

ACN

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**Istanbul Anti-Corruption Action Plan for
Armenia, Azerbaijan, Georgia, Kazakhstan,
the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine**

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews
of Legal and Institutional Frameworks for the Fight against Corruption**

GEORGIA

UPDATE ON NATIONAL IMPLEMENTATION MEASURES

Presented at the 6th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan
on 13 December 2006 at the OECD Headquarters in Paris

I) NATIONAL ANTI-CORRUPTION POLICY, INSTITUTIONS AND ENFORCEMENT

Recommendation 1 and Additional Recommendation 1

Review and update existing anti-corruption policies; in order to demonstrate political will, mobilize civil society and all actors to participate; prioritise and focus on implementation measures. It is very important to review existing anti-corruption laws.

Recognising that the magnitude of challenges calls for active and rapid actions, Georgia should ensure that policy reforms are carried out in a fully transparent and participatory manner, are based on sound analysis and consistent with the overall reform objectives. In particular, the elaboration of the new Anti-Corruption strategy by the National Security Council should be open for public participation, pursuant to January recommendations 1 and 2.

The Government of Georgia applied a number of effective anticorruption measures. Substantial changes in the legislation were adopted. Concrete actions were taken to change the organizational structure of most of the ministries; along with substantial staff reductions and replacements. The salary of the public servants was raised; drastic reductions of the redundant staff and resolute prosecution of corrupt officials took place. These actions were a clear demonstration of political will and helped regain public trust. The change in the levels of trust for the police service is obvious. After the old Traffic Police force was disbanded and number of reforms took place, the Police improved its standing among the public service agencies in Georgia with 9 places. Similarly effective measures were taken in the public education area, where a new state exam replaced the old system that was perceived as corrupt.

Civil society has always been active in Georgia; the efforts of the Government were and to a large extent continue to be supported by the civic organizations. Some criticism exists, directed mainly at the lack of coordinated approach by the Government when implementing the reforms. There are limited concerns about the independence of the judiciary – it should not be threatened by the effort to clean the judicial system. At the same time no corrupt official should be allowed to hide behind the shield of accusations of “politically motivated” dismissal. With this respect the due process is of paramount importance.

The need for corruption prevention is fully appreciated. Most of the implemented measures aim at reducing the administrative burden over the businesses¹, including reduction of taxes, licensing regimes, permits and registrations; introduction of one-stop shops, abolishment of customs duties; at some cases disbanding whole structures, perceived as corrupt. Thus the economic incentives for corruption disappear, effectively eliminating the very need to corrupt.

However, no review of the existing anticorruption policies was carried out; a review of the anti-corruption legislation was carried out through review of the sector specific legislation; the focus of the process in on the legislation in the pipeline. The specific implementation measures could have benefited from a more structured approach and more uniform implementation in the different Government agencies. For example, one of the main Government measures, namely filling the open positions in the new ministries and agencies through open and transparent competition was implemented through different procedures.

The National Anti-corruption strategy and the Action plan for its implementation were adopted in 2005 / 2006. The strategy was drafted with some input from civil society; and in cooperation with some of

¹ The number of the licensing procedures was reduced with 84 per cent, from approximately 950 down to 150 in the last year

the international actors in Georgia. At least four meetings were held with civil society organizations and a final conference to present the Strategy was organised. Many of the civic sector ideas were reflected in the final version of the document.

The process of elaboration and adoption of the anticorruption strategy could hardly be described as “structured”. It has been the wish of the Georgian Government to lead the process and to be the one to draft the Strategy. The strategic documents were drafted with a delay of 5 months.

The strategy is not based on a sound analysis, consistent with the reform objectives. The existing analyses (World Bank Governance Matters 2004; TI CPI and the Global Corruption Barometer; different NGO reports) give a broad idea of the magnitude of the problem faced by the Georgian Government; they could not be regarded though as sufficiently detailed review of the procedures, practices and legislation to become the basis for a focused reform.

Georgia is largely compliant with this recommendation.

Recommendation 2

Strengthen the existing Anti-corruption Coordination Council, which should consist of persons with high moral and ethical standing, including representatives of the general public and from relevant executive bodies (administrative, financial, law enforcement, prosecution) as well as from the Parliament and civil society (e.g. NGOs, academia, respected professionals).

The State Minister on Reforms Coordination is now responsible for the development and coordination of the Anti-corruption strategy. The former Anti-corruption Coordination Council is disbanded. Two of the current Minister’ staff members are former National Security Council staff and participated in the previous anti-corruption efforts. They are responsible for the co-ordination of the strategy.

The Action Plan for the implementation of the Anti-corruption strategy is drafted by the State Minister for Reform Coordination; assistance was provided by the Council of Europe. The Action Plan was adopted in the end of March 2006. The existing staff seems sufficient to coordinate the activities of the Government agencies. It is not sufficient though to deliver the analytical capacity needed to design, monitor, evaluate and implement anti-corruption policies. Representatives of the Parliament and line agencies are involved in the anti-corruption policy formulation. Little information was provided about the involvement of the local self-government bodies in the process; there seem to be a lot of opportunities in this area.

The goal of this recommendation is to ensure that the anti-corruption reforms in the country are led by leaders that enjoy public trust. Apparently the Georgian Government is supported by the people with regard to the implemented anti-corruption policy; therefore the broad goal of this recommendation has been largely met.

Georgia is largely compliant with this recommendation.

Recommendation 3 and Additional Recommendations 2 and 3

Establish a Specialised Anti-corruption Agency with a mandate to detect, investigate and prosecute corruption offences, including those committed by high-level officials. Such an agency could be structurally linked to the Anti-Corruption Bureau or to the General Prosecutor’s Office, but should be given proper independence in both cases. It is important that the Agency would combine law

enforcement/investigative (e.g. the best officers from the existing police Department on Economic Crime and Corruption could be seconded to work in such an agency) and prosecution departments and be headed by a person with the powers of a Prosecutor. Apart from working on actual high-level corruption cases, one of the main tasks of such an Agency would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations).

The establishment of the special anti-corruption division in the Prosecution is related to the January recommendation 3 concerning the establishment of a specialised anti-corruption agency. At this early stage the recommendation 3 can be reiterated to encourage further efforts ensuring proper independence of such a body, its mandate for law-enforcement and prosecution, and its role of coordinating various law-enforcement, security and financial control bodies.

Significant achievements of the law-enforcement activities were noted during the discussion. Such efforts should continue to promote the implementation of the anti-corruption policy, fully based on objective data and in accordance with the law. Statistics on anti-corruption cases should be carefully maintained and made public.

The reforms in the Criminal Procedure of Georgia relieved the Prosecutors office from the responsibility to investigate crime; except of the corruption-related crimes, thus effectively turning the Main Investigative Department with the General Prosecutors Office into an Anti-corruption Agency.

. The Department has jurisdiction over all corruption offences, committed on the territory of Georgia. It is autonomous structure within the General Prosecutor's office. The Department is headed by a Deputy Prosecutor General. Along with the Central Department, 9 Regional Units are functioning.

The staff selection procedures are thorough and include interview with a panel, which includes representatives of NGOs, governmental bodies and respected people, as well as special measures to ensure integrity, such as polygraph testing.

The Department is fully supported by the other law enforcement and information gathering agencies.

In particular it enjoys good cooperation with the Ministry of Interior, the Financial Monitoring Service, the Assets Declaration Bureau within the Ministry of Justice and the Chamber of Control.

More than 1000 criminal cases are investigated during 2004-2005 by the Department under passive and active bribery, abuse of power and exceeding the limits of official authority offences. Some examples of indicted high-level officials include the Head of Railway Department, the Director General of the Power Engineering Regulatory Commission of Georgia, the former Head of the Tax Department, the former Head of the Large Tax Payers Inspection, the Director of Customs Department and Director-General of one of the large telecommunication companies.

The Department has exclusive jurisdiction over the corruption offences, committed at the territory of Georgia. It is an issue of slight concern; if the perceptions of widespread corruption are even to a small extent reality, it would be difficult for a small number of prosecutors and investigators (even together with the nine regional sub-units) to effectively investigate and prosecute all the detected corruption crimes². So

² Plans exist to form a special unit within the Interior Ministry to focus on the high-level corruption only. It should also investigate the tax and assets declarations of high-level officials.

far the situation does not seem to be out of control; further strengthening of the Department will help prevent such a danger.

Clear and available statistics exist on the corruption prosecution in Georgia. It could not be used as a monitoring mechanism, insofar as there are too many factors that may influence the number of cases – to name just three, better corruption detection; more cooperation from the citizens; actual increase of the corruption in the country. But it certainly demonstrates a sustained effort to reduce corruption in Georgia through criminal prosecution. Every case of detected corruption is widely publicised through the media to raise awareness of the public at large on the dangers of corruption and of its consequences.

A substantial part of recommendation 3 is to ensure that the Anti-corruption Agency in question has as its main task the enhancement of the inter-agency cooperation between the law enforcement, security and financial control bodies in corruption investigations. An example of how such a function would be exercised is the adoption of clear guidelines for exchange of information and team work. Though no such guidelines are adopted, satisfactory level of coordination seems to exist, with teams of detectives, investigators and prosecutors being formed and with regular exchange of information.

The Prosecutors are functionally independent when making their decisions. They may receive instructions from the superior prosecutor; in the case of the Department – from the Deputy Prosecutor General or from the Prosecutor General. In this case the superior prosecutor takes responsibility for the recommended action. The structure of the Department though does not allow for conclusion to be made that it enjoys full independence. Being an integral part of the General Prosecutor's Office has apparent advantages; however it falls short of the recommendation requirements. The necessary level of financial, human resources and policy formulation and implementation autonomy could not be observed in the current setting.

Georgia is largely compliant with this recommendation.

Recommendation 4

Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and those agencies responsible for the fight against corruption.

Technically, there are no guidelines for increased cooperation, exchange of information and resources between the agencies, responsible for the fight of the organized crime and the anti-corruption agencies. The cooperation between them is a fact, insofar as the prosecutor is the master of the pre-trial stage of the criminal proceedings. The Main Investigative Department is part of the prosecution service of the country; it enjoys full control over the investigation phase of the proceedings. As far as the detection phase is concerned; all the agencies in Georgia support the activity of the Department and have to submit the relevant information in a timely fashion. It must be noted that there is shared vision among the high level officials of the Georgian Government regarding the need to address the problem of corruption – and on the way to address it. As a result there is common understanding of the need to fully support the efforts of the Department.

Nevertheless it must be noted that the existence of the guidelines in question is a substantial element of the sustainability of the Georgia's anti-corruption efforts. More work has to be done in this area. The organizational culture; existence of established procedures and trained staff are equally important in term of ensuring continuity of the anti-corruption efforts. To sustain the good practices, to ensure that they will be followed by every government, written procedures and protocols must exist. They need not be in the shape of a law; in fact it may even be counterproductive. They must be as practical and detailed as

possible; easy to access, including by the public at large; could be shaped as a set of synchronized legal documents adopted by different agencies; and all the staff must be aware of their existence and content.

Georgia is partially compliant with this recommendation

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION AND THE RELATED MONEY-LAUNDERING OFFENCE

Recommendation 5 and additional recommendation 4

Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the Criminal Code and other relevant legislation.

Ensure the implementation of outstanding January recommendations, in particular recommendations 6, 7, 8 and 10, which relate to bringing up criminalisation of bribery and corruption related offences in line with international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) and to responsibility of legal persons for corruption offences.

Georgia introduced several laws to harmonize its anticorruption legislation with the international standards. Examples of this legislation are the Law of Georgia on "Conflict of Interests and Corruption in the Public Sector" and the "Law on Public service". Nevertheless the necessary changes in the field of criminal legislation are still to come. Current definitions of corruption offences fall short of the international standards: offer or promise of a bribe and solicitation of a bribe is only considered as 'attempt', 'aiding' or 'abetting'; bribery for the benefit of third persons is not covered by the provisions of the Criminal Code.

It appears that the draft changes to the Criminal Code, which have already been subjected to the first reading in the Parliament, address the mentioned deficiencies. More attention should be given to reviewing and assessing of the current system of disciplinary, administrative and criminal corruption offences.

Georgia is non-compliant with this recommendation.

National Action since June 2006 to Implement the Recommendation Further

During the 5th Monitoring Meeting in Paris, the Georgian delegation informed the OECD-ACN that the Draft Law on Amendments to the Criminal Code of Georgia had been submitted to the Parliament. The said Draft contained provisions concerning the introduction of criminal liability of legal persons. The Draft has been adopted by the Parliament and signed by the President on June 25, 2006.

According to Article 107² (Crimes which raise criminal responsibility of a legal person) legal person shall bear criminal responsibility for the crimes envisaged under Articles 143¹ (human trafficking), 143² (trafficking in minors), 194 (legalization of illegal incomes), 221 (commercial bribery), 224¹ (participation in a group of racketeers), 227¹ (endangering the navigation of vessel), 227² (obtaining illegal possession over, damage or destruction of artificial platform [at the sea]), 231¹ (threatening to gain illegal possession over nuclear substance), 255¹ (involvement of minor in production and/or distribution of pornographic materials), 260-271 (drug crimes), 323-330 (terrorism crimes), 330¹ (incitement to commit terrorism crime), 330² (persuasion to commit terrorism crime), 330³ (preparation/training for the commission of terrorism crime), 331¹ (financing of terrorism), 339 (bribe-giving), 339¹ (trade in influence), 344¹

(facilitation of crossing Georgian border by a migrant illegally or creation favorable conditions for a illegal migrant to stay in Georgia), 364 (adverse interference in legal proceedings or pre-trial investigation), 365 (threat or violence related to legal proceedings or pre-trial investigation) and 372 (bribery or forcing a witness, victim, expert or interpreter).

The relevant amendments have been made to the Criminal Procedure Code in order to ensure effective enforcement of the new provisions of the Criminal Code.

For the detailed information concerning the new concept of criminal liability of legal persons, please see the Annex 1 and Annex 2.

Recommendation 6

Amend the incriminations of active and passive bribery in the Criminal Code to meet international standards. In particular, clarify the relationship between the offence of passive bribery (Art. 339), and the offence of accepting prohibited presents (Art. 340). Consider increasing the punishments for active bribery and the statute of limitations for all corruption offences.

No changes are introduced to the Criminal code in respect to active and passive bribery. The definition of these acts does not meet the international standard. The relevant articles of the Criminal Code describe the basic form of active bribery and provide for a sanction that could not be regarded as sufficiently dissuasive: a fine or an imprisonment for up to two years. The statute of limitation is low, which may be regarded as inadequate.

To a great extent, the draft provisions mentioned in the previous section on the recommendation 5 meet the international standards.

The concern on Art. 340 - which criminalizes the accepting of illegal presents (a form of passive bribery) - by providing very low sanctions (fines) has not been addressed. This provision could be used to shield officials in certain cases of passive bribery. The argument that accepting an illegal present unlike accepting a bribe does not relate directly to the official status and duty of the public servant is rather confusing.

Georgia is non-compliant with this recommendation.

National Action since June 2006 to Implement the Recommendation Further

The amendments to the Criminal Code of Georgia of June 25, 2006, introduced, among others, the new definition of active and passive bribery and increased the penalty for both of them as required by international standards and recommended by the OECD ACN.

According to the current edition of Article 338 (Bribe-taking), bribery is defined as an act committed by a public official a person equal in the same status, through promising, offering or accepting money, securities, property or any other material benefit, taken in exchange for performing or not performing, in favor of the bribe-giver, any action that should or could have been carried out or could have been supported in official capacity of bribe-taker, as well as for exercising official patronage over bribe-giver. The penalty for bribe-taking is determined by deprivation of liberty from 6 to 9 years.

The said penalty makes bribe-taking as a grave crime, since according to the classification of crimes provided under Article 12 of the Criminal Code of Georgia, premeditated crime that entails deprivation of

liberty up to ten years belongs to category of grave crimes. Accordingly, under Article 71 of the Criminal Code of Georgia, the statute of limitation for grave crimes is determined by 10 years.

At the same time, it is noteworthy that bribe-taking committed by a state official of a political status, by a group, due to an agreement in advance or in respect of a large amount of bribe³ is punishable with the deprivation of liberty from 7 to 11 years. Furthermore, the drafters considered bribe-taking committed by the person previously convicted for bribery, repeatedly, by extortion, by an organized group or in respect of especially large amount of money⁴ as of particularly dangerous and provided the deprivation of liberty from 11 to 15 years as a punishment. Thus, according to Article 12 of the Criminal Code, bribery committed in aggravating circumstances belongs to category of outmost grave crimes and the statute of limitation is determined by 25 years under Article 71 of the same Code.

As regards the crime of bribe-giving criminalized under Article 339 of the Criminal Code, it has been amended as well. According to the new definition introduced on June 25, 2006, bribe-giving is defined as an act of offering, request of receipt of money, securities, property or any other material benefit to an official or persons of equivalent rank in exchange for performing or not performing in his official capacity certain act in favor of the bribe-giver or other person, or for using his official authority for analogous purposes, as well as for exercising official patronage over bribe-giver. The crime of bribe-giving is punishable with fine or corrective labor for a term of 2 years or the restriction of liberty for the same term or the deprivation of liberty for a term up to 3 years. Increasing the term of deprivation of liberty from 2 to 3 years changes the statute of limitation for bribe-giving. Accordingly, under Article 71 of the Criminal Code of Georgia, statute of limitation for less grave crime that entails deprivation of liberty more than 2 years is determined by 6 years.

Bribe-giving committed in aggravating circumstances i.e. giving bribe to an official or a person of an equal rank in exchange of the commission of an illegal act or bribe-giving committed by an organized criminal group belong to category of grave crimes since the former entails deprivation of liberty from 4 to 7 years and the latter the deprivation of liberty from 5 to 8 years. Accordingly the statute of limitation is determined for 10 years under Article 71 of the Criminal Code.

Thus, the definitions of active and passive bribery have been modified and the penalties as well as the statutes of limitations have been increased. For the texts of Article 338 and 339 see the Annex 3.

Recommendation 7

Ensure that the definition of “official” in the Criminal Code encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.

The definition of public servant in the Law on Public Service has not been changed since the review in 2004. It is still narrow: it includes Georgian nationals and only as far as they perform “paid work”.

³ According to the note on Article 338, a large amount of bribe represents the sum amounting to more than 10 000 GEL in the form of money, securities, other property or material benefit.

⁴ According to the note on Article 338, especially large amount of bribe constitutes the sum of more than 30 000 GEL in the form of money, securities, other property or material benefit.

The definition in the Criminal code refers to the existing definitions in other pieces of legislation. The law of Georgia on “Conflict of Interests and Corruption in Public Sector” and the “Law on Public service” define notions of ‘official’, ‘public official’ and ‘civil servant’.

There is a need for a clear definition of a public servant that would be compliant with the international standards. However, the number of investigations and prosecutions suggest that in practice so far the definition never shielded public servants from prosecution.

The draft law referred to in the section on the Recommendation 5 addresses this issue.

Georgia is partially compliant with this recommendation.

National Action since June 2006 to Implement the Recommendation Further

SEE additional information to Recommendation 5, 6 and 8.

Recommendation 8

Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

Criminalisation of the bribery of foreign and international public officials is essential and is a part of a number of important international instruments. The current legislation with its narrow definition of an “official” as a citizen of Georgia only, can not effectively play this role. Therefore, bribery of foreign or international public officials can not be considered criminalized. The draft law referred to in the section on the Recommendation 5 addresses this issue.

Georgia is non-compliant with this recommendation.

National Action since June 2006 to Implement the Recommendation Further

Georgia was recommended either to extend the definition of public officials to foreign officials or introduce separate offence in the Criminal Code.

Georgia chose the first option and extended the definition of public official. Namely, under the amendments of June 25, 2006, the note was added to Article 338 (Bribe-taking) of the Criminal Code of Georgia. According to the note, for the purposes of Article 338, Article 339 (Bribe-giving) and 339¹ (Trading in influence), the person of an equal rank to an official includes the foreign state official (including members of the national legislative or administrative body), officials of international organization or organ or employees hired by contract, or any person on assignment or without it, performing the functions equivalent to that of an official or other employee, member of International Parliamentary Council, the judge or official of an International Court or judicial organ (see Annex 3).

Recommendation 9 and additional recommendation 6

Consider amending the Criminal Code to ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is

possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational. Explore the possibilities to check and, if necessary, to seize unexplained wealth.

Monitor the newly established confiscation of proceeds regime and the confiscation of unexplained wealth and invest special attention that they are implemented in a non-discriminatory and non-arbitrary manner through proper checks and balances and safeguards.

The assets confiscation and forfeiture regime in Georgia is marked by the prohibition of confiscation of property as a type of punishment, as decided by the Constitutional Court. The existing legislation though allows for confiscation of proceeds of criminal activity, object and means of crime, as well as the profit incurred from these proceeds. The legislation of Georgia is compatible with the appropriate requirements of the international legislation, in particular with the relevant Council of Europe Convention, in providing for confiscation not only within a criminal procedure, but also through other means. Thus the Georgian Administrative Code empowers the prosecutor to claim the illegal property and unexplained wealth, the notion of which is described in the Law on Conflict of Interests. There are measures provided by the Criminal Procedure Code, such as the power to make civil claims in relation to the criminal offence. Georgia also supplied information regarding the application of these norms that substantiate the claims for effectiveness. It seems that the procedure for identification and seizure of proceeds of corruption exist and it is efficient and operational.

Provisions dealing with the issue of the proceeds of crime were amended in the CC in December 2005. Forfeiture of property shall be ordered by the court for all premeditated crime under the CC including the corruption related crimes. To monitor the application of the new provisions, Georgia has started in January 2006 the gathering of statistics under Article 52 of the Criminal Code. Continued attention should be paid to this process.

Georgia is largely compliant with this recommendation.

Recommendation 10

Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Georgia should, with the assistance of organisations that have experience in implementing the liability of legal persons (such as the OECD and the Council of Europe), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

The current legislation of Georgia does not provide for liability of legal persons for corruption offences. The draft amendment of the Criminal Code mentioned in the section of Recommendation 5 addresses this issue, but is not adopted yet.

Georgia is partially compliant with this recommendation.

National Action since June 2006 to Implement the Recommendation Further

Under the amendments mentioned in the Recommendation 4, the legal person is brought to criminal responsibility for the crime committed in its name, through using it and/or for its benefit by the person in charge, i.e. the person with the representative or managerial capacity, the decision-maker and/or the member of the supervisory, control, consultative or auditing board of the legal person. Fine, liquidation, deprivation of the right to pursue activity and seizure (forfeiture) of property (i.e. seizure (forfeiture) of property acquired as a result of criminal activities and/or seizure (forfeiture) of the object or

means of the crime) are provided for as sanctions for legal persons. Liquidation and deprivation of the right to pursue activity may be applied only as basic sanction, fine – both as a basic and additional sanction, while seizure (forfeiture) of property only as an additional sanction. It is notable that liquidation is to be applied only in exceptional circumstances, when the criminal activities represent the main aim of its creation or essential part of its activities.

Recommendation 11

Adopt clear, simple and transparent rules for the lifting of immunity and limit the number of categories of persons benefiting from immunity (e.g. candidates for the Parliament) or the scope of immunity for some categories (e.g. judiciary) to ensure that it is restricted in applications to acts committed in the performance of official duties.

The Government has made substantial changes to its legislation to cut down the number of categories, immune from criminal prosecution. The category of elected officials, prosecutors and investigators do not enjoy immunity any more. Article 9.3 of the Criminal Procedural Code of Georgia explicitly states that the immunities can not be used as a shield against criminal liability. On April 24, 2004 paragraph 2 of Article 52 of the Constitution of Georgia was amended, allowing the arrest of a Member of Parliament if he/she is caught in the process of committing a crime.

The immunity of two Members of Parliament was lifted after a request from the Prosecutor's Office. However, the procedure for lifting the MPs immunity seems to include an element of excessive scrutiny of the judicial decision by a political body. The Prosecutor's Office can not appeal to the Parliament in an open plenary session; instead it must submit it to a Parliamentary Committee, which may pass the case further to the Bureau, subject to its discretion.

Georgia is largely compliant with this recommendation.

Recommendation 12

Ensure effective international mutual legal assistance in the investigation and prosecution of corruption cases.

Georgia is party to several multilateral treaties in the area of mutual legal assistance. The Government of Georgia has supplied a list of agreements in the field of mutual legal assistance, which cover the entire spectrum of criminal justice. After the mission, the Georgian authorities have submitted statistics on international mutual legal assistance requests in the investigation and prosecution of corruption cases. However, it is difficult to assess the effectiveness of these requests. In the area of asset recovery, there is no specific rule in CPC dealing with execution of foreign requests to freeze, seize and confiscate. However such actions are possible on the basis of a court order obtained directly on the basis of a foreign request.

Georgia is largely compliant with this recommendation.

III) TRANSPARENCY OF THE CIVIL SERVICE

Recommendation 13

Introduction of a system of merit-based appointment and promotion in the civil service is needed.

One of the priorities of the new Government of Georgia was the introduction of a system of merit-based appointment, promotion and demotion of civil servants. Salaries were increased and the working

conditions improved. Specific measures had been carried out to harmonize wage levels across the Public service organizations. Since January 2005 the minimal salary in the public sector became equal to the existence minimum, as promised by the Government at the beginning of 2004. The prestige of the public service was raised.

The new Government introduced active reforms in the area of public administration since it gained power in late 2003. The reforms dealt with difficult institutional issues of central government restructuring and massive re-staffing, as well as streamlining administrative management practices in operation.

Georgia undertook a number of institutional steps to re-organize the civil service, to ensure transparency and openness. In 2004 the existing Public Service Law was amended and a Public Service Council (PSC) and Public Service Bureau (PSB) have been established. The PSC is a high level policy advisory body chaired by the President of Georgia, while the PSB is an operational unit. It is responsible for the elaboration and implementation of a state public administration/civil service policy (to be approved by the Council)⁵.

DFID, the Netherlands, SIDA and the World Bank currently fund a Public Sector Reform Support Project (PSRSP). The development objective of the PSRSP is: to promote good governance through strengthening the institutional capacity of key agencies; to support the effectively and efficient use of the public resources; to support the Government's development priorities through improving the accountability of public finance. One of the outcomes of the project is the Human Resources Management Information System (HRMIS).

The current Public Service Law has some shortcomings that may pose corruption risk and allow for favouritism or nepotism, such as lack of clearly specified procedures for merit-based appointment of public servants; lack of additional requirements referring to additional qualifications; Lack of specification with regard to the certification committees' status and main rules of work and evaluation; lack of special regulatory system for written and oral exams during the competition;

Although the Law of Georgia on Public Service distinctly states that recruitment in public service shall be carried out through a selection procedure, the procedures should be described by the generally applicable legal act including the mechanism for provision of information about a person applying for a position in the state or municipal agency.

This means the provision of objective information about a person applying or holding a position in the state or municipal agency, which has been legally collected and held by law enforcement and control institutions. Information should be provided to the head of the agency or a state politician, who has appointed or is appointing the civil servant in question, which shall be carried out in compliance with the procedure prescribed by law on the request of the head of the agency concerned or a state politician or on the initiative of the law enforcement or control institutions.

The development of criteria for the selection and recruitment is under the responsibility of heads of institutions, and differs from one institution to another. The current legislation does not effectively regulate the HR management to ensure impartiality and transparency in the recruitment process.

Georgia is largely compliant with this recommendation.

⁵ According to the Law on "Public Service", the PSC directs and coordinates the implementation of the stated complex and long term activities and drafts decisions, analyses information and administers decisions of the President as well as coordinates activities related to public sector management.

Recommendation 14

Prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Consider elaborating specific Codes of Conduct for public officials and work on their dissemination.

As the legislative basis for civil service stands today, the ethical norms for civil servants are scattered throughout laws concerning “Conflict of Interests and Corruption in Civil Service” and “Public Service Law”.. There are specific ethical norms for officials in some institutions, which set additional requirements according to the specific fields of service: “Judicial Ethics Code”, Code of Ethics for the Servants of the Prosecutors Office “Ethics and Behaviour Code for Georgian Judicial Branch Officials”, Rules for officials of the Ministry of Finance and codes for customs officials. Violating these rules necessitates disciplinary punishment or opening of an administrative or criminal case.

Currently, there is no general code of conduct for the public service, obligatory for all the public servants, with a clear system of sanctions for its violations.

Georgia is partially compliant with this recommendation.

Recommendation 15

Strengthen the Public Service Bureau to improve the observance of legal requirements in the civil service at large. Provided that the Public Service Bureau is strongly committed to upholding professional and legal standards in the civil service, it should be vested with powers to enforce legislation, in particular with the help of disciplinary actions.

The functions of the Public Service Bureau are stipulated by Article 130 of the Law on Public Service. Pursuant to Paragraph 1 of this Article “PSB shall study and analyse the field of public service and submit reports to the President on the enforcement of respective normative acts; coordinates all the activities, related to the HR management of the Georgia government bodies; supports methodologically and coordinates the training of the public servants.

The Law on “Public Service” establishes the PSB. This status of the PSB provides sufficient ground for institutional strengthening and capacity enhancement of the PSB.

The PSB has no authority to initiate disciplinary actions if professional and legal standards in the civil service have been violated. The Georgian authorities should increase capacities of internal control bodies, such as General Inspections.

Georgia is partially compliant with this recommendation.

Recommendation 16

Ensure a more effective enforcement of the Law on Conflict of Interest and Corruption. Consider strengthening the existing institution that monitors its implementation and provide the institution with the authority to verify the accuracy of submitted asset declarations. All asset declarations have to be available to the public.

There is currently no structure in Georgia to monitor effectively the conflict of interest legislation. The function that receives and maintains the official’s property and financial declarations is the Information Bureau of Public Officials Property and Financial Status under the Ministry of Justice. The

bureau is responsible for the timely submission of asset declarations by public officials and their storage. Under the current legislation, in order to correctly fill in the declarations, this bureau is authorized to check declaration data and to act upon the information possessed in accordance with the legislation.

The Bureau maintains statistics on the number of officials that submitted declarations and the number of persons that violated these requirements. The declarations are submitted between April 1st and June 1st. 1571 senior officials submitted their declarations in 2005.

There is no mechanism for studying, analysing, monitoring and advising. The legislation does not require or empower the relevant agencies to analyse if the information submitted in the property declaration. Non material benefits, such as intellectual property rights, and beneficial ownership do not have to be declared.

The forms for the declarations are quite complicated. The current institutional capacities are not sufficient to fully implement its duties.

Georgia is partially compliant with this recommendation.

Recommendation 17

Adopt measures for the protection of employees in State institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants; adopt (basic) regulations on the protection of “whistleblowers”.

Development and introduction of special witness protection program is foreseen by the Article 4.3 of the National Anti-Corruption Strategy. Article 5.6 of the draft Anti-corruption Strategy Action Plan calls for a witness protection system by 1 May 2006, which should ensure security of the witnesses and their families, real guarantees should be given to the individual persons as well as to their family members who provide law enforcement bodies with significant information and testimonies. A Parliamentary Committee jointly with other governmental structures and NGOs are in process of creation of special legislation in this area. The Operational Department of the Ministry of Internal Affairs reported to have a witness protection system in place. This service should provide protection to persons, co-operating the law enforcement.

Although the intention to build up a witness protection system is welcomed, it does not cover the recommendation to adopt measures for the protection of employees in State institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors. There was no internal campaign to raise awareness of those measures among civil servants. There are no regulations on the protection of “whistleblowers”.

Georgia is not compliant with this recommendation.

Recommendation 18

Review the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.

On April 20, 2005 the Parliament of Georgia adopted the new Law #1388 “On Public Procurements” which entered into force on January 1st of 2006. The open tender principle has been adopted as a basic method for public procurement and the closed tender method has been abolished. Procurement agencies gained rights to establish their own qualification requirements and provisions regarding the conflict of interests. According to this legislation, the new “Order on Implementation of Public Procurements” should be prepared by the State Procurement Agency under the Ministry of Economy within one month. This Agency was established as a result of reorganization of State Procurement Department of the Ministry of Economy of Georgia. According to the Article 4 of the new Law, the main functions of the Agency are coordination, monitoring, analysis of public procurements, developing legal basis, establishing databases, collecting information of potential suppliers, etc. Georgian Chamber of Control supervises the use of public funds and other state property. The Chamber of Control is independent in its activities and is accountable to the Parliament of Georgia.

This new piece of legislation is welcomed; however, there is room for improvement in the areas of blacklisting of the bidders/companies that had been sanctioned for corruptive practices; additionally:

- Suppliers may be demanded to issue a declaration that he did not give and has no intention to give an undue advantage to win the bidding (“Honest Declaration of the Supplier”):

- The officials participating in the process of the preparing the tender documents may be distinct from the officials evaluating the suppliers on the bidding process;

- There are no provisions in the Law regulating the requirement to assess the set evaluation criteria and other conditions in the procurement documents on the anticorruption point of view.

Georgia is largely compliant with this recommendation.

Recommendation 19 and Additional Recommendation 7

Ensure that the access to information legislation limits discretion on the part of the public officials in charge as to whether the requested information should be disclosed, and to limit the scope of information that could be withheld. Consider steps to reach out to both, public officials as well as citizens to raise awareness about their responsibilities and rights under the access to information regulations.

Ensure the implementation of outstanding January recommendations in the area of transparency of civil service and financial control issues.

Georgian legislation includes specific regulation concerning provision of public information. Freedom of Information Chapter of the General Administrative Code (adopted on June 25 1999) provides definitions on public information, commercial, personal, professional, and state secret, as well as procedures as to how and within which time period should the public information be provided, and what the grounds are for refusing public information. Moreover, it also includes provisions as to how the decision on refusal of public information can be appealed by an administrative procedure as well as in courts proceedings.

Furthermore, officials responsible for provision of public information failing to implement their official obligations, are liable to disciplinary sanctions according to the Law on Public Service. In addition, Article 153 of the Criminal Code of Georgia provides that “Unlawful interference with the right to receive and impart information, which resulted in significant damage or using powers of public office, is punished by the fine or correctional labour during one year, or deprivation of liberty of up to two years, with the right of removing the right of occupying office or undertaking professional work for up to three years or

without”. The failure to provide public information, resulting in severe damage, is a crime punishable by Georgian law.

Advertising campaigns informed citizens of their rights to get information from civil service. Some important issues are covered by the National Anticorruption Strategy to increase transparency of activities of the public service, as well developing the electronic system of dissemination of public information.

The existing problems in the implementation of the Freedom of Information legislation are described as follows.⁶

Failure of public agencies to provide public information in due time limits: The law provides that public information should be provided immediately, unless the information requires processing or should be accumulated from different agencies, in which case information should be supplied within 10 days after the request of information. When the immediate provision of information is not possible, the agency should inform the requesting person within 3 days after receiving the request. However, there are reports that this information is rarely given. Only in rare exceptional circumstances, information is provided immediately, upon request and usually, in cases where the requesting person uses personal contacts or influence.

Failure of public information to provide public information: There are a number of agencies that decline to provide information not by an official refusal, but through failing to provide any response to the request. In such cases, the requesting person does not receive any kind of explanation on his request upon passage of any time limit.

Refusal to register request of public information: Certain public agencies decline to provide public information not through a direct refusal, but through refusing or avoiding registering the request of public information. In certain cases, technical reasons are brought as an excuse, e. g such as lack of copying equipment, absence of technical personnel who are tasked with registering such applications etc.

Refusal to provide public information: The General Administrative Code contains an exhaustive list of grounds when provision of public information can be refused, such as when information contains personal, commercial, professional and state secret. In cases when the State agency provides an official letter declining to provide public information, it contains an official justification, based on regulations established in the law. The questions whether such refusals are in fact conforming to the requirements of the legislation have to be decided by the courts, where such refusals can be appealed. Such instances, when public agency officially refuses to provide public information, substantiating reasons, are comparatively scarce.

Georgia is largely compliant with this recommendation.

Recommendation 20 and Additional Recommendation 8

Review the Tax Code to make compliance with its provisions simpler, and to reasonably limit the discretion of tax officials.

Further steps towards liberalisation of business environment should be promoted. Such steps could include, for instance, a diagnostic of administrative barriers for business activities.

Georgia is fully compliant with this recommendation.

⁶ Systematic problems in implementation of Freedom of Information legislation in Georgia in 2004/2005 and suggestion for improvement, Ana Dolidze, (OSCE publications, November 2005).

Recommendation 21

Ensure necessary conditions for the effective functioning of the Georgian Financial Intelligence Unit (FIU) and adequate resources and training of the FIU staff.

Georgia is fully compliant with this recommendation.

Law of Georgia on the Amendment to the Criminal Code of Georgia
(signed on June 25, 2006, entered into force July 10, 2006)

I: Criminal Responsibility of Legal Persons
Criminal Responsibility of Legal Persons, Types of Penalties, Rules on Use of Penalties

Article 107¹ Basis for Criminal Responsibility of Legal Persons

1. The provisions of this Code shall be applied with respect to legal persons. For the purposes of this Code, legal persons mean commercial and non-commercial legal person (its successor).
2. Legal person shall be held liable under this Code, if the crime is committed by a responsible individual on behalf of or through the legal person and/or for the benefit of that legal person.
3. Responsible individual under paragraph 3 shall include any person responsible for the management, representation, decision-making or a member of the Supervisory, Control or Revision Council of the legal person.
4. Legal person shall bear criminal responsibility even when the crime is committed on behalf or through the legal person or for its benefit regardless the person who committed the crime is found.
5. Exception of a responsible person from the criminal liability does not exclude the criminal liability of the legal person.
6. Criminal responsibility of a legal person does not exclude criminal liability of an individual for the same crime.
7. Criminal responsibility does not free legal person either from the obligation to pay damages caused, or from any other form of responsibility established by the applicable law.
8. Legal person shall be exempted from criminal responsibility if culpability of the natural person and/or illegality of the action of that person is excluded.

Article 107² Crimes which raise criminal responsibility of a legal person

Legal person shall bear criminal responsibility for the crimes envisaged under Articles 143¹ (human trafficking), 143² (trafficking in minors), 194 (legalization of illegal incomes), 221 (commercial bribery), 224¹ (participation in a group of racketeers), 227¹ (endangering the navigation), 227² (misappropriation, destruction or damage of stationary platform), 231¹ (threat of misappropriation of nuclear substances), 255¹ (involvement of minor in production and/or distribution of pornographic materials), 260-271 (drug crimes), 323-330 (terrorism crimes), 330¹ (incitement to commit terrorism crime), 330² (persuasion to commit terrorism crime), 331¹ (financing of terrorism), 339 (bribe-taking), 339¹ (trade in influence), 344¹ (facilitation of crossing Georgian border by an migrant illegally or creation favorable conditions for a illegal migrant to stay in Georgia), 364 (adverse interference in legal proceedings or pre-trial investigation), 365 (threat or violence related to legal proceedings or pre-trial investigation) and 372 (bribery or forcing a witness, victim, expert or interpreter).

Article 107³ Types of penalty

- 1) Legal persons shall be punished with
 - a) liquidation
 - b) deprivation of business license
 - c) fine

- d) forfeiture of property
- 2) Liquidation and deprivation of business license shall be applied only as a main penalty.
- 3) Fine can be applied as main as well as additional penalty.
- 4) Forfeiture of property shall be applied only as an additional penalty.

Article 107⁴ Liquidation

1. In the case of application of liquidation as a penalty (unless in the cases defined by the Law of Georgia on National Bank) the court shall appoint liquidator(s) responsible for the liquidation of the legal person in accordance to the legal requirements for the liquidation of legal person. Convicted legal person shall bear the cost of the liquidation.
2. In the cases envisaged in this Code, the liquidators are appointed by the National Bank of Georgia for the liquidation of commercial banks and other depositary institutions under the court decision.
3. Liquidation shall be applied if it is found that criminal activity was the main purpose of the establishment or constitutes the major part of the activities of the legal person.

Article 107⁵ Deprivation of business license

1. Deprivation of one or several types of business licenses shall be applied indefinitely or for a term from one to ten years.
2. Deprivation of license shall be applied in respect to the activity discharging for or related to which the crime was committed.

Article 107⁶ Fine

1. Minimal fine for legal person shall be fifty times as much as that provided for individual under article 42 of this Code.
2. The amount of fine is determined by the court taking into consideration the gravity of the crime, the benefit obtained and the financial situation of the legal person. The latter is measured by its possession, income and other relevant elements.
3. If it is impossible to apply fine as a main penalty against a legal person, it shall be changed with deprivation of business license or liquidation.
4. If in the note of any Article of the Material Part of this Code, fine is mentioned as both main and additional penalty, fine shall not be used as additional penalty if it is already used as main penalty.
5. Application of fine as main penalty against the same legal person twice within three years is prohibited.

Article 107⁷ Forfeiture of property

Article 52 of this Code shall apply to the forfeiture of a property of legal person.

Law of Georgia on the Amendments to the Criminal Procedure Code of Georgia

(signed on June 25, 2006, entered into force July 10, 2006)

Chapter LXIV²

Proceedings related to the application of criminal liability towards legal persons

Article 679¹¹. Application of the provisions of the present Code towards legal persons

1. The proceedings on the application of criminal liability towards legal persons shall be carried out on the common basis established by the present Code and in pursuance of this chapter. The provisions of the present Code shall be applied with respect to the legal persons keeping their contents in mind.
2. For the purposes of the present chapter, the term legal person means the commercial and non-commercial legal persons (or his legal successor) .

Article 679¹². The basis for the commencement of the proceedings on the application of criminal liability towards legal persons

1. If in a course of investigation or trial, the circumstances providing the basis for the application of criminal liability with regard to the legal person considered by chapter XVIII¹ of the Criminal Code of Georgia emerge, the investigator or the court (judge) respectively shall issue the Decree on the commencement of the proceedings on the application of criminal liability towards legal person.
2. The head(s) or the founder(s) the legal person at issue shall be informed promptly about the commencement of the proceedings on the application of criminal liability towards legal person in the view to ensure proper representation in the criminal proceedings.

Article 679¹³. The circumstances that shall be determined in the course of the proceedings on the application of criminal liability against the legal person

1. The following shall be determined in the course of the proceedings on the application of criminal liability against the legal person:
 - a) whether the criminal offence is committed on behalf of or through the legal person at issue or/and for the benefit of the said legal person;
 - b) whether the suspect or accused is a person authorized for the management, representation or decision-making on behalf of the legal person at issue or whether he/she is a member of supervisory, control or revision council.
2. In the case envisaged in paragraph 5 of Article 107¹ of the Criminal Code of Georgia, when the person having criminal liability is not identified, only the circumstances provided in subparagraph "a" of paragraph 1 of the present Article shall be determined in the proceedings on the application of criminal liability against the legal person.

Article 679¹⁴. The participation of the representative (counsel) of legal person

1. The representative (counsel) of legal person shall be allowed to participate in the criminal proceedings immediately after the issuing of the Decree on the commencement of the proceedings on the application of criminal liability towards the legal person.
2. The representative (counsel) of legal person has the right to get familiarized with the materials of criminal proceedings, appeal the act and decisions of investigator, prosecutor, judge (court) and to move with motions as defined by the present Code.

Article 679¹⁵. The application of coercive measures of criminal procedure and other kind of restrictions against legal person

1. Seizure as a temporary measure can be applied against legal person.
2. Seizure shall be applied against legal person in accordance with the provisions of Articles 190-201 of the present Code.
3. Liquidation or reorganization procedures with respect of legal person shall not be started from the time of the commencement of criminal proceedings to the time the judgment enters into force or the prosecution is terminated.

Article 679¹⁶. The basis for the refusal of the commencement of the proceedings on the application of criminal liability against legal person and for the termination of criminal prosecution

1. The Decree on the commencement of the proceedings on the application of criminal liability towards legal person shall not be issued or the issued Decree shall be abolished when:
 - a) any of the circumstances considered by Article 679¹³ is not determined;
 - b) there is any of the basis considered by sub-paragraphs “a”, “b”, “c”, “d”, “e”, “i”, “j” and “k” of paragraph 1 of Article 28 of the present Code.
2. If any of the circumstances provided for in paragraph 1 of the present Article is present, investigator or court (judge) shall issue the relevant Decree and inform the representative (counsel) of the legal person.

Article 679¹⁷. The transmission of the case on the application of criminal liability against legal persons to the court

1. If the basis for the termination of criminal prosecution have not emerged in the course of the proceedings, the investigator shall make decision on the transmission of the case on the application of criminal liability towards legal person to the court.
2. Investigator, after making decision on the transmission of the case on the application of criminal liability towards legal person to the court, informs the representative (counsel) of legal person, victim, civil applicant, civil respondent and their respective representatives and explains them their right to have access to the case file. Access to the case file, as well as rules on motions and those on their examination are determined by the relevant Articles of the present Code.
3. After the participants have familiarized with the materials of the case and after the examination of the motions, investigator shall issue the Decree on the transmission of the case on the application of criminal liability against legal persons to the court.
4. Investigator shall forward the Decree on the transmission of the case on the application of criminal liability against legal persons to the court together with the case file to the prosecutor for approval. Prosecutor shall make one of the under-mentioned decisions after he/she familiarizes with the case file:
 - a) on the termination of the criminal prosecution on the application of criminal liability against legal person on the basis of Article 679¹⁶.
 - b) on the return of the case for additional investigation;

- c) on the approval of the Decree issued by the Investigator and the transmission of the case to the court.
5. Prosecutor shall issue Decree on the termination of the criminal prosecution or on the return of the case for additional investigation.

Article 679¹⁸. Trial

1. The trial in the criminal case concerning the application of criminal liability against legal person shall be conducted in accordance with the rules established by the present Article and Articles 457-516 of the present Code.
2. The court inquiry shall be commenced by the prosecutor reading the Decree on the transmission of the case on the application of criminal liability against legal persons. Afterwards, the evidence are examined and the procedural measures necessary for rendering decision in the criminal case are taken. Evidence are presented first by the prosecutor, then the victim, civil applicant and their representatives, and then by the representative (counsel) of legal person, civil respondent and their representatives. The parties to the case have the right to cross-examination and re-examination. Judge ask final questions to the persons subject to interrogation.
3. Immediately after the completion of the court inquiry, the oral discussion starts. Prosecutor, victim, civil applicant, civil respondent and their representatives, as well as the representative (counsel) of the legal person participate in the oral discussions. The representative (counsel) of the legal person shall participate in the oral discussion and makes a rebuttal at the end. After the closing arguments are presented, the judge (court) goes to render verdict.

Article 679¹⁹. Judgment against a legal person

1. Judgment against a legal person shall contain:
 - a) the name of the legal person, legal address;
 - b) Article of the Criminal Code of Georgia, on the basis of which a criminal liability has been applied against legal person;
 - c) the type and measure of the punishment applied against legal person for the commission of criminal offence and the body responsible for execution of the punishment (in case of liquidation – liquidator/s);
 - d) decision on civil claim;
 - e) decision on the measure of constraint applied;
2. Judgment against legal person can be appealed on the common basis.

Article 679²⁰. The publication of the verdict rendered against legal person

1. Judgment establishing the criminal liability of legal person shall be published after it enters into force. The publication cost shall be covered by the convicted legal person.
2. The court is authorized to determine the ways of publication. The name of the victim may be made public only upon the consent of the victim or his/her legal representative.

THE RELEVANT PROVISIONS OF THE CRIMINAL CODE OF GEORGIA CONCERNING THE CORRUPTION RELATED CRIMES⁷

Article 338: Bribery

1. Direct or indirect demanding or accepting money, securities, property or any other material benefit, or accepting such a promise or offer, committed by a public official or a person with an equal status, in exchange for performing or not performing, in favor of the bribe-giver or a third person, any action as well as using his official position for that end or exercising official patronage, shall be punished with the deprivation of liberty from 6 to 9 years.
2. Bribery committed,
 - a) by a state official with political status;
 - b) in respect of a large amount of bribe;
 - c) by a group, due to an agreement in advance,

shall be punished with the deprivation of liberty for a term from 7 to 11 years.

3. the conduct defined in paragraphs 1 and 2 of the present Article, committed:
 - a) by the person previously convicted for bribery;
 - b) repeatedly;
 - c) by extortion;
 - d) by an organized criminal group;
 - e) in respect of especially large amount of money,

shall be punished with the deprivation of liberty for a term from 11 to 15 years.

Note:

1. A large amount of bribe represents the sum amounting to more than 10 000 GEL in the form of money, securities, other property or material benefit and an especially large amount of bribe constitutes the sum of more than 30 000 GEL.

2. For the purposes of the present Article, as well as Article 339 and 339¹, the person with an equal status to public official includes foreign state officials (members of the national legislative or administrative body), officials of international organization or organ or employees hired by contract, or any person on mission or without it, performing the functions equivalent to that of an official or other employee, member of international parliamentary bodies, judge or an official of an international court or that of a judicial organ.

Article 339. Bribe giving

⁷ Please be informed that this documents contains the last version of the Criminal Code of Georgia including the June 25, 2006 amendments.

1. Direct or indirect promising, offering or giving money, securities, property or any other material benefit to an official or a person with an equal status, in favour of the bribe-receiver or third person, in order that official or a person with an equal status to perform or not to perform any action or to use his official position for that end or to exercise official patronage in favour a bribe-giver or a third person, shall be punished with fine or corrective labour for a term of 2 years or the restriction of liberty for the same term or the deprivation of liberty for a term up to 3 years.
2. Giving bribe to an official or a person with an equal status in exchange of the commission of an illegal act shall be punished with fine or the deprivation of liberty for a term from 4 to 7 years.
3. The conduct defined in paragraphs 1 and 2 of the present Article committed by an organized group, shall be punished with the deprivation of liberty for a term from 5 to 8 years.

Note:

1. Bribe giver will be exempted from the criminal liability provided that the bribe was extorted from bribe-giver or he/she voluntarily informed the law-enforcement body about the fact of bribe giving.
2. Legal person shall be punished with fine for the crimes provided by the present Article.