister</td>
<td>15</td>
</tr>
<tr>
<td>Member of Parliament</td>
<td>6</td>
</tr>
<tr>
<td>Member of City Council</td>
<td>24</td>
</tr>
<tr>
<td>Chairmen of City Council</td>
<td>91</td>
</tr>
<tr>
<td>Governor</td>
<td>5</td>
</tr>
<tr>
<td>City Council Chairperson</td>
<td>93</td>
</tr>
<tr>
<td>Deputy Chairperson of City Council</td>
<td>31</td>
</tr>
<tr>
<td>Mayor</td>
<td>6</td>
</tr>
<tr>
<td>Deputy Mayor</td>
<td>6</td>
</tr>
<tr>
<td>Customs Officer</td>
<td>277</td>
</tr>
<tr>
<td>Tax Inspector</td>
<td>213</td>
</tr>
<tr>
<td>Other Civil Servant</td>
<td>213</td>
</tr>
<tr>
<td>Total</td>
<td>995</td>
</tr>
</tbody>
</table>
### 2011 Statistics

<table>
<thead>
<tr>
<th>Articles in the Criminal Code</th>
<th>Investigation was Launched</th>
<th>Conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td>182 Embezzlement</td>
<td>276</td>
<td>96</td>
</tr>
<tr>
<td>194 Money Laundering</td>
<td>58</td>
<td>23</td>
</tr>
<tr>
<td>221 Commercial Bribery</td>
<td>20</td>
<td>4</td>
</tr>
<tr>
<td>338 Passive Bribery</td>
<td>63</td>
<td>29</td>
</tr>
<tr>
<td>339 Active Bribery</td>
<td>28</td>
<td>31</td>
</tr>
<tr>
<td>3391 Trading in Influence</td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>455</td>
<td>187</td>
</tr>
</tbody>
</table>

### No Exceptions

**During last 3 years:**

- Deputy Minister of Labour, Healthcare and Social Security - Passive Bribery
- Deputy Minister for Defense - Abuse of Power
- Deputy Minister for Education and Science – Passive Bribery
- Deputy Head of Environmental Protection Inspection - Passive Bribery
- Deputy Governor of Samtskhe-Javakheti Region – Money Laundering
Legal and Institutional Framework

- Anti-Corruption Interagency Coordination Council
- Public Council of the Prosecution Service
- Anti-Corruption Department of the Prosecution Service of Georgia
- Office of the Public Defender (Ombudsman)
- National Anti-Corruption Strategy and Action Plan

Integrated Criminal Case Management System (ICCMS)
**Session 1: Investigating bribery offences with complex elements**

The following presentations were made:

**Combating bribery of foreign officials: experience in France** by Loïc Guérin, France

**Experience of Liechtenstein in tracing and freezing proceeds of foreign bribery** by Daniel Thelesklaf, Principality of Liechtenstein

**Investigation and prosecution of corruption in Georgia** by Irakli Shulaia, Georgia

**Investigation and Prosecution of Corruption: Beyond Reasonable Doubt** by Flemming Denker, Denmark
Combating bribery of foreign officials: experience in France

Mr. Loïc Guérin
Prosecutor, 1st vice prosecutor
Court of first instance of Paris
France

Origins of the case

From United Kingdom: investigation on M. Ayoub for laundering

From United States: MLA request regarding a bribery committed in Nigeria by an American co: NDS and attached to the US request:

a N. official report regarding a case of bribery of public agents

The contract

At the end of 1990s the Federal Govt of N. wants to set up a system of national ID cards. A committee is created to define the terms of reference and evaluate the tenders.

On the 22/08/2001 a contract for an amount of 216 million US dollars assigned between the N. Govt and company Wisem. The contract is signed by the President.
The stakeholders: natural persons

The N.:
- C. Ayoub: head department of national civic registration; in charge of the settlement of ID program; chair of OCL company (UK),
- N. Lagun: chair of companies Tron, Rang, W. Africa
- M. Elahay: head of department, Home office
- M. Wodou, president of the PDP
- M. Ioukoulele, high rank officer, Home office...

The French:
MM. P., J., G., D.: employees of Wiser Co

The stakeholders: The legal entities

- **Wisem**: a notorious French company, involved in defence and security activities;
- **Tron**: a Nigerian company, headed by M. Gun, a «lobbyist, intermediary», who provides services of guarding
- **Rung**: idem
- **Wisem Africa**: in charge of representation of Wisem in Africa
- **OCL company**
- **Biometric Solutions** (BSC), Mauritius: tenderer, then subcontractor of **Wisem**, then failed
- **NBS**: first subcontractor of **Wisem**, US company breaks its deal with **Wisem** on bribery clues but becomes again the subcontractor of **Wisem** after **Datacard** gave up
- **Datacard**: successor as subcontractor of NBS, US company
- **Alnica, Mayeuni**: Costa Rican companies

### The others contracts

1. **Wisem/Tron**: technical and commercial agreement for the supply of ID in N
2. **Wisem/Rung**: supply of security guards
3. **Wisem/NBS**: 21 million US dollars for the supply of cards, of which 3.1 must be paid to **Tron**
4. **NBS/MT**: 4 million US dollars, recruiting employees in N
5. **Wisem Africa/Wisem**: exclusive retailer of **Wisem**, security
Money flows

**Wisem:**
- → Tron: 20 million USD
- → Rung: 4.1 million USD without any contract
- → Sagem Africa: 4.5 million USD
- → BSC: 10 million USD, of which 4 million USD → MT

**NBS → TRON:** 1.6 million USD [3.1 foreseen]

### Tron →

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount and date</th>
<th>Beneficiaries</th>
<th>Position of the beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>L. PARIS</td>
<td>USD 609,960 03.06.2003</td>
<td>OCL Ltd</td>
<td>M. Ayoub, head of the department of civil registration</td>
</tr>
<tr>
<td>idem</td>
<td>USD 667,210 13.06.2003</td>
<td>OCL Ltd</td>
<td>M. Ayoub</td>
</tr>
<tr>
<td>C. bank L.</td>
<td>USD 992,210 06.06.2002</td>
<td>Ruth O.</td>
<td>Wife of M. Ayoub</td>
</tr>
<tr>
<td>idem</td>
<td>USD 241,500 22.05.2002 USD 200,000 03.04.2003 USD 100,000 03.10.2003</td>
<td>A. Youkoul</td>
<td>Ministry of the public agents/civil servants</td>
</tr>
<tr>
<td>idem</td>
<td>USD 300,000 03.06.2003</td>
<td>O. Wodou</td>
<td>National secretary of the popular party</td>
</tr>
</tbody>
</table>
Others payments

- **M. GUN**
  - → S&M Ltd (headed by Chief A.): USD 334 000 (Home office minister)
  - → H. Z family (Minister of Labor) USD 30 000
- **Rung Ltd**
  - → **M. Ayoub**: USD 779 960

The bribery

« I can insure you that everything is OK to support the tender of *Wisem*. We act on recommendations issued by members of the Government. We are supported by close relation of Pdt, and everyone knows that the terms of reference match tender of a company. »
Indications of Bribery

• Influencing components of the terms of reference in such a way that Wisem’s tender is the best;
• Disclosing the content of other tenders;
• Supporting the tender of Wisem, by all means; and
• Bias the choice of the jury.

Investigation techniques

• House searches;
• Phone taping;
• Bank account requests...

The sentence

• Wisem: USD 500 000

• French employees of Wisem: discharged because they acted on behalf of the company (appeal brought by public prosecutor)

Others:
• Ayoub: sentenced in UK, assets seized
Experience of Liechtenstein in tracing and freezing proceeds of foreign bribery

Mr. Daniel Thelesklaf
Head
Financial Intelligence Unit
Principality of Liechtenstein

The necessity to collect financial intelligence

• International corruption cases are not prosecuted satisfactory, although
  • the necessary legal framework is/should be in place (UNCAC, OECD, CoE Conventions)
  • the political will has been declared at many occasions
  • support is available (StAR, ICAR)
• The first stage in a investigative process is the phase of tracing and detecting possible proceeds of crime
• Formal MLA is not necessarily a useful tool to trace proceeds of crime
• More emphasis should be placed on the instruments set up to fight money laundering

Act 1

• The AC agency of country A conducts an investigation for corruption related offences against Mr X.
• X is accused of embezzling funds of public company Y
• In that framework, the FIU of A detected a suspicious payment from the account of Y to a bank in country B.
• The FIU of B informs FIU of A of a subsequent payment made into a Liechtenstein bank account held by a company registered in country C.
Case study (ongoing case)

Mr X (suspect in country A)

Bank in Liechtenstein

Bank in B

Acct held by company in C

? 

Conclusions 1

- Establishment of an FIU
- Membership in Egmont Group
- Capability of FIUs to trace assets across jurisdictions
- Tracing of assets has to be done speedily
Act 2

- Based on the request by FIU of A, the Liechtenstein FIU obtains information from the bank in Liechtenstein
- The information provided reveals that the beneficial owner of company C is Mr X
- The information was shared with the FIU of A for intelligence purposes
- The assets in Liechtenstein were initially frozen for one week, subsequent to the suspicious activity reporting system.
- The Liechtenstein FIU requested the General Prosecutor’s Office to maintain the freeze of the account. The competent court has granted this request.

Case study (ongoing case)

- Mr X (suspect)
- Bank in B
- Bank in Liechtenstein
Conclusions 2

- Powers of FIUs to obtain information
- Powers of FIU to suspend transactions and/or freeze assets
- Capabilities of FIUs to instigate criminal investigations
- Confidentiality rules between FIUs

Act 3

- The Liechtenstein FIU asked a donor agency to support country A to draft a MLA request
- The donor agency hired ICAR and an independent AML expert and funded a mission of the experts to country A
- Country A appoints the expert as representative
- The expert can follow up with the Liechtenstein authorities to request the production of evidence with a view to seize and repatriate the assets
Conclusions

• Collect intelligence before entering into formal MLA
• Use powers of FIUs to freeze assets, as available
• Have a bird’s view and take into account all processes
• Head out for a “guide” that can assist you steering through the processes
• Allow for expert advice and fair representation
• Mobilize support by donors when developing countries are involved
Investigation and prosecution of corruption in Georgia

Mr. Irakli Shulaia
Deputy District Prosecutor
Georgia

Phases of Fighting corruption

Detection Corruption

Investigation of Corruption

Prosecution

Detection of Corruption

Determine Suspicious Fields

Detailed Analyses of such Facts

Detection of Inconsistent Facts.

Detailed Analyses of such Fields
Case #1 - False Disqualification

In Tender held By Healthcare and Social Program Agency Head of The Commission Mr. X intentionally Disqualified all the other applicants.

The Winner Company benefitted 700,000 $, From which Mr. X took as the Bribe 25,000 $.

Mr. X, His Acquaintance - mediator and the Head of The Company have been Prosecuted.
Case #2 Cost and Quality of Product

Head of the Environment Protection and Natural resources Agency Mr. M with His acquaintance established false company

Mr. M gave priority to that company in purchasing computers for the Agency in Less amounts to avoid a Tender

The Company distributed the Agency with Computers in High cost

The Company did give the Percentage of the income to Mr. M

Mr. M and his acquaintance have been Prosecuted!

Case #3 Patronage in Cleansing service

The Governor MR. Y was taking bribe from Cleansing Company in his District, for which the Company was under the protection of the Governor

The Company having Governor’s support was committing False Financial actions .

The Governor MR. Y and the Head of the Company have been prosecuted!
Case #4 High Official crime commitment

The Deputy Education Minister Mr. A gave priority in Tender reconstruction of Public schools to his relative MR. B

The Deputy Minister A ensured acceptance of lower quality reconstructed schools from the Company

MR. B gained 300 000 GEL by that action of the Deputy MR. A

The Deputy Minister A and his Relative MR. B both have been prosecuted
Investigation and Prosecution of Corruption: Beyond Reasonable Doubt

Mr. Flemming Denker
Former Deputy State Prosecutor
Office for Serious Economic Crime
Denmark

The right organization
The right procedure handling a case and
sufficient rules – both criminalizing the act and rules helping us to get the necessary information.

The prosecution-system in Denmark

Director of Public Prosecution

6 regional state prosecutors

The prosecutor for serious economic crime

The prosecutor for international crimes against humanity

12 police directors
INITIAL PHASE

Investigators:
- Reception/selection/initiative case
- Initial considerations eg. Special investigative techniques
- General time frame

Prosecutors:
- Deliberations regarding conditions for prosecution, subsumption, time-barring, legal tenability, other legal questions
- General time frame
INVESTIGATIVE PHASE

Investigators:
- Training?
- Data collection (open sources)
- Supplementary questioning of complainants/victims

Prosecutors:
- Training?

Investigators:
- Supplementary criminal procedural measures
- Investigative focus
- Investigations abroad?
- Eurojust
- JIT

Prosecutors:
- Supplementary criminal procedural measures
- Investigative focus
- Letters of request
- Eurojust
- JIT
CONCLUDING THE INVESTIGATION

Investigators :
* Supplementary investigation (requests by the defence team?)
* Case summary
* Outline of documents

Prosecutors :
* Draft of indictment
* Presentation to superior authorities, special authorities, etc
* Presentation
INVESTIGATION AND PROSECUTION OF CORRUPTION
25 – 26 September 2012 - Batumi, Georgia

Investigators :
* Glossary etc.

Prosecutors :
* Pre-trial court hearings ?
* Pruning, waiving prosecution
* Checking legality
* Bringing an indictment

BRINGING THE CASE BEFORE THE COURT

Investigators :
* Preparing the extract
* Visual aids
* Possible supplementary investigation

Prosecutors :
* Preparing the extract
* Preliminary court hearing
* Indictment
* List of evidence
* Plan for the trial
INVESTIGATION AND PROSECUTION OF CORRUPTION
25 – 26 September 2012 - Batumi, Georgia

TRIAL (1ST AND 2ND COURT INSTANCES) AND AFTERWARDS

Investigators:
- Supplementary investigation
- Assistance at court hearings?
- Confirmation of list of items taken into police custody
- Filing the case

Prosecutors:
- Supplementary investigation
- Court hearings
- Notifying/reporting to relevant authorities

UNICEF-case
Norwegian Citizen,

- 5½ year imprisonment for
- accepting bribes at a value at 5½ million Norwegian Kroner, that is to say about 730.000 €.
From an investigative point of view

- Lifting of immunity.
- Search and seizure
- How to investigate.
- Where to prosecute.
- Inform the perpetrator about the report to the police??
Session 2: Criminalisation and Enforcement of the Offence of Illicit Enrichment

The following presentations were made:

- **The Illicit Enrichment Study: Main Findings** by Lindy Muzila, Stolen Asset Recovery Initiative, UNODC
- **Experience of the Independent Commission Against Corruption** by Eric Yang, Hong Kong, China
- **Illicit Enrichment: Criminalisation and Practical Experience in Lithuania** by Saulius Urbanavičius, Lithuania
The Illicit Enrichment Study: Main Findings

Ms. Lindy Muzila
United Nations Office on Drugs and Crime (UNODC)
UNODC and the World Bank Stolen Asset Recovery Initiative

Introduction

- Illicit enrichment as an anti-corruption mechanism under Art. 20 UNCAC
- Mandate of the Illicit Enrichment study
- Objectives of the study
- Methodology

The experiences of jurisdictions prosecuting illicit enrichment

- Focus of the study was on India, Pakistan, Argentina and Hong Kong.
- They consider illicit enrichment a useful tool.
- Have put in place mechanisms to help in the detection and prosecution of illicit enrichment.
- The limited statistics available indicate that in terms of convictions, illicit enrichment prosecutions have moderate to high conviction rates.
Illicit enrichment and asset recovery

- In all jurisdictions reviewed, the illicit enrichment law addresses the recovery of the assets illicitly acquired.

- There is also no solid statistical data to establish whether illicit enrichment has substantially contributed to the recovery of assets.

International cooperation in illicit enrichment cases

- Dual criminality remains a potential hurdle.

- Several jurisdictions have publicly indicated their willingness to assist in MLA.

- In drafting requests, the conduct in question could be classified as an offence within its legal system.
in most cases, there is no actual reversal of the burden of the proof, but a different material element (actus reus) constituting the offence.
• the presumption that arises after the prosecution has demonstrated its case is, per se, unlikely to cause prejudice in itself to an accused.
• What matters is the quality and clarity of the illicit enrichment provision itself.

Global experience in illicit enrichment so far is sparse and mixed.
• However, the limited experience available shows that illicit enrichment can be implemented in full respect of Human Rights.
• While it can be a useful anti-corruption and asset recovery tool, mechanisms and resources need to be put in place before implementation.
Experience of the Independent Commission Against Corruption

Mr. Eric Yang
Principal Investigator
Operations Department
The Independent Commission Against Corruption (ICAC)
Hong Kong, China

Prevention of Bribery Ordinance

SECTION 10 INVESTIGATION

What would you say ....
No cash withdrawal from salary account for 19 months within 3 consecutive years

HK$120,000 (US$50,000) cash deposit to repay credit card expenses
Background of Enacting Section 10

- Draconian - burden of proof of absence of corruption on the defendant
- Corruption endemic in Hong Kong for years - undermine whole fabric of society
- S. 10 - multiple S. 4
- Strong indication of corruption having taken place but impossible to prove acceptance of bribe
- Difficult or impossible for prosecution to establish a Government Servant had received bribe(s) BUT his material possessions were of an amount or value so disproportionate to his official emoluments as to create a prima facie case that he had been corrupted

Section 10 POBO v Bill of Rights

- Onus on accused to provide an explanation deviates from common law principle
- What triggers the explanation requirement is incommensurateness or disproportion which is unreasonable in the circumstances
- Balance between fighting corruption AND protecting rights of innocent people
Corruption - requires special powers of investigation and provisions

- dictated by necessity
- difficult to detect & prove
- happy parties situation - no hard evidence
- victims - society

Difference between S.10(1)(a) & S.10(1)(b)

- S.10(1)(a) - standard of living incommensurate with official emoluments
  - during the charge period (within 7 years - availability of bank documents)

- S.10(1)(b) - control of pecuniary resources / property disproportionate to official emoluments
  - particular assets / properties at the date particularized
Prosecution must establish a prima facie case

- Prove status as Government Servant

- [S. 10(1)(a)] maintained standard of living incommensurate with present or past official emoluments during charge period - expenditure & capital accretions could not be reasonably afforded out of official emoluments

- [S. 10(1)(b)] was in control of pecuniary resources or property disproportionate to present or past official emoluments

Investigation - prove a disproportion between official emoluments & standard of living / property under control
Special Investigative Power under POBO

S. 13 Authorization
Investigate accounts and require production of documents

S.14(1)(a) Notice to Suspect
Statutory declaration or statement in writing
[within 3 years:  (I) property;
(II) expenditure incurred by suspect, parents or children;
(III) liabilities incurred by suspect, agents or trustees]

S.14(1)(b) Notice to Suspect
Statutory declaration or statement in writing
[no time limit: Information on property or money sent out of by suspect or on his behalf]
**S.14(1)(c) Notice to Non-Suspect**
Statutory declaration or statement in writing
[no time limit: information on property – date and from whom acquired]

**S.14(1)(d) Notice to Non-Suspect**
Appear before ICAC officer – furnish information on oath
– produce documents

**S.14(1)(e) Notice to Person in charge of Public Body**
Furnish certified documents in his possession

**S.14(1)(f) Notice to Bank Manager**
Produce copies of accounts of suspect, spouse, parents or children
S. 14C Restraining Order

[Suspect and/or Third Party including Bank]

Impose condition on property or exempt property from operation

Thorough Financial Investigation

S.10(1)(a)
Standard of living - all outgoings (including expenses incurred abroad) & capital accretions

- goods and services acquired during charge period
- running costs, expenses of repairs or maintenance and outgoings, incurred during the charge period, connected with property acquired before the charge period
- value of gifts made
- money spent by defendant on another’s standard of living
- ability to obtain credit during charge period
- prepayment of periodic outgoings within charge period
- goods and value of services obtained on credit
- emoluments received but excluding those not actually paid during charge period
- amount of hire charges paid during charge period

- bills remaining unpaid for goods supplied and services rendered during charge period
- school fees of dependent children
- salary tax actually paid
- increase in defendant’s bank balance between the beginning and the end of charge period
- deposits in banks & investments held but excluding notional interest thereon
- payments made by third parties for and on behalf of defendant for goods and services maintaining defendant’s standard of living - such payments might be included as part of the explanation of standard of living maintained where court is satisfied that payment was made with untainted money
- credit given for money received from sale of assets or goods acquired before charge period if shown to have come from untainted source and shown the monies were utilized in maintaining defendant’s standard of living
S.10(1)(b)

In control of pecuniary resources or property, or both

- Items of property under control of defendant at a specified date
- Prove amount of pecuniary resources & other assets in defendant’s control at that date
- Prove total official emoluments up to the same date
- Establish disproportion between the two

Both S.10(1)(a) & (b)

- All land check [valuation of assets]
- Source of funds for the purchase of all assets
  - properties, vehicles, yachts
  [valuation of assets]
Bank Enquiries

Local bank accounts

- Overdrafts Repayments
- Credit Card Repayments
- Certified true copies of all vouchers & bank records
- Statements from all depositors/cheque payees
- Affidavits for production of bank documents
- Statements for production of documents from credit card companies & financial institutions
Overseas bank accounts

- Mutual legal assistance - treaty countries
- Letters of Request - from Judiciary to Judiciary
- Depositions / Affidavits

Collation of evidence to forestall possible defence

- Financial support by relatives - proof of their financial position
- Winnings from gambling (or from illegal off-course betting)
- Money acquired from illegal source other than corruption
**Formal/Prime evidence to be adduced**

- Proof of Government Servant status & employment history
  - statement from department

- Proof of official emoluments
  - information from Treasury & Certificate from the Chief Secretary

- Expert accountant’s report to prove the case

**Standard of Proof**

- Prosecution case - beyond reasonable doubt (not only prima facie)
  - Prosecution can only rely on S.10(2) presumption after having proved the case beyond reasonable doubt

- Defendant - give explanation on a balance of probabilities
  - show the money which accounted for the living expenses or acquired the property from non-corrupt or untainted sources
  - merely need to show more likely than not that the money came from legitimate sources
  - discharge burden of proof by tipping the balance in his favour - no matter how slightly
  - no need to give satisfactory explanation beyond doubt
Aid & Abet S.10

Relatives or Associates

I) knew that suspect maintaining during charge period a standard of living incommensurate with official emoluments

II) knew that defendant unable to prove money used to maintain disproportionate standard of living came from untainted source

knew (I) and (II) - aided and abetted defendant to continue to maintain that standard of living by actively assisting him in concealing or otherwise dealing with his money for which no satisfactory explanation could be given

Standard of Proof

- Prosecution case - beyond reasonable doubt (not only prima facie)
  - Prosecution can only rely on S.10(2) presumption after having proved the case beyond reasonable doubt

- Defendant - give explanation on a balance of probabilities
  - show the money which accounted for the living expenses or acquired the property from non-corrupt or untainted sources
  - merely need to show more likely than not that the money came from legitimate sources
  - discharge burden of proof by tipping the balance in his favour - no matter how slightly
  - no need to give satisfactory explanation beyond doubt
Aid & Abet S.10

Relatives or Associates

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REID Case Study
This case involves a government official who

- was corrupt, and
- had amassed huge wealth through misuse of office

The official was

- the Deputy Director of Public Prosecutions,
- well conversant with the anti-corruption laws,
- had received his corrupt monies through his lawyer friends,
- had laundered the proceeds overseas, and
- no witnesses to his corrupt acts were forthcoming
Charles Warwick REID

- Position: Acting DPP
- Allegation: Accepted bribes through lawyers to drop prosecutions (Arrested in October 1989)
- Investigation: A full S.10 POBO enquiry (Tracing of disproportionate assets and corrupt proceeds)

Family members:
- Wife
- Parents
- Parents-in-law
- Children
- Sister-in-law

Corrupt Associates:
- One barrister
- Two solicitors
- Five businessmen (offerors)
Enquiries

- Bank enquiries on REID, family members, lawyers
- Identified the movement of monies
- S.14 Notices served on REID
- Escaped from Jurisdiction before Christmas

Overseas enquiries

- Overseas enquiries: 9 countries/regions including Taiwan, Singapore, New Zealand, United Kingdom, China, Philippines, Malaysia, Vanuatu & Macau
- Evidence obtained through letters of request
The Laundering Process

Bribes paid to REID in HK$ and US$

$US remitted to ANZ Bank, Singapore  
(account in the name of REID’s mother)

US$ remitted to First Commercial Bank, Taipei  
(account in the name of an associate of REID’s accomplice)

US$ remitted to Hang Seng Bank account, Hong Kong  
(account in the name of LIU Jui-shin, a bullion dealer)
Gold purchased in Hong Kong sold in Taipei (through the bullion dealer)

NT$ deposited in International Bank of China, Taipei (account of REID’s first attorney in Taiwan)

Funds disbursed through REID’s first attorney in Taiwan:

A) US$ remitted to REID’s bank accounts in New Zealand for purchase of properties

B) US$ remitted to ANZ Grindlays Bank, London (account of Pacific Capital Growth Funds Ltd)

US$ remitted to ANZ Bank, Hong Kong (account of Pacific Capital Growth Funds Ltd)
US$ remitted from ANZ Bank, Hong Kong to five different locations:

a) En Tie Commercial Bank, Taipei
   (account of REID’s second attorney in Taiwan)

b) Pacific International Trust Company Limited, Vanuatu
   (held in trust by Gordon Trust Fund)

c) Bank accounts in England and New Zealand (held in the name of REID’s parents-in-law)

d) Bank accounts in Australia and New Zealand
   (held in the name of REID’s sister-in-law)

e) Pacific International Trust Company Limited, Vanuatu
   (held in trust by Sajeca Trust for the benefit of REID’s children)
Pleaded guilty to controlling assets (HK$12.4 million or US$1.5 million) disproportionate to his official emoluments

Sentenced to 9 years imprisonment

Sentence reduced to 8 years following his testimony against his accomplice lawyers and offerors

Surrendered his ill-gotten money
Illicit Enrichment. Criminalisation and Enforcement.

• A key challenge in fighting corruption is to prevent gaining assets through corruption crimes;
• Bribes, advantages, property benefits – these are important factors motivating the corrupters;
• Effectiveness of property confiscation is very topical question.

Illicit Enrichment. Criminalisation and Enforcement.

• A working group consisting of representatives of the prosecution services, Special Investigation Service, ministries of Justice and Interior developed a draft law relative to extended confiscation of property, as a tool of criminal punishment, and a separate offence of illicit enrichment.
Illicit Enrichment. Criminalisation and Enforcement.

Changes were brought by an initiative of the President leading to new laws on:
- Reform of confiscation of property, introducing new norms on extended confiscation;
- Amending offences committed against civil service and public interest;
- Raising sanctions for offences committed against civil service and public interest;
- Introducing an obligation to the prosecutor conducting pre-trial investigation to search property gained illegally with the aim of its confiscation (in 2010).

Illicit Enrichment. Criminalisation and Enforcement.

Article 189. Illicit Enrichment
1. A person who, by right of property, possesses property in the amount exceeding 500 MLSs was aware or ought to have been aware or could have been aware that the property could not have been acquired by means of legal proceeds, shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.
2. A person who took over the property indicated in Paragraph 1 of this Article from third parties shall be released from criminal liability for illicit enrichment where he, prior to reporting on the suspicion, informed about it law enforcement institutions and actively co-operated with them in identifying the origin of the property.
3. A legal entity shall also be held liable for the acts provided for in this Article.
Illicit Enrichment. Criminalisation and Enforcement.

There is limited experience in enforcing this new provision. In almost 2 years since the law entered into force in total 94 pre-trial investigations have been taking place, including:
- 15 were stopped;
- 8 investigations led to laying charges;
- 2 investigations were finalised by a court verdict;
- Currently 69 criminal cases are under investigation for this crime.

Example from practice:

The case of “the King” - Son of former police officer (who created earlier a crime group involved in contraband and was sentenced for contraband) has immovable property, the value of which is about 1.5 million euros. Information was available that the property was acquired illegally by the father. The official salary of the 27 years old son was about 7 800 euros/annually.

On the basis of this information, the tax service started a criminal case for illegal enrichment.
Illicit Enrichment. Criminalisation and Enforcement.

- Positive experience from investigating such cases so far is limited.

- The legal provision itself is ambiguous, and there is not a single case which would have gone through all the court instances.

Illicit Enrichment. Criminalisation and Enforcement.

Challenges:
- Lack of court practice with cases of this kind and proving illegal gains;
- Prosecution is reluctant to qualify this offence, since it is difficult to prove illegal origin of the property gained through committing it;
- Problems also arise from rights not to testify against oneself (against self-incrimination);
- Absence of mandatory declaration of assets for all citizens (it is mandatory only for public officials, civil servants and persons looking for tax deduction), which would allow establishing asset situation of all inhabitants.
Illicit Enrichment. Criminalisation and Enforcement.

Challenges:

• Small loans only accounted for on unofficial lists of loans or loans from foreign citizens impossible to check;
• Loans received from foreign enterprises registered in tax free zones;
• Establishing actual market value of immovable property in relation to declared value;
• The principle of burden of proof in criminal process is undefined – in fact it is shared, being on the prosecutor and then the suspect, while according to the criminal law charges should be laid by the state, in the person of prosecutor.

In conclusion:

It is early at this stage to assess the success of this criminalisation. There are only few criminal cases, based on which trends in enforcement can be identified.

Courts already expressed doubts about the criminalisation, however, the Constitutional Court declined the request of one of the courts to assess the constitutionality of the new law, explaining courts should decide on unclear matters as part of court proceedings of such cases.
Session 3: Investigating and Prosecuting Corruption of Legal Persons

The following presentations were made:

Corporate Responsibility in Corruption Cases by Peter Koski, the United States

Investigation and prosecution of criminal offences involving legal persons in Serbia by Mirjana Jakovljevic, Serbia

Investigating and prosecuting corruption of legal persons in Italy by Donata Costa, Italy

Criminal liability of legal entities in the Republic of Azerbaijan by Sahib Ismayilov, Azerbaijan
Corporate Responsibility in Corruption Cases

Mr. Peter Koski
Attorney
Department of Justice
the United States

U.S. v. Juan Bravo & Hector Martinez

Juan Bravo

Ranger American

2

3
Principles of Corporate Culpability

• Did the agent act on behalf of company’s interests
• Pervasiveness of wrongdoing within the company
• Corporation’s history of similar conduct
• Corporation’s remedial actions
• Collateral consequences and adequacy of prosecution of company’s principals
High-profile defendants sometimes seek to exploit the press to their advantage.
Investigating and Prosecuting Criminal Offences of Corruption Offended by Legal Entities - Legislation and Practice in the Republic of Serbia

Ms. Mirjana Jakovljevic
Deputy Higher Prosecutor
Belgrade Higher Prosecutor’s Office
Serbia

THE MAIN GOALS, REVISION OF LAW AND PRACTICE FROM THE 2000 - 2012

- Suppression of organised crime
- Protection of human rights
- Combating corruption

REVISION OF LEGISLATION IN STRENGTHENING COMBATING CORRUPTION

CRIMINAL LEGISLATION
- CRIMINAL CODE (2005)
- CRIMINAL PROCEDURAL CODE (2001)

THE PURPOSE OF CHANGES:
- Broader definition of corruption;
- Modernising of existing and prescribing new procedures for detecting criminal offences;
- Extending the powers of law enforcement agencies and prosecution service in detecting and prosecuting corruption.
NEW LEGISLATION IN INVESTING AND PROSECUTING CORRUPTION

CRIMINAL LEGISLATION

› LAW ON THE LIABILITY OF LEGAL ENTITIES FOR CRIMINAL OFFENCES (2008)
› LAW ON SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME (2008)

OTHER LEGISLATION

› NATIONAL STRATEGY FOR COMBATING CORRUPTION (2005)
› LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING TERRORISM (2005)
› LAW ON ANTI-CORRUPTION AGENCY (2008)

ON LIABILITY OF LEGAL ENTITIES FOR CRIMINAL OFFENCES

THE GROUNDS FOR LIABILITY

ART. 6. PAR. 1

Legal entity is liable for a criminal offence committed for its benefit by a responsible person within his/her authorities.

Conditions for application of law:

1. Commitment by the known natural person (direct perpetrator) who has certain position and power within a legal entity;
2. Benefit has to be precisely determined.
CRIMINAL PROCEEDINGS - CHARACTERISTICS

- Criminal proceedings are initiated and conducted jointly against legal entity and responsible person. A single sentence is being brought for the same criminal offence;
- An accused legal entity is represented by a chosen proxy, or a proxy appointed by the court during the criminal proceedings;
- There is no compulsory defence for a legal entity even if defence is compulsory for the responsible person;
- Provisional measures could be ordered by the court *ex officio* or under the request of public prosecutor, if there is a danger that a later confiscation of the proceeds would be more difficult or impossible, or if there is a reasonable doubt that a criminal offence may be continued. The court may prohibit status related changes which would lead to deletion of accused legal entity from the register;
- Penal sanctions are fines, with possibility of imposing suspended sentence, or deletion of legal entity;
- Special chapter of the law regulates enforcement of court decisions.

LAW ON SEIZURE AND CONFISCATION OF PROCEEDS FROM CRIME

- Precisely specifies the list of criminal offences of corruption or connected with corruption;
- Law is applied against the perpetrators of criminal offences and bequeather or third party to which the proceeds from crime have been transferred;
- Financial investigation shall be ordered by the public prosecutor when reasonable grounds exist to suspect that he/she possesses considerable assets deriving from a criminal offence;
- The proceedings of permanent seizure of assets will be initiated upon finality of judgement;
- Public prosecutor proves only the disproportion between legal income and value of assets.
COMPETENCES OF THE REPUBLIC PROSECUTOR OFFICE IN CRIMINAL CASES OF CORRUPTIONS

- Republic Prosecutor Office of Serbia shall be informed on each case with the elements of corruption;
- Special Department for Combating Corruption has been formed within the Republic Prosecutor Office of Serbia;
- All acts of public prosecutors are under supervision of Republic Prosecutor Office as the highest prosecuting instance in Serbia.
Investigating and prosecuting corruption of legal persons in Italy

Ms. Donata Costa
Public Prosecutor’s Office
Court of Monza
Italy

1. Companies bribery and the liability of Legal Entities

Europe is quite new to the concept of the liability of legal entities, according to the roman law principle *societas delinquere et puniri non potest*.

The legal system of the United States had already recognized the concept of the legal liability of legal entities at the end of the nineteenth century, when the antitrust rules were introduced, aiming at sanctioning the acts that the American Congress called “economic abuses”.

In 1909 even the Supreme Court of the United States confirmed the constitutional legitimacy of the principle of the legal liabilities of legal entities by the famous judgement New York Central & Hudson River R.R. vs. United States.

In Europe the criminal system had become inadequate to the modern economic system and to the forms in which business are managed, in the 90 % of the cases through companies and legal entities.

For this reason Brussels Convention 26th July 1995 on the protection of the financial interests of E.C. and the Brussels Convention 26th May 1997 on the fight against the corruption of E.C. officials and of the member States, besides prescribing to the member States of the E. C. common provisions concerning the fight against the corruption, required necessarily a system for the imputation of the liability even towards the companies and the legal entities.

For this reason, at the end of 1990s, the liability of the companies and the legal entities was introduced in most of the European countries.

The introduction into the Italian Legal System of the administrative liabilities of legal entities took place with the Legislative Decree 8 June 2001, No 231.

As provided by this Legislative Decree, the companies and the economic legal entities are considered directly liable for the crimes committed by individuals acting in the interest or for the profit of the legal entity itself. Therefore the Decree aimed at prosecuting more efficaciously the crimes committed within the company structures and at encouraging the beginning of a culture of legality in the carrying out of the company activities.

The liability of legal entities is envisaged exclusively in case the individuals commit the crime while exercising their company duties or functions and in case of illegal conduct explicitly provided for by the law.
It is evident that the discipline in force in Italy was inspired by United States’ legal system, particularly with respect to the discipline of the organization, management and control model, which involve the exemption from the liability, if efficaciously adopted – similarly to what is provided for with reference to the so called American compliance programs.

### 1.1 Identification of the legal entities to whom the discipline is applied

To identify the legal entities having a legal status it is sufficient to refer to the rules of the Civil Code.

The State and the territorial public legal entities (Regions, Provinces –Districts-, Municipalities), as well as the non profit public legal entities, are included among the subjects which are not liable pursuant to the Legislative Decree 231/2001.

The only public legal entities subject to the administrative liability are therefore the for-profit legal entities, observing the ratio of the legislative intervention that is to repress “illicit behaviours in the carrying out of purely economic activities, that is with profit purposes”.

Among the legal entities excluded from the discipline of the administrative liability there are also those legal entities exerting functions of constitutional importance, as for example the political parties and the trade unions.

Art. 4 of the Legislative Decree 231/2001 provides for the liability of the legal entity also for crimes committed abroad in the interests or for the benefit of a company having its head office in Italy.

In this case, the applicability of the discipline under consideration depends on two conditions:

a) the supposed crime has to be included among these for which the jurisdiction of the Italian Judge is provided for;

b) the State where the crime has been committed must not take legal proceedings against the legal entity.

Art. 4 expresses a general principle of territoriality and this is why foreign legal entities exerting in Italy are subjected to Italian Law and therefore also to the Legislative Decree 231/2001.

### 1.2 The constituent elements of the “administrative” offence

The liability of the legal entities introduced by the Legislative Decree 231/2001, even if it was called “administrative”, presents the typical features of the criminal liability: it depends on the commission of a crime, it is established by means of a criminal proceedings and provides for very heavy sanctions.

The competent authorities (to apply it) are the Public Prosecutor (for the investigation) and the Criminal Court (for the judgment).

Also the Court of Cassation stated on this matter, saying that “the new liability, nominally administrative, conceals his substantially criminal nature” (Cass Pen, Judgement n. 3615, 20 December 2005)

The Legal entity is considered liable when the following circumstances take places jointly:

a) the commission of particular types of crimes provided for within the scope of the Legislative Decree 231/2001;
b) the criminal offence was committed by subjects belonging to the organizational structure of the legal entity;
c) the crime was committed in the interest or for the benefit of the legal entity;
d) the legal entity has not adopted and efficaciously implemented an organization, management and control model.

a) The commission of a specific crime
In 2001 the legislator chose a “minimalist” approach, approving a decree which only provided for the fraudulent crimes described in the International tools subject of ratification: the crimes of extortion, corruption and fraud.
Anyway in the years following the enforcement of the Decree, the legislator inserted new crimes which entail the liability of legal entities. Currently the list of crimes provided by the law cover almost completely the corporate crimes, including the offenses against the Public Administration, the crimes against public safety, money laundering, manslaughter and culpable harm committed by the violation of the rules on workplace safety and health, the crimes concerning the protection of the environment.

b) Subjects on “top positions” and “subordinate” subjects

The second necessary condition to the emergence of the legal entity’s administrative liability is represented by the commission of one of the crimes listed above by individuals belonging to the corporate organization.

The foresaid subjects have been identified through an adaptable formula which emphasizes the concrete carrying out of the duties rather than the office formally held.

In the matter case, two categories of subjects have been introduced: the so called “top position subjects” and the so-called “subordinate subjects”

As far as it concerns the first category, reference is to those subjects having representative, administrative or managing functions within the legal entity, as for example, legal representatives, directors and executive managers, also belonging to an autonomous organizational unit, as the so called plant managers, including the subjects that, effectively carry out the above mentioned functions.

The subordinate subjects are those individuals subject to the direction or supervision of the top position subjects: clearly for them, though the identification with the company is weaker, what it is important is to act in the interest of the legal entity.

c) The interest or the benefit of the legal entity

Case Law confirmed that “interest” and “benefit” are two alternative conditions, as the interest represents the aim of the individual’s criminal behaviour and, therefore, may be verified with reference to the existing situation before the commission of the crime (ex ante), while the benefit is represented by the actual advantage achieved at the result of the crime even if the perpetrator had not imagined it.

In any case the author of the crime has to commit the crime in the interests of the legal entity.

d) The entity’s negligence: the non-adoption of the organization, management and control models
The further necessary condition for the beginning of the administrative liability is the so-called “entity’s negligence”, by which the legislator intentionally pursued the aim of stimulating the development of a culture of legality within the corporate activities.

The adopted system, as said before, was inspired by the compliance programs used in the United States and it entails the exemption from liability when “organization and management models, suitable to prevent crimes of the same kind of the one which took place, are adopted and efficaciously implemented, before the commission of the crime”.

The adoption of a model having the characteristics provided for by the foresaid rule is sufficient to avoid the legal entity’s liability for the crime committed by a subordinate subject.

On the contrary, the conditions for the exemption are stricter for the crimes committed by top position subjects who plainly express the legal entity’s will.

Specifically, it will be up to the legal entity proving that:

a) it adopted the organization, management and control model;

b) it entrusted an autonomous body with the task of supervising the functioning and complying with the models and carrying out the updating;

c) the perpetrator of the crime committed it eluding fraudulently the organization models;

d) there was no omitted or insufficient supervision by the supervisory body.

Eventually the organization, management and control models take an important function even if adopted after the charged criminal act was committed. The foresaid models, if adopted before the criminal act, may exclude the liability of the legal entity, while, if implemented after the commission of the crime, they allow to obtain an attenuation of the pecuniary sanction and, in the presence of further reparatory conducts, the exclusion of the prohibiting sanction.

1.3 Sanctions and precautionary measures

The sanctions predicted for the legal entity may be divided into four different categories: pecuniary sanctions; prohibiting sanctions; seizure; and publication of sentence. In case of assessment of liability, the pecuniary sanction, as well the seizure are always applied, while the prohibiting sanctions may be applied to the cases expressively provided for. The publication of verdict of guilty is optional.

Pecuniary sanctions consist in a number of fees, from one hundred to one thousand. The purpose of this system of sanction is to assure the efficacy of the sanction, whose total amount will be the result of the multiplication of the amount of each fee, on the basis of the economic condition of the legal entity, by the number of fee considered proper to the seriousness of the crime.

Prohibiting sanctions are certainly the most fearful, both because they may entail important effects on the business activity and because they may be applied even in a precautionary way, before the final sentence:

a) prohibition of carrying out the business activity (that can be applied only when any other sanction is inadequate - *extrema ratio*)

b) suspension of authorizations, licenses or permits instrumental to the commission of the crime;

c) prohibition to deal with the Public Administration;
d) temporary prohibition to obtain facilitations, loans, contributions or subsidies and the possible revocation of those already granted;

e) prohibitions to promote goods or services.

Publication of the sentence is an accessory and facultative sanction, which may be decided when a prohibiting sanction is applied.

Seizure hits the price and the profit of the crime and is compulsory in both cases. The Decree provides the possibility to seize sums of money, goods or other utilities having an equivalent value to the price or to the profit of the crime. The profit subject of the seizure is represented by the economic benefit derived from the commission of the crime. In any case the seizure is always related to goods belonging to the liable company.

2. Corruption

2.1 Corruption in general

Corruption is a very old practice, as shown by the Latin origin of the word. The structure of the crime has not changed very much in the course of the time: that is to pay money (or to give other utilities) to obtain an undue advantage, from the side of corruptor; to accept money (or other utilities) to commit something against his official duties from the side of the corrupted.

Some countries punish both public and private corruption but in many others only corruption of public officials is considered a crime.

Corruption of public officials is generally much more difficult to detect than private corruption. It is true that corrupted people always act in a secret manner. However when corruption occurs within a public body, although the public interest is seriously damaged, it is very uncommon that corrupt practices are denounced by the colleagues (or even the superiors) of the corrupted officials.

Unfortunately the public interest has no advocates. When corruption occurs within a public body it is very likely that most of its employees have been familiar with gifts and bribes for decades, and the superiors have tolerated or directed such practices. So this means that corruption of public officials is particularly difficult to detect.

Bribery is without any doubt a “phenomenon which raises serious moral and political concerns, undermines good governance and economic development” (making reference to the preamble of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997)

In 1999, in the preamble of the “Criminal Law Convention on Corruption” it’s written:

“Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against corruption, including the adoption of appropriate legislation and preventive measures;
Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.

So corruption is something which directly affects democracy. When bribery of public officials is considered customary it is sure that the selection of the political élites is very strongly connected to dirty money flows.

It affects the integrity of the entire public administration. Under corrupted politicians you generally find thousands of dishonest civil servants and this is true in all the links of the chain; from the head of the State, to the customs officer at a remote border and the policeman in the street.

International corruption means illegal exploitation of resources (think of illegal logging in Africa or the consumption of land for massive overbuilding) or selling a country’s resources at a very low price (think of oil) or paying at inflated prices weapons, technology etc.

The task of fighting corruption has become the only way to “develop” for the “developing countries”. But it can be very hard. It is not only matter of having well trained police forces and appropriate technology.

The biggest problem lies in the lack of independent prosecution. If the prosecution has a pyramidal structure and the Attorney General - who is generally very close to the Government (member of or nominated by) and well acquainted with top officials - is free to decide whether to bring a case to court or simply dismiss it, it is clear that there is very little space for any effort to investigate and prosecute grand corruption.

I think this is a prerequisite. In Italy the independence of the public prosecutor is linked with the mandatory prosecution.

Another problem is, of course, effective legislation both in terms of severity of the penalties and in terms of the means of investigation available.

2.1 International corruption

According to the law international corruption is corruption of public officials.

The 1997 OECD Convention regards “bribery of foreign public officials in international business transactions” as defined in the Art.1: “to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”

The cases of foreign bribery are very often cases of grand corruption.

This is the form of corruption where the public officials involved are generally of very high rank, even Heads of States, and the size of the bribes is very significant.

In the cases of grand corruption there are further obstacles to the enquiries: political interferences and collusion between people under investigation and the investigators.
The cases of international corruption are necessarily transnational cases and, at least, two-side cases.

In fact, not considering at the moment the various intermediaries who often play an important role in the plot, in a case of foreign bribery the concerned jurisdictions are at least:

- the corruptor’s state (e.g. US, UK, France Germany etc) and
- the corruptee’s state (e.g. Nigeria, Pakistan, South Africa).

The corruptee’s side is the most important because practically the whole story is over there. On the corruptor’s side you generally see only improper and/or suspicious payments.

It must be stressed that a thorough and successful investigation in this matter should require a combined approach. Investigators of the developed countries and of the developing countries should work together but this generally doesn’t happen.

### 3. Investigation

Since officials generally don’t denounce themselves (or their colleagues) and the acts of the public officials are generally well-constructed and don’t reveal sign of law-breaking, it is possible to find clues of bribery only in two points of the structure:

- the corporate records;
- the path of the money.

#### 3.1 Corporate accounts

From the corruptor’s side, an investigation into corruption is basically an investigation into corporate wrongdoings and financial transactions.

A central role in tracing illegal flows of money is played by the investigation into corporate accounts.

The offence of false accounting is the main tool in the hands of investigators and prosecutors when they try to detect misconduct within companies. It is fundamental for 2 reasons:

- because it is essentially a sign of illness in the body of the corporations: if the books seems fake there is undoubtedly some wrongdoings in the company: misappropriation, tax fraud, market abuse, corruption.
- because it allows extensive investigations into the company’s accounts and makes it possible to identify the chain of command

It must be remembered that article 8 of OECD Convention reads: “In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary... regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents... for the purpose of bribing foreign public officials or of hiding such bribery...Each Party shall provide effective, proportionate
and dissuasive civil, administrative or criminal penalties for such omissions and falsifications”

3.2 Mutual legal assistance (to path the money)

Very often, in the investigations for bribery is necessary to obtain evidences in other Countries: the profit of the bribery is hidden abroad, the money used for the corruption comes from foreign bank account.

When we deal with a case of international bribery, MLA is basic.

In our job we have to promote a proactive approach to international assistance, which implies that the authorities in the requested state and the requesting authorities act together in the evidence-gathering process.

This means in practice:
- an agreed investigation strategy;
- informal contacts and discussions on a regular basis;
- joint questioning of witnesses;
- joint execution of searches.

When this happens MLA is an exciting work, where you meet wonderful people, who have experience of the domestic legal technicalities and know the local environment; people who enable the foreign requesting authority to move between bank secrets and corporate archives with the same authoritativeness as the domestic enforcement agencies.

Unfortunately very often the requested authorities see the foreign MLA requests as an annoyance.

It is important to remember that article 9 of OECD Convention reads: “Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance...”

3.3 Practical advises

To fight bribery is necessary to look for good evidence and follow the rules, keeping in mind remembering that the corruptees are often powerful and therefore very well defended:

- During the investigation it’s functional to use such force as is reasonably necessary (search warrants, computer seizure, arrests warrants, phone listening). The evidence obtained in extreme situations can easily vanish during the trial;

- It’s also helpful to use experts, especially forensic accountants. But never force their work. If they reach some results independently of your suggestions, their evidence at the trial will be stronger and they will be less likely to be discredited during cross examination;

- Never put pressure on witnesses during the investigation. At the trial, any slight pressure that was put on them during the investigation is recalled by the witnesses as if their evidence would have been taken under duress.

In conclusion, when crooks are powerful, prosecutors must be clever. Forget the force, use the brain, but never give up.
Criminal liability of legal entities in the Republic of Azerbaijan

Mr. Sahib Ismayilov
Prosecutor
Anti-corruption Department
General Prosecutor’s Office
Azerbaijan

The Azerbaijani Government launched its anti-corruption efforts in 1994 pursuing a steady course of changes. Law on “Combating Corruption” was approved in January 2004. The Law defines general framework on the fight against corruption and determines responsibilities and mains tasks of the state bodies in this area. For its implementation more than 20 laws were amended to bring them into conformity with the anti-corruption law.

In 2004-2006 was implemented State Program for Fighting Corruption. Also The National Strategy on Increasing Transparency and Combating Corruption was approved by the President in July 2007. The Strategy is completed by an Action Plan for 2007-2011. Nearly National Anti-Corruption Action Plan 2012-15 was approved by the President on September 5, 2012. Before approval the draft of Action Plan has been reviewed by foreign specialists and they issued a positive opinion about it.

There are two specialized anticorruption agencies. First one is the Commission on Combating Corruption, which is a specialized entity in the prevention of corruption was established as a part of institutional measures in 2005. The Commission consists of 15 members, representing the executive, legislative and judicial branches. Also Anti-Corruption Department with the Prosecutor General was established in 2004 as a specialized entity in detection and prosecution of corruption related offences. Department also carries out special investigation means (SIM) in respect of the corruption offences.

During 2005-2011 years - 511 criminal cases in respect of 897 persons were sent to courts and in first 8 months of 2012 114 criminal cases in respect of 209 persons were sent to court.


Legal entities

The legal system of Azerbaijan is based around civil law. The legislation of Azerbaijan is developed according to the principle of division of material and procedural legislation. Legal norms attributable to one specific area are codified. The norms of the criminal law providing for criminal liability are codified into the Criminal Code of the Republic of Azerbaijan. This means that no other statute shall be the ground for
criminal liability, unless the appropriate provision of the Criminal Code refers to it or unless it is directly incorporated into the Code.

In order to implement GRECO and OECD’s recommendations over the past years it was proposed to consider amendments to the Criminal Code of Azerbaijan to hold legal entities criminally liable as it was required by international conventions to which Azerbaijan joined and it was several times discussed at the plenary sessions of the Parliament.

The Law "On Amendments to the Criminal Code of the Azerbaijan Republic", dated 7 March 2012, has adopted the new amendments related to the criminal liability of legal entities and penalties. Effective from 1 May 2012, legal entities will be subject to the criminal liability for the crimes committed by the following individuals in order to protect legal entity's interests:

- authorized individual representing the legal entity;
- authorized individual who has the right to make decisions on behalf of the legal entity;
- authorized individual having the supervisory authority over the legal entity's activity;
- legal entity's employee (if the crime is committed as a result of misconduct of the supervisory responsibilities of the above mentioned persons).

According to the amendments 2 new chapters were added to the CC: 15-1 Special confiscation and 15-2 Criminal proceedings against legal entities.

Criminal liability of the legal entity does not indemnify the individual from being subjected to the criminal liability for the crime committed by him/her. The liquidation of the legal entity is forbidden unless there is an effective court decision which has been executed considering criminal punishment measures for the legal entity and individual committed a criminal activity. The types of the criminal punishment measures which legal entities are subjects to are imposition of financial sanction, special confiscation, deprivation the legal entity from carrying out certain business activity and liquidation of the legal entity.

Together with the criminal penalties, the following issues are considered:

- nature and degree of the danger of the action to the society;
- amount of profit gained by the legal entity as a result of crime;
- number of crimes and seriousness of their consequences;
- aiding in revealing crimes and finding the criminals
- compensation of damages as a result of crime.

Before amendments “Confiscation of property” was considered as a criminal punishment measure, but after amendments this punishment measure was taken from the CC. Instead was added article under the name “Special Confiscation”, which is a wider notion. According to the amendments, if it is not possible to confiscate the property because it was used or another reason, the other property of legal entity with the same price will be confiscated. Besides, state authorities, municipalities, also international organizations cannot be a subject to criminal liability of legal entities.

Financial sanctions which are imposed to legal entities must not precede the half price of legal entity’s property. Also legal entities such as political parties, trade unions, governmental (municipal) bodies and legal entities where controlling shares belong to state cannot be liquidated.

After applying this law, nowadays drafts of the amendments to the Criminal-Procedural Code and Code on Execution of Punishments of Republic of Azerbaijan are prepared.
Also recently was adopted National Anti-Corruption Action Plan 2012-15 which contains a number of innovations.

First of all according to the Plan, in 2013, the rules for assessing the influence of the legal regulation (RIA) and rules of anti-corruption examination of draft legal acts are prepared.

It is also planned the improvement of consideration of applications and complaints, including introduction of single methodology and standards of organization of hotlines in governmental agencies, preparation of a law on personal protection, persons reporting on cases of corruption, direct enrolment of citizens by heads of state organizations.

Improvement of activity of the Anti-Corruption Commission and the Anti-Corruption Department under the General Prosecutor’s Office in particular implies creation of online-register of legislation, preventive measures.

Strengthening of the institutional mechanism to combat money laundering, including preparation of a legal act on return of asset recovery is planned as well.

It is also planned to improve legislation and institutional framework in the area of public service, including the drafting of the Code of Civil Service, introduction of the rotation system in the civil service and the implementation of pilot projects in this area.

The future introduction of the declaration of conflicts of interest and the interest of financial nature implies the adoption of specific legislation, introduction of e-declarations for those responsible.

Under the Plan, it is expected to improve municipal activities, develop fair business environment, promote to the audit system, state procurement (introduction of electronic state procurement), improve transparency of real estate registry, licensing and large complex of other events.

The plan also aims the improvement of legislation on prosecution of corrupt officials, including a draft law on criminal proceedings against legal entities, rules on restriction of the immunity of judges suspected of corruption, suggestions for improving the effectiveness of anti-corruption operational and investigative activities.

On July 13 the State Agency for Public Services and Social Innovations was established. This agency will manage the specially created centers "ASAN xidmet", coordinate the activity of the staff of state bodies that work in these centers, monitor and evaluate, deal with mutual integration of the state bodies’ data bases, accelerate organizing e-services, improve the governance in this area. Different services at these centers should be rendered on the basis of citizens’ appeals directly, over phone or via the Internet.
The following facts have been disclosed as a result of various national investigations:

- Petrov, who is the Minister of Fuel and Energy of country A, has purchased a resort home in the Medeteranian Sea coast for USD 8 million. USD 3.2 million went through three shell corporations before a bank transfer was made to purchase the house. These funds originated from a subsidiary of BlueOil (legal person in country B).
- WaterWays Inc. (legal person in country C) and BlueOil participated in the tendering process competing for the contract from the Government of the country A, three months prior to the payment of the house, for the building of oil and gas pipelines transiting from country B to Europe. The area through which the pipeline would pass was in a protected reserve. The contract required pre-approval from the Ministry of Fuel and Energy of the country A.
- WaterWays Inc. did not get a pre-approval from the Ministry of Fuel and Energy of the country A. As a result BlueOil was awarded a USD 560 million contract from the Government of the country A; the Head of Procurement at the Ministry of Fuel and Energy, Lana Sheva, signed the approval.
- Once the results have been announced WaterWays Inc. has filed a complaint that the tendering process was rigged (arranged in the interests of a particular company).
- In the course of investigation of this complaint, correspondence of the Minister was examined. An e-mail from Alan Smith, the executive of the WaterWays Inc., forwarded to the Minister by his Secretary under the Subject line (Personal) was found. It was sent a month before the announcement of the tender results. In it Mr. Smith states that “we are prepared to pay a 1 per cent fee required to win the contract”.
- The remaining payments on the Medeteranian Sea coast house were made through a series of cash payments.
- The investigation documented that all of Minister Petrov’s legal income was deposited to his bank account. No currency was withdrawn.
- Minister Petrov has no other legal sources of income.
- Head of Procurement Lana Sheva is a personal friend of Minister Petrov and she has received three promotions in the last 5 years.

Your tasks:

1. Discuss and list all of the possible offences which need to be investigated based on the presented facts in the jurisdictions that the participants represent.
2. Imagine that your investigative team has limited resources and the necessary discretion to go after only one offence. Remember based on this choice and subsequent investigation, the work of your investigative team will be evaluated. Now, discuss and choose one criminal offence that you believe could be successfully investigated and prosecuted.
3. Determine what the elements of this offence are (i.e.: answer the following questions: (i) what constitutes illegal actions, (ii) who committed them, (iii) for what purposes and (iv) with what intention)?
4. Decide what evidence you would need to gather to prove each one of those elements and how such evidence can be collected.

5. Select one of your team members to present your findings from the above four steps. Prepare a short presentation (5 minutes) which should contain:
   - the list of all offences
   - offence you selected and arguments why
   - elements of this offence
   - description of evidence you decided to gather to prove each element and how you planned to do it.
**Seminar Agenda**

**MONDAY, 24 SEPTEMBER 2012**

19:30  
Welcome dinner hosted by OECD, *Sheraton Hotel Batumi*

**DAY 1: TUESDAY, 25 SEPTEMBER 2012**

9:00  
**Opening and keynote address**

 Welcoming remarks:

- **Mr. Otar Kakhidze**, Deputy Minister of Justice, Georgia
- **Mrs. Olga Savran**, Manager of the Anti-Corruption Network for Eastern Europe and Central Asia, OECD

**Keynote Address:**

- **Mr. Otar Kakhidze**, Deputy Minister of Justice, Georgia
  
  “Investigating and prosecuting corruption – Georgian experience”

10:00 – 13:00  
**Session 1: Investigating bribery offences with complex elements**

This session will discuss investigated and prosecuted bribery cases involving offences such as offer and promise or solicitation of bribe, cases that involve non-material benefits, and bribery that benefited third persons or was committed through intermediaries. Speakers will be invited to describe how these cases were detected, for instance by using pro-active detection or reports from internal security services in public authorities in question, FIUs and other sources. They will further describe how the investigation was planned and organised, how intelligence and special investigatory means were used to collect direct and indirect evidence, how coordination of law enforcement bodies was organised, which measures were taken for tracing, freezing and confiscating assets in the country and abroad, and how cooperation with foreign jurisdictions, including off-shores, was organised. The speakers would also share their experiences on presentation of such cases in courts, as well as evidentiary problems faced and ways to resolve them.

**Moderators:**  
**Mr. Irakli Chilingarashvili**, Head of Legal Unit, Chief Prosecutor’s office, Georgia; **Mrs. Olga Savran**, Manager of the Anti-Corruption Network for Eastern Europe and Central Asia, OECD

**Panellists:**

- **Mr. Loïc Guérin**, Prosecutor, Court of first instance of Paris, France
- **Mr. Daniel Thelesklaf**, Head, Financial Intelligence Unit, Principality of Liechtenstein
- **Mr. Irakli Shulaia**, Prosecutor, Prosecutor General’s Office, Georgia
- **Mr. Flemming Denker**, former Deputy State Prosecutor, Office for Serious Economic Crime, Denmark

**Round-table discussion**

Questions to be addressed:

- Have you investigated/prosecuted cases involving offering, promising or soliciting a bribe? What is your experience how to successfully uncover such crimes?
• Have you dealt with cases where a bribe was a non-material benefits? What kind of benefit was it and how did you prove the receipt of it?
• What are the key preconditions and most successful methods to detect complex corruption cases?
• What are the main challenges you face in co-operation with foreign jurisdictions in corruption cases?

11:30 – 12:00 Coffee break

13:00 – 14:00 Lunch

14:00 – 15:30 **Session 2: Criminalisation and Enforcement of the Offence of Illicit Enrichment**

This session will look at approaches taken to criminalise illicit enrichment and how this offence is being enforced in various jurisdictions. Speakers will discuss experience and main challenges faced by their countries and institutions in this field through examples of their legislation and cases. Issues discussed will include illicit enrichment vs. presumption of innocence and the right not to testify against oneself, various approaches to reversal of the burden of proof. The use of asset declarations of public officials for investigative and evidentiary purposes and other complimenting elements, such as *in rem* forfeiture actions against stolen property will also be discussed.

Moderator: **Mr. Nikoloz Chinkorashvili**, Head of Anti-Money Laundering Unit, Chief Prosecutor’s Office

Panellists:
Ms. Lindy Muzila, Stolen Asset Recovery (StAR) Initiative, United Nations Office on Drugs and Crime
Mr Eric Yang, Principle Investigator, the Independent Commission against Corruption (ICAC), Hong Kong, China
**Mr. Saulius Urbanavičius**, First Deputy Director, Special Investigation Service, Lithuania

*Round-table discussion*

Questions to be addressed:
• If there is an offence of illicit enrichment in your country, when and why was it introduced (for instance, compliance with the UNCAC, good practice in other countries, more effective enforcement)?
• Did you in your own practice have cases on illicit enrichment and what were the challenges you were faced with in such investigations/prosecutions?
  - In your opinion is it a good tool in corruption investigations, if so what do you think could be benefits for investigator/prosecutor?
• If no, are you familiar with the concept and do you think such an offence would be of benefits for you in practice?
• Does your legal system provide for other avenues of the reversal of burden of proof? If so, describe how it can be done? And share your/your colleagues experience on it application?
• Are *in rem* forfeiture actions against the property possible in your country? Do you use such type of forfeiture in corruption cases? Is it within the competencies of your agency or another (for instance special agency created for such purposes)?
Did you ever use asset declarations statements submitted by public officials in your investigations/prosecutions of corruption cases? Did it have evidentiary value and were the courts accepting of such evidence?

15:30 – 16:00  Coffee break

16:00 – 17:30  Working Groups: Simulating an investigation (part 1)

This practical exercise will simulate the investigation of a realistic corruption case.

All participants will be divided into 2 Working groups. The work of each group will be divided into two parts: (i) working in smaller investigative teams; and (ii) working within the larger Working group. The participants will be asked to analyse and discuss within their smaller investigative teams the case. Then each investigative team will nominate one presenter who will present the findings of its investigation to the others. Members of other investigative teams will be invited to discuss the presentation of each team.

This exercise will be drawn on the basis of the ACN “Training Manual on Investigation and Prosecution of Corruption Offences”.

20:00  Official dinner hosted by Georgian Ministry of Justice

DAY 2:  WEDNESDAY, 26 SEPTEMBER 2012

9:30 – 13:00  Session 3: Investigating and prosecuting corruption of legal persons

This session will discuss practice on investigation and prosecution of legal persons for corruption. Speakers will be invited to describe the type of liability that is established in their country for bribery by companies, and to present examples of real life investigations into corporate bribery. As in the first session, speakers will describe various stages of detection, investigation and prosecution of companies, as well as the sanctions which were imposed by courts in these cases. In particular, it will be shown how corporate bribery can be investigated and prosecuted separately or in parallel with proceedings against natural persons; what triggers corporate liability and how corporate “guilt” can be attributed; liability for lack of supervision.

Moderator:
Mr. Daniel Thelesklaf, Head, Financial Intelligence Unit, Principality of Liechtenstein

Panellists:
Mr. Peter Koski, Attorney, Department of Justice, the United States
Ms. Mirjana Jakovljevic, Deputy Higher Prosecutor, Belgrade Higher Prosecutor’s Office, Serbia
Ms. Donata Costa, Prosecutor, Tribunal of Monza, Italy
Mr. Sahib Ismayilov, Prosecutor of the Anticorruption Department with the Prosecutor Generals Office, Azerbaijan
Round-table discussion

Questions to be addressed:

• To what extent corruption is in your countries takes place through companies or other legal persons? Is it important to hold companies liable for corruption?
• What are the requirements to hold a company liable for corruption in your country? How efficient these requirements are from the point of view of effective investigation and prosecution?
• If you have investigated or prosecuted corruption involving a legal person, what were the circumstances of the crime and how you succeeded to prove the liability of the legal entity?

11:00 – 11:30 Coffee break

12:30 – 13:00 What criteria for performance appraisal of prosecutors and investigators?

Introduction by Ms. Assel Satvaldinova, General Prosecutor’s Office of Kazakhstan
Discussion

13:00 – 14:00 Lunch

14:00 – 15:00 Working Groups: Simulating an investigation (part 2)

| The practical exercise will continue in the plenary format and each Working group will present what was discussed and decided upon at the end of Working groups’ session of the previous day. The participants will provide feedback evaluating the way different groups handled the case. |

15:00 – 15:15 Coffee break

15:15 – 16:00 Wrap-up session

Tour de table on main outcomes
Discussion on possible follow-up activities

16:00 Visit to Public Service Hall² in Batumi, followed by visit to the Georgian-Turkish border and the Customs Clearance Zone (anti-corruption measures “on the spot”)

² http://house.gov.ge
# List of Participants

<table>
<thead>
<tr>
<th>COUNTRIES</th>
<th>Name</th>
<th>Title/Position</th>
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<tbody>
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     - Counteraction of Corruption and Criminal Breach of Trust Dept.
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8. **Belarus**
   - **Ms. Irina Yudo**
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     - Ministry of Justice
     - International Cooperation Department
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     - Minsk 220004

9. **Denmark**
   - **Mr. Flemming Denker**
     - former Deputy State Prosecutor
     - Office for Serious Economic Crime

10. **Estonia**
    - **Mr. Martin Perling**
      - Head of Bureau
      - Security Police of Estonia (KAPO)
      - Anti-Corruption Department
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11. **Estonia**
    - **Ms. Laura Vaik**
      - Office of the Prosecutor General
      - Prosecution Department
      - State Prosecutor
      - Wismari 7, 15188
      - Tallinn

12. **France**
    - **Mr. Loïc Guérin**
      - Court of first instance, Paris
      - Ministry of Justice
      - Tribunal de grande instance de Paris
      - 4 boulevard du Palais 75055
      - Paris Cedex 01

13. **Georgia**
    - **Mr Otar Kakhidze**
      - Deputy Minister of Justice
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<td>Georgia</td>
<td>Ms. Nino Sarishvili</td>
<td>Deputy Head</td>
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<td>15.</td>
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<td>Mr. Irakli Shulaia</td>
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<td>Mr. Nikoloz Chinkorashvili</td>
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<td>Georgia</td>
<td>Mr. Gocha Parulava</td>
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<td>18.</td>
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<td>Ms. Miranda Khabazi</td>
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<td>Kong,</td>
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27. **Kyrgyz Republic**  
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<td>Chief inspector</td>
<td>The Agency for State Financial Control and Combating</td>
<td>Dehoti street 50, Dushanbe 734055</td>
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<td>Corruption Prevention Department</td>
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<td>43.</td>
<td>Tajikistan</td>
<td>Mr. Ikrom Zavarov</td>
<td>Senior investigator of serious cases</td>
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<td>Investigation Department</td>
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<td>44.</td>
<td>Turkey</td>
<td>Mr. Faris Karak</td>
<td>Head of Section-Judge</td>
<td>General Directorate of International Law and Foreign Affairs</td>
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<td>Ministry of Justice</td>
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