Fighting Corruption in Transition Economies

Georgia

EMERGING ECONOMIES TRANSITION

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Fighting Corruption in Transition Economies

Georgia

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FOREWORD

The fight against corruption has only recently been placed on the international policy agenda, despite its long-known effects on democratic institutions and economic and social development. Today, many international organisations are addressing the global and multi-faceted challenge of fighting corruption. The main contribution by the OECD has been in the area of fighting corruption in international business transactions. The 1997 *Convention on Combating Bribery of Foreign Public Official in International Business Transactions,* together with the 1996 *Recommendations* and 1997 *Revised Recommendation of the Council on Combating Bribery in International Business Transactions* were adopted by all OECD countries and five non-OECD countries. It is a legally binding document, the implementation of which is systematically monitored. This convention has since become a powerful tool in controlling international bribery.

The *OECD Guidelines for Multinational Enterprises* and *Principles of Corporate Governance* are non-binding tools that help level the competitive playing field for companies and ensure the integrity of business operations. The OECD also addresses the demand side of bribery through its work on public governance, which includes *Recommendations on Improving Ethical Conduct in the Public Service, Guidelines for Managing Conflict of Interest in Public Service* and *Best Practices for Budget Transparency*. The *Support for Improved Governance and Management Programme (SIGMA)* helps the EU candidate and new member countries to reform their public administration, and to strengthen their public procurement and financial control systems. The OECD also fights corruption in aid-funded procurement and has endorsed the *Recommendations on Anti-Corruption Proposals for Bilateral Aid Procurement*.

The OECD supports several regional initiatives to promote anti-corruption actions in non-member countries. The Anti-Corruption Network for Transition Economies — one such initiative — assists the countries of Central, Eastern and South Eastern Europe, Caucasus and Central Asia in their fight against corruption by providing a regional forum for exchanging experience and elaborating best practices. Ministers launched the Istanbul Anti-Corruption

Action Plan in 2003 to provide targeted support to Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine. Implementation of this Action Plan includes reviewing the legal and institutional framework for fighting corruption, identifying its achievements and weaknesses, and proposing further actions.

The review was based on the OECD methodology for self-assessment and peer review. Self-assessment reports were prepared by the governments of Istanbul Action Plan countries. International teams of experts reviewed the reports and provided their assessment and recommendations. The recommendations were endorsed at review meetings, which brought together national governments of Istanbul Action Plan countries, other transition economies and OECD countries, international organisations, international financial institutions, as well as civil society and business associations involved in fighting corruption in the region. The recommendations contain country specific actions in areas such as strengthening anti-corruption policy and institutions, reforming anti-corruption legislation according to international standards, and implementing preventive measures by ensuring an ethical civil service and effective financial control.

This report presents a systematic international anti-corruption review of Georgia. The results, presented in this publication, provide an important guide for this country in its anti-corruption efforts. The recommendations provide a benchmark for regular monitoring of Georgia's progress. This report also serves as a reference for other partners involved in fighting corruption not only in transition economies, but also in other regions of the world.

William Witherell
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The review of the legal and institutional framework for fighting corruption in Georgia was carried out within the framework of the Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Russian Federation, Tajikistan, and Ukraine. The self-assessment status report was presented by the government and country recommendations were endorsed in January 2004. The Georgian delegation requested to consider this status report an interim report, due to rapid anti-corruption efforts underway in the country at that time. Georgia presented its updated status-report in June 2004; as a result addendum of the country review was endorsed.

Olga Savran, OECD Anti-Corruption Division, provided the general management for the Istanbul Action Plan, including the review process. Goran Klemencic, legal advisor to the Istanbul Action Plan, took the lead in designing the review framework, co-ordinated the expert review teams, and managed the review meeting. Nicola Bonucci, OECD Deputy Director for Legal Affairs, chaired the review meeting and ensured effective discussions which resulted in the endorsement of recommendations by consensus of all the parties.

Tamar Beruchashvili, Deputy State Minister, led the Georgian delegation during the January 2004 review. The delegation included Koba Chekurishvili, Anti-corruption Bureau of Georgia, Papuna Ugrekhelidze, Anticorruption Bureau of Georgia and Maia Chochua, American Bar Association Central European and Eurasian Law Initiative. The updated status report of Georgia was presented in June 2004 by Ketevan Makharashvili, Member of the Parliament. The delegation also included Besik Loladze, Deputy Minister of Justice, Irakli Chikovani, Director of Anti-Corruption Department, National Security Council of Georgia, Paliko Kublashvili, Head of Administration, Ministry of State Security, Carolyn Clark Campbell, American Bar Association Central European and Eurasian Law Initiative, Lana Ghvinjilia, Transparency International Georgia and Zurab Guntsadze, Association ALPE.

The team of review experts who examined the self-assessment report for Georgia and developed the draft assessment and recommendations included:

Benjamin Allen, UNDP; Oleksandr Dykarev, State Department for Financial Monitoring, Ukraine; Valts Kalnins, Centre for Public Policy Providus, Latvia; Marizo Khalifaev, Tajikistan/Prosecutor General's Office; Josip Kregar, Zagreb University, Croatia; Daniel Thelesklaf, TVT Compliance Ltd, Switzerland.

The review meeting, which examined the self-assessment report of Georgia and endorsed the recommendations as well as the follow-up meeting, which discussed the updated report of Georgia and endorsed addendum to the recommendations, brought together representatives from all Istanbul Action Plan countries, as well as selected OECD countries and transition economies (Austria, Canada, Germany, Italy, Japan, Mexico, Moldova, Norway, Switzerland, Turkey and the US), international organisations (EU, Council of Europe/GRECO, UNDP, UNODC, EBRD and OSCE), civil society and business associations (ABA CEELI, Transparency International, Open Society Institute and BIAC).

Lyndia Levasseur-Tomassi and Marie-Christine Charlemagne, OECD Anti-Corruption Division, provided effective assistance to the review process.

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The OECD Secretariat expresses its gratitude to all other partners who contributed to the review process.

INTRODUCTION

Istanbul Anti-Corruption Action Plan

The Istanbul Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed at the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies (ACN) in September 2003 in Istanbul. ACN Secretariat, based at the OECD Anti-Corruption Division, provides secretarial support for the Istanbul Action Plan. An Advisory Group was established to assist the Secretariat to develop, implement and assess the Work Programme of the Istanbul Action Plan; the Group brings together national coordinators from the Istanbul Action Plan countries, OECD members and donor agencies, international organisations, civil society and business groups.

The implementation of the Action Plan foresees several phases: review of legal and institutional framework for fighting corruption and endorsement of recommendations; implementation of the recommendations though national actions and international support; and review of progress in implementing the recommendations. The first phase – country review of legal and institutional frameworks for fighting corruption – has been conducted in 2004.

Country Reviews

The methodology of the review was based on the OECD practice of mutual examination, and took account of the experience of other organisations, such as the Council of Europe and its GRECO review programme. The Istanbul Action Plan review included the following elements: self-assessment carried out by the governments of examined countries; expert analysis of the self-assessment report by a team of peer reviewers; discussion of the assessment and recommendations developed by the experts during Istanbul Action Plan review meetings; and endorsement of country recommendations based on consensus.

To help the governments to carry out the self-assessment, the Secretariat developed Guidelines for Status Reports. The Guidelines included a series of questions with comments, covering the following areas: national anti-corruption strategy; promotion of accountability and transparency (ethics in the public

service; public procurement; financial control; tax and customs systems; money laundering; corporate accounting and auditing; access to information; private sector and civil society involvement; political party financing); criminalisation of corruption (definition and elements of offences including active and passive bribery and other corruption related offices; sanctions; statute of limitations; definition of a public official; defences and immunities; jurisdiction; confiscation of proceeds; corruption in private sector and liability of legal persons); specialised service; investigation and law enforcement (distribution of powers between law enforcement agencies; mandatory and discretionary prosecution; investigative capacities; organised crime and corruption); international aspects and mutual legal assistance.

The self-assessment reports were developed by the governments of the Istanbul Action Plan countries, based on the inputs of their national institutions, involved in the prevention and combating corruption. The reports were supported by extracts from various legal acts. These reports provided the main basis for country examinations. Additional publicly available sources of information were used as well, such as reports developed by other international organisations. Reports specially prepared for this review by the civil society groups provided an important input.

Teams of review expert teams were established for each country. The experts were nominated by the governments of Istanbul Action Plan countries (excluding the examined country), other transition and OECD countries, international organisations and civil society groups participating in the Action Plan. The expert teams studied the reports and other available information, and developed draft assessments and recommendations for each country. The draft assessment and recommendations were presented at review meetings, which brought together some 80 participants, representing all the main stakeholders. The review meetings provided an opportunity for the national delegations to present their self-assessment report, the review team presented draft assessment and recommendations, and all the participants debated final recommendations. The recommendations were endorsed by consensus.

Assessments and Recommendations

The recommendations include general assessment and recommendations, followed by concrete recommendations in three broad areas: national anti-corruption policy and institutions; legislation and criminalisation of corruption and transparency of the civil service. The assessment and recommendations vary among the countries reflecting different national situations. While it is impossible to summarise the findings for all the countries, a number of common issues emerged during the review.

Anti-Corruption Policies and Institutions

Many countries have declared the fight against corruption a key priority in the broader framework of economic and social reforms. At the time of the reviews, Georgia and Ukraine were entering the stage of updating their existing anti-corruption strategies; Armenia has adopted its anti-corruption strategy; Azerbaijan and Tajikistan were in the process of elaborating and adopting such policy instruments. While recognising these achievements, the recommendations stress the need to improve the analytical basis for such programmes, including the need to study the patterns and trends of corruption in each country, to identify sectors and institutions where the risk of corruption is particularly high. The recommendations call for reinforcement of implementation measures, and a balanced approach of repressive and preventive measures. They further underline the importance of a participatory process for the elaboration and monitoring of anti-corruption programmes and strategies, which should involve all branches of public authorities, civil society and private sector. Finally, the recommendations stress the importance of effective monitoring and reporting mechanisms to support the implementation of anti-corruption policies.

Armenia, Georgia and Ukraine have established anti-corruption councils or committees responsible for the elaboration and/or monitoring of the implementation of anti-corruption strategies. The recommendations call to strengthen these bodies by ensuring their independence and high moral of their members, promoting public involvement in their work and providing adequate resources for their effective operations. Establishing a national multi-stakeholder anti-corruption council was recommended for Tajikistan. In addition to these policy bodies, it was recommended for all countries to establish specialised anti-corruption law-enforcement agencies, responsible for detection, investigation and prosecution, as well as for the coordination among other law-enforcement agencies involved in the fight against corruption.

The recommendations for all countries stress the importance of awareness raising among the general public and public officials, and training at all levels, including corruption-specific training for policy, prosecutors, judges and other law enforcement officials.

Legislation and Criminalisation of Corruption

The assessment of national anti-corruption legislation confirmed that all reviewed countries have developed core legislation criminalising corruption and corruption related crimes, but national anti-corruption legal standards fall short of international anti-corruption 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. The recommendations in the field of anti-corruption legislation require from all countries of the Action Plan to reform national legislation and to bring in line with the international anti-corruption standards, including the following recommendations:

- Criminalise offer and promise of bribe, non-material benefits and trading in influence, and bribery though a third person; clarify provisions about gifts to officials;
- Ensure adequate sanctions for corruption and corruption related offences, strengthen sanctions for active bribery;
- Ensure effective responsibility of legal persons for corruption;
- Ensure mandatory confiscation of proceeds, value based confiscation, and confiscation from third persons; consider introducing legal provisions for checking and seizure of unexplained wealth;
- Ensure sufficient statute of limitation for corruption and corruption related offences;
- Ensure that definition of a public official is broad enough to include all levels of power, state representatives on boards of companies, foreign and international officials;
- Reduce scope of immunities and categories of officials who benefit from them, clarify criteria for lifting immunities;
- Ensure effective international mutual legal assistance;
- Ratify the Council of Europe and the UN Conventions against corruption.

The recommendations call the countries to harmonise their anti-corruption legislation in order to ensure that the provisions of Laws on the Fight against Corruption, which were recently adopted in many countries, are adequately reflected in the Criminal Code and other relevant legislation, and that disciplinary, administrative and criminal corruption offences do not contradict each other, and do not leave legal gaps.

The reviews stressed that more information was needed to assess actual interpretation and implementation of the legal texts. The recommendations call the countries to evaluate continuously the application of their national anti-corruption legislation, and to develop it further based on the analysis of its effectiveness.

Transparency of Civil Service

During the review of corruption prevention measure in civil service, countries have reported about their efforts in developing regulatory frameworks in such areas as merit-based civil service and management of conflict of interest; transparency and fairness in public procurement and taxation; financial control and anti-money-laundering; political party finance; and public access to information. The recommendations propose further reforms in these areas, including the following:

- Introduce unified merit-based system for appointments and promotion in the civil service, which would, to the extend practicable, limit discretional decisions;
- Elaborate and disseminate comprehensive practical guides for public officials on corruption, conflict of interest, ethical standards, sanctions and reporting of corruption; provide training on anti-corruption to officials; introduce codes of conduct for civil servants, particularly in the agencies where the risk of corruption is high; consider the introduction of an ethics supervision body/commissioner;
- Ensure effective implementation of Conflict of Interest legislation, including strengthening of monitoring of its implementation, empowering relevant institutions to verify the accuracy of submitted declaration of assets, sanctions for failure to comply with requirements; Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government;
- Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers"; improve the system of internal investigations in cases of suspected or reported corruption offences;
- Introduce measures to limit discretion in public procurement; introduce eligibility criteria to exclude from bidding companies, which had been convicted for corruption; promote electronic contracting; enhance transparency of procedures and publishing public procurement information;
- Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials;

- Pursue the implementation of the FATF recommendations; adopt and enact anti-money laundering legislation; establish and strengthen Financial Intelligence Units; build expertise necessary for financial investigations in corruption-related cases, ensure coordination and exchange of information with financial control/audit institutions;
- Consider establishing an office of an Information commissioner to receive appeals under the Law on Access to information; limit discretion of officials and the scope of information that could be withheld; enhance cooperation with civil society.

Implementation of Recommendations

While these recommendations are not legally binding, they represent the commitment of the participating states, and are expected be implemented as such by their governments. Implementation of these recommendations will not only support the objectives of the Istanbul Anti-Corruption Action Plan, but will also help the countries to meet their legally binding obligations under the United Nation's Convention on Corruption and the Council of Europe's Criminal Law Convention on Corruption.

Besides, the results of the reviews provide a framework for launching the second phase of the Istanbul Action Plan, which will focus at the regular monitoring of national actions to implement the recommendations and at thematic reviews on selected priority issues; they will also provide a benchmark for review of implementation of recommendations, planned under the third phase of the Action Plan.

Following the introduction, the book presents the recommendations and addendum to country assessment. Next section contains the full text of the updated self-assessment report. Technical annexes, civil society report and the text of the Istanbul Action Plan are presented in Annexes. This publication was compiled by the OECD Secretariat; it is available in English and Russian languages. for more information, please refer to the web site of the Anti-Corruption Network for Transition Economies/OECD
www.anticorruptionnet.org.

SUMMARY ASSESSMENT AND RECOMMENDATIONS

Endorsed on 21 January 2004

National Anti-Corruption Policy, Institutions and Enforcement

General Assessment

In recent years, Georgia has undertaken a substantial number of anti-corruption measures aimed at the establishment of specialised anti-corruption bodies and the adoption of a legal framework in line with international standards. As a result, there exists today a relatively well developed framework of relevant legislation.

The Anti-corruption Coordination Council and the Anti-corruption Bureau were established in 2001. A set of recommendations was developed by the Council, and adopted by the President, in order to achieve to limit corruption. The recommendations included changes to legislation for the civil service, for public access to information, and for public procurement.

Georgia had already adopted in 1997 a specific Law on Conflict of Interest and Corruption in the Public Service. This law regulates in detail conflict of interest situations and requires complex asset declarations to be submitted by officials. It is, however, difficult to measure the real impact of these provisions as no agency is in charge of their enforcement.

The implementation of anti-corruption policies and measures are at present constrained by the difficult and challenging economic and social situation. While specialised anti-corruption bodies with analytical, policy and coordinating powers exist, Georgia does not have specialised law enforcement and prosecutorial bodies focused exclusively on detection, investigation and prosecution of corruption. Neither do the state financial control institutions make a significant contribution in the fight against corruption. It is clear, therefore, that the implementation and enforcement of this legislation, and the general lack of capacity of public institutions, which present the major challenges and on which Georgian efforts to control corruption should focus.

The current political situation provides a window of opportunity to meet these challenges. Building on the experience of the development of the "shadow" report for this review by the anti-corruption NGO coalition, Georgia should continue to consult civil society and NGOs in the formulation and monitoring of its anti-corruption policy.

It should be noted that Georgia has been a member of the Council of Europe's Group of States against Corruption (GRECO) since 1999 and was evaluated in the first evaluation round that took place in 2001. It is expected to act in line with the recommendations adopted in the framework of GRECO.

General Recommendations

Within the framework of the new government and the forthcoming new Parliament, the Anti-Corruption Strategy needs to be updated and more focused on implementing specific measures in order to improve the general social and economic environment and promote investments.

Taking into account the limited financial resources of Georgia, it is important to strengthen the institutional and analytical capacity of the Anti-Corruption Council and the Bureau, and to streamline and consolidate the investigative and law-enforcement bodies involved in the fight against corruption.

Measures should be taken to increase the involvement of the state financial control institutions in the country's overall strategy against corruption, as well as to enhance their capacities to identify corrupt practices. This could, for example, mean their involvement in the work of the Anti-corruption Coordination Council and the Anti-Corruption Bureau, and an obligation to prepare internal anti-corruption strategies, the establishing of guidelines for the exchange of information and co-operation with law enforcement authorities, and conducting joint training with the Anti-Corruption Bureau.

Developing agencies with high standards of professional ethics and which conduct vigorous investigations and prosecutions are challenging tasks. It is difficult to tackle corruption in all public agencies at once. Focusing efforts on a few selected, possibly corruption-prone institutions could demonstrate positive changes. Such focused measures should comprise a review of the regulatory and institutional settings of such agencies and their operational practices in order to identify and minimise the factors which favour corruption (*e.g.* by limiting discretionary powers of civil servants, strengthening internal control, introducing preventive measures, recruiting and promoting new staff through transparent procedures, measuring and reporting improvements). The existing anti-corruption bodies should lead this process by example.

Specific Recommendations

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

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

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 independent in both cases. It is important that the Agency 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 co-operation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchanging information, introducing a team-work approach in complex investigations).

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

Legislation and Criminalisation of Corruption

General Assessment

The Georgian Criminal Code includes the main criminal offences relating to corruption, including active (Article 339) and passive (Articles 338 and 340) bribery of domestic public officials, abuse of official authority, money laundering, private corruption, etc.

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that the definitions of bribery offences fall short of 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). for instance, the subject of the bribe offence is limited to material benefits, and thus would not extend to non-pecuniary and non-tangible benefits. Offers or promises of a bribe as well as solicitation of a bribe are only criminalised under the "attempt", "aiding" and "abetting" provisions. Bribery for the benefit of third persons does not seem to be covered by the provisions of the Criminal Code and trading in influence is not considered a criminal activity.

The Criminal Code does provide for dissuasive sanctions, including prison sentences ranging up to 15 years (for grave offences), corrective labour, and fines. However, the basic form of active bribery carries a rather low sanction – a fine or imprisonment for up to two years. The statute of limitation is only two years, which is not adequate given the concealed nature of corruption. There is also a concern that Article 340, which criminalises the acceptance of illegal presents (a form of passive bribery), by providing very low sanctions (fines) could be improperly applied in serious cases of passive bribery.

The Criminal Code also stipulates that the Court shall remit the punishment of the perpetrator of active bribery who promised or gave the bribe after being extorted by the public official to do so, providing that such a perpetrator reported the act to the competent law enforcement authority before the crime was detected.

The Criminal Code does not define categories of public officials subject to incriminations under corruption offences, and bribery of foreign or international public officials is not criminalised. Money laundering has been criminalized as a separate offence in the Criminal Code and the Financial Intelligence Unit (FIU) has just recently been established.

Confiscation of property has been prohibited by the constitution, which reflects negatively on the confiscation of proceeds from crime (Georgia refers to this as "procedural confiscation") as it is literally non-applicable; as a result, proceeds from corruption offences are not confiscated.

The existing legislation does not provide for criminal liability of legal entities and there is currently no administrative or civil liability of legal entities for corruption-related cases.

Specific Recommendations

5. 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.

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 (Article 339) and the offence of accepting prohibited presents (Article 340). Consider increasing the punishments for active bribery and the statute of limitations for all corruption offences.

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 State interests in commercial joint ventures or on the boards of companies.

8. The bribery of foreign or international public officials should be made a criminal offence, either by expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.

9. Consider amending the Criminal Code to ensure that the confiscation of proceeds is mandatory for all corruption and corruption-related offences. Ensure that the confiscation regime allows for the 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 are efficient and operational. Explore the possibilities to check and, if necessary, to seize unexplained wealth.

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.

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.

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

Transparency of the Civil Service

General Assessment

The information which was available under this heading is not sufficient to support an in-depth assessment. Therefore, only a number of specific recommendations on selected sections can be made. for the final report, the expert team will co-operate with the Georgian team to complete the necessary information.

Specific Recommendations

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

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.

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.

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 that institution with the authority to verify the accuracy of submitted asset declarations. All asset declarations must be available to the public.

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".

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.

19. 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 and citizens to raise awareness about their responsibilities and rights under the access to information regulations.

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

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

ADDENDUM TO THE SUMMARY OF THE UPDATE REPORT AND OF THE DISCUSSION

Endorsed on 17 June 2004

National Anti-Corruption Policy, Institutions and Enforcement

General Assessment

Since the January 2004 anti-corruption review of Georgia within the framework of the Istanbul Action Plan, Georgia has implemented a number of significant political reform measures aimed at strengthening the democratic principles and the rule of law, and at enhancing the effectiveness and efficiency of public management. According to the updated report, the main political reform measures include the following:

- election of the President and of the Parliament;
- changes in the Constitution, including the creation of the Cabinet and introduction of the post of Prime Minister;
- reorganisation of the Executive Power by replacing the three-tiered system by two levels (ministries and lower level bodies), reducing the number of agencies and improving their co-ordination;
- ensuring the authority of the State by re-establishing the authority of the State in the autonomous republic of Ajara.

Fighting corruption is identified among the top priorities of the new President and the government in the overall framework of reform. According to the updated report there are a number of approaches pursued in the field of anti-corruption policy and institutions:

- *anti-corruption strategy*: elaboration of a new Anti-Corruption Strategy by a special group of the National Security Council; the active involvement of civil society is foreseen;
- *anti-corruption institutions*: transferring the authorities of the Anti-Corruption Bureau for policy development and co-ordination to the

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National Security Council under the President; establishing a special division for fighting corruption in the office of the Prosecutor General;

- *law enforcement*: fighting the "syndrome of impunity" and reaffirming the rule of law by effective prosecutions and convictions, *e.g.* 20 to 40 high level officials were detained for official malfeasance and economic crimes;
- *judicial reform*: strengthening the possibility of the Council of Justice to undertake disciplinary actions against judges, and the introduction of jury trials in some cases of administration of justice.

During the discussion at the Second Review Meeting, the participants welcomed the recent political measures and the anti-corruption approaches pursued by Georgia.

General Recommendations

1. Recognising that the magnitude of challenges calls for rapid action, 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 the January recommendations 1 and 2.
2. The establishment of the special anti-corruption division in the Prosecutor's Office 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 co-ordinating various law-enforcement, security and financial control bodies.
3. Significant achievements of law-enforcement activities were noted during the discussion. Such efforts should continue in the implementation of the anti-corruption policy based on objective data and in accordance with the law. Statistics on anti-corruption cases should be carefully maintained and made public.

Legislation and Criminalisation of Corruption

General Assessment

Despite the brief lapse of time since the January review, the updated Georgia report indicates a number of important changes in national legislation,

some of which are related to the January recommendations. The main changes are summarised below.

- *Immunities*: reduction of the number of officials protected by immunities, as well as the scope of immunities.
- *Confiscation*: adoption of legal provisions for the investigation of illegal or unjustified property, introduction of the institution of withdrawal of illegal property.
- Efficiency of investigation and prosecution: introducing plea-bargaining in the criminal procedure; enhancing the possibilities to apply special investigative means in collection of evidence.
- *Confiscation of proceeds from crime*: Georgia has adopted a new law, which provides a legal basis for confiscation of unjustified property, and addresses the January recommendation 9 concerning the confiscation of proceeds of corruption; additionally, new measures are being introduced outside the criminal process to enable confiscation of unexplained wealth (through the reversal of burden of proof).
- A new criminal procedure code is being developed.

General Recommendations

1. Ensure the implementation of outstanding January recommendations, in particular recommendations 6, 7, 8 and 10 which relate to bringing 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) as well as the responsibility of legal persons for corruption offences;
2. Ensure the fulfilment of recommendations endorsed for Georgia under the first evaluation round by the Council of Europe's Group of States against Corruption (GRECO);
3. Monitor the newly established confiscation of proceeds regime and the confiscation of unexplained wealth, and invest special attention to verify that they are implemented in a non-discriminatory and non-arbitrary manner through proper checks and balances and safeguards.

Transparency of the Civil Service and Financial Control Issues

General Assessment

On the preventive side of anti-corruption measures, the updated report of Georgia mentions a number of recent measures, including the following.

- Adequate remuneration of civil servants: establishment of the Development and Reform Fund to provide additional payments to some categories of civil servants.
- Financial police: established under the Ministry of Finance to consolidate the law-enforcement functions in the field of economic crime.
- Tax and Budget Reforms: introduction of legal provisions for identification of excessive taxes and streamlining the tax administration, improvements of the development and execution of the state budget.
- Money laundering: improvement of the effectiveness of the Financial Monitoring Service and establishment of the Financial Intelligence Unit (recommendation 21).

The rapid and profound reform of staffing of the government was noted. The participants noted that a more transparent system of hiring of new civil servants as well as of the use of the salary fund is needed, in line with January recommendation 13.

Tax reforms, consistent with January recommendation 20, were noted during the discussion as an important measure to reduce the incentives for bribe taking, and for the general economic development of Georgia.

General Recommendations

1. Ensure the implementation of outstanding January recommendations in the area of transparency of civil service and financial control issues.
2. Further steps towards liberalisation of business environment should be promoted. Such steps could include, for instance, a diagnostic of administrative barriers for business activities.1

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1. Such a diagnostic is being tried at the regional level in the Russian Federation and provides for a bi-annual survey on the implementation of legislation for business regulation, *e.g.* on licensing, inspections and registration.

UPDATED SELF-ASSESSMENT REPORT

At the first meeting review meeting held 19-21 January 2004, the report on the state of the fight against corruption and on the legislative and institutional base in Georgia was discussed.

Considering the events that took place in November 2003 in Georgia, the participants decided on a further meeting to discuss the state of anti-corruption activities taking into account appropriate changes and trends.

Representatives from Georgia were given suggestions to clarify some issues that were not presented properly in the last report.

The present document consists of two parts. The first includes the answers to those questions that should have been clarified in the report presented in January 2004 (introduced in text boxes) and the second briefly reviews all those events, including changes in legislation since January 2004 and which relates to issues concerning the fight against corruption.

National Anti-Corruption Plan (Strategy) Against Corruption

Information on Corruption-Related Research

- "Surveys on Corruption" made by GORBI in 2002-2203;
- "Global Corruption Barometer" (Transparency International and Gallup Int. Institution) 2003, indicating the list of the most corrupt branches and effect of corruption on various aspects of life;
- Corruption Perception Index 2002, 2003 (TI) evaluates the extent of corruption in the state;
- Corruption in the Higher Educational Sphere (TraCCC), 2003.

The above research was conducted by qualified groups and contains complete information concerning the respective questions. Accordingly, we suppose that additional comments to these results would not serve any purpose. The only circumstance we would like to underline is that the popularization of a certain topic increases public awareness and this is reflected in public surveys.

This may explain the increase in the ranking of corruption in polling results; more people are simply aware of this activity.

Statistical Information Concerning Corruption Offences

Cases considered by the common law courts with respect to the malfeasance in office:

- In 2002, under the qualification of accepting and giving a bribe, the common law courts of Georgia received 8 criminal cases, 9 completed (including remainder). Sentence was passed on six cases, constituting 0,1% of all types of sentences passed in 2002.
- In 2001, under the qualification of accepting and giving a bribe, the common law courts of Georgia received 18 criminal cases, 24 completed (including remainder). Sentence was passed on 15 cases, constituting 0,2% of all types of sentences passed in 2002.
- In 2002, under the qualification of abuse of official powers, the common law courts of Georgia have received 60 criminal cases, 62 completed (including remainder). Sentence was passed on 46 cases, constituting 0,6% of all sentences passed in 2002.
- In, under the qualification of abuse of official powers, the common law courts of Georgia have received 73 criminal cases, 73 completed (including remainder). Sentence passed on 49 cases, constituting 0,7% of passed sentences during the year 2001.
- In 2002, under the qualification of other malfeasance in office, the common law courts of Georgia have received 54 criminal cases, among them 50 completed. Among completed cases, sentence was passed on 35 cases, constituting 0,5% of all sentences passed in 2002.
- In 2001, under the qualification of other malfeasance in office, the common law courts of Georgia have received 49 criminal cases, among them 57 completed (including remainder of the previous year). Among completed cases sentence passed on 51 cases, constituting 0,7% of passed sentences during the year 2001.

The number of convictions and types of punishment on cases considered with respect to malfeasance in office:

- During 2002, 68 persons were convicted for abuse of official powers, among them 3 were sentenced to deprivation of liberty, 26 received suspended sentences, 39 were fined, and 3 received discharges;

- During 2001, 10 persons were sentenced to deprivation of liberty, 3 to correctional labour, 30 received suspended sentences, 29 received fines, 5 were discharged. A total of 77 persons were convicted.
- During 2002, 7 persons were convicted for giving or receiving a bribe, among them 1 was sentenced to deprivation of freedom, 6 received suspended sentences, and one person was discharged.
- During 2001, 3 persons were sentenced to deprivation of liberty, 14 received suspended sentences, 1 was fined. A total of 18 persons were convicted.
- During 2002, 59 persons were convicted for other malfeasance in office, among them 3 were sentenced to deprivation of freedom, 1 to corrective labour, 23 received suspended sentence, 32 were fined, and 1 was discharged.
- During 2001, 70 persons were convicted for other malfeasance in office, among them 3 were sentenced to corrective labour, 32 received a suspended sentence, 31 were fined, and 4 were discharged.

The inconsistencies between figures are caused for objective reasons and are not related to technical errors. Where cases are the result of long procedures, there are frequent instances when a case cannot be completed and a sentence determined within a year. Accordingly, the cases received by a court in the previous year but not terminated may be moved as a remainder in the next year.

National Strategy for the Fight against Corruption

A group of seven members was formed by Presidential decree in 2000 to fight corruption. This group is composed of experts and members of the public and were assigned to develop the National Anti-corruption Program. Within the fixed terms, it has produced a draft of basic directives. These initiatives were further enhanced when their implementation was assigned to the advisory body of the President of Georgia, the Anti-corruption Policy Coordination Council, established on 13 April 2001 by the President of Georgia and with the assistance of George Soros. Since then the Anti-corruption Bureau of Georgia has been set up, and which provides the Anti-corruption Policy Coordination Council with information and analytical support.

The Anti-corruption Policy Coordination Council consists of a Secretary and eleven members, who are designated by the President and serve two-year terms. Members of the Anti-Corruption Council are elected from both the public and private sectors. Members of Anti-Corruption Policy Coordination Council are also representatives from the public sector and the Government.

The activities of the Anti-corruption Council are of a preventive nature and seek to bring changes to a corruption-conducive environment. Therefore, the Council develops recommendations on implementation of systemic changes and monitors their implementation.

The mentioned recommendations concern such measures as the:

- reorganization of the executive system and increase of remuneration in the public service;
- liberalization of the business environment;
- financial management of the state resources;
- issues concerning of the educational system;
- power structures;
- representative democracy; and
- improvement of the legal procedures.

These recommendations were approved by Presidential Decree N°95, Presidential Provision N°758 on Some Anti-corruption Measures of 27 July 2001, and Provision N°430 on Approval of Schedule of Anti-corruption Measures of 17 April 2002.

The Anti-corruption Bureau of Georgia has developed and approved within a year almost 80 recommendations to be implemented with regard to systemic changes, in accordance with the Presidential Decrees and further recommendations on the issue of responsibilities of separate authorities.

The activities of the Anti-corruption Policy Coordination Council and Bureau are not focused only on the elaboration of recommendations. One of the major directives of the Anti-corruption Council and Bureau is to react to specific violations of the law.

for breach of the Law on Conflict of Interests and Corruption in the Public Service, and on the basis of recommendation of the Anti-corruption Policy Coordination Council, the following officials were dismissed: Chairman of the State Department of Forestry; Presidential Attorney in the Mtskheta-Mtianeti Region; Head of State Bureau Service of the State Chancellery (President Administration); Head of Service for Regional Policy and Administration of the State Chancellery (President Administration); Chairman of Department of Logistics and Financial Maintenance of the Ministry of Interior.

The activities undertaken by the Anti-corruption Bureau during 2003 made clear that, in parallel with the recommendations concerning systemic changes, important results can be brought by bringing forth the issue of liability of high officials. to develop further activities in this domain, it is necessary to widen the powers of the Anti-Corruption Bureau. In particular, it is necessary to define precisely the powers of the Bureau with respect to collection of information, as there have arisen some problems related to delivery of information by state agencies and the quality of the information received.

In our case, the Lithuanian experience has been considered as acceptable, where similar powers of the Bureau are formulated as follows: "*State institutions and self-governmental organizations are obliged to create free of charge and unhindered conditions of utilization of State registers, cadastres and other databases of the public organizations and utilization of databases of private and other institutions is achievable on the basis of agreement*."

In 2005, the Anti-corruption Policy Coordination Council and Anti-Corruption Bureau intend to further develop the anti-corruption education of the public and elaboration of efficient models of anti-corruption propaganda. In this way it is hoped that there will be greater citizen involvement in the fight against corruption.

The activities of the Anti-Corruption Policy Coordination Council and Anti-corruption Bureau will in the near future be determined according to the following three pillars:

- systemic prevention steps;
- reaction to violations of the law; and
- anti-corruption propaganda and anti-corruption education.

The Anti-corruption Policy Coordination Council and Anti-corruption Bureau actively co-operate with international and donor organizations operating in Georgia (United States Department of Justice, the World Bank, "Open Society Georgia" Foundation, accredited embassies and donor organizations). Such assistance enables the Anti-corruption Policy Coordination Council and Bureau to take efficient steps towards implementation of anti-corruption measures in the State.

During the last years, corruption has received the attention of both the executive power non-governmental organisations. At various times, many NGOs have undertaken campaigns with respect to this issue. The most memorable was the campaign led by the Association for Legal Development

(ALPE). for several months they distributed anti-corruption posters and advertisements were placed in the mass media and at places of public assemblies. Although this campaign cannot be considered as an important anti-corruption measure, it was highly influential in the development of public opinion.

It should be noted that campaign was related to changes of office automobile license plates by the executive power. The Anti-corruption Bureau has prepared a draft Presidential Provision, according to which all agencies were to change the so-called "privileged series" license plates of official automobiles.

The draft provision prepared in Anti-corruption Bureau of Georgia has been submitted for signing has been significantly changed. Despite this, this measure was used as a test for high-ranking officials. It was not intended that this recommendation have an anti-corruption effect, but rather show how the government elite was ready to give up the insignificant difference that distinguished it from ordinary citizens.

for this purpose, the license plates with AAA governmental series have been eliminated. The majority of officials have indeed changed the mentioned plates in accordance with the Provision. Nevertheless, there were exceptions (several parliamentarians) who rejected implementation of this recommendation.

The situation has not changed sufficiently. Instead of the mentioned license plates, the officials have stuck the titles of their agencies to the windscreens of their official automobiles in an attempt to distinguish their cars from those of ordinary citizens. In summary, we can conclude that the majority of officials failed to pass the easiest test.

The Anti-corruption Program was elaborated by a group of authoritative experts nominated by the President. During the working process, the group actively cooperated with non-governmental organizations and representatives of society. Before submitting its programme to the President, the draft was publicized for public examination and comments were received from all regions of Georgia.

The final version of the Anti-corruption Program was submitted to the President of Georgia. After establishment of the Anti-corruption Policy Coordination Council and Anti-corruption Bureau, the recommendations were approved by presidential legal acts (provisions).

The long-term program, approved by Presidential Decree, indicates the terms of execution of the recommendations and the body responsible for execution.

The review of Anti-corruption Program is possible on the basis of the proposal of the Anti-corruption Policy Coordination Council under the Presidential Provision.

The given power of the Coordination Council derives from subparagraph "a" of Article 2 of the Provision stating that the functions of the Council include "*enhancement of basic directives of the National Anti-corruption Program taking into consideration the current social, economic and political events, elaboration of schedule of measures provided for by the Program*".

Periodically, the Anti-corruption Bureau carries out the evaluation of implementation of the Anti-corruption Program. to date, the initial assessment has been carried out, which was discussed with the President at the meeting of the Anti-corruption Policy Coordination Council.

The first composition of the Anti-corruption Policy Coordination Council was determined under the Presidential Provision N°342 on Determination of the Composition of the Anti-corruption Policy Coordination Council, dated 25 April 2001.

The Anti-corruption Bureau of Georgia was staffed a competition held on 28 May 2001 and was set in action from 16 June of the same year.

At present, the widening of the powers of the Bureau only ensures access to a certain type of information. In particular, the Anti-corruption Bureau has no power to request information on taxes paid to the budget by a concrete enterprise, or information pertaining to the investigation of a criminal case.

The disclosure of facts of violations of law is complicated without the given powers; this is the reason for the resistance encountered by the Bureau in its activities.

According to the Provision of the Anti-corruption Policy Coordination Council, its functions include:

- monitoring the implementation of measures by State bodies and high officials as provided for by the National Anti-corruption Program;

- preparation of recommendations on the basis of analysis of the monitoring results and proposals to the President of Georgia in order to effectively implement the measures of the Anti-corruption Program;
- developing recommendations in order to prevent corruption in the State structures;

Accordingly, the Council is empowered to study each issue connected within the sphere of state relations covered by the Anti-corruption Program. As regards the mechanism to react to facts, Article 4 of the Provision states: "*Coordination Council has the right, upon necessity, to address the state agencies and high-ranking officials with a letter of recommendation with respect to the cases considered*."

Since its inception, the Anti-corruption Program has been the focus of attention. In this respect, the most important has been that given by the non-governmental sector and foreign partners.

Today, when corruption comes to light, there is little illusion that radical changes will be supported by the government and high officials. All anti-corruption measures will encounter resistance from the privileged groups, and which are the same groups which are supposed to introduce changes. It is difficult, therefore, to imagine high ranking officials as supporters of the Council in the fight against corruption.

The only reliable force in the implementation of anti-corruption measures is society itself. That is why the support of non-governmental organizations, as the most active part of society, is very important for the Anti-corruption Council. Cooperation with the Anti-corruption Council is equally vital, however, for the non-governmental sector. In the settlement of a difficult problem, the Anti-corruption Council and Bureau may become a spokesperson for NGOs. An example is the successful cooperation in 2003 between these two actors with respect to the monitoring of the Presidential Decree N°95 of 2001. The fund Open Society – Georgia financed the monitoring activities of this decree by Non-Governmental Organizations.

One of the most important measures of the Anti-corruption movement relates to entrepreneurs. The Anti-corruption Bureau actively cooperates with representatives of the business environment in the process of working out of the rules for issuing permits and licenses. Concrete steps have been taken and steps will be taken to liberalise the conditions of the business environment.

Moreover, the activities of the Anti-corruption Bureau and Anti-corruption Policy Coordination Council have been well received by the public, with large numbers actually addressing this agency to solve a problem. This is demonstrated by the number of applications submitted to the Anti-corruption Policy Coordination Council and Anti-corruption Bureau of Georgia (more than 600 in 2003). The Anti-corruption Bureau of Georgia gives timely responses to all applications and does its best not to alienate society. We are aware that, by means of maximum transparency of the activities of the Anti-corruption Policy Coordination Council and Bureau, it is possible to achieve public support in the anti-corruption struggle. Press-conferences, briefings and meetings are held regularly and will continue in the future to deliver information on activities of the Council and Bureau.

The support of foreign partners to the Council and Bureau is also important. As a result of their financial and technical assistance, the Bureau has reached a maximum level of independence level, which is vital for the effective activities of such a structure. Such assistance is also present in the process of the preparation and enforcement of recommendations that are the part of the Anti-corruption Program. We suppose that the success of activities of the Council and the Bureau is conditioned by support of the foreign partners and society.

Promotion of Accountability and Transparency

Ethics in the Public Service

Main Civil Service Laws and Other Regulations Which Apply to Civil Servants

The basic legislative acts regulating public service:

- Law of Georgia on Public Service
- Law of Georgia on Conflict of Interests and Corruption in Public Service
- Code of Labour Laws

In addition to the above, the activities of public service are regulated by special laws:

- Organic Law of Georgia on Courts of General Jurisdiction of Georgia
- Organic Law of Georgia on Constitutional Court of Georgia
- Organic Law of Georgia on the Supreme Court of Georgia
- Law of Georgia on Police

- Law of Georgia on Prosecutor's Office
- Law of Georgia on Defence of Georgia
- Law of Georgia on Security Services of Georgia
- Law of Georgia on Intelligence Activities
- Law of Georgia on Special Service for State Security
- Law of Georgia on the Chamber of Control of Georgia

The Process of Recruitment and Appointment of Public Officials and the Career Advancement Practices

Public office is a primary unit of a state body, which determines the place and social role of a citizen within a system of public service, and his/her rights and duties incumbent upon him/her. Any public position is obtained either through election or appointment. That person, on the basis of legislation, will exercise legislative, executive and judicial power, state supervision and control, and/or state defence. A person shall not be accepted to a public office position if he/she:

- has been previously convicted for deliberately committing a crime and has not been discharged;
- is under pre-trial investigation or arrest;
- under a court decision has been recognized incapable or having limited capability;
- has been deprived by the court of the right to occupy the respective position;
- according to a medical certificate, does not satisfy the necessary requirements of the respective position;
- is directly related to a parent, spouse, sister, brother, son, daughter, or spouse's sister, brother, parent;
- is a candidate for citizenship of a foreign country, except the exclusion provided for by law or international treaty.

When accepting a post, a public servant (candidate) shall submit annually to the State Tax Service of Georgia a declaration of his/her and his/her family's property and revenues. Under this law, property includes bank fees, securities, dividends of enterprises, movable and immovable property, the possession or co-possession.

When accepting to the position, a person shall present a certificate of medical and narcotic examination in accordance with the rule provided for by legislation. Additional requirements with respect to taking on employment are determined by law. Additional qualification requirements may be introduced by the head or superior of an organization under the normative act.

A public servant is accepted to the service through appointment or election. The right to appoint a person to a position has a head of respective agency or an official empowered by him. As a rule, a public servant is accepted to a vacancy for an indefinite term. The following are accepted for a determined term:

- a person substituting a temporarily absent public servant before his/her return or dismissal;
- a person acting as a public servant to be appointed to a position through a competition, before appointment of a public servant in accordance with the competition results;
- Presidential advisor or assistance (consultant), for no more than the term of office of the President;
- Assistant or advisor to Chairperson of Parliament, Deputy Chairperson, Chairperson of Committee, also – assistant to Member of Parliament – for the respective term of office;
- Deputy Minister or Parliamentary Secretary – for no more than term of office of a Minister;
- part-time public servant – for the term of fulfilment of task;
- other public servant positions as provided for by legislation.

A person who by law can employ civil servants can impose a probation period of no more than six months. During the probation period, the professional skills, capabilities and compliance of personal features of a public servant are examined. In case of unsatisfactory results, a public servant may be dismissed within the probation period under the rule provided for by this law. The probation term is not used towards:

- a civil servant appointed by the President;
- a civil servant appointed or elected by the Parliament;
- a civil servant to be appointed through contest;
- in the case of a position being occupied following an official promotion;

- a person temporarily absent.

Documents to be presented at acceptance to the public service:

- completed application form;
- Curriculum Vitae;
- certificate of compliance of a person with the requirements provided for by law;
- certificate of education or respective qualification;
- identity card;
- work-book already issued;
- certificate of presentation of property declaration from the tax service;
- certificate of medical and narcotic examination;
- medical health certificate;
- other documents provided for by legislation.

Non-submission of these documents may serve as grounds for rejection in the public service.

Appointment a Position Through Competition

A person may be appointed to a position in accordance with competition results. A contest may be announced under a decision of head of state or local self-government agency for occupation of a certain position in this agency, except the cases provided for by Article 30. The following are appointed to a position without a competition being held:

- civil servants to be appointed or elected by the President of Georgia and Parliament;
- deputy ministers, assistants and advisors;
- temporary substitutes;
- acting civil servants on the vacant positions that shall be filled through by a competition;
- in case of official promotion;
- persons listed in reserve.

A public competitions for a vacant position shall be announced by the head of the Public Service Bureau in the newspaper *Sakartvelos Respublika* ("Republic of Georgia"), or in the other official printing agency or by a head of executive board of the local self-government in the respective printing agency. In addition, the candidates shall have a two-week period in which to submit an application from the day the announcement is published.

The Competition and Attestation Commission shall assess compliance of a candidate with the requirements to occupy a position, if necessary, hear the opinion of a person empowered to appoint a person to a position, and make its decision under the rule prescribed by legislation.

The Competition and Attestation Commission shall nominate or reject candidacies to be appointed to a position.

The Competition and Attestation Commission Chairperson, or Deputy Chairperson in his absence, or other empowered member of the Commission, within no later than two days after making decision, shall notify each candidate in writing of the decision made. It will notify the person empowered to appoint of a candidate to approve or reject the candidate nominated by the Commission. A candidate nominated by the Competition and Attestation Commission shall be appointed to a position within two weeks after the decision has been made by the Commission.

Promotion

A person or agency having the right to appoint a person to a position may promote a public servant to a higher position. A public servant may be promoted to a higher position if he has been for at least six months in post and the Competition and Attestation Commission has nominated him. Promotion of a public servant needs his/her written consent.

When nominating several servants to be promoted for one position, the public servant with the highest grades in accordance with the attestation results is appointed. A public servant may not be promoted if undergoing disciplinary proceedings.

Article 30 of the Law of Georgia on Public Service provides for exceptions when appointments are undertaken without competition. These are:

- person is appointed by the President or appointed or elected by Parliament;
- person is a Deputy Minister , an assistant or an advisor of minister;

- person is in charge of other civil servants;
- person is working on a job for a fixed period that should be occupied by the rules of competition;
- person is promoted;
- person is in reserve.

Exclusion of a person subject to appointment by the President or Parliament from a general rule is conditioned by a circumstance that the persons empowered to appointment are supreme political officials. In the case of deputy ministers, assistants and advisors, the basis for such exception is that they are appointed to positions for a period corresponding to the minister's term of office. In the case of a person charge, the exception is determined by the temporary, fixed-term nature of the activities. As regards the case of promotion, it is understood that the promotion is preceded by at least six months work experience in the respective agency.

The appointment from reserve is separated from the general rule because a person enrols in reserve through competition. In case of positive tests results in a competition, it is illogical to convoke him/her again to undergo a test.

Unfortunately, the Law of Georgia on Public Service does not clearly oblige the Heads of the Public Agencies to make appointments through competition. In this respect, two articles of the Law shall be addressed: one states that "t*he person will be able to be appointed to the position as a result of a competition*", and the other provides for the cases when a person can be appointed to the position without competition. The similar incompatible provisions create confusion, which in the end is used as a means to ignore the rule of competition.

Wording of the Law that a person "*will be able*" to be appointed, taking into account the competition results, enables the heads of agencies to apply the mechanism of appointment for probation periods. In particular, a person is appointed to a position for a probation period, and after expiration of this period that person is deemed appointed for an indefinite term.

The given deficiency is partially filled up by other legislative acts, which provide for the obligation to use only the rule of competition for appointment of certain categories of officials. These include the Law on Courts of General Jurisdiction, Tax Code (for tax official), Law on Chamber of Control.

As regards the obligation of publishing, the Law determines unambiguously that if a competition is announced for the purpose of occupation of a position, the information on the given issue shall be published in the mass media.

The number of employees accepted in the public sector on the basis of and without competition in the first half of 2003 is given in the table below (except the power structures).[1]

Number	Agency	On the Basis of Competition	Without Competition
1	Ministries	161	223
2	State Departments	17	80
3	Staff of the State Representative of the President	-	6
4	Other Agencies	16	220
	Total	194	529

Institutional Structure for Managing the Public Administration/Civil Service

- State policy in the public service is determined by Parliament of Georgia. for the purpose of elaboration of the unified state policy, coordination of the respective activities and implementation of the basic directives in the public service, a Public Service Bureau is being established in the State Chancellery. Its provisions and structure are approved by the President of Georgia. The head of Public Service Bureau is appointed to and dismissed from by the President of Georgia.
- This bureau studies and analyses the situation existing in the public service and submits summaries to the President; submits reports to the President on implementation of the normative acts operating in the sphere of public service; coordinates the activities of the State Bodies with respect to personnel services; coordinates and renders methodological assistance to professional training, re-training, and improving the skills of the civil servants.

The personnel department of the agency:

1. The information is provided by the Bureau of Public Service.

- organises competitions, establishes attestations for the vacant public positions;
- keeps files of civil servants, enters the necessary records in the work-book of a servant;
- advises civil servants on their legal status, limitations and other issues concerning public service;
- analyses the level of a civil servants' professional preparation, organizes re-training (change of qualification) and raising the qualification of civil servants.

Total Number of Civil Servants Including Senior and Ordinary Civil Servants (Explanation of Various Grades)

The information available as of 1 July 2003 is given in the table below.

#		Ministries	State Depart.	State Inspections	Other Agencies	Total
1	Number of Civil servants pursuant to List of Staff Members	6715	3734	118	3616	14183
2	Actual Number of Civil servants	6393	3645	110	3884	14032
Among them:						
	Public Officials	5296	2228	102	2764	10390

In accordance with the Budget 2003, the total number of civil servants financed from the State Budget is 131 098. The average salary is GEL 66. However, there are certain differences between the salaries of representatives in the various spheres. for example, the salary of judges is GEL 500 – 15 000, prosecution system officials earn between GEL 425 - 630. The salaries of the Tax and Customs Bodies officials have not been increased, but the Tax Code provides for so-called "special funds". The average salary of civil servants is thus between GEL 300 - 800 per month.

As regards the agencies with law-enforcement status, the salaries have not been increased yet and the average salary constitutes GEL 75. However, there are certain increases made available through the system of premiums.

Average monthly nominal salaries of the private sector employees in accordance with economic activities 2002 is indicated in the table below.

#	Title of Activity	Total Average Salary GEL
1.	Total by Title of Activity	114,0
2.	Agriculture, Hunting and Forestry	42,3
3.	Fishing	37,5
4.	Industry - total	167,6
5.	Mining and Extracting Industry and Quarry	192,2
6.	Manufacturing Industry	143,4
7.	Power Energy, Gas and Water Supply	214,9
8.	Building	176,1
9.	Wholesale and Retail Trade, Maintenance of Vehicles, Motorcycles, Household Stuffs and Goods of Private Utilization	72,8
10.	Hotels and Restaurants	51,5
11.	Transport, Warehouse and Communications	171,7
12.	Financial Mediation	429,6
13.	Operations with Real Estate, Rent and Commercial Activities	92,0
14.	State Governance and Defence, Obligatory Social Insurance	141,4
15.	Legal Sphere	221,7
16.	Accounting and Audit Report	106,5
17.	Education	56,6
18.	Health and Social Service	55,6
19.	Other public utilities, Social and Personal Services	82,2

Functions of the Bureau of Public Service; Establishment of the Bureau of Public Service and Its Legal Basis

The Bureau of Public Service was established in the State Chancellery in May 1998, six months after adoption (November 1997) and enactment (1 December 1997) of the Law of Georgia on the Public Service. Pursuant to the

Article 128 of the Law on Public Service, "*The bureau of public services will be formed in the State Chancellery in order to create united policy, coordinate relevant activities and to implement the basic directions determined by this law*". Pursuant to Article 129 of the Law, "*the Chief of the Public Service Bureau is appointed and dismissed by the President of Georgia*".

The functions of the Public Service Bureau are determined by Articles 128 and 130:

- The bureau of public services will be formed in the State Chancellery in order to create a unified policy, coordinate relevant activities and to implement the basic measures as determined by this law.
- Will learn and make an analysis of the present situation in the field of public service and present the conclusions to the President of Georgia;
- Will present the report on the implementation of the normative acts in the field of public service to the President of Georgia;
- Coordinates the activities of staff services of the organs of Georgian Government;
- Coordinates and provides assistance in the field of professional training, retraining and improvement of qualification.

The Provision of the Public Service Bureau is approved by the Presidential Decree N°14 dated 12 January 1998.

In accordance with the Law and Provision of the Public Service Bureau, the Bureau shall elaborate the methodological materials and coordinate the activities of personnel departments of the public agencies in order to ensure the implementation of the requirements decided by legislation. It shall submit to the President the reports on implementation of the existing normative acts in the sphere of the public service and thus, may be considered as a kind of auditing organization.

The Presidential Decree specifies the role and functions of the Public Service Bureau provided for by the Law. In particular, it outlines how the Bureau shall elaborate the standards and recommendations in order to establish a unified policy.

Both the Presidential Decree and Law determine that the Public Service Bureau shall coordinate the personnel departments; in addition, the presidential Decree envisages holding seminars and conferences for the bodies of the central and local governments on the public service issues.

The Decree determines that the Public Service Bureau shall be responsible for collection of statistical data on acting and reserve staff.

The Decree states that the Public Service Bureau shall study and analyse the international experience, and cooperate with similar international bureaux and donor organizations.

The Decree defines precisely the goal of the Public Service Bureau which is to analyse the existing situation with respect to organizational structures and management of personnel. It also outlines the active participation of the Public Service Bureau in the elaboration of recommendations on reform of the existing structures, the establishment of new ones, of management methods and procedures, and also with respect to situations abroad.

The presidential Decree determines the Head of the Public Service Bureau as the authority of a manager, supervisor and representative, as well as the right to issue an order within his/her competencies (recommendations and standards). Among them, it is worth noting Article 84 of the Law on Public Service which provides for the appointment of heads of competition-certification commissions. Pursuant to Article 85 of the same Law, a person is appointed by the Head of the State Service Bureau in agreement with the head of adequate agency.

The Organisation of the Public Service Bureau

In accordance to the Provision, there are three sub-units in the Bureau:

- the service of analyses and coordination of personnel departments of the public agencies.
- the department of the reform system of the public service.
- the department of attestation and training of the personnel of the public service.

The service of analyses and coordination of personnel departments of public agencies and the department of attestation and training of the personnel of Public Service have business relations with the personnel departments of the Ministries and Departments.

The department of the reform system of public service works out the recommendations concerning the structures of Ministries and Departments and other organizational issues for the President.

In order to achieve its main goal – the elaboration and implementation of a unified state policy in public service sphere – the Public Service Bureau performs the duties vested under the Law on Public Service. As such, the Public Service Bureau conducts regular meetings with the heads of personnel services of the Ministries, Departments and Inspections, as well as with similar departments of the Parliament of Georgia and the Court. These meetings are held 6-10 times a year. Along with these meetings, other conferences and seminars organized by international donor organizations are held.

At meetings with the heads of personnel departments, the Public Service Bureau presents the drafts of methodological and legislative documents and records their comments. When the mentioned normative acts or methodologies are officially received at the meetings, their practical implementation is discussed. The meetings are conducted at the State Chancellery, and sometimes in Parliament, Ministry of Justice, and the Supreme and Constitutional Courts. The structural and organizational issues are not discussed at these meetings.

The bureau appoints the Chairman of Competition-attestation Commission, who represents the head of the corresponding agency or his deputy. The Bureau also organises professional training of public officials. While implementing the TACIS project, during three years the training and re-training courses were held in TACIS State Administrative College, where Georgian specialists along with their foreign colleagues conducted the courses. Today, some of them work in the business school created on the basis of this college.

In accordance with the Provision, the Public Service Bureau should perform their activities to improve the level of skills and the professional development of public officials. A year and a half after its establishment the Centre for Training, Re-Training and Improvement in the Level of Skills was founded in December 1999. Close co-operation was established between the Centre and the Public Service Bureau. The Heads of Departments of Training and Preparation of Public Officials are the members of the Management Council of the Centre.

Public Administration's Training Capacities

Within the framework of the measures fostering the improvement of professional skills of the civil servants, under the Presidential Provision N°97 dated 7 April 1997 the Research and Study Centre of Regional Policy and Management Service was established; under Presidential Decree N°667 dated 12 December 1999 a legal person of public law – Centre for Management of Public Service and Training and Re-training and Raising of the Level of Skills of Servants were was established.

We would like to underline that the above issue is the focus of the non-governmental sector, in particular the Georgian Institute of Public Affairs (GIPA). The activities of the latter are evaluated positively by various administrative bodies of Georgia and foreign experts.

The legal person of the Public Law — the Centre for Management of Public Service and Training — was founded pursuant to the Presidential Decree 667 of 12 December 1999. In accordance with the decree, the Centre conducts its activities in two main areas: the issues of improvement of the state service management and training-methodological aspects.

The Centre's major structural units are the scientific-methodological department and the training-methodological department. The following additional services are also present: administrative department, accounts department and economic management. There is a staff of 21. The Centre invites highly qualified specialists from different sectors. After four years, and owing to the changes in the State sector, in accordance to the Presidential task, a structural reorganization of the Centre was implemented. In particular, a high administrative school was created.

Several important normative and methodological documents have been processed in the scientific-methodological direction. In accordance to the task of the State Chancellery, the study and analyses of the current situation, drafting of respective recommendations and proposals systematically takes place in the State sector.

From the activities of the training-methodological direction, it should be noted that the training programs for public officials are based on several ranks and functions. On the basis of these programs, the Centre conducts short-term (1-2 weeks) training courses. Due to the request of the Head of the Governmental Institution, training are carried out by individual programs. As a result, the corresponding scientific thesis/report is drawn up, which is discussed and defended at the enlarged meetings of the Centre's Management Committee. to date, 140 public officials have raised their level of skills through various types of study.

Codes of Conduct for Public Officials

The main regulatory and basic normative act of the rules of behaviour in the public service is the Law on Conflict of Interests and Corruption in Public Service, adopted on 17 October 1997. The law regulates the issues such as incompatibility and conflict of interests, acceptance of presents, declaration of property and financial standing, sanctions for the breach of requirements

provided for by law. In addition, there are other acts regulating ethics of special character. These are:

- Order of the Minister of Tax Revenues N°177 on the Rule of Behaviour of Civil servants of the Ministry of Tax Revenues of Georgia and System of Ministry, dated 11 April 2001;
- Order of the Minister of Tax Revenues N°10 on Approval of Code of Behaviour of the Customs Officials dated 15 January 2002;
- Provision of the National Energy Regulatory Commission N°2 on Approval of the Rule of Professional and Ethic Behaviour of the Members and Staff of National Energy Regulatory Commission dated 8 April 2003;
- Code of Judicial Ethics adopted by Conference of Judges in 2001.

Because of the absence of political will of the former Government, the Code of Ethics in the public service has not been put into practice. There any conclusion regarding these issues would not be suitable at this point.

Moreover, number of norms regulating conflict of interests and ethics are scattered in various normative acts (basically in laws).

The adoption of the Code of Ethics or the Code of Conduct as a normative act is not necessary yet because the general norms are already in the current legislation, in particular in the Law on Conflict of Interests and Corruption. Nevertheless, at this stage it would be useful to revise the current law and to eradicate particular deficiencies. In addition, the granting of the additional liabilities to the Information Bureau to re-examine the correctness of the declarations would be important. First steps are put forward in this direction.

The Ministry of Justice of Georgia drafted "the Legislative Package of the Anti-corruption Purposes", which provides for the introduction of complex and systemic mechanisms in the fight against corruption. In accordance to this legislative package, the role of the Information Bureau of Assets and Finances of Public Officials is strengthened significantly. Having the statistical role, the Bureau reorganizes into the active, independent State institution with the effective means of control. Consequently, it changes its name and status. The Bureau significantly thus has a serious lever to reveal and react on conflicts of interest and corruption violations committed by public officials. Namely, it is granted the following responsibility:

- to request and receive from the administrative bodies any information which is connected to the implementation of the Bureau's functions;

- to have the access, in accordance to court rules, on the information regarding the bank accounts and bank transactions of officials and their family;
- to demand an explanation from an official, his family member or close relative, documents certifying the legitimacy and origin of property (incomes) in his/her ownership and indicated in the declaration.
- to apply the tax bodies, Prosecutor's Office of Georgia and the Court if corruption is revealed.
- to confirm or refuse by its own decision the existence of illegally received property in the ownership of an official or his/her family member.

The Legislative Package of the Anti-corruption Purposes provides for the mechanism of re-examination of declarations submitted by officials, the rule of disclosure of "illegally received property" in the declared property of officials, the participation of a society in the of re-examination of declarations, an increased role of the Bureau in the process of re-examination of declarations. The legislative package provides for the establishment of the overall system of declarations, which should be implemented through submission of declarations by physical persons to the tax bodies.

The Legislative Package of the Anti-corruption Purposes is considered at the first plenary meeting of the Parliament of Georgia.

Conflict of Interests

The issues of conflict of interests and financial standing are regulated by the Law on Conflict of Interests and Corruption in the Public Service. This law provides for the following provisions:

- A high-ranking official has no right to use official authority or possibility equal thereto against the interests of public service or to resolve an issue which does not pertain to his official authority.
- A high-ranking official has no right to disclose or use for non-official purposes the confidential information or information containing an official secret, the publicity of which is restricted pursuant to the operating legislation and of which she/he became aware when performing official duties.

- A high-ranking official who, due to the public service, is obliged to render a service or make a decision free of charge has no right to accept or request a material reward or other kind of benefit.
- A high-ranking official who, due to the public service, is obliged to render service or make decision in the value prescribed by official rule has no right to accept or request a higher amount of reward.
- A high-ranking official has no right to accept any kind of reward for publication of information, produced or collected by the treasury agency, or proceedings, report or other materials drawn up on the basis of this information.
- The limitation does not operate when the information is public and may be obtained by any interested person.
- An official has no right to engage in material transaction with a treasury agency where s/he occupies a position.
- An official has no right to conclude a material bargain with his/her close relatives or his/her representatives as a public servant.
- An official, whose obligation is, within the structure of a corporate body, to make a decision towards which she/he has a material or other personal interest, is obliged to notify the other members of this body or his/her direct superior and not participate in any decision-making.
- An official, whose obligation is to make an individual decision towards which s/he has a material or other personal interest, is obliged to declare of rejection and notify in written his/her direct superior (superior body), who makes a decision either himself or designates an official thereto.
- An official has the right to sign a decision only on the basis of a written permission of his/her direct superior (superior body), upon which shall be indicated in a decision.
- An official has no right to perform any profitable activity, except scientific, pedagogical or creative activities, or occupy any position in other treasury agency or enterprise, or perform any profitable activity or occupy any position in a body or agency of a foreign country.
- An official, the members of his/her family have no right to occupy any position or perform any activity in an enterprise registered in Georgia, control of which falls under the authority of this official or his/her agency.
- An official has no right to occupy any position in an enterprise.

- An official, members of his/her family have no right to possess stocks or shares of authorized capital stock in an enterprise, control of which falls under the authority of this official or his/her agency.
- An official has no right to be a representative or attorney of any physical or legal person, or undertake representation or defence in criminal, civil or administrative cases for or against any treasury agency, except the cases when s/he is a trustee or curator of this physical person.
- A close relative of an official may not be appointed to a position of public servant which falls under the supervision of this official, except appointing through contest. The given limitation does not extend over employees of the health protection and education systems.
- An official, member of his/her family is obliged to resign incompatible office, cease incompatible activity within ten days term after occupying this position, unless otherwise provided for by constitution or law.
- An official shall submit the documents confirming elimination of his/her incompatibility or a member of his/her family to a superior person (body), under whose subordination she/he is, and to the respective personnel department as well.
- An official, if she/he or member of his/her family breaches the requirements of official incompatibility provided for by this law, shall be immediately dismissed from the position, unless otherwise provided for by constitution or law.

See the full text of the Law on Conflict of Interests and Corruption in Public Service in Annex.

The norms of the Law on Conflict of Interests and Corruption in Public Service apply to all senior public officials. No amendments are on the agenda at present.

Declaration of Assets of Public Officials

An official is obliged to complete a declaration of financial standing within one-month of occupying his position. An official is obliged to complete a declaration of financial and material standing from 1 to 30 April during the term of office. In order to participate in a competition, a candidate for a judgeship, as provided for by Organic Law of Georgia on the Common Law Courts, is obliged to complete a declaration of material standing within one week after

registering his candidate. An official is obliged to complete declarations of material and financial standing within one month after resigning.

In cases provided for by paragraph 4 of this article, an official is released from the obligation of completing declarations if she/he has left the position on account of election, appointment or approval to a position the occupation of which, pursuant to law, obliges declarations to be completed.

Declarations are submitted to the Information Bureau of Property and Financial Standing of Officials.

The property declarations of officials are filled in pursuant to the annexes provided for by this law.

A declaration shall include the following complete information:

a. a list of movable or immovable items in possession of an official or member of his/her family in Georgia or abroad, among which the value of each exceeds fifty times the amount of living minimum, indicating type of item, owner, market value and location of immovable item;

b. securities in possession of an official or member of his/her family in Georgia or abroad, indicating type of securities, owner, face-value and quantity;

c. fees and/or account in the banking and/or other credit institution in Georgia or foreign country, the right to manage of which is in possession of an official or member of his/her family, indicating props of institution, type and manager of fees and/or account and amount added on fees and/or account;

d. cash amounts in possession of an official or member of his/her family, among which the value of each exceeds fifteen times the amount of living minimum, except the amount stipulated by subparagraph "c" of this paragraph, indicating owner and quantity of the amount;

e. participation of an official or member of his/her family in an enterprise of Georgia or foreign state, indicating participant and form of participation, complete title and legal address, registering body and dates of registration;

f. any profitable activities performed by an official or member of his/her family in Georgia or foreign state, except participation in activities of an enterprise, indicating executor, position occupied, or contents of work and that service in which a person holds office or performs activities;

g. any operating agreement concluded by an official or a member of his/her family, the value of item of which exceeds fifteen times the amount of living minimum, except agreements stipulated by subparagraphs "a"-"f" of this paragraph, indicating type of agreement, participant (s/he and a member of his/her family), subject of agreement and its value, dates of concluding and term of operation, bodies undertaking state registration and confirmation of an agreement;

h. identification information of an official and members of his/her family (name, date of birth, place of birth, blood or other relation).

i. date of filling a declaration.

Article 2 of the Law of Georgia on Conflict of Interests and Corruption in the Public Service determines the persons who, for the purpose of this law, represent the public officials and shall complete the property and financial declarations. The list includes the representatives of executive, judicial, and legislative branch. Other exceptions with respect to this are not provided for by the existing legislation.

During 2003, 3 063 officials have submitted declaration to the Information Bureau. These include those listed in the table below.

The Bureau for Information on Asset and Finances of Public Officials was founded in May 1998 on the basis of the Law On Conflict of Interests and Corruption in Public Service, adopted on 17 October 1997. The Statute of Information Bureau was approved by Presidential Decree N°350, dated 24 May 1998.

The Bureau for Information on Asset and Finances of Public Officials is an independent institution which does not belong to any state branch (neither legislative, executive, or juridical) and maintains a neutral position concerning state structures and political forces. The Bureau for Information is responsible and answers to the President of Georgia. The President himself controls the activity of the Bureau for Information.

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Ministry of Transport and Communications of Georgia	50
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The main purpose of the Bureau for Information is to obtain information on property and the financial state of public officials, record-keeping, systematization, and to make this available to the public. The main functions of Bureau are to:

- instruct high public officials for technical correct filling of declarations.
- organizing timely submission of the declarations to the public officials.
- receive and register the declarations.
- systematization, keeping and depositing of completed
- providing the appropriate security of the declarations and other confidential data.
- administer the disclosure of non-confidential information. Insuring the publicity of the non-confidential declaration contents on the basis of applications of natural and legal persons in co-operation with the press and other mass media as stipulated by law.

The Bureau has a Chairman, whose nomination to a four-year term is approved by Parliament upon presentation of the President of Georgia. The Bureau has a staff of 25.

Whatever the rank of an official may be, the information submitted to the Information Bureau is accessible to all persons.

In accordance with the legislation, the function of the Information Bureau is limited to the organization of filling the declarations and ensuring the publicity and accessibility of the declarations submitted. The Law does not provide for the right to verify the information included in the declarations.

Mechanisms for Ensuring Respect of Rules on Conduct of Interests, Declaration of Assets, Codes of Conduct, or Similar Instruments

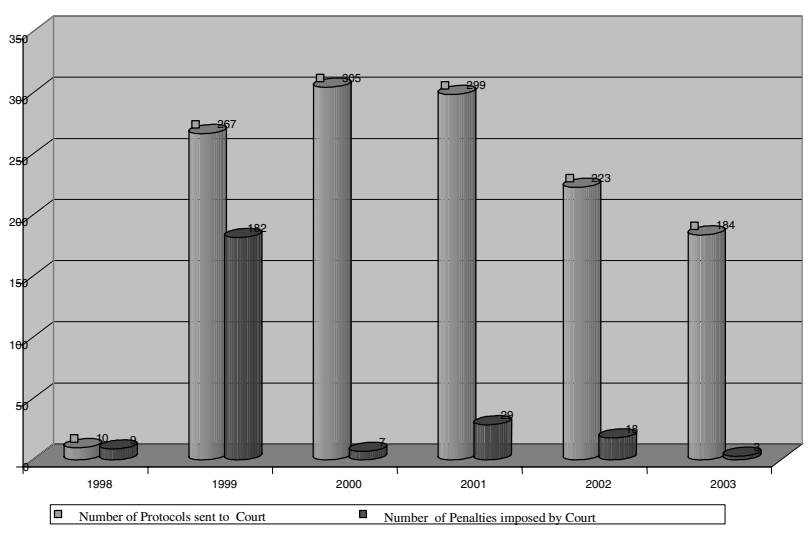
The breach of requirements of law causes responsibility in accordance with the codes pertaining to the criminal or administrative infringements. for non-submission of declarations within the fixed terms, imposing of responsibility upon officials under the criminal or administrative codes, does not exempt him/her from an obligation to submit a declaration. In this case, an official, within two weeks after the decision of the court enters into force, is obliged to complete the respective declarations.

An alleged violation of the requirements of law by an official, if it is not a criminal or administrative violation, results in disciplinary responsibility under the rule prescribed by law.

If an official who has committed corrupt offence and towards whom a disciplinary measure was used, except dismissal, within a year commits another corrupt act, is subject to obligatory dismissal from position.

These requirements do not apply to the President of Georgia, Members of Parliament, Heads of Higher Representative and Executive Bodies of Ajarian and Abkhazian Autonomous Republics and their Deputies, Heads of regional, and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali) and local representative bodies. The graph below indicates the statistics on disclosure of administrative offences.

Statistics on Offences Disclosed by the Information Bureau for Property and Financial Assets of the Public Officials



Between 1998-2003, the Court received a total of 1 288 protocols on administrative offences, disclosed through declarations on property and financial assets. Only in 248 cases has a court imposed penalties, which is quite a low figure. Experts suppose that the reason is that the judges do not pay enough attention to the similar category cases. As regards criminal cases, between 1998-2003, 13 criminal cases were instituted, although the court sentence has not been passed on either of these cases.

The violation of the Law on Conflict of Interests and Corruption shall incur the three types of liabilities: disciplinary, administrative and criminal.

Paragraph I of Article 79 of the Georgian Law on Public Service includes the exhaustive list of the measures of disciplinary responsibility. These responsibilities include dismissal with termination of salary payment for not more than ten days or permanent dismissal.

According to the Paragraph 2 of Article 20 of the Law on Conflict of Interests and Corruption in the Public Service, dated 17 October 1997, violation of the provisions outlined in this law by an official authority, if such a violation is not a criminal infringement, causes disciplinary responsibility in accordance with the rules set in the law. According to the Paragraph 3 of the same Article, if a disciplinary responsibility measure was applied to a government official who committed the violation and commits a new act of corruption within one year, he/she will be subject to mandatory dismissal.

As far as the link between the procedural acts and the type of the above disciplinary responsibility foreseen by the Criminal Procedural Code of Georgia (20 February 1997) is concerned the type of criminal compulsion given in sub-paragraph b of Article 134 of the Code, which is dismissal.

The application of the disciplinary liability takes place in accordance with the rule provided by the Law on Public Service, through the presentation of the corresponding agency of the internal-control service and the order of a high official.

The imposing of the administrative liability is made on the basis of the Protocol of Administrative Offences under the court decision:

- In accordance to the Code of Administrative Offences.
- The non-presentation of the property and financial declaration shall incur fine up to one hundred of minimum of the salary.
- In the case where a Property and Financial Declaration is not submitted, the Chairman of the Information Bureau on Property and Financial Condition of the Official draws up the Protocol on Administrative Offences, and the regional (city) courts consider these types of administrative offences.
- In the case of criminal liability, the investigation is carried out by the General Prosecutor's Office and after that, the case is transmitted to the Court, which makes the final decision.
- In accordance to the Criminal Code the continued evasion or deliberate entering of incomplete or incorrect information in the declaration of assets and finances shall incur a fine or forceful labour ranging from 120 to 200 hours per day, or deprivation for up to three years of the right to occupy such a position.

The requirements provided for by the Law on Conflict of Interest and Corruption are applicable to all officials, including the President and Parliament

Members. The exception is provided by Article 20, which determines that the liability or the disciplinary liability provided for by paragraphs 2 and 3 of this Article do not apply to: "*The President of Georgia, members of the Parliament of Georgia, representative of the government, heads and deputies of the Supreme Representative and Executive bodies of the Autonomous Republics of Adjaria and Abkhazia, the heads of region and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi, and Tskhinvali,) Local Representative bodies".*

This is conditioned by the fact that these persons are officials of a separate branch of a government or are members of the representative bodies who are elected for a fixed term. The current legislation does not provide for any types of disciplinary measures for such cases.

to impose disciplinary liability in such cases would be illogical due to the fact that it would be impossible to find out who is responsible for imposing disciplinary liability to the President, Members of Parliament, or members of local representative bodies. Thus, the issue of eliminating these exceptions has not yet been raised.

Rules on the Reception of Gifts or Other Advantages by Public Officials

Article 12 of the Law on Conflict of Interests and Corruption in the Public Service provides for the following requirements and limitations:

- An official, a member of his/her family has no right to accept a present if the total value of the presents accepted during one year exceeds twenty times the amount of the minimum standard of living.
- An official, a member of his/her family has no right to accept a present from a body or agency or institution of foreign country or international organization or its representative, except symbolic items or souvenirs when undertaking protocol activities or other official undertakings. In this case, the value of a gift received from one source shall not exceed five times the amount of minimum standard of living.

An official, his/her close relative has no right to:

- accept a present given due to his/her official position;
- accept a present from a person, the case in relation to whom was considered by him/her, is under consideration or it is preliminary known that the issue will be considered due to exercise of his/her official duties;

- accept a present from a person under his/her official supervision, if this is not related to a special event when giving a present is generally acceptable in the society. In this case, value of a present accepted from a person under his/her supervision shall not exceed the half amount of living minimum.

An official, his/her close relative is obliged to return a present, acceptance of which is forbidden by law, to a person who has given it, or to the State Treasury or treasury agency within 72 hours after receiving a present, or when s/he became of receiving a present.

Article 340 of the Criminal Code of Georgia provides for the responsibility for accepting illegal presents.

Article 340. Accepting Illegal Presents

Accepting an illegal present by an official or a person equal thereto, shall be punishable by fine or by socially useful labour from one hundred to three hundred hours or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

The same action committed repeatedly, shall be punishable by fine or by socially useful labour from two hundred to four hundred hours or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Internal Inspection/Disciplinary Investigations

The institution of general inspections is not established in Georgia yet. Despite the fact that general inspection operate in various agencies, there are no unified standards of internal control mechanisms to be applied in the process of inquiry of infringements.

The only indication of progress on this issue concerns the disciplinary proceedings of judges. Disciplinary responsibility in this sphere is regulated by the Law on Disciplinary Responsibility and Disciplinary Proceedings of Judges of the Common Law Courts of Georgia. The same type of responsibility for other civil servants is regulated by the Law on Public Service and Conflict of Interests and Corruption in the Public Service.

The General Inspections, as the internal control services are called, operate in all government agencies of Georgia. Their authority includes disclosure of violations of law related to the official activities and respective reaction thereto.

The requirements set in the Part 4 of Article 16 of the Criminal Procedural Code can be regarded as such protection mechanisms. According to these provisions, it is possible to hold fully or partially closed hearings of the case per the writ (decree) of the court (judge), when this is required for the personal safety of the participant or for family members and close relatives.

Direct protection of such persons is foreseen by Article 109 of the Criminal Procedural Code, the purpose of which is to protect participants from criminal encroachment:

Article 109. Protection of the Participants from Criminal encroachment

1. Judge, prosecutor, investigator and inquirer are entitled to request that the government protects those, who are related to the proceedings of the case and their family members and close relatives, protects their lives, health, dignity and property from unlawful encroachment. If there is information about such encroachment, they must notify relevant bodies of the Ministry of Interior of Georgia, which is obliged to take measures to protect these people.

2. Victim, witness, expert, accused and other participants of the process are entitled to apply a person or a body, proceeding the criminal case, requesting for protection for him/herself, family members and close relatives to protect their lives, health, dignity and property from unlawful encroachment, if an unlawful act has been performed toward them or there is a real threat of such an act in relation with their participation in the process of case proceedings.

3. In the case where the application mentioned in part 2 of the present Article is proved, the person or the body, proceeding the criminal case will draw up a decree (writ) on state protection of the participant and addresses it to the Ministry of Interior or the relevant special service of the state protection of Georgia, which are obliged to immediately take measures for the protection of this person. If the measures are not taken or are delayed, the person involved is entitled to lodge a complaint to the court and demand compensation from the State for the damage caused by the above action. Selection of particular protection measures is within the competence of the Ministry of Interior and the special service of the State Protection of Georgia.

4. The person, toward whom the writ on protection measures is drawn up, is not exempt from the obligation to testify during the preliminary investigation and in the court, answer the questions and participate to the confrontation with the accused.

5. If the person is a secret officer of police, Ministry of State Security, State Intelligence Department or any other state remedial body, or an informer, his identity can be declassified only when the defence proves that disclosure of his/her identity will allow to prove falsity of his/her testimony and innocence of the accused.

6. Protection measures are usually used after the person, mentioned in Part 4 of the present Article, testifies. The Ministry of Interior of Georgia or the body of the State Security must notify the body, drawing up the writ on protection measures of the participant of the process about such actions, as changing name, identification documents or appearances, address or job.

7. If the threat does not exist any more, the protection measures are cancelled per the decree (writ) of the body fixing the protection measures. The protected person must be immediately notified about this.

It must be noted that the contents of Article 367 of the Criminal Procedural Code stipulates the responsibility (fine, restriction of liberty for up to two years or imprisonment for up to four months) for disclosure of the secret of protection of a member of the constitutional court, judge, jury or other participant of the proceedings, executive, victim, witness or other participant of the criminal process of his/her family member or close relatives by the person who is informed about this due to his/her job or for the person to whom the secret was disclosed. Such an action is aggravated if it resulted in serious consequences; the law sets corresponding responsibility measure (deprivation of liberty for up to five years).

At this time, the project for changes in the legislation are being prepared and foresee necessary measures for whistleblower protection.

The Ministry of Justice prepared a draft law on General Inspections, which provides for the obligation to introduce the institution of General Inspections into the system of government agencies of Georgia, determines the legal status, structure, functions, rights and duties of the General Inspection, procedure of appointment and dismissal of the Head and staff of the service, determines the requirements incumbent upon the Head and staff of the General Inspection to be appointed to a post, legal and social security guarantees for the staff, and issues of material and technical support.

According to the draft law, the General Inspection shall carry out official controls within the system of an agency to ensure human rights and freedoms, discipline and legality, purposeful management of funds, ensuring protection and rational usage of material valuables. The General Inspection performs its basic functions through inquiries, inspections and audits. The draft law also provides for the procedures of implementation of the public monitoring of the activities of the General Inspection and accountability thereof.

The draft law on General Inspections was considered at the Government Session and according to the comments thereupon, the revised final version of the draft law was submitted to the Parliament of Georgia. Thus, the institute of General Inspection is already integrated in the Georgian legal space and the improvement of the respective legal basis is currently underway.

Obligation to Report Cases of Misconduct/Breaches of Duties/Corruption

The Criminal Code of Georgia provides for responsibility for the cover-up and non-reporting of crimes.

Article 375. Crime Cover-up

Cover-up, without aforethought of any especially grave crime, shall be punishable by a fine or by jail time from three to six months or by prison sentences for up to four years in length.

Note: Criminal liability shall be lifted up from the one who has covered up the crime of his/her close relative without aforethought.

Article 376. Non-Reporting of Crime

Non-reporting of crime by the one who actually knows that any grave or especially grave crime is being prepared, shall be punishable by fine or by jail time from three to six months or by imprisonment up to three years in length.

The Law on Conflict of Interests and Corruption in Public Service is used to regulate the issues of limitation of activities, official incompatibility, declaration and publication of economic interests of officials. This law provides for the general issues of liabilities of officials for the breach of ethics of the public service.

The Efficiency of the Declaration of Assets and Finances

The declaration and publication of the economic interests is carried out by officials through declarations. In accordance to the declaration data the cases of official incompatibility should be revealed and the changes in the property of an official during the period of holding a post. The existence of the declaration ensures the transparency of the public service.

The interest of mass media in the process of declaration and the declaration data of officials is also worth noting. The declaration data of officials are frequently published and broadcast by television. Mass media highlighted all stages of the declaration processing, in particular during the period of declaration. These are confirmed by the statistical data. Namely, from 1998 to 2003 329 publications and 217 broadcastings were made available to the public.

Publications		Broadcastings	
1998	44	1998	28
1999	63	1999	29
2000	96	2000	53
2001	22	2001	24
2002	63	2002	56
2003	41	2003	27

Main Legal and Institutional Deficiencies

The Information Bureau is a body that can reveal the cases of breach of norms as provided by the law on Conflict of Interests and Corruption in Public Service. Thus, we consider it is necessary that the authorities of the Information Bureau have the right to react to violations revealed by the declaration data. The violations shall refer to the issues of official incompatibility, accepting illegal gifts and various revelations of the so-called corrupt infringements. The re-examination of the accuracy of the declaration data is not the competence of the Bureau. In spite of the effectiveness of the law, it is difficult to execute it as there is no governmental body possessing the necessary powers.

The law does not provide for the legal status of the Information Bureau, nor for its place in the State system. Thus, at this stage, in order to eliminate the existing deficiencies, the proper legislative amendments are necessary.

As regards to the evaluation of the effectiveness of the Public Service which includes the assessment documents of the effectiveness of the executive government's activities.

Public Procurement and Public Subsidies, Licences, or Other Public Advantages

Legal Framework Concerning Public Procurement

State procurement is regulated by the Law on State Procurements. In addition, the following legal acts have been issued with respect to procurement: Presidential Decree N°223 dated 5 June on the Establishment of Public Procurement Agency and Handing Property Over to It; Presidential Decree N°224 dated 5 June on Approval of provision of the Supervisory Board under the Public Procurement Agency; Order N°1 of the Chairperson of Public Procurement Agency on Rules of Implementation of State Procurements.

Methods and criteria of state procurements are regulated under the following articles of the Law on State Procurements.

Article 5^2. Public Procurement Planning

1. Any procurement agency shall implement public procurements in accordance with an annual procurement plan developed and approved in advance. In the case of multiple-year procurement, planning is conducted by a pertinent procuring body in compliance

with Georgian legislation. State procurement planning is regulated by the Decree of the Chairperson of the Agency.

2. Each annual procurement plan shall be developed in accordance with the procedures of developing and reviewing the drafts of appropriate (State or local) budgets, as set out in the laws on the Budgetary System and Budgetary Authorities and the Principles of the Georgia Economic and Social Development Indicative Planning.

3. Procurement of homogeneous goods, services and work conducted by the pertinent procurement agency during a year is considered as procurement if it is financed from one source.

4. Not later than 20 days following approval of the State Budget, or those of the Autonomous Republics, or local budgets, the head of the pertinent procurement agency shall approve and provide to the Agency the revised procurement plan.

Article 6. Methods of State Procurement

1. Methods of State procurement are as follows:
   — open tendering
   — closed tendering
   — single-source procurement

2. In cases justified by the present Law, open and close tenders can be carried out in two stages.

3. Principles for the use of procurement methods are determined by the present Law and by-laws adopted by the Georgian Ministry of Economy.

4. The quotation and the intellectual services procurement methods shall be defined in a special normative act.

Article 7. Basic Principles Governing the Choice of Type of Tender

1. Open tender is held in cases when the estimated value of the subject to procurement exceeds the amount of GEL 70 000, while in the case of procurements of construction works when it exceeds GEL 230.000.

2. Closed tender is held in the cases when the estimated value of the goods to be procured is less than GEL 70 000 (while in the case of procurements for construction works – GEL 230.000), but exceeds

the amount of GEL 25 000 (while in the case of procurements for construction works, this is fixed at GEL 120 000).

Article 9. Tender announcement

1. In an open tender, the Tender Committee on behalf of a procuring organization:
    a) shall make an announcement about the tender via the mass media as defined in the by-laws;
    b) when the estimated value of the State procurement exceeds the amount of GEL 600 000, while in the case of the construction work procurement – GEL 8 000 000, notification shall be also placed in a wide-spread international periodical or specialized printing organ, in one of the languages most accepted in the international trade practices. The notification shall also be sent to the foreign diplomatic and consular institutions based in Georgia;
2. If necessary, shall define additional means, other than the ones defined in the sub-unit (a) and sub-unit (b) of the Unit, for tender announcement
3. In the case of closed tender the procuring organization sends to the bidders selected in advance subject to this Law (no less than five bidders) an official notification of holding the tender.
4. In the tender announcement there should be indicated:
    a. contact details of the procuring organization;
    b. the type, quality and quantity, the point and form of supply of the procured goods; the essence and the place of implementation of the work or service to be implemented; all other details, that the procuring organization considers necessary as connected with the description of the objects to be procured;
    c. the desire to supply the goods, to implement the work, to render the service to be procured, and the obligatory terms;
    d. criteria and rule for estimation of qualification data;
    e. the terms, place and language for submission of the qualification data;
    f. request for the documentation proving the qualification data;

g. the rules, terms, place and language for submission of tender documents, also payment rate for acceptance of tender documents.

5. The Tender Committee approves the tender announcement.

6. The Tender Committee publishes and, correspondingly distributes tender announcements no later, than 15 calendar days before the collection of the qualification data starts. In the case of closed tender the Tender Committee should select the means of distribution of tender announcement that will enable the selected persons to receive the announcement in the shortest possible term.

7. The Tender Committee might amend the information mentioned in the announcement, notice of which shall be made through mass media, the same way the announcement had been published, and in the case of closed tender the notice should be distributed to all the persons, whom the Committee addressed initially.

8. Amendment of the announcement and the publication (distribution) of these amendments should occur no later, than five calendar days before end of the submission term.

Article 21. Two-stage tender

1. Two-stage tender is held if:
   a) given the peculiarity of the object to be procured, it is impossible to determine all the technical and economic conditions of the object in advance and the procuring organization considers it necessary to hold negotiation with bidders at the first tender stage, in order to determine technical, economic and other aspects;
   b) the object of State procurement is consultancy, scientific research, experimental, investigative or consultation-projecting works, and it is impossible to determine their results and price in advance;

2. At the first stage of two-stage tender the bidders shall submit their free Initial tender proposals, ("initial tender proposal');

3. At the first stage Tender Committee can hold direct negotiations with bidders, with the purpose to verify any issues of the initial tender proposal, as well as define the final parameters for tender documentation;

4. Pursuant to review of the initial tender proposal the Tender Committee determines the final version of tender documentation that shall be distributed among all the bidders in case of payment of tender fee.
5. Besides the rules defined in the units 2, 3 and 4 of the Article, the rules for one-state tender are also applicable to the two-stage tender.

Article 22. The method of direct negotiation with a single person

1. The procuring organization may choose to use the method of holding direct negotiations on State procurement with a single person, in case:
    a. the estimated cost of the unit under procurement shall not exceed GEL 10 000 and in the case of procuring construction works – GEL 50 000;
    b. supply or implementation of the State procurement object is the exclusive right of a single person;
    c. as a result of *force majeure* the State procurement can not be postponed;
    d. it is necessary to implement State procurement from the same supplier with the purpose of further application and prevention of deterioration of qualitative feature of goods, technology or equipment received from the supplier, except for the case when the initial supply cost exceeds the assumed amount of the State procurement to be implemented;
2. In the case of application of the method of holding direct negotiations on State procurements the head of the procuring organization or the authorized person appointed by him (her) subject to legislation.

Article 23. Review of the conditions of agreement on Implementation of State procurement

1. It is not permitted to change the conditions of the agreement entered with the supplier if it causes increase in the price of the agreement and adversely affects the conditions of the agreement referring to the procuring organization, except for the case envisaged by the Article 398 of the Civil Code;

2. The procedures and rules for review of the conditions of agreement on implementation of State procurements are defined by the Georgian Legislation.

In this case, the Civil Code of Georgia provides for:

Article 398. Adaptation of a Contract to Changed Circumstances

1. If the circumstances that constituted the grounds for execution of the contract have evidently changed after execution of the contract, and the parties, had they taken these changes into account, would not have executed the contract or would have executed it with different contents, then it may be demanded to adapt the contract to the changed circumstances. Otherwise, taking into account individual circumstances, a party to the contract may not be required to strictly observe the unchanged contract.
2. It is the same as a change in circumstances when the understandings, which constituted the grounds for execution of the contract, have turned out to be wrong.
3. In the first instance, the parties should try to adapt the contract to the changed circumstances. If such adaptation is impossible, or if the other party does not agree on it, then the party whose interest has been harmed may repudiate the contract.

In addition, the Law of Georgia on State Procurements provides for:

Article 24[1]. Bringing of Claims

1. All persons willing to participate or actually participating in the public procurement activities, all bidders and suppliers, whether being individuals or entities, shall have the right to contest any action of procuring agencies (or tender committees), if they believe that in the course of the public procurement activities any rules or procedures, established by the Public Procurement Law or any other applicable legal act, and/or their rights have been violated.
2. If any claim emerges before the conclusion of a public procurement contract, the person who has such a claim may request directly the procuring agency to reconsider the decision of the relevant officer of the tender committee or procuring agency or to review the dispute.
3. In cases envisaged in paragraph 2 of this Article, any person who has a claim may apply to the procuring agency with this claim not

later than 20 calendar days after the receipt of information about the conditions or the making of that decision which caused the emergence of such a claim or dispute. All such persons whose interests actually are or can be affected by such claim shall have the power to take part in the review of that claim.

4. Before a public procurement contract is made, any individual or legal entity that is willing to take part or is actually participating in the public procurement procedure, or is a bidder or supplier, may appeal to the Agency with a claim to review any dispute which may arise in relation to public procurement.

5. Any individual or legal entity that is willing to take part or is actually participating in the public procurement activities, or is a bidder or supplier, may appeal to the Agency also in case that such individual or entity is not satisfied with the decision of the procuring agency.

6. In cases envisaged in paragraphs 4 and 5 of this Article, the Agency, not later than ten days after the receipt of a claim, shall make in written a reasonably justified decision which shall be communicated to those persons and the procuring agency that has submitted the claim.

7. If as a result of thorough scrutiny of the claim itself, as well as all related conditions, the Agency finds that the claim is reasonably justified, then the Agency shall have the power to:

    a) warn the procuring agency that it has committed an incorrect action and call on it to implement the public procurement activities in accordance with the requirements of law;
    b) require that the procuring agency review or cancel its decision(s);
    c) in case that it finds that any participant in the public procurement activities has failed to comply with the provisions of this Law, to require the appropriate agencies to hold such a participant responsible for such a breach.

8. After the deadline specified in paragraph 3 of this Article, as well as after the public procurement contract has been entered into effect, all claims and appeals may be heard by courts only.

9. No claim may be considered if it refers to:

a) the selection of a public procurement method, if the same has already been selected in accordance with the procedures established by this law and other applicable legal acts;
b) the decision of the procuring agency on the cancellation of public procurement activities, if such a decision has been made in accordance with the procedures established by this law and other applicable legal acts.

10. Any claim or appeal shall be based on a reasonable ground and shall be supported by reasonable evidence that in case of withholding the claim or appeal the person in question will suffer serious losses.

11. In case that any claim is submitted to the procuring agency, or the Agency, or court before the relevant public procurement contract has been effected, the procuring agency shall suspend all public procurement activities for the period of ten days. By the decision of the manager of the procuring agency, or the Agency, or court the suspension period may be extended, provided that under no circumstances shall the whole suspension period exceed 30 days.

12. With the agreement of the Agency, the procuring agency may decide not to suspend the public procurement activities, if delay in public procurement is impossible or is not justified in view of national or public interests.

13. Any individual or legal entity that is willing to take part or is actually participating in the public procurement activities, or is a bidder or supplier, may take legal action against the decision of the procuring agency or the Agency with respect to the claim of such an individual or entity.

14. Any damages which as a result of reviews and hearings provided in this Article may be payable to the person that has initiated claims, shall be limited to those costs which have been incurred in relation to the participation of such a person in the public procurement activities and shall not include any indemnification for the expected revenues.

As regards the role of supervisory bodies in procurement, their powers are envisaged in the Article 24 of the Law on State Procurements:

Article 24. State procurement account

1. The State procurement process is reflected in the State procurement account and the rule for its elaboration and keeping is defined by the by-law, adopted by the Ministry of Economy.
2. After tender is held minutes of Tender Committee meeting, decisions taken, conclusions of the experts and consultants participating in the tender, also other documents defined in the by-law referred to in the unit 1 of the Article should be attached to the account.
3. The State procurement accounts shall be submitted to the Ministry of Economy of Georgia within the following terms:
    a) in the case of tender no later, than ten days after agreement is executed;
    b) in the case of holding negotiations with a single person, if the amount of State procurements exceed GEL 25 000 no later than ten days after agreement is executed;
    c) in the case the amount of State procurements is less than GEL 25 000 on quarterly basis, no later, than the tenth day of the first month of the following quarter;
4. All interested persons shall have access to the State procurement accounts if requested, and their summary should be made public on regular basis through the State procurement bulletins, founded by the Ministry of Economy of Georgia.
5. If the volume of public procurements conducted through a tender exceeds GEL 32 million, the chairman of the tender committee shall report on the procurement process to the President of Georgia at the government meeting.
6. The Ministry of Finance of Georgia, those of the Autonomous Republics of Abkhazia and Adjara, and local finance departments shall be obligated to regularly (on a monthly basis) provide the Agency with information about actual disbursements to the budgetary agencies."
7. The Agency is authorized to request any documents and information on state procurement from procuring organizations and bidders at any stage of state procurement implementation, including the information on implementation of agreements."
8. In order to ensure transparency of the procurement process the agency's obliged to carry out monitoring of the protecting of such

principles during the state procurement process as publicity, fairness, proper fulfilment of the determined procedures, reporting open and efficient competition, an opportunity of rational and free choice.

Public Entities Subject to Public Procurement

These issues are regulated by the following norms of the Law of Georgia on State Procurements:

Article 3. Definition of Concepts and Terms Used in the Law

a) "State procurement" - acquisition of any goods, works or services in order to meet State needs and by utilizing funds from:
a.a) Georgian State budget and means consolidated in the State budget;

a.b) Budgets of the Abkhazian Autonomous Republic and the Adjarian Autonomous Republic;

a.c) Budgets of other Georgian local units determined by Georgian legislation.

a.d) by special funds of all those organizations and institutions which are funded out of the resources of the State Budget of Georgia, budgets of Autonomous Republics of Abkhazia and Adjara and local budgetary resources specified by law;

a.e) by funds extended by other countries and international organizations either as an international assistance or lending on the basis of international agreements (except the cases when the given Law is in conflict with the respective international agreement or if respective credit or grant agreements provide for internationally accepted procurement rules different from the rules established by this Law);

a.f) by loans extended under the government's guarantee;

a.g) by funds of public or private legal entities, (except of National Bank of Georgia) established on the basis of the State property, irrespective of sources of such funds.

b) Procuring agency – any executive governmental body of Georgia, or Autonomous Republics of Abkhazia and Adjara, budgetary agency or organization, local self-governance and

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governance bodies as well as any other institution or company that is procuring goods, works and services by the funds specified in paragraph a) of this Article.

Georgian legislation is not aware of exceptions with respect to particular categories of procurements.

Institutional Framework of the Public Procurement System

for the purpose of coordination of state procurements, a Public Procurement Agency has been established in Georgia. Its bodies, structure, resources, functions, powers and independence is regulated by the following norms of the law on State Procurements.

Article 4. Public Procurement Agency

1. With the purpose of coordinating and monitoring all public procurement activities, under the guidance of the Law on Public Legal Entities, a permanently-operating independent agency to be referred to as the Public Procurement Agency (hereinafter the "Agency") shall be established, the chairman of which, shall be appointed and dismissed by the President of Georgia at the proposal of the Ministry of Economy, Trade and Industry.
2. The Constitution of Georgia, international covenants and agreements, this Law and the Agency's charter to be adopted on the basis of the above-mentioned documents shall constitute a legal base of the Agency operations.
3. With the purpose of ensuring transparency in the public procurement system and publicity in the activities of the Agency, a Board of Supervisors shall be established with the Agency, which shall consist of seven members (including Chairman of the Board of Supervisors), to be appointed by the President of Georgia. Charter of the Board of Supervisors shall be approved by the President of Georgia. The staff of the Board of the Supervisors: officials from ruling and controlling bodies (representatives of the Chamber of Control, Ministries of Finance, Justice and Economy, Industry and Trade); Representatives of Mass media and Public organizations. The Board of Supervisors work on the public basis.
4. The Charter and the structure of the Agency shall be based on this Law and shall be approved by the President of Georgia. A state body carrying out control of the activities of the Agency shall also

be specified by the Charter of the Agency in compliance with the legislation of Georgia.

5. The Agency shall be funded:

    a) funds earmarked from the State Budges;
    b) out of the revenues received for the work carried out on the basis of the agreement;
    c) out of the revenues in consistent to the Georgian legislation.

6. The main functions of the Agency shall be as follows:

    a) to develop and make public any normative acts required for the implementation of this Law and standard bidding documents and to harmonize them with international norms;
    b) on the basis of reports received from procurement agencies, to implement systematic studies and analyses of situation existing in the country's procurement system and to provide recommendations to the President of Georgia to enable him to make appropriate decisions;
    c) to develop model teaching programs and methodological materials and documentation, to hold seminars and training sessions for central and local governmental bodies, law-enforcement agencies, mass media and other interested parties;
    d) to develop and improve an integrated public procurement data base;
    e) to provide expertise, recommendations and consulting services to procurement agencies;
    f) to maintain the register of suppliers
    g) to support the establishing of modern informational and communications technologies in the public procurement system;
    h) to make public any normative acts and reports for ensuring publicity of public procurement and to publish a special periodical newsletter;
    i) on the basis of administrative procedures to adjudicate any disputes emerged in the course of public procurement activities;
    j) to oversee the lawfulness of state procurement procedures and define the state policy regulating a procurement process.

Article 4[1]. Duties and Responsibilities of the Agency Chairman

1. The Agency Chairman shall:
   a) in agreement with the Board of Supervisors established at the Agency issue normative acts – orders – specified in this Law and mandatory for all the agencies involved in the state procurement;
   b) make orders and instructions on internal organizational matters;
   c) regulate any issues which are within the Agency's jurisdiction;
   d) monitor the Agency's structural units to ensure that they perform their functions in proper manner; supervise the Agency staff according to the established procedures.
   e) within the limits of its competence appoint and dismiss the Agency staff;
   f) manage the Agency's funds and control the spending;
   g) make suggestions according to the established procedures on such decisions which should be made on any matter over which the Agency has jurisdiction;
2. The Chairman of the Agency is responsible for the Agency's activities in accordance with law.

Article 4[2]. Duties, Responsibilities and Operational procedures of the Board of Supervisors

1. The Agency's Board of Supervisors shall
   a) review at its meetings normative acts to be issued by the Chairman of the Agency, and the by-laws of the Agency's structural units and results of their activities;
   b) in its operations the Agency's Board of Supervisors shall be guided by the key measures of the government's public procurement policy and at its meetings shall give the participants in the public procurement activities possibility to freely defend their respective interests;
   c) prepare annual reports about its activity and submit it to the President of Georgia. The reports should be open to public.
2. Agency's Board of Supervisors within the limits of its competence, shall have the right to request procurement agencies to provide it with any information related to the public

procurement activities and to examine correctness of such data and information.

3. The meetings of the Agency's Board of Supervisors shall be open to public and all its decisions shall be published in accordance with the existing procedures. Confidentiality of any information considered by the Board of Supervisors shall be preserved in accordance of applicable law.

Summary of the Reform in the System of State Procurement in Georgia

The first stage included such milestones as the formulation of the legislative base for state purchases, the successive adoption of the Law on State Procurement, the establishment of the SPA under the Ministry of Economy, and the issuance of by-laws. Despite the fact these were adopted with the participation of international experts, purchasing organizations continued in general to ignore the norms established by the legislation, a behaviour that was supplemented by the absence of standards for the administration of purchasing procedures and thus allowing purchasers to interpret laws as they so wished. In addition, state purchases comprised procurement administered solely by central and local budget assignments, whereas the so-called "special funds", foreign grants and lending were not captured by the law. Given the fiscal restraint, the budget was often sequestered, which led to underfinanced expenditures under "other goods and services", as well as "capital expenditures (basically limited to payroll expenditures). In real terms, the law on state procurement was not applied.

At the second stage of the reforms of the anti-corruption commission, under the national anti-corruption program of Georgia, the main measures for the improvement of the state purchases system were developed. Furthermore, an agreement was reached with the World Bank on the Institutional Development Program on State Procurement in 2001 and an action plan for the reform of the state purchases system is identified. Under the Structural Adjustments Credit (SAC) III of the World Bank, Georgia committed to improving the legislation regulating state purchases in view of harmonizing it with international legislative norms and ensuring its feasible implementation. Draft legislative amendments were prepared by end-2000, submitted to Parliament, and adopted in March 2001 following lengthy debates. These amendments expanded the coverage of the law. Namely, it included the special funds of the state budget and other budgetary organizations stipulated by the Georgian legislation, as well as funds received from foreign lending and assistance pursuant to international agreements with foreign donors and international organizations, state guaranteed credits and funds of legal entities of public law, established on the

basis of state property (except the National Bank of Georgia). State procurement by these funds could be administered by holding negotiations with one person via the method of price quotation, open or closed bids, of which two-stage tenders, usually applied during purchases of intellectual services. According to the recommendations of World Bank experts, the method of price quotation was included in the law on state procurement, which would on one hand promote the simplification of procurement procedures and on the other would ensure a rational and effective use of public funds and the establishment of a competitive environment.

The law also set provisions and rules on preventing conflicts of interest, and refined procedures and rules on planning state purchases. With a view to reinforcing supervision on state purchases, the Ministry of Finance and local financial bodies were made liable to submit information to the agency on actual assignments of budget organizations; a practice of administrative settlement and filing of complaints relative to state purchases was introduced.

At present, training and seminars were offered to specialists of state procurement, manuals and legislative/normative documents on state purchases were published and disseminated. The office of the SPA was modernized with new equipment. The regulation on Rules on Carrying Out State Purchases was developed in cooperation with international experts and consultants, the charter of the SPA and the supervisory board under it were adopted pursuant to Presidential Decrees N°223 and 224 dated 5 June 2001. Based on several Presidential resolutions the first composition of the supervisory board and the agency chairman were approved.

Following the legislative amendments, a legal entity of common law, the SPA, was established. The competencies of the agency were substantially expanded and a new momentum was gained for the agency to perform its coordinating role while meeting goals identified by the law, namely: ensuring efficient use of funds assigned for state purchases, developing sound competition in the sphere of commodity production, performance of works and delivering of services for state needs, securing fair and unbiased treatment of participants in tenders, making the process of state purchases transparent, establishing a single system of state procurement and cultivating public credibility.

Based on the order of the agency chairman dated 15 October 2001, the by-law Regulation and Appendices of the Rule on Carrying out State Procurement was established. Apart from general provisions, the documents necessary for affecting state purchases and the standard forms of reporting were determined, as were instructions, methods and guidelines relating to procurement as a

whole. A common information network and a database have been set up in the agency which generates information on procuring organizations and the procurement carried out by them, as well as a regularly updated register of suppliers. A consultative-methodological centre was set up under the agency, which greatly contributed to the enforcement of the regulatory legislation on state purchases.

The third stage was launched by the preparation of the report providing an assessment of the state procurement environment in 2001. Despite the process of reorganization, the performance of the agency in this period marked some progress reflected in doubled tenders and substantial public (budget) funds saved as a result of competitive selections. Furthermore, legislative the law was strictly monitored. Consultations were extended to both central and nation-wide agencies. On-site meetings were held in different regions of Georgia and a concluding session was organized in Tbilisi for heads of procuring organizations.

for securing quick responses to law violations, each case was transferred by the agency to the Prosecutor's Office, Chamber of Control, Anti-Corruption Bureau, and other bodies. At present, the President continues to receive an annual detailed report during government sessions. In 2002, amendments were introduced to the Code of Administrative Offences which identified the level of administrative accountability the heads of purchasing organization bore for violations during state procurements. The same amendments granted the SPA the right to compile cases of administrative offences and remit them to the court. Pursuant to paragraph 3, Article 261 of the Law on State Procurement and paragraph 3 of the Presidential Decree N°973 dated 8 August 2003, the preparation of draft amendments to the Criminal Code was determined with a view to strengthen criminal accountability for violations during state purchases.

In order to support the successful development of reforms in the sphere of state purchases, information-methodology centres must be established in the regions. The use of modern information technology is especially vital during the process of administering and reporting state purchases. ,At present draft amendments are prepared according to the Law on State Procurement to expand its coverage to purchases carried out by legal entities of private law, in the authorized capital of which the government holds over 50% of shares (mostly natural monopolies, enterprises engaged in supplying the population with energy, transportation, communication and other services).

In view of ensuring the financial support of the profound adjustments underway in the country, apart from focusing on the mobilization of budget revenues, the efficient use of public funds must be ensured. The current reforms

in the system of state procurement precisely inclines towards the latter. Each year state procuring organizations at different budget levels spend GEL 400-500 million in public funds, of which more than half comprises central and state budget organization (entities of common law) spending, and only GEL 150 million is financed from local budgets (almost half of that is directed towards state purchases by Tbilisi). Unfortunately we do not have information on state purchases affected by the Autonomous Republic of Adjara, given that the region fully ignores the law on State Procurement and provides neither information nor reports as required by the law to the agency. The above noted funds represent assignments on "other goods and services", "capital expenditures", "program expenditures" and other. According to the assessment by government experts and statistical observations, if state purchases are carried out under competitive conditions, 10-15% of these funds could be saved.

During administrative discussions at the SPA and court proceedings relating to state purchases, we could clearly identify the build-up of trust in both purchasers and suppliers to reach a favourable agreement for conditions of fair competition and their readiness to resort to legal ways for protecting their respective rights. The progress reached in the implementation of state procurement procedures, the planning and final stage of procurement – reporting the status of commitments – depends on the integrity of civil servants due to the inactive financial system of accounting, which we hope will improve with the enforcement of a new financial policy.

The pace of identifying infringements and adequately responding to them in cases of under- or late reporting by procuring organizations is still slow. This is very important given the system of state procurement is decentralized in Georgia and an authorized state purchasing organization is accountable for shrewdness while affecting purchases. Proceeding from the above and for further development of the state purchases reform, the supervisory board under the SPA (chaired by Professor Chitanava) adopted the 2004 agenda for the agency, which was agreed to with the World Bank prior to its approval.

At this stage, paramount importance is given to the implementation of the law and its enforcement at the level of each purchasing organization. In almost all organizations, a dedicated purchasing unit was identified, together with a state procurement coordinator. The 2004 action plan envisages the realization of a national strategy during training opportunities offered to both coordinators and general professionals specializing in state purchases. In 2003, a seminar was offered to coordinators in Tbilisi and certificates were issued to 42 specialists. A regulation was developed in cooperation with the Ministry of Education on the rule of certifying procurement specialists and on the job description for procurement managers. The improvement and further rationalization of budget

expenditures still remains a pressing issue. The level of accountability of the Ministry of Finance concerning registered contracts must be determined so that terms of these contracts are not violated in cases of non-payment.

Procuring organizations must also review contracts on state procurement, which today bears a more formal tone. The present legislation makes ministries, organizations, public agencies, and local government bodies liable for full obedience to the law and to coordinate purchases affected by subordinate organizations.

Brief Overview of Information on Offences in the State Procurement Practices

According to the analyses, the offences that have been discovered are typical of state procurement practices: purchasing organizations under report information and ignore lawful requirements of the agency; some purchasers use the funds wastefully, cases of corrupt deals and attempts to smuggle goods have been identified; the largest bodies of the government (some ministries, local government bodies, controlling bodies, etc) ignore norms set forth by the legislation in the sphere of state procurement; under conditions of unstable fiscal and financial environment and an inadequate system of accounting, often state orders are left not financed, thereby making them unattractive for potential suppliers. In addition, purchasing organizations often violate the law as they submit reports (statistical, quarterly and annual) to the agency in an inadequate format. Operative reports and documents on organized tenders are submitted with delays, which deprives the agency of an opportunity to timely affect regulatory actions on procurement processes. In some cases contracts that violate procurement laws are hidden, their implementation were not inspected, some government bodies issued normative acts that establish unjustified preferred treatment towards specific suppliers; during the processing of tender applications, a certain bias to some bidders is vividly observed. Under the pretext of charity, organizations sometimes conclude deals that inflict damage to the state, misuse official duties, force suppliers to provide goods and services without a contract and conclude a respect contract at a later stage.

The organization of tenders often features procedural violations, thereby stripping any efficiency in the concept of bidding (some bids lack the issuance date and rules of receipt of tender documents; awarded contracts do not mention the validity period, specific and general terms, the mechanism for controlling the contract observation and other. In some cases, the structure of the database has been changed on discretion. Tender reports are submitted to the agency with delay; the submitted report is sometimes not complete; often the purchase of intellectual service is carried out by general procedures; the estimated value of the contract is not indicated; qualification data is not accompanied by required

documents; the records filed by the staff of the tender commission are not chronologically consistent with office records. The submitted tender proposals are often unrealistic. As a result, competitors distribute the state purchasing market on an unfair basis. Especially, government officials were spending special funds on free will, which prompted the conclusion of contracts through corrupt practices and hidden forms of patronage in damage to the state. Even in case of registered contracts, the transfer of relevant funds, according to suppliers, was often impossible without personally motivating the leadership of the purchasing organization and without adequate backing in financial agencies.

Additional Information on Regulation and Control of State Procurement

According to the Law of Georgia of State Procurement, the SPA carries out the coordination, monitoring and control of state purchases nationwide. The SPA administers its activities in accordance to Presidential Decree N°223, dated 5 June 2001. Its lawful requirements are mandatory and their negligence represents an administrative offence. With a view of providing transparency and public scrutiny over the agency performance, a supervisory board has been established under the SPA involving both government and societal representatives that perform work free of charge.

The system of state purchases is decentralized. The state procurement organization, authorized to carry out purchases, is responsible on the reasonableness of state purchases. In accordance with the Law on State Procurement and the Rule of Carrying Out State Procurement, all purchasing organizations are liable to: administer the procurement rationally in the range of assignments pursuant to the law while safeguarding state interests; carry out the procurement based on a pre-determined and approved annual plan in terms stipulated by the law and submit activity reports to the SPA in a due form; no later than in the course of 20 days after the adoption of state or local budgets, approve a precise plan on state purchases and submit it to the SPA; if the estimated value of goods or services exceeds GEL 5 000, upon the completion of preparatory works should inform the SPA when procurement procedures are kicked off; should generate an annual activity report on the administered procurement upon the completion of a fiscal year and submit it in a due form to the SPA no later than 1 February of the subsequent year; generate activity reports on monthly procurement and submit it to the SPA.

Approximately 3 000 large-scale organizations are engaged in state purchases in Georgia at present. The most prevalent method of dealing with purchasing organizations still rests in since-source procurement (42% for procurement funded by the central budget and 79% for purchases financed by local budgets). The method of price quotation has been introduced in real

practice (15%% for procurement funded by the central budget and 7% for purchases financed by local budgets). The share of tenders in the central budget was substantial: 40% for open and 3% for closed bids, as for local budgets 11% for open and 3% for closed tenders.

According to reports submitted to the SPA by procuring organizations, up to 350 tenders are held annually. The structure (composition) of the procurement has somewhat been balanced recently (goods hold 41%, services 32% and works 27%).

Response on the SPA Related Offences

Based on the authority granted by Article 239 of the Code of Administrative Offences, the SPA in 2004-2004 filed 53 cases of administrative offences for instances of violating the Law on State Procurement and other normative acts as stipulated in Article 159.5-159.9 of the same code. Namely, on 30 April 2003, administrative infringements were recorded against heads of 41 procuring organizations given they failed to submit reports to the SPA pursuant to the Law on State Procurement and other normative acts (see the annual 2002 report and Q1 2003 report), which based on Article 159.9 of Code of Administrative Offences represents an administrative crime resulting in the imposition of fines against the head of the organization in the amount of 200 to 300 times the remuneration; on 26 August 203, due to the biased review of bids by the chair of the tender commission and its four members (the tender was announced on 15 June 2003 in Sakartvelos Respublika N°155 for outsourcing services relating to repairing residential buildings that were damaged during the Georgian-Ossetian civil conflict) which pursuant to Article 159.6 of the Code of Administrative Offences represents an administrative crime resulting in the imposition of fines against the chair and four members of the tender commission in the amount up to 400 times the remuneration; due to the failure to submit information to the SPA (operative reports on the tender announced in the Sakartvelos Respublika) in accordance to the Law on State Procurement and other normative acts, which pursuant to Article 159.9 of the Code of Administrative Offences represents an administrative crime resulting in the imposition of fines against the head of the organization in the amount of 200 to 300 times the remuneration, on 29 December 2003 against heads of 2 procuring organizations; due to the failure to submit information to the SPA (2003 annual report) in accordance to the Law on State Procurement and other normative acts, which pursuant to Article 159.9 of the Code of Administrative Offences represents an administrative crime resulting in the imposition of fines against the head of the organization in the amount of 200 to 300 times the remuneration, on 24 February 2004, against heads of five purchasing

organizations; the above mentioned cases have been transferred to the Krtsanisi-Mtatsminda district court, which delivered appropriate decisions.

Financial Control / State Audit

The Chamber of Control is a constitutional body exercising supervision over utilization and spending of state resources and other material valuables of the state. The activities of Chamber of Control of Georgia are regulated by Constitution of Georgia and Law of Georgia on Chamber of Control of Georgia.

In accordance with the Article 97 of the Constitution, "The Chamber of Control is independent and is responsible to Parliament. The Chairman of the Chamber of Control is appointed by Parliament, upon the nomination of the President, for a term of five years."

Twice a year while submitting the preliminary and final report on the fulfilment of the budget, the Chamber of Control submits a report to Parliament on government expenditures. Once a year it submits a report of its own activities.

With respect to financial independence, there is no special independence guarantee; however, Article 82 of the Law on Chamber of Control of Georgia provides for a certain mechanism for stimulation of the employees of Chamber of Control:

Article 82

Before elaboration of the unified rules for stimulation in the State bodies of the Country, in result of revision and inspection by Chamber of Control, the amounts, revealed in favour of state budget of Georgia, budgets of Autonomous Republics and other territorial units, shall be levied by tax service. Thirty percent of amount added on to the state budget, budgets of Autonomous Republics and other territorial units in the form of financial sanctions, shall be added to account of the Chamber of Control and used to strengthen material and technical basis, material stimulation of the employees of the Chamber of Control and other measures.

As regards the relations with mass media, the given agency pays essential attention to cooperation with mass media and spread of reliable information on revealed infringements through assistance with it. Noteworthy is the fact that during the last year, on the basis of information of the Chamber of Control, a TV program "Additional Question" was broadcasted, informing society of the detailed information on the existing situation in the various spheres. This was the first attempt to cooperate with mass media and should be deemed a good beginning.

In addition to the abovementioned, as regards the forms of revision and inspection activities, the Georgian legislation is not aware of any special procedures. Revision is carried out through operational control, complex revision, inspection by subject-matter and expertise.

Services within public organizations that could provide fiscal control - as a key element of the system of internal control over the execution of the state budget of Georgia – are largely absent apart from a few exceptions.

Pursuant to the Constitution of Georgia, the Chamber of Control submits to the Parliament a report on the government's performance alongside preliminary and final budget execution reports.

While developing a report on the execution of budgets at all government levels, the Chamber of Control fully assesses all revenues and expenditures of the entire fiscal period. In addition, the Chamber of Control assumes measures to evaluate the efficacy of budget expenditures.

The Chamber of Control is actively engaged in legislative activities of the country, which involve the development of legislative and other proposals relative to financial issues and the extension of expertise concerning selected by-laws.

The preparation of the state budget of Georgia is regulated by a hierarchical sequence: each organization (agency), which uses budget assignments and is liable to prepare a budget report, is responsible for the preparation of a respective report and its submission to a relevant ministry (or a central agency), whereas the Minister assumes the responsibility of generating a report on the overall ministry and submits it to the Ministry of Finance.

The Ministry of Finance prepares a budget report and presents it to the President for consideration. The President, no later than in the course of 3 months following the completion of a fiscal year, submits a state budget execution report to the Parliament for approval.

While compiling its report, the Chamber of Control reviews the government report and draws on the results of current and comprehensive inspections administered at certain ministries, agencies and organizations.

The Chamber of Control, no later than 30 days after the President submits a state budget execution report to the Parliament, submits to the Parliament a report on the government's performance relative to the state budget. The latter document is adopted on the condition it fully and precisely reflects the volume of budget revenues and expenditures, and the appropriateness of administered expenditures during the previous fiscal year. Otherwise the Parliament preserves the right not to approve it.

If the report on the execution of the state budget is not adopted or the Law on State Budget of Georgia is violated, the Parliament is authorized to deem the government's performance, as far as it concerns the implementation of the budget law, unsatisfactory and thereof ask the President to raise the accountability of members of the executive authority, and extend recommendations to the President with a view of remedying the uncovered flaws.

The report on the state budget execution and the decree of the Parliament of Georgia on the approval of the report are published in the printed media.

The budget execution reports of Autonomous Republics and territorial units of Georgia are prepared by respective financial bodies and submitted for consideration and approval to supreme representative and local government bodies of the Autonomous Republics or territorial units.

The state budget of Georgia is executed in accordance to regulations set forth by the Ministry of Finance. This process is regulated by respective pieces of legislation and other by-laws.

According to the present legislation of Georgia, the Parliament and the Chamber of Control provide oversight on the execution of the budget. The Ministry of Finance and its territorial structural units are responsible for providing effective control over the timely mobilization of revenues as well as administration of public expenditures.

During the fiscal year, parliamentary committees of Georgia consider the state budget execution on quarterly basis. These discussions are organized by the Budget and Finance Committee of the Parliament. If prompted by necessity, the results of discussions are presented to the Parliament.

The Chamber of Control of Georgia, alongside the President's report on the execution of the state budget of the current fiscal year, submits to the Parliament its own report, which covers the financial accounting and reporting of budget organizations, as well as the consistency of public expenditures with the law and reviews and assesses the correspondence of expenditures with the decisions of the authorized entity (body).

The Chamber of Control of Georgia, as noted above, submits a government performance report in respect to the execution of the state budget, no later than in the course of 30 days after the President presents to the Parliament his report on the execution of the state budget of Georgia. The report by the Chamber of Control outlines the assessment of the chamber concerning the following issues: did the government and other budget organizations observe the legal norms governing the public administration in the precedent fiscal year? Do the final reports and records match the reality and are they consistent with the law? Do the report and data on the state budget execution fully reflect the financial processes that took shape in the reported fiscal year? Does the government report meet the end-fiscal year targets? Were the receipt and use of public funds well-targeted? and etc.

Alongside the financial scrutiny, the report of the Chamber of Control provides an assessment on: changes in assets of budget organizations, reasons behind the incidence of balances on budget assignments, management of the treasury account, developments relative to the state debt, revenues and expenditures of state special funds and a summary of the performance of local budgets.

Based on the experience built-up in the sphere of control and subsequent results, the Chamber of Control develops proposals and recommendations relating to improvements in budgetary processes, which are submitted to the Parliament together with the report. The detailed information on the state budget execution is not public and thereby not published in full.

Tax and Custom System and Fiscal Treatment of Bribes

Georgian legislation does not provide for any different rules of revelation and response on infringements for tax and customs bodies. (In respect to the ordinary rules of inquiry and investigation.

The given structures are completely empowered to cooperate with the respective bodies of the home country and foreign states, as well. They also fall under the responsibility that is provided for by operating legislation for non-reporting of the crime.

There were no specific trainings either in tax or customs sphere; however, one should outline the existence of training centre under the Ministry of Finance of Georgia (the tax and customs bodies are unified under this agency), where the tax and customs officials undergo trainings in order to raise their level of skills.

Despite this fact we deem expedient to hold trainings in respect to prevention of corruption in order to introduce specific methodology contributing to the change of corrupt environment.

Under the Georgian legislation, giving and accepting bribes is punishable, hence – deduction of any amount paid as bribe is out of question.

Money Laundering

"Money laundering" is a criminal offence in Georgia; in particular, under the Article 194 of the Criminal Code of Georgia legalization of illicit incomes is a punishable act and provides for deprivation of liberty for the term of ten years.

As far as there is no law on regulation of the "money laundering" issues in Georgia, the above-mentioned norm was not operating and therefore, there were no crimes revealed in this direction in Georgia.

In December of the last year, the parliament of Georgia has adopted the Law on Prevention of Contribution to Legalization of Illicit Incomes, according to which within the National Bank of Georgia an independent structure – Financial Monitoring Service should be established. The given structure is Financial Intelligence Unit (FIU), which performs analytical activity concerning suspicious transaction and persons participating in it.

In case when there is a supposition of a suspicious transaction in result of analysis of the relevant information, the Financial Monitoring Service is obliged to forward this information to the General Prosecutor's Office.

Agencies that are obliged to inform the Financial Monitoring Service of suspicious transactions are the following: commercial banks, exchange offices and non-bank deposit agencies, brokerage companies and securities registrars, insurance companies, private retirement funds, persons holding lottery and other

winning games, casinos and gambling clubs, persons dealing with precious metals and gems and their derivatives and antiquarian items, agencies performing trading in immovable property, companies performing investment operations, notary public, customs bodies, postal organizations.

The following types of transactions are subject to monitoring: Transaction made or performed by a person, or aggregate of transactions performed, when its (their) price exceeds GEL 20 000 in cash payment and GEL 40 000 in non-cash payment and, at the same time, a transaction is suspicious and represents one of the below-listed transactions:

- receipt of sum on bearer by bank cheque, also – exchange of one denomination banknote on another one;
- purchase and sale of foreign currency in cash;
- transfer of money to or from Georgia by owner of a bank account registered in non-affiliated zone;
- granting or taking of loan by a person registered in non-affiliated zone;
- transfer of money to foreign country on anonymous account or to Georgia from such account;
- granting a loan without guarantee or guaranteeing the securities on bearer;
- within three months after registration of a legal person, transfer of sum to or from its account;
- transactions performed by securities on bearer, also purchase and sale of securities; these are transactions, being performed by person or owner of account registered or being in non-affiliated zone;
- receipt of insurance premium and/or pension fee;
- release of winning in monies or other material form by holders of lotteries and other gambling;
- carrying in and out of banknotes;
- transactions related to purchase and sale or otherwise management of property;
- receipt or sending of postal money transfers.

Since 1996 according to the Criminal Code of Georgia money laundering is recognized as a criminal activity:

Article 194. Legalization of Illegal Income Generation

1. Legalization of illegal income generation, i.e. making money or other property legal, also hiding the source, location, flow, real owner of the property or property right is subject to a fine or deprivation of liberty for up to five years.

2. The same activity: in a group; repeatedly; power abuse; accompanied by generation of significant income is subject to deprivation of liberty for up to ten years and a fine.
Note: in this article income of more than GEL 10 000 is considered a big amount.

On 6 June 2003 the Parliament of Georgia adopted the Law on Tools for Suppression of Legalization of Illegal Income Generation, according to the Paragraph A of the Article 2 of which, any property or property rights, obtained as a result of any criminal activity, envisaged by the Criminal Code of Georgia, is considered illegal (thus, corruption represents a predicative crime for the purposes of the Article 194 of the Criminal Code of Georgia).

On the basis of the Decree of the President of Georgia, dated 16 July 2003, a legal entity of public law – Financial Monitoring Service – was established at the National Bank of Georgia, the main task of which is to fight against legalization of illegal income generation and financing of terrorism. In the Article 10 of the Law on Tools for Suppression of Legalization of Illegal Income Generation there are provisions, related to the Financial Monitoring Service of Georgia, defining its rights and obligations. Namely, the Service requests the data on suspicious deals from the monitoring entities (commercial banks, money exchange points and non-bank deposit institutions, broker companies and securities' registrars, insurance companies and non-governmental pension scheme founders, entities, holding lotteries and other winning games, entities, dealing with precious metals, precious stones and produce made of them, and antiquarian items, customs bodies, entities launching grants and charity aid, notaries and post institutions), analyze them and in case if there is any consideration that some deal is indeed suspicious and is carried out for the purpose of legalization of some kind of illegal income generation or financing of terrorism, submits the materials on hand to the relevant department of the Prosecutor General's office. for the purpose of execution of the entrusted authority, the Financial Monitoring Service can address inquiries and receive information from state and local administration and self-government bodies or institutions, as well as from any physical and legal entity, executing public-lawful authority. In this regard business relations have been established with the Ministry of Interior and the Ministry of State Security of Georgia, Central National Bureau of Interpol and the State Department for Statistics. It must be noted here that in February 2004 the Parliament of Georgia adopted the Georgian Law on Amending the Law on Tools for Suppression of Legalization of Illegal Income Generation, according to which the Financial Monitoring Service is entitled to address the court for the purpose of sequestering property (bank account) or suspending a deal (operation), if there is a consideration that the property (amount of the deal) may be used for financing terrorism (in such cases the materials are immediately submitted to the relevant service of the Prosecutor General's office). The above legislative amendment has also allowed the authority of the Financial Monitoring Service to be expanded with regard to international relations. Namely, in accordance with the requirements of the EGMONT Group, the Financial Monitoring Service was granted the authority to conclude agreements with the similar bodies of other countries, which agreements would regulate exchange of information and other issues related to competence in the field of fighting against

legalization of illegal income generation and terrorism. The Financial Monitoring service will address requests for providing of the needed information on legalization of illegal income generation and terrorism to the authorized bodies of other countries and respond to similar requests from their side.

The Financial Monitoring Service represents the Georgian Delegation in the MONEYVAL Committee of the European Council (FATF-type regional group) and presently is a membership contender to the EGMONT Group (has passed two steps for joining).

As we already mentioned above, the Georgian Law on Amending the Law on Tools for Suppression of Legalization of Illegal Income Generation, adopted on February 25, 2004 has considerably increased the authority of Financial Monitoring Service. It must be noted here that the given amendment allows one to understand the notion of a "suspicious deal" in a new way. Elaboration of the new version of Article 5 of the Law on Tools for Suppression of Legalization of Illegal Income Generation (deals subject to monitoring) was the most important and fundamental change in the law. Instead of the previously existing three criteria (amount + suspiciousness + presence in the list of the deals), according to the amendment, every deal exceeding GEL 30 000 (approximately USD 15 000) is subject to monitoring and every suspicious deal, with no regard to its amount. The banks are also obliged to submit to the Service the information on any suspicious deal, whatever the amount of the deal and existence in the list. Moreover, the Service is entitled to determine additional criteria and deal lists for monitoring by means of its normative acts, which once again points to increased authority of the Financial Monitoring Service.

Corporate Accounting and Auditing Standards

The legal grounds for auditing activities and relations referred to these activities, rules for carrying out these activities and rights and responsibilities of participants are regulated by the Law of Georgia on Auditing Activities dated 7 February 1995.

As regards the exercise of state functions in the system of regulation of auditing activities – elaboration of auditing standards and methodological recommendations, licensing and attestation of auditors are exercised by Board of Auditing Activities established under Parliament of Georgia pursuant to the Law.

The activities of external auditors are undertaken pursuant to the conceptual principles, which are provided for by the Law of Georgia on Auditing Activities and International Accounting Standards produced by International Federation of Accountants.

The law on auditing activities has played a key role in establishment of auditing in our country; its adoption was a step forward in enhancement of legal basis of Georgian audit. The passed period has shown its positive aspects, though there were some deficiencies that emerged in practice.

Nowadays, we may say that Georgian auditors have the same problems as in general auditing commonwealth has. These are: recognition of auditors' independence, financial standing of a customer, protection of market from expansion of foreign firms, failure to resolve some legal issues, multitude of dumping firms on the market, non-existence of the efficient mechanisms for their elimination from market, lack of qualified auditors. These problems cause low-level auditing and the so-called "black auditors". for this purpose, a draft law was drawn up on Introduction of Amendments and Additions to the Law of Georgia on Audit Activities. These amendments refer to increase of responsibility of auditors. The draft law provides for: "use of authority by auditors against the objectives of their activities in the prejudice of themselves and/or other persons, damaging the rights and legal interests of citizens and/or organizations, incurs the criminal responsibility provided for by articles 220 or 204 of the Criminal Code of Georgia." The sanctions for these acts are fines, suspension or termination of license, deprivation of liberty from 3 months to 5 years. In addition, the draft law provides for other measures that will enhance the auditing activities.

As regards the internal audit, it is basically present at banking system (except several large enterprises), where this service directly subordinates to the head of organization and carries out activities pursuant to the standards approved by International Internal Audit Institution.

There are no special services of internal audit established in the number of enterprises of Georgia, where the number of staff is limited. This factor wakens implementation of internal audit by administration and increases the risk and facts of compromises.

As regards the entry of incorrect data in the accounting books, off-balance accounts, inadequately legalized transactions, records of non-existent expenses, entry of liabilities in accounting books indicating incorrect objects, use of false documents to bribe or conceal bribe, the issues of respective administrative, civil and criminal punishment – these acts are criminalized under the operating legislation and are revealed under the rule provided for by the Law of Georgia on Operative Investigation Activities (see Section on Criminalisation of Corruption).

On 7 February 1995 the adoption of the Law of Georgia on Auditing Activities provided a ground for the establishment of the Auditing Council (AC) under the Parliament of Georgia in the second half of 1996 with a view of assuming state functions in the regulation of auditing activities in the country.

The competencies and roles of the AC include: training and re-qualifying auditors with a view of building their professional capacity, certifying auditors and issuing respective certificates, extending licenses to auditing firms and individual auditors for the performance of auditing services nationwide, performing the translation, publication and enforcement of different international standards, representing and defending interests in front of public structures.

In order to accomplish the outlined goals, the AC set up different commissions and working groups which engaged practicing auditors and accountants, accounting and auditing professors and teachers of higher-education institutions, scholars of economic research institutes and senior-level experts of the USAID. With a view of improving auditing fundamentals, theory and practical knowledge, textbooks were published by both Georgian scholars and foreign theorists and practitioners. In 2000, the AC and the Georgian Federation of Accountants, with the support of the USAID, published the international auditing standards in two-volumes in Georgian. Furthermore, the code of ethics for auditors was developed and acknowledged as a by-law.

Preceding from the public interest and auditing principles (which assume the provision of high quality services by the auditor) the selection, training, re-qualification and knowledge of theoretical and methodological fundamentals by auditors are essential. In combination they provide a single system promoting the cultivation of relevant knowledge, expertise, business qualities and practical behaviour among auditors. The system of teaching today covers all types of auditors and is established institutionally, methodologically and content-wise. If we cast an objective glance to the period behind us, then we can say that the establishment of auditing activities and the achievement of its goals has developed faultlessly.

The adoption of the Law of Georgia on Auditing Activities played an important and critical role in the development of auditing services in the country. However, taking in view modern standards and practices, it still does not fully reflect the patterns, which took shape in the audit market, and lags behind the international practice and reality in a number of substantial aspects, which could be attributed to the reforms Georgia launched recently and the complete transformation of the existing economic system. These developments led the auditors' institution to the need of communicating a new outlook and put the elaboration of a modern by-law on the agenda.

Respectively, draft amendments to the Law of Georgia on Auditing Activities has been developed, which were extensively discussed both by practicing auditors, as well as government and non-governmental organizations. After the debates, the final version of draft amendments was submitted to the Ministry of Justice. The draft piece of legislation went through the relevant expertise and was forwarded to the government of Georgia for further consideration.

The draft amendments outline additional requisites that should crack down on corruption, for example: According to the present legislation (Article 25) the license of the auditor may be revoked if he/she performs a poor quality service or does not abide to auditing standards and/or by-laws. The new draft legislation expands the list of unqualified, substandard and criminal acts performed by the auditor (Article 25). Furthermore, a draft amendment has been prepared to the Criminal Code of Georgia, namely Article 204.1 on

delivery of a false auditor's conclusion, which envisages punishment starting from fines to imprisonment up to 5 years.

The draft amendments to the Law on Auditing Activities will improve the legislative base and the quality of performed auditing services, and envisages requirements (submission of a written report alongside the auditor's conclusion, establishment of special commissions under the AC) that are aimed at shrinking corruption.

Following the disclosure of acts of fraud at Enron by CIA, which inflicted damage of several tens of million dollars to shareholders, and the association of Arthur Anderson, one of the Big-5 world-acknowledged international audit firms in this scheme, the IFAC and the IAASB, with a view of enhancing the responsibility of auditors and economic entities, eradicating conditions that feed corruption and toughening key rules of auditing services, has introduced substantial amendments to present auditing international standards and has also initiated new standards. The immediate agenda of the AC includes the translation of these standards into Georgian, their testing and introduction into practice.

Access to Information

Legal Framework on Access to Information

On 23 July 1999, the Parliament of Georgia adopted the General Administrative Code of Georgia, in which the old (existing) norms are accumulated and the new ones are elaborated. They refer to and protect the rights of all Georgian citizens to receive any information from the State (administrative) bodies.

This Code defines the procedures for issuing and enforcing administrative acts, reviewing administrative complaints, and preparing, concluding, and implementing administrative contracts by an administrative agency. The purpose of this Code is to ensure the protection of human rights and freedoms, public interests, and the rule of law by administrative agencies.

Explanation – According to the Code, each State or Local Self-government or Government Body or Agency, Legal Person of the Public Law, also any other persons, who exercise public legal authority on the basis of the legislation, are unified under the concept of the General Administrative Body.

The third part of the General Administrative Code is dedicated to these issues ("Freedom of Information"). Article 27 gives the definitions of the terms:

- "Public agency" means a state or self-government agency or institution, or the person who exercises statutory authority on behalf of a public agency pursuant to law or contract, or artificial person of Public Law or Private Law that receives funding from the State Budget.

- "Corporate public agency" means a public agency that incorporates a governing or advisory board consisting of more than one public servant, and in which decisions are jointly made or prepared by more than one public servant.
- "Member of a corporate public agency" means a public servant who participates in decision-making of a corporate public agency with the right to vote.
- "Official" means the person indicated in Article 2 of the Law on Conflict of Interests and Corruption in Public Service.
- "Session" means the hearing of a matter by members of an agency for the purpose of preparing or rendering a decision on behalf of the public agency.
- "Publicizing" means entry of public information into a public register in accordance with law and making public information accessible for the public.
- "Public database" means data that is systematically collected, processed and stored by a public agency or public servant.
- "Personal data" means public information that allows identification of a person.
- "Executive privilege" means the exemption of a public agency or public servant from the obligations stipulated by this Chapter.

According to Article 28 of the Code, Public information shall be open, unless otherwise prescribed by law, or except for information that constitutes state, commercial, or personal secrets. As regards a commercial secret, this means any information concerning the plan, formula, process, or means that constitute a commercial value, or any other information that is used to produce, prepare, or reproduce goods, or provide service, and/or which represents an innovation or a significant technical accomplishment, or any other information, disclosure of which could reasonably be expected to cause competitive harm to a person. No information concerning an administrative agency shall be considered a commercial secret.

When submitting particular information, a person shall indicate whether it constitutes a commercial secret. A public agency shall within ten days categorize the information specified in paragraph 1 of Article 28 as a commercial secret, unless the applicable law requires the information to be open. If after submission of the information, the public agency does not consider it a commercial secret, the agency shall make the information open and

immediately inform the concerned person thereof. The information shall become open in 15 days after the decision is made, unless the person who submitted the information appeals the agency's decision in a higher administrative agency or court before expiration of that term. In this case, the person shall immediately inform the agency about the appeal.

Any person may appeal the decision to consider information as a commercial secret in a higher administrative agency or court.

A public agency shall enter into the public register the records regarding any request for commercial information submitted by a third person or another public agency, including the date of request and name/title and address of the requester.

In accordance with the Code, professional secret means any information that constitutes a personal or commercial secret of a person or organization, which became known to another person in the course of the execution of his professional duties. No information that does not constitute a personal or commercial secret of a person or organization shall be considered a professional secret.

According to Article 30, the decision designating public information to be classified may be rendered if the law provides express requirement to protect such information from disclosure, establishes concrete criteria for such protection, and provides an exhaustive list of classified information.

Unless otherwise prescribed by applicable legislation, professional and commercial information shall be kept classified for an unlimited term. Commercial secret shall be declared open if the grounds for classifying such information can no longer be invoked. Personal secret shall be classified within lifetime of the information subject, unless otherwise prescribed by applicable legislation. The decision to classify public information or to extend the term for keeping it classified shall be entered into public register.

Article 32 provides for that the session conducted by any corporate public agency shall be open and public, unless the session considers the information concerning state, commercial and private secret.

There are additional procedures for publicizing secret information. After classified information is declassified, any part of classified public information or protocol of the closed session of a corporate public agency that can be separated on reasonable grounds shall be publicized. In such case, the agency

shall also indicate the name of the person who classified the information, the grounds for classifying, and the term for keeping the information classified.

A corporate public agency shall a week ahead publicly announce any forthcoming meeting, including its place, time and agenda. The agency shall also publicly announce its decision to close such a meeting, if applicable.

In case of urgent necessity, a corporate public agency may hold a meeting without complying with the rules set forth in paragraph 1 of Article 32. In such case, the agency shall immediately announce the place, time and agenda of the meeting, and, if applicable, its decision to close the meeting.

When a corporate public agency holds a meeting or decides to close the meeting due to urgent necessity, it shall announce procedures for appealing a decision made at the meeting within three days after the decision is made. The agency shall enter into the register results of a roll-call vote regarding closure of its meeting, and minutes of the meeting, pursuant to Article 33 of this Code.

A lawsuit concerning the legitimacy of a meeting held by a corporate public agency due to urgent necessity, or concerning the agency's decision to close the meeting shall be filed with court within one month after the meeting was held. If the court rules that the agency held its meeting in violation of applicable procedures, the decision made at such meeting shall be declared invalid by the court.

All public information kept by a public agency shall be entered into the public register. Reference to public information shall be entered into the public register within two days after its acquisition, creation, processing or publicizing, indicating its title and the date of receipt, creation, processing, and publicizing of the information, and the title or name of the natural or artificial person, public servant, or public agency, which provided the information and/or to which it was sent. A public agency shall designate a public servant who will be responsible for ensuring the accessibility of public information.

The Code preserves overtly the right to request the public information (Article 7): "*Everyone may request public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information. If there is a danger of damaging the original, a public agency shall provide access to the original under supervision or provide a duly certified copy of the document*."

In order to obtain public information, a person shall submit a written request. The applicant shall not be required to specify grounds or purpose for requesting the information. When seeking to obtain personal data of another person or commercial secret, the applicant shall also submit a written consent of the information subject, certified by a notary or an administrative agency, except for the events prescribed by the law."

A public agency shall provide access to the copy of public information. No fees shall be charged for distributing public information, except for copying costs.

A person may not be denied access to the public information, which allows his identification, and which shall not be accessible to other persons according to this Code. A person may have access to his personal information that is kept in a public agency, and may obtain copies of such information free of charge.

Article 40 of the Code provides for the terms of release of the public information. In particular, a public agency shall release public information immediately or not later than ten days if responding to a request for public information requires:

- acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information,
- acquisition and processing of separate and large documents that are not interrelated, or
- consultation with its subdivision that operates in another area, or with another public agency.

If release of public information requires the period of ten days, the public agency shall immediately inform the applicant thereof upon his request.

In accordance with Article 41, the applicant shall be immediately informed of the denial of a public agency to release public information. If access to public information was denied, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies, which provided their suggestions regarding the decision.

In accordance with Article 42, everyone is entitled to know:

- environment and the hazard that constitutes a threat to life and health,

- fundamental principles and objectives of a public agency,
- description of the structure of a public agency, the procedures for assigning and dividing functions among civil servants and decision-making procedures,
- names and office addresses of those servants of public agencies, who hold positions or are responsible for classifying public information, or public relations, or provision of information to citizens,
- results of open ballots in a corporate public agency,
- election of a person to an elective office,
- results of auditing or inspection of the activity of a public agency and court materials on the cases where a public agency acted as a litigant,
- the title and location of the public database of a public agency and the name and office address of the person responsible for the database,
- the purpose, area of application and legal grounds for collecting, processing, storing and disseminating data by a public agency,
- availability or non-availability of personal information of applicant in a public database, the procedures for gaining access to such information, including the procedures allowing the identification of a person, if the person or his representative filed the request to gain access to or modify personal information of the applicant,
- category of persons who may gain access to the personal information contained in a public database pursuant to law,
- composition and sources of the data contained in a public database and the category of persons, concerning whom information is collected, processed and stored, and
- any other information that is not considered state, commercial, or personal secret pursuant to the law or applicable procedures.

Article 43 provides for the rule of processing personal data. In particular, a public agency shall:

- collect, process and store only those data that are expressly provided by law and are necessary for the proper functioning of the agency;
- not allow collection, processing, storage, or disclosure of personal data relating to a person's affiliation with any religious, sexual, or ethnic group, or his political beliefs or worldviews;

- develop and establish the program for controlling the conformity of collection, processing, storage and content of the data with statutory goals and terms;
- destroy the data that is unrelated to the statutory goal when demanded by a person or required by a court's decision; destroy inaccurate, unreliable, incomplete and irrelevant data and replace them with accurate, reliable, updated and complete data;
- store amended data, indicating the date of their use, together with original data for the period of their existence, but note less than five years;
- during the collection of personal information about any person obtain information directly from that person and other sources, only if all possibilities of obtaining information from an initial source were exhausted, except as provided in Article 28 of this Code, and only if the public agency is expressly authorized by law to collect, process and store personal data about persons of certain category;
- enter into a public register the information about the collection and processing of personal data and about the request for data by a third person or a public agency; date of a request and the name/title and address of the applicant;
- immediately notify a concerned person at his current address of the request for his personal data by a third person or a public agency, except as provided in Article 28 of this Code;
- before transferring personal data to another person/public agency take all reasonable measures for double-checking whether those data are accurate, relevant, updated and complete;
- during the collection, processing and storage of personal data inform a concerned person about the objectives and legal grounds for processing personal data, whether the person is required to provide personal information, the sources and composition of personal information and third persons who may gain access to it.

In accordance with Article 44, no public agency shall disclose information constituting personal secret, except for personal data of officials (including candidates to such positions), without the consent of the information subject, or a founded decision that was rendered by court pursuant to the law. A person may appeal the agency's decision to deny access to personal data within one month after the denial. A court may render the decision declassifying personal data only if it is impossible to prove essential facts on the case on the basis of

other evidence, and if all possibilities of obtaining this information from other sources were exhausted. In particular, according to the Article 45 personal data may be accessible for the purpose of conducting a scientific research. This rule excludes the possibility of identifying a person.

Article 46 provides for that a person may demand the revision of data or the destruction of illegally obtained data. The burden of proof concerning the legality of collection of personal data shall rest with a public agency. Before the revision of public information a person's statement concerning inaccuracy of that information shall constitute public information and shall be attached to the pubic information. A public agency or public servant shall render a decision on this matter within ten days.

In accordance with Article 47, a person may file a claim in a court demanding the nullification or amendment of the decision of a public agency or public servant, and claim material or non-material damages for:

- denying access to public information, partly or completely closing the session of a corporate public agency, or designating public information to be classified,
- the creation and processing of incorrect public information,
- the illegal collection, processing, storage and dissemination of personal data, or illegal furnishing of personal data to another person or public agency, or
- the violation of other requirements of this chapter by a public agency or public servant.

The burden of proof shall rest with the public agency or public servant that acts as a defendant in a court.

According to Article 48, pursuant to the motion submitted by a party, the court may request for and review classified public information to investigate the legality of designating this information to be fully or partly classified.

Article 49 of the Code provides for the obligation of public agency to submit the report to the Parliament and the President of Georgia on 10 December of every year regarding:

- the number of requests to provide or modify public information provided to the agency and the number of decisions,

- the number of decisions complying with or denying requests, the names of the civil servants rendering those decisions and the decisions of corporate public agencies to close their sessions,
- the public databases and the collection, processing, storage, and furnishing of personal data by public agencies,
- the number of violations of this Code by civil servants and the imposition of disciplinary penalties upon officials,
- the legislative acts that served as grounds for denying access to public information or closing a session of a corporate public agency,
- appeals from the decisions to deny access to public information, and
- expenses relating to the processing and release of information and appeals from the decision to deny access to information or to close a session of a corporate public agency, including the payments made to adverse party.

In accordance with Article 36 of the General Administrative Code, a public agency shall designate a public servant who will be responsible for ensuring the accessibility of public information.

Special Rule for Media

Georgian legislation is not aware of different procedures and rules specific to the media.

According to Article 18 of the Civil Code of Georgia, dignity and respect of a person is rated as private intangible property.

The relations connected to protection of dignity and respect are regulated by the Parts 2 - 6 of Article 18:

1. A person is entitled to demand through the court rejection of the information, infringing his/her dignity, respect, privacy, personal immunity or professional reputation, if dissemination of this information does not prove their verity. The same rule is applied for incomplete publication of factual data, if this infringes dignity, respect or professional reputation of this person.

2. If the information, infringing individual's respect, dignity or privacy is published through the mass media sources, they must be rejected in the same sources. If such information is contained in a document, issue by an organization, this document must be replaced and the persons involved must be notified about this.

3. The person, whose dignity and respect were infringed by the information published in media sources, is entitled to publish a response in the same sources.

4. The person is also entitled to demand the same as given in the parts 1 and 2 of this Article if his/her image (photo, film, video, etc.) is published without his consent. Consent of a person is not necessary if filming (photograph) is related to his/her public recognition, held position, requirements of police or justice, for scientific, educational or cultural purposes or filming (photograph) took place in a public place or the person was paid for posturing.

5. Protection of the issue, foreseen in this article is conducted in spite of guilt of the invader. and if the violation is caused by criminal action, the person is entitled to demand compensation of damage. Compensation of damage can be demanded in the form of the benefit, gained by the invader. In case of criminal infringement an authority is entitled to demand compensation of intangible (moral) damage. Moral damage can be compensated independently from tangible damage.

One more condition must be underlined here, that according to the current legislation, libel related to crime causes criminal responsibility (Criminal Code, Article 148). Namely, punishment for such a crime involves fine, or socially useful work for 100-200 hours, or reformatory work for up to one year.

As concerns statistics on criminal offences regarding instances of prosecution and conviction of journalists, it must be noted that such statistics have not been carried out in the past, but after the additional research we found that about 20 cases had place during the past two years.

Dissemination of Anti-Corruption Laws, Regulations and Policies

After the General Administrative Code entered into force, in cooperation with the Georgian NGOs and international organizations, many seminars, trainings and round tables were held in Georgia, dedicated to the implementation and popularization of the Code. Based on the General Administrative Code and for the purpose of its real application, several Presidential Decrees were drawn up and issued. Many projects were financed by foreign organizations, such as IRIS, UNDP, USAID. Various undertakings were organized. One of the projects, providing for propagation of advertising and cognitive trailers, printing of slogans and their distribution free of charge, is still proceeding.

The wide-range of anti-corruption propaganda has not been undertaken due to the absence of financial resources.

Private Sector Initiatives and Civil Society Involvement

At the present stage of development of Georgia, the key role in everyday life of the State is played by non-governmental or private sector. Since the beginning of the 1990s, the institute of non-governmental organizations-associations has been established, which significantly influences the current processes in the State?

There are more than 3 000 non-governmental organizations in Georgia today, and benefits from the existing situation which allows for freedom of speech.

We should also mention the position of State agencies with regard to support of the non-governmental sector. Recently, the non-governmental organizations and advisory boards have been established in structures (ministries) of the Executive Government. The membership in the agency is free and any organization interested in the activities of the Ministry can take part in its activities. Although the non-governmental sector does not take an interest in participation of similar structures yet, the mentioned mechanism for the future will be considered as a key sector in establishing relations between the public and private sectors.

We should single out the participation of the non-governmental sector in the elaboration of an anti-corruption strategy and in the monitoring process of implementation of the anti-corruption recommendations. Almost 100 non-governmental organizations were actively promoting the group created by the President of Georgia and which developed the anti-corruption program. They presented their proposals with regard to the change of corruption system in different spheres. These recommendations are envisaged in the Anti-corruption Program of Georgia and serve as a guide manual for various State structures.

The non-governmental sector also actively participated in the monitoring of first-range anti-corruption activities. With this purpose the coalition of non-governmental organization has been created and which gives an independent evaluation as to the degree of fulfilment of anti-corruption recommendations. The stated evaluation as a conclusion has been presented to the Anti-corruption Policy Coordination Council of Georgia and to the President of Georgia as well.

The Anti-corruption Policy Coordination Council of cooperates with non-governmental sector. This is confirmed by the fact that today among twelve members of advisory agencies of the President of Georgia, seven are representatives from the non-governmental sector.

Three main issues can be outlined in the activities of the non-governmental sector: elaboration of a new Tax Code and liberalization of business environment, monitoring of elections, and elaboration of ethical norms.

The activities of the non-governmental sector in the elaboration of a Tax Code and the liberalization of business activities seems to be productive, although the establishment of those principles, which were proposed through the initiative of the private sector, is prevented by the current Parliamentary

crisis. It should be mentioned that a new Draft Tax Code and a number of legislative proposals with regard to liberalization of business environment has been prepared with direct participation of the private sector and business circles. These proposals refer to the refinement of forms of State control, optimization of licenses and permits, etc.

The non-governmental sector actively participates in the preparation of issues related to various levels of elections and the monitoring of these elections. The issue of recruitment of the central electoral commission was considered as one alternative; however, this model became inadmissible for the political parties, even though this did not prevent the non-governmental sector to continue work with different political unions with the aim of elaborating an acceptable electoral code. We consider that the active participation of non-governmental organizations in the monitoring process of forthcoming elections is of great importance and the fact that the private sector fully realizes the importance of elections in the State's future development is essential.

Finally, the non-governmental sector actively participates in the process of elaboration of Norms of Ethics, which has been hampered by the stagnancy of State structures. In 2000, one of the non-governmental organizations (Corruption Research Centre) prepared similar norms. Later, the Anti-corruption Policy Coordination Council of Georgia proceeded with work in this direction, but with no real result to date. Nevertheless, the Anti-corruption Bureau of Georgia continues activities with the non-governmental sector and we hope that in the near future, the elaboration of a Code of Ethics for civil servants as well as for other professional representatives will become possible.

Political Party Financing

The issue of financing of political parties and political contenders is regulated in Georgia at the legislative level.

Financing of political parties and political contenders is regulated by the Georgian Organic Law on Political Unities of the Citizens, dated 31 October 1997, and the Election Code of Georgia of 2 August 2001.

The issues of financing of actual activities of political parties and election campaigns are differently regulated by the legislation of Georgia. Namely:

Generally the relations connected to assets of a political party and finances is regulated by the Chapter III of the Georgian Organic Law on Political Unities of the Citizens, dated 31 October 1997.

The norms for regulating financing of election campaigns are given in the Articles 46 (Election Campaign Fund), 47 (Election Donations to the Election Campaign Fund) and 48 (Rules of Administration of Election Campaign Fund) of the Election Code of Georgia.

The current legislation of Georgia does not involve any discrimination or differences in this regard.

In accordance with Article 6 of the Georgian Organic Law on Citizens' Political Unions, dated 31 October 1997, it is absolutely inadmissible in Georgia to create parties on a regional or territorial basis.

Part 2 of Article 46 of the Election Code of Georgia determines the exceptions from the general rule, namely according to the above part:

Opening of the Election Campaign Fund is mandatory for all the election entities. The majority contender of membership of the Parliament of Georgia presented by a party/election block is entitled not to open the Election Campaign Fund (in this case he/she has no right to use other resources during the election campaign, except the resources allocated by the party/election block, presenting this contender, from their its own Election Campaign Fund). A contender for membership of a representative body of a community or a village local self-administration body – Sakrebulo opens the Election Campaign Fund voluntarily.

Article 30 of the Georgian Organic Law of Citizens' Political Unions foresees the possibility of financing of political parties from the State Budget.

In accordance with Article 30 of the Georgian Organic Law on Citizens' Political Unions:

1. Every year the state allocates from its budget ascertain amount for organizational and other needs of the parties.

2. Total amount allocated is determined by the Georgian Law on the State Budget.

3. The allocated amount is proportionally distributed among the parties and election blocks, which received more than 5% of the votes of the voters participating to the elections held on proportional basis at the recent parliamentary elections.

4. The amount allocated for election block is proportionally distributed among the parties involved.

According to the Paragraph 1 of Article 25 of the Georgian Organic Law on Citizens' Political Unions, one of the sources of financing of a party are the donations made by physical and legal entities.

It also must be noted that according to Part 1 of Article 47 of the Georgian Election Code, money transfers to the Election Campaign fund made by physical and legal entities are considered as donations.

According to Article 27 of the Georgian Organic Law on Citizens' Political Unions:

Total value of financial and material donations received by political parties must not exceed annually:

a) from a physical person – GEL 30 000;

b) from a legal entity – GEL 100 000.

According to Article 26 of the Georgian Organic Law on Citizens' Political Unions:

It is prohibited to accept financial or material donations from:

a) Foreign physical or legal entities, except for holding lectures, seminars and other public activities, procurement and distribution of books, handing over technical equipment;

b) State bodies and organizations, except the cases outlined in this law (the examples of financing by the state are given in the Article 30 of the same Law);

c) Treasury enterprises and enterprises, in which the state share is more than 28;.

d) Public unions.

In accordance with Part 5 of Article 47 of the Georgian Election Code it is inadmissible to accept donations to the Election Campaign Fund from:

a) Foreign states;

b) Foreign physical or legal entities;

c) Individuals, having no citizenship;

d) International organizations or movements;

e) Non-productive legal entity and religious organizations;

f) Georgian productive legal entity with state share.

In accordance with Part 3 of the same Article, it is prohibited to accept anonymous (without pointing out the data defined by the law) donations. Such donations must be transferred to the State Budget of Georgia.

There no rules for donations from subsidiaries of foreign companies set by the legislation of Georgia.

Obligation of a physical person and a corporation to make the information about its political donations is not foreseen by the legislation of Georgia.

According to Paragraph 3 of Article 32 of the Georgian Organic Law on Citizens' Political Unions, a party must send to the Ministry of Justice of Georgia copies of the published declaration and conclusion of auditor (audit firm) within ten days after publishing.

According to Part 11 of Paragraph 4 of Article 48 of the Election Code of Georgia:

4. Manager of the Election Campaign Fund is obliged to check legality of the money transferred to the account of the fund within his/her competence;

5. also submit to the corresponding election commission the account of the fund and notify about the source and amount of donation and date donation was received.

6. Manager of the Election Campaign Fund documents any kind of operation. If some of the expenses can not be documented, it must be fixed by means of a two-sided act.

7. The election subjects within maximum of one month after publishing the results of elections and the election subjects, that will receive the number of votes necessary per this law within eight days after voting must present to the corresponding election commission the report on the resources used for the election campaign pointing out the sources of the money transferred to the Election Campaign Fund.

8. for the election subjects, which do not submit the report of the Election Campaign Fund it will be forbidden to participate to the following correspondent elections.

9. Election subjects that receive the number of votes necessary per the present law and do not submit the report of the Election Campaign Fund within the set period of time or violations of the Paragraphs 2, 3, 4, 5 and 7 of Article 46 of the present law

(2. Opening of the Election Campaign Fund is mandatory for all the election subjects. A majority contender of membership of the Parliament of Georgia presented by a party/election block is not obliged to open the Election Campaign Fund (in this case during the election campaign he/she will not be allowed to execute other resources except the resources of the party/election block presenting this contender). A contender of membership of the representative body of local self-administration of a community or a village – Sakrebulo opens the Election Campaign Fund voluntarily.

3. The money attracted by the election subject must be transferred to the account of the Election Campaign Fund, which must be opened in the National Bank of Georgia or a commercial bank or its correspondent branch within 5 days after the election subject is registered by the correspondent election commission. Account must be opened only for the national currency.

4. The election subject within two days after opening the account of the Election Campaign Fund must submit to the correspondent election commission the document, verifying the fact of opening the account of the Election Campaign Fund issued by the bank and the account number, also advices the identity and coordinates of the manager and the accountant of the Election Campaign Fund.

5. Personal account of the party, majority contender of presidential contender can not be used as the account of the Election Campaign Fund. Opening of more than one account for the Election Campaign Fund is inadmissible.

7. Money transferred to the account of the Election Campaign Fund, as well as any goods or services received free of charged are considered as the resources attracted for the Election Campaign Fund.)

Paragraphs 4 and 5 of Article 47

4. During the election campaign execution of any other resources except the Election Campaign Fund resources by the election subject is inadmissible.

5.It is inadmissible to accept donations for the Election Campaign Fund from:

Other states;

- Foreign legal or physical entities;

- Individual with no citizenship;

- International organization or movement;

- Non-productive legal entity or religious organization;

- Georgian productive legal entity with a state share.)

and of the requirements of Paragraphs 4, 5 and 6 of the present Article are proved, correspondent election commission considers and makes decision on summarizing the results of the elections without including the number of votes received by the election subject.

10. The election subject is obliged to close the account of the Election Campaign Fund within 20 days after the final results of the elections are summarized. The balance of the

account is returned to those, who transferred the money proportionally to the amount transferred.

11. The format of reporting on the resources used for elections is determined by the Central Election Commission of Georgia on the basis of a decree.

12. Information on election donations is open, public and available. The Central Election Commission of Georgia is obliged to provide every person involved with the information on the amount, sources and date of transfer of the resources available at the account of the Election Campaign Fund of an election subject.

According to Article 32 of the Georgian Organic Law on Citizens' Political Unions:

1. Every year before 1 February a party published in printed media a financial declaration of the previous year together with the conclusion of the auditor. The declaration reflects the annual income (pointing out the sources) and expenses of the party and also the report on property status.

2. The income and expenses of the resources used for the election campaign must be shown in the declaration separately.

3. Within ten days after publishing, the party must send to the Ministry of Justice of Georgia copies of the published declaration and the conclusion of the auditor.

The Ministry of Justice of Georgia keeps the information provided by the parties and gives it out to every person involved in form of public information in accordance with the requirements of Article 10 of the General Administrative Code of Georgia.

According to Part 4 of Article 46 of the Election Code of Georgia: Within two days after opening the account of the Election Campaign Fund, the election subject must submit to the correspondent election commission the documents, verifying the fact of opening the account of the Election Campaign Fund issued by the bank and the account number and advices the identity and coordinates of the manager and the accountant of the Election Campaign Fund.

In accordance with Parts 2 and 3 of Article 8^2 of the Election Code of Georgia:

1. The complaints for violations of the election legislation in cases, determined by the present law and other legislative acts, may be lodged in the terms and according to the rules outlined in the present law in the constitutional or common court of Georgia.

2. The person violating the election legislation is charged administrative and criminal responsibility.

Article 73 of the Election Code of Georgia also concerns consideration of the arguments related to violation of the election legislation:

According to Paragraphs 1-6 of the above-mentioned Article:

1. Complaints for violations of the election legislation can be lodged in the correspondent election commission or in the common court and is the argument concerns constitutionality of the elections – in the Constitutional Court of Georgia.

2. The decision of the election commission can be appealed in the higher election commission or in the court within three calendar days after the decision is made, and the decision made by the Central Election Commission must be appealed in the court, if the present law does not prescribe different period of time. The court considers the decision of the election commission during three calendar days, if there is no different period

prescribed by the present law. Prolongation of the terms of appealing and considering the argument beyond the terms set by the present law is prohibited.

2[1]. The terms for appealing against the decisions made by the court for the election arguments not foreseen in the present article in the higher instance is limited to three days (28.11.2003 N 3124).

3. Lodging a complaint to the court will not terminate the effect of the decision appealed.

4. The terms and rules for lodging a complaint related to the election in the election commission, its consideration by the election commission and making a decision are determined by the present law and the regulations of the election administration, and the issues not foreseen in this law are regulated by the Common Administrative Code of Georgia. If the above mentioned normative acts do not prescribe terms for lodging a complaint, it can be done at any time, but not later than within 30 days after the day of elections, and the election commission must consider it and make the decision within the period of 10 calendar days.

5. Terms and rules of lodging a complaint related to the decisions of the election commission and the violations of the election legislation in the court, terms for considering the complaint and making decision, circle of the complainants are determined by the procedural legislation of Georgia, if the present law does not prescribe any other terms and rules.

6. The terms for Lodging a constitutional complaint related to calling or not calling the elections and considering such complaints are determined by the Georgian Organic Law on the Constitutional Court of Georgia and the Georgian Law on Constitutional Judicial Examination. Terms for lodging a complaint related to constitutionality of the elections determined by the correspondent election commission is ten days after publication of the decision made on approving the results of the elections, and the terms for consideration of a constitutional complaint are determined by the laws mentioned in the present paragraph.

Political sanctions for violation of rules of financing the parties are set by Parts 7 and 8 of Article 48 of the Election Code of Georgia (see above).

Criminalisation of Corruption

Active and Passive Bribery

Definition and Elements of the Offences

Article 338 of the Criminal Code of Georgia provides for the responsibility for receiving a bribe, and Article 339 provides for the responsibility for giving a bribe. Moreover, Article 340 of the Code provides for responsibility for accepting presents forbidden by law. Below is the wording of the articles related to bribery:

Article 338. Accepting Bribes

1. Accepting bribes by an officer or a person equal thereto, in the form of money, securities, property or any other material benefit, for performing or not performing this or that action in favour of the bribe-giver that the officer or the person equal thereto must have or could have performed by using his/her official position, or his/her official authority could have promoted such action, as well as exercising official patronage by him/her, shall be punishable by prison sentences ranging from five to ten years in length.

2. Accepting bribes:
   a) by a political official;
   b) in large quantities;
   c) by a group's conspiracy,

   shall be punishable by prison sentences ranging from six to twelve years in length.

3. The action referred to in Paragraph 1 or 2 of this article, committed:
   a) by a person previously convicted of bribery;
   b) repeatedly;
   c) through extortion;
   d) by an organized group;
   e) in especially large quantities,-

   shall carry legal consequences of imprisonment ranging from eight to fifteen years in length.

   Note: Bribe in large quantities shall be the amount exceeding GEL 10 000 in the form of money, securities, other property or material benefit, and the amount in excess of GEL 30 000 shall be construed as bribe in especially large quantities.

Article 339. Bribe-Giving

1. Giving bribes to an official or a person equal thereto, shall be punishable by fine or by corrective labour up to two years in length or by restriction of freedom up to a similar term or by jail time not in excess of three months or by imprisonment for up to two years in length.

2. Giving bribes to an official or a person equal thereto for committing an illegal action, shall be punishable by fine or by imprisonment for up to eight years in length.

Note: A briber shall be released from criminal liability if he/she was extorted of bribe or if he/she voluntary informed a prosecuting body on the bribe-giving.

The above-mentioned crimes pertain to the malfeasance in offices and consequently, are envisaged in Part 39 of the Code. As a rule, the subject of crimes provided by this part is a public servant or a person with equal status. The given crimes pertain to those of a corrupt nature that may be committed in the public sector, in contrast to the interests of the public service and should be related to a person's official authority. These are the signs characterizing these crimes and the existence of these signs if of sufficient importance qualifies the crime as provided for by this part.

As regards the Article 39 – giving a bribe — the subject of this crime may not only be a public servant or a person equal in status, but any physical person.

The subject of malfeasance in office provided for by Part 39 of the Criminal Code is a public servant or a person equal in status, the concepts of which are defined by the Law on Public Service. In particular, Articles 4 to 8 of this Law determine defines the different types of public officials. Article 2 of Law on Conflict of Interests in Public Services and about Corruption defines "high authority" and their limiting of the acts, incompatibility of ranks and the obligatory norms of publishing and declaration of economic interests, the violation of which institutes administrative and criminal proceedings.

An offence provided for by Article 338 of the Criminal Code of Georgia – Accepting Bribes – may be considered complete by an officer or a person equal thereto, in the form of money, securities, property or any other material benefit, for performing or not performing this or that action in favour of the bribe-giver that the officer or the person equal thereto must have or could have performed by using his/her official position, or his/her official authority could have promoted such action, as well as exercising official patronage by him/her.

The offence provided for by Article 339 – Bribe-Giving - is present only in those cases when a person who received a bribe (an official or a person equal thereto) knew this and there was a kind of agreement concerning performance of some acts in return. A person who bribes shall be released from criminal liability if he/she was extorted through bribery or if he/she voluntary informed a prosecuting body on the bribe-giving.

Concerning the participation of a third person in a criminal case, it should be noted that the Criminal Code defines the types of complicity and perpetrators. In particular, with respect to the Article 24, perpetrator shall be the

one who immediately committed the offence or participated along with the other (co-perpetrator) in the wrongdoing, as well as the one who perpetrated the crime though such person is released from criminal liability under this Code due to age, diminished responsibility or any other circumstance. Co-perpetrator, according to Article 24, might be:

- the organizer shall be the one who staged the crime or supervised its perpetration as well as the one who established the organized group or supervised it.
- the instigator shall be the one who persuaded the other person into committing the offence.
- the accomplice shall be the one who aided the perpetration of crime.

Pursuant to Article 25, criminal liability shall be imposed upon the perpetrator and accomplice only for their own fault on the basis of joint illegal action, in consideration of the character and quality of the part that each of them played in the wrongdoing.

Sanctions

The punishment measures for committing offences provided by Articles 338 and 339 of the Criminal Code are defined according to qualificatory circumstances. In particular:

Article 338 - accepting bribes – consists of three parts. Qualificatory circumstances are defined according to subject, means and quantity of an offence. Bribe in large quantities shall be the amount exceeding GEL 10 000 in the form of money, securities, other property or material benefit, and the amount in excess of GRL 30 000 shall be construed as bribe in especially large quantities. Acts falling into this category are punishable by a prison sentence ranging from five to ten years.

According to the second part, the qualificatory circumstances for accepting bribe are: a) by a political official; b) in large quantities; and c) by a group's conspiracy. Acts falling in the second part are punishable by prison sentences ranging from six to twelve years.

The actions referred to in the third part, are those committed: a) by a person previously convicted of bribery; b) repeatedly; c) through extortion; d) by an organized group; e) in especially large quantities. These acts shall carry a sentence ranging from eight to fifteen years in length.

Article 339 consists of two parts:

1. Giving bribes to an official or a person equal thereto, shall be punishable by fine or by corrective labour up to two years in length or by restriction of freedom up to a similar term or by jail time not in excess of three months or by imprisonment for up to two years in length.

2. Giving bribes to an official or a person equal thereto for committing an illegal action, shall be punishable by fine or by imprisonment for up to eight years in length.

Note: A briber shall be released from criminal liability if he/she was extorted of bribe or if he/she voluntary informed a prosecuting body on the bribe-giving.

Statute of Limitations

Article 71 of the Criminal Code establishes the terms of limitations for persons sentencing to criminal liabilities. In particular, in accordance with the Part 1 of this Law, the person shall be released from criminal liability if:

- two years have passed since the perpetration of the crime for which the maximum sentence prescribed by the article or part of the article of the Special Part of this Code does not exceed two years of imprisonment;
- six years have passed since the perpetration of any misdemeanour;
- ten years have passed since the perpetration of any grave offence;
- twenty-five years have passed since the perpetration of any especially grave offence.

The offences provided for by the Part 1 of Article 338 of the Criminal Code belong to a grave category of an offence, the term of limitation ranges from five to ten years; the offences provided for by Parts II and III of this Article belong to especially grave offences and terms of imprisonment is twenty five years after committing an offence.

The Article regulates the issues of suspension of terms of limitations:

- The term of limitation shall cover the period from the day of wrongdoing before the effectiveness of the conviction. In case of committing another crime, the term of limitation shall be computed for each particular crime.

- The flow of the limitation shall drop if the criminal escapes from the investigation or the court. On such occasion, the limitation shall be resumed upon the apprehension or appearance in court with the confession of guilt.
- The question whether to apply the limitation or not to the person convicted of life imprisonment, shall be settled by the court. If the court rules that it is impossible to apply the limitation, life imprisonment shall be commuted to imprisonment for a particular term.
- The limitation shall not be applied in cases provided by the International Treaty of Georgia.
- The flow of the limitation shall drop as long as the person is protected by immunity.

Other Corruption and Corruption-Related Offences

Except for the above-mentioned, the following corruption and corruption-related crimes are envisaged in the Criminal Code:

Article 191. Illegal Registration of Land-Related Deals

Illegal registration of a land-related deal, distribution of the registered data of state land cadastre, or reduction of land tax for mercenary purposes or by other personal motives, shall be punishable by fine or by socially useful labour from one hundred and twenty to one hundred and eighty hours in length or by jail sentence for up to a three-month term, by deprivation of the right to occupy a position or pursue a particular activity for up to three years in length.

Article 194. Legalization of Illicit Income

1. Legalization of illicit income, *i.e.* giving a legal form to money or other property, as well as concealing the source, location, allotment, circulation of illicit income, the actual owner or possessor of property or property right, shall be punishable by fine or by imprisonment for up to five years in length.
2. The same action:

a) by a group;
b) repeatedly;
c) by using one's official position;
d) involving generation of income in large quantities, -

shall be punishable by imprisonment for up to ten years in length and by fine.

Article 203. Bribing Participant or Organizer of Professional Sports Competition or Commercial-Spectacular Contests

1. Bribing, a participant, referee, coach, team leader or organizer of sports competition, as well as an organizer of commercial-spectacular event or a member of the jury, intended to influence the result of the competition or consent, shall be punishable by socially useful labour from one hundred and twenty to one hundred and eighty hours in length or by corrective labour extending from six months to one year or by jail sentence for up to two months in length.

2. The same action, committed:
   a) by an organized group;
   b) repeatedly, shall be punishable by restriction of freedom for up too three years in length or by imprisonment for the term not in excess of five years.

3. Illegally receiving money, securities, or any other property or enjoying property service by a participant of professional sports competition intended to influence the result of the competition or contest, shall be punishable by imprisonment for up to two years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

4. Illegally receiving money, securities or other property or enjoying property services by a referee, coach, team leader or organizer, or an organizer or member of the jury of a commercial-spectacular contest, intended to influence the result of the competition or contest, shall be punishable by fine or by jail sentence for up to a three-year term, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

   Note: Criminal liability shall be lifted up from the person who voluntarily declares to a governmental authority that he/she has given money, securities or other property or has rendered property service to one of the persons referred to in Paragraph 1 of this Article.

Article 332. Abuse of Official Authority

1. Abuse of official authority by an officer or a person equal thereto in contempt of public service requirements in order to gain any

profit or privilege for oneself or others that has come as a substantial prejudice to the right of a natural or legal person, legal public or state interest, shall be punishable by fine or by jail time up to four months in length or by imprisonment for up to three years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

2. Abuse of official authority by a state-political official, shall be punishable by fine or by imprisonment for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Article 333. Exceeding Official Powers

1. Exceeding official powers by an officer or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest, shall be punishable by fine or by jail time up to four months in length or by imprisonment for up to three years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.
2. Exceeding official powers by a state-political official shall be punishable by fine or by imprisonment for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.
3. The action preferred to in Paragraph 1 or 2 of this article, perpetrated:
   a) repeatedly;
   b) under violence or by application of arms;
   c) by insulting a dignity of a victim,

   shall be punishable by prison sentences ranging from three to eight years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Article 337. Illicit Participation in Entrepreneurial Activity

Establishment of an enterprise, organization or institution for entrepreneurial purposes or participation therein, irrespective of a legal prohibition, by an officer or a person equal thereto, directly or indirectly, if it is related to awarding illegal privileges or

preferences or granting any other form of patronage to him/her, shall be punishable by restriction of freedom extending from two to three years in length or by imprisonment for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Article 340. Accepting Illegal Presents

1. Accepting an illegal present by an official or a person equal thereto, shall be punishable by fine or by socially useful labour from one hundred to three hundred hours or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.
2. The same action committed repeatedly, shall be punishable by fine or by socially useful labour from two hundred to four hundred hours or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Article 341. Falsification in Service

Falsification in service, *i.e.* entering false data or record into an official document or register, or drawing up or issuance of a false document, as well as forging of an official or private document existing in the file of an enterprise, establishment, organization, by an official or a person equal thereto, perpetrated for mercenary purposes or by any other personal motive, shall be punishable by fine or by imprisonment for up to two years in length.

for Articles 332, 337, 340 and 341, the subject of the offence may be an official or a person equal thereto, but offences provided for in Articles 194 and 203 may be any person found guilty of illegal actions provided for by the Criminal Code.

The terms of limitations provided for by Article 17 of the Criminal Code apply to the above-mentioned offences.

Concept and Definition of a "Public Official"

for the purpose of avoidance, revelation, prevention of conflict of interests in public service, the main principles of amenability of corruptive violations of law, and the issues of legislative regulations are specified in the Law on Conflict of Interests in Public Services and about Corruption. The list of high-

ranking officials is given in the same law. In particular, pursuant to the Article 2 of the Law, the following persons are defined as "high-ranking officials":

President of Georgia; Member of the Parliament of Georgia; the Heads of Supreme Representations of Adjarian and Abkhazian Autonomous Republics and their Deputies; Heads of Supreme Bodies of the Executive Government of Adjarian and Abkhazian Autonomous Republics and their Deputies; the Minister of Georgia and his Deputy; the Head of State Chancellery and his Deputy; the Chairman of State Department of Georgia, the Head of State Inspection of Georgia and their Deputies; the Head of Structural Subdivision of the Ministry, also a person equal thereto; the Head of Structural Subdivision of State Chancellery of Georgia and a person equal thereto; the Head of a State's Lower-level Agency of Georgia; the Heads and the Deputies of Departments, Bureaus, Head Divisions and Divisions of the Ministry of Internal Affairs of Georgia, Ministry of Security and the Ministry of Defence of Georgia, and persons equal thereto; the Head of Customs Department of the Ministry of Finance of Georgia, Regional Customs; Heads of Tax Inspections of Tax Department of the Ministry of Finance of Georgia, Supreme Representation of Adjarian and Abkhazian Autonomous Republics, the Heads of Regional, City, City District Local Tax Inspections; the Chairman of Central, Regional and City (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali) Conscription Commission, also the Chairman of the City District Conscription Commission; Chairman of the Chamber of Control of Georgia, Deputy, Member of the Presidium, Heads of the Chambers of Control of the Adjarian and Abkhazian Autonomous Republics, Heads of the Departments, Regional and City Bureaus; the President of the National Bank of Georgia and Council Members; Member of the Advisory Body of the President of Georgia; Member of the National Commission for Energy Regulation of Georgia; Chairmen of Automobile, Rail, Navy Transport and Civil Aviation Administrations of Georgia; Chairman of Central Election Commission of Georgia, Deputy, Secretary; State Attorney of the President of Georgia and his Deputy; Heads of Local Representative Bodies (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali), Region and City (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali), also Heads of Local Executive Bodies of City District and their First Deputies; Judge; General Prosecutor of Georgia and his Deputy; Heads of Divisions of General Prosecutor's Office and Services and persons equal thereto, Regional Transport Prosecutor, Regional Military Prosecutor, Supervision Prosecutor of Preservation of Law during Execution of Court Decision, Prosecutors of District, Region, City (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi and Tskhinvali) Courts, also, City District Courts; Other person elected, designated or commissioned to a post relevant to the direct instruction of the Georgian Constitution.

Article 338 of the Criminal Code of Georgia for foresees responsibility related to bribe-taking not only for official authorities, but generally for officials and the persons equated to them. It must be noted here, that according to Article 6 of the Georgian Law of 31 December 1997 on Public Service, an official is a person who is appointed or elected to the established position of a treasury institution. The officials are divided into government officials and local self-administration officials.

It must also be noted, that according to Article 11 of the same law, this law is effective for judges and prosecutors only in case, if there are no other provisions provided in the Constitution of Georgia or special legislation.

Moreover, Article 11 of the Criminal Code considers bribe-taking by a state political authority as an aggravation. According to Paragraph 3 of Article 1 of the Georgian Law on Public Service, such persons are:

a) President of Georgia;

b) Members of the Parliament of Georgia;

c) Members of the supreme representative bodies of Abkhazia and Adjara;

d) Leaders of the governmental institutions of the Autonomous Republics of Abkhazia and Adjara.

The Criminal Code foresees the same category of individuals (officials and persons equated to them) as the objects of such criminal activities, as bribing and accepting illegal presents (Article 340).

Definition of an official authority given in the Criminal Procedural Code (Article 44, Part 47) must also be noted here:

An official authority (towards whom the judicial proceedings are performed) – for the purposes of this law foresees the official authorities, foreseen in Article 2 of the Georgian Law on Conflict of Interests and Corruption in the Public Service, also individuals executing administrative or representative authority in an enterprise (in which the share of state ownership is 50% or more), accused during the period of holding the position, accordingly committing a crime against the interests of the organization, also legalization of illegal income generation, extortion, embezzlement or speculation, evading taxes or violation of rules of the customs, despite whether he/she is or is not dismissed from the held position.

According to Article 44 of the Criminal Procedural Code an individual executing administrative or representative authority in an enterprise (in which state ownership share is 50% or more) is considered as an official authority.

Pursuant to the same Law, "corruption in the public service" is abuse of official authority by an officer or a person equal thereto in contempt of public service requirements in order to gain any profit or privilege for oneself or others and "corrupt offence" is an action which contains signs of corruption and for which the law provides for the disciplinary, administrative and criminal liability.

The alleged violation of the requirements of this law by an official, it is not criminal or administrative violation causes disciplinary liability. If an official

who has committed a corrupt offence and receives a disciplinary measure, except dismissal, if during the year he commits another corrupt act, he is subject to obligatory dismissal from his position.

Defences and Exceptions

There are no special mechanisms with regard to corrupt offences provided for by Georgian Legislation. They fall under the general rules and mechanisms that are provided for by the Criminal Code of Procedure of Georgia.

In such cases sub-paragraph d of Part 1, Article 124 of the Criminal Procedural Code is executed. According to this sub-paragraph, in the sentence, writ and decree on termination of the suit where there is such evidence given such as money or values obtained through criminal activities, this is used for compensation of the damage caused by the crime, and if the damaged person is not known, this money is handed over to the State Budget.

It must be noted that according to Part 48 of Article 44, procedural confiscation means withdrawal of the tools and objects of the crime.

As far as the legal effect of the license obtained as a result of bribery is concerned, the requirements of Article 60 of the Common Administrative Code of Georgia (25 June 1999) must be taken into consideration:

1. Administrative-judicial act (according to the sub-paragraph c of Part 1 of the Article 2 of the same Code, license is exactly the judicial act) must be annulled if:

a) It is issued by an unauthorized body or an unauthorized person;

b) Its execution will cause a crime;

c) It contradicts with the law or the requirements set by the legislation for its issuance or preparation are considerably violated.

2. Considerable violation of the requirements set by the legislation for its issuance or preparation of legal acts means issuance of an administrative-legal act through violation of the rules set by Article 32 (publicity of the sessions) or Part 2 of Article 34 (sessions of collegial public institutions) or such a violation of the law, in case of existence of which other decision would be made.

3. Administrative-judicial act is annulled by the body issuing it and in case of lodging a complaint – the higher administrative body or the court (2 March 2001, N°772).

4. An administrative act may not be cancelled if the party involved has a legal trust towards the administrative-judicial act, except the cases, when the administrative-judicial act considerably violates legal rights or interests of a state, public or other person.

5. Legal trust of the party involved exists in case, if he/she on the basis of the administrative-judicial act has performed legal action and he/she will suffer damage if the administrative-judicial act is annulled. No legal trust exists, if it is based on illegal activities of the party involved. (2 March 2001 N°772)

6. If an administrative-judicial act, which violates the rights of a state, public or any other person is annulled, provided that the circumstances set in the Part 5 of the present Article exists, the party involved, on the basis of private and public settlement of relations

must be compensated tangible damage, made by annulment of the administrative-judicial act.

7. Annulment of an administrative-judicial act means cancellation of the legal results which arose after its becoming effective.

8. In the case an administrative-judicial act is annulled, the person is entitled to demand returning of the amount (or goods) paid in benefit of the state or local self-administration, and, if this is impossible, the person must receive corresponding and full compensation.

9. If the person benefits from annulment of the administrative-judicial act, he/she is obliged to return the gained benefit according to the rules set in the Articles 976-991 of the Civil Code of Georgia,

10. Annulment of an administrative-judicial act is performed according to the rules set for drawing up administrative-judicial acts.

Immunities

The Georgian Legislation provides for the protection mechanisms of immunities against legal proceedings, also against offences, which relate to corruption delinquency. According to the legislation, the following authorities enjoy immunity:

> The President of Georgia, Presidential Contender, Member of the Georgian Parliament, Alternate Member of the Parliament, Judge, Judge and the members of the Supreme Court of Georgia, Member of the Constitutional Court, Ombudsman, Chairman of the Chamber of Control, General Prosecutor, his First deputy and Deputies, Chief of Investigative Unit of General Prosecutor, Prosecutors of the Adjarian and Abkhazian Autonomous Republics, Tbilisi Prosecutor, other members of the General Prosecutor Board, Deputies of Supreme Representative Bodies the Adjarian and Abkhazian Autonomous Republics, Ombudsman of the Autonomous Republic, Member of the Constitutional Court of the Autonomous Republic.

The extent of the immunity is the same for all authorities; there is no criminal liability on the respective person, and he cannot be arrested or searched if there is no respective consent of the empowered body (high authority). The exception is if caught in *flagrante delicto*, and for which should be immediately informed the empowered body (high authority). If the mentioned body (high authority) does not give its consent, the arrested person should be immediately released.

With respect to the legislation, the decision on “lifting” the immunity is taken by:

- for a Judge of the General Law Court of Georgia: the Chairman of the Supreme Court
- for a Member of the Constitutional Court of Georgia: the Constitutional Court;
- for a Presidential Contender or Alternate Member of Parliament: the Central Electoral Commission;
- for the Prosecutor's Office Personnel: the Chairman of the Supreme Court;
- for the Deputies of the Supreme Representative Bodies of the Autonomous Republics: the Supreme Representative Body of the respective Republic;
- In all other cases: the Parliament of Georgia.

The Ministry of Justice of Georgia prepared the legislative package, which pursuant to the recommendations of the Group of States against Corruption (GRECO) provides for the revision of the system of immunities in Georgia and the perfection of active procedural norms concerning lifting of immunities. In particular, the legislative package provides for a reduction of the categories of officials who enjoy immunity from criminal proceedings (according to the amendments Prosecutors and Investigators shall not enjoy immunity against detention), and of those categories of persons who did not fall under measures of conveying to judicial and investigative bodies provided for by the procedural legislation (according to the amendments, the Member of the parliament of Georgia, Ombudsman, the Deputies of the Supreme Bodies of the Adjarian and Abkhazian Autonomous Republics, Judge, Member of the Board of the General Prosecutor's Office of Georgia).

The legislative package also provides for the elimination of the immunity for the Alternate Member of the Parliament of Georgia, in addition, the draft law consider the norm, according to which the detention or arrest of the Alternate Member of the Parliament with less grave offence, is inadmissible before the final results of elections are published (*i.e.* for that category of an offence which according to the Criminal Code shall be punishable by imprisonment of up to five years).

The changes proposed by the legislative package takes into account the abolishment of compulsory consent of the Chairman of the Supreme Court of Georgia and the Parliament of Georgia for those cases when, the Ombudsman of Georgia, the Chairman of the Chamber of Control, high authorities (General Prosecutor, his Deputy, and Prosecutors of the Adjarian Abkhazian autonomous

Republics) of the Prosecutor's Office of Georgia are apprehended in *flagrante delicto*. In addition, the legislative package takes into consideration the abolishing the immunity of the Investigator and high authority of the Prosecutor's Office (Head of the Investigatory Department of the Prosecutor's Office, transport Prosecutor of Georgia and other members of board).

The legislative package also regulates in detail the proposals on the request of the General Prosecutor (Bodies of the Prosecutor's Office) of Georgia on lifting the immunities for the relevant bodies and high authorities and the procedures of consideration of these proposals. The obligatory terms of consideration of the proposals of the General Prosecutor, the possibility of requesting and receiving additional information, the withdrawal of the proposal of the General Prosecutor, and the rule of making a decision by the empowered body on lifting the immunity are under specification. According to the legislative package, each investigative action (on the institution of criminal liability, on detention, arrest, on search of a flat, a car, office or a personal search) needs separate consent from an empowered body (high authority).

This legislative package is currently under consideration in the Parliament of Georgia. The Members of Parliament have initiated the draft Constitutional Law of Georgia on the amendments in the Constitution, which provides for the revision of immunities; in particular pursuant to the mentioned draft, Parliament Members cannot benefit from immunity in those cases where she/he has committed a grave offence.

Jurisdiction

According to the Criminal Code, a person who committed an offence on the territory of Georgia shall bear criminal liability according to the rule provided by the Criminal Code.

Pursuant to Article 4 of the Criminal Code, the crime shall be deemed perpetrated on the territory of Georgia if it began, continued, terminated or ended on the territory of Georgia. This code shall also be applied to the crimes committed on the continental shelf of Georgia and in the Special Economic Zone. A person who has perpetrated a crime on or against a vessel authorized to use the national flag or identification mark of Georgia, shall bear criminal liability under this Code unless otherwise prescribed by an international treaty signed by Georgia. If the diplomatic representative of a foreign country as well as the person enjoying diplomatic immunity has committed a crime on the territory of Georgia, the question of their criminal liability shall be settled in manner and to the extent permitted by the international law.

Pursuant to Article 5 of the same law, the citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed an action under this Code which is regarded as a crime under the legislation of the state in which it was committed, shall bear criminal liability under this Code if they have not been convicted in another state. The citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed an action under this Code which is not regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under this Code if it is a grave or especially grave offence directed against the interests of Georgia or if the criminal liability for this offence is provided for by the International Treaty of Georgia. The citizen of a foreign state as well as the stateless person not permanently residing in Georgia who has committed the action under this Code shall bear criminal liability under this Code if it is a grave or especially grave offence directed against the interests of Georgia or if the criminal liability for this offence is provided by the International Treaty of Georgia if they have not been convicted in another state.

The citizen of Georgia as well as the stateless person permanently residing in Georgia shall in no way be extradited to the other state for criminal prosecution or for serving a sentence unless otherwise determined by the International Treaty of Georgia.

The citizen of a foreign state as well as the stateless person being on the territory of Georgia who has committed a crime may be extradited to another state for criminal prosecution or for serving a sentence in manner and to the extent determined by the International Treaty of Georgia. It shall be inadmissible to extradite the person under asylum who has committed a crime and who is being persecuted for political creed or the person who has committed the action not regarded as crime under the legislation of Georgia or if for this crime capital punishment is prescribed in the state seeking extradition. The question of criminal liability of such persons shall be settled in manner and to the extent permitted by international law.

Corruption in the Private Sector

Chapter 39 of the Criminal Code provides for the crime in prejudice of interests of enterprise or other organization. In particular, Article 220 provides for the abuse of managing, representative or other special authority in an enterprise or other organization to the detriment of the legal interests of this organization, designed to derive profit or privilege for oneself or others, that has caused a substantial damage, shall be punishable by fine or by corrective labour for up to a two-year term or by jail time for up to six months or by imprisonment for a term not in excess of five years.

Article 221. Commercial Bribe

1. Illegal transference of money, securities or other property or property service illegally rendered to a person exercising managing, representative or other special authority in an enterprise, or any other organization, so that such person use his/her official position in favour of the briber's interests, shall be punishable by fine or by restriction of freedom for up to a two-year term or by imprisonment for the term not excess of three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length or without it.

2. The same action, committed:
   a) by a group;
   b) repeatedly, shall be punishable by fine or by restriction of freedom for up to a four months term or by jail time from two to six months in length or by imprisonment for the term not excess of four months, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length.

3. Illegally accepting money, securities, or any other property or illegally enjoying property service by a person exercising managing, representative or other special authority in an enterprise or any other organization so that such person use his/her official position in favour of a briber's interests, shall be punishable by fine or by restriction of freedom for up to a three-year term or by imprisonment for the term not in excess of five years, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length.

4. The action referred to in Paragraph 3 of this Article, perpetrated:
   a) by a group;
   b) through extortion, shall be punishable by fine or by imprisonment for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length.

   Note: The perpetrator of the actions referred to in Paragraph 1 or 2 of this Article shall be released from criminal liability if he/she was extorted of his/her property or he/she voluntarily informed a government authority thereon.

Confiscation of Proceeds from Corruption

According to the decision of the Constitutional Court of Georgia, confiscation has been regarded as anti-constitutional and consequently, the Parliament removed this kind of offence from the Criminal Code. Consequently, confiscation is not considered in a new Criminal Code. Still, there is a type of confiscation in the Code.

Procedural Confiscation, - criminally obtained money (material valuables), is used in the Code of Criminal Procedures as deprivation of material evidence (Articles 121-124 of the Code).

According to Article 124 of the Code of Criminal Procedures, the decision or ruling for completion of a case of the matter of material evidence shall be decided as follows:

- if instruments of crime present no value, they are destroyed; if they have value, they are subject to confiscation;
- if an item removed from circulation has any value, it is delivered to a respective agency; if it has no value, it is destroyed;
- other things presenting no value are destroyed, or in the case of a petition by the persons or agencies concerned are delivered thereto;
- money or other valuables gained criminally are used for the compensation for damage caused as a result of the committed crime but if the person damaged is unknown are delivered to the budget of the state;
- all other things and documents belonging to the victim, the person acquitted or other person, save the person on trial and persons being materially liable before them, are returned to the proprietor or legal owner.

The procedural confiscation is used without limitation, notwithstanding the crime committed.

The Criminal Code provides for criminal coercive measure – in the form of deprivation of subjects and instruments of crime, which in accordance to Part 3 of Article 41 (Main and Additional Punishment) of the Criminal Code, only apply to offences provided for by Article 214 (Breach of Customs Procedures) of the Criminal Code.

In order to ensure criminal coercive measures and procedural confiscation provided for by Articles 190 and 201 of the Code of Criminal Procedure of Georgia, the action of property seizure may be used.

Liability of Legal Persons

The Georgian Legislation does not provide for the mechanism of legal liability of legal persons. Article 1005 of the Civil Code of Georgia provides for the liability of the State for harm caused by its employee.

Article 1005. Liability of the State for Harm Caused by its Employee

> If a state employee [public servant] breaches his official duties before other persons by intent or gross negligence, then the state or that body ["organ"] in which the employee works shall be bound to compensate the harm incurred. In the case of intent or gross negligence, the employee and the state shall be liable jointly.
>
> The obligation to compensate the harm shall not arise if the victim, either by intent or by gross negligence, did not try to avoid the harm through legal action.
>
> The harm caused by illegal conviction of a rehabilitated person; illegal criminal prosecution; illegal application of enforcement measures in the form of detention or an order not to leave a place; or improper imposition of an administrative penalty in the form of imprisonment or correctional labour, shall be compensated by the state regardless of the fault of officials of inquiry or preliminary investigation agencies, the procurator's office or the court. In the case of intentional misconduct or gross negligence, these persons and the state shall be liable jointly.

Chapter 38 of the Code of Criminal Procedures provides for the rehabilitation and compensation for damage resulting from unlawful and unreasoned actions of bodies of criminal procedure. The liability of compensation for damage by the State does not release concrete offenders from relevant responsibility.

In cases of administrative misdemeanours the Code of Administrative Offences of Georgia provides for the liability of legal persons – for example, Articles 43, 153, 1533, 1778-17710 and 194 of Code of Administrative Offences.

Today, the Draft Law on Amendments and Additions to the Criminal Code of Georgia and to the Code of Criminal Procedures of Georgia is under preparation in the Ministry of Justice of Georgia, which takes into consideration the establishment of legislative liability of a legal person.

The civil liability of a legal person (except State responsibility) is limited to material responsibility and its quality depends on the organizational and legal form of a legal person.

Specialised Services

As noted above, for the purpose of the fight against corruption, the Anti-corruption Policy Coordination Council was established under Presidential Decree N°131 of 13 April 2001. The functions of the Coordination Council are as follows:

- Improvement of basic directives of the National Anti-corruption Program in view of the current social, political and economic events; elaboration of schedule of measures provided for by the Program;
- Monitoring of implementation of measures by the State bodies and high officials as provided for by Anti-corruption Program;
- Analysis of the monitoring results and incoming application and preparation of recommendations for the President of Georgia for the purpose of efficient implementation of the Anti-corruption Program measures;
- Elaboration of recommendations for prevention of corruption in the state structures;
- Cooperation with NGOs, mass media, entrepreneurs and other groups of citizens in order to involve them in implementation and monitoring of measures as provided for by Anti-corruption Program.
- Support of establishment of the system of anti-corruption education of the population and elaboration of effective modelling of anti-corruption propaganda;
- Cooperation with international anti-corruption programs and initiatives;
- Preparation of draft legal acts for the purpose of implementation of Anti-corruption Program measures;

In accordance with the Presidential Decree N°187 of 8 May 2001, the Anti-corruption Bureau of Georgia was established to provide the Anti-corruption Policy Coordination Council with organizational and technical support.

In order to conduct the procedures of declaration of property and incomes of the high officials, to receive declarations, to ensure publicity of property and financial state of a high official and control of timely deliverance of the declarations, to perform other functions provided for by the operating legislation, the Information Bureau of Property and Financial State of the High Officials was established on the basis of the Law of Georgia on Conflict of Interests and Corruption in the Public Service.

In addition, a special service against corruption functions within the Ministry of Interior: the Central Board for Fight against Corruption and Economic Crime. Its functions and powers are provided for by provision of the Ministry of Interior and operating legislation, by virtue of which the Board is obliged to reveal and prevent the economic and corrupt crime. This unit has a staff of more than 300.

As regards the malfeasance in office, investigations are undertaken by the General Prosecutor's Office, and inquiries by the above-mentioned unit. Moreover, in order to regulate the issues related to the money laundering, the Financial Intelligence Unit was established in Georgia in the current year, which operates within the National bank and is under establishment.

We suppose that in revelations of corrupt offences, the essential importance is attached to usage of operational and technical methods, including the use of special gear.

It is vital to introduce the experience of agreements and "witness protection program" in cases of admission of guilt. In addition, following up on the existing situation, we deem necessary that the inter-relationships of "money laundering", corrupt offence predicate acts and undertake complete investigation on the basis of materials of the Financial Intelligence Unit.

With the view of investigation of corruption cases, there is no more or less effective coordination in Georgia; this was one of the main reasons that the National Security Council Temporary Commission was asked to develop a concept of the law-enforcement and security bodies. At present, this concept is still under the process of being developed into laws.

There is an experience of establishment of "investigative group" in Georgia, which is based on the relevant article of the Code of Criminal Procedure. The practice of investigative groups as carried out in developed countries is not yet present in Georgia.

Investigation and Enforcement

Distribution of Powers and Responsibilities among Police and Prosecutor in Investigations

In accordance with the Code of Criminal Procedure, the authority to initiate criminal proceedings is an inquirer named with the consent of a prosecutor, an investigator, prosecutor, or judge.

An inquirer (an operating officer of the Service for Fight against Corruption and Economic Crime Ministry of Interior) performs his duties on the basis of law on Operational and Investigative Measures and law on Police.

The powers of an inquirer include receipt of information from public and secret sources, and complaints and claims concerning the crimes already committed or under preparation.

After receiving and preliminary checking the information, an inquirer shall begin, upon the consent of the Head of Service, an inquiry implying the following acts:

- interrogation of the person;
- gathering information and visual supervision;
- verify purchasing;
- verify delivery;
- search for objects and documents;
- identification of a person;
- verification of the correspondence of the condemned, detained and arrested;
- under an order from a judge, veiled wire-tapping and recording of phone conversations, gathering and recording of information by channels of communication (means of communication, computer networks, line communications and station gear); supervision of the postal and telegraphic messages (except diplomatic mail);

- under an order from a judge, hidden audio and video recording, filming and photography; electrical observation by technical means, without prejudice to human life, health and environment;
- under the prescribed rule, infiltration of counterspy or operating officer into criminal organization;
- under the prescribed rule, establishment of a secret organization.

In view of the results, the head of the inquiry body shall take a decision on initiation or rejection of criminal proceedings and whether the materials gathered be submitted to the Superior Prosecutor. Initiation or rejection of initiate criminal proceedings shall only be undertaken by supervisor prosecutor.

Within seven days after initiation of criminal proceeding, an inquiry body has the right to carry out preliminary investigation. At end of this period, an inquiry body is obliged to forward the initiated materials, pursuant to subordination, to the respective investigative body.

An investigative body shall continue the investigation until the end of the case. An investigator is independent in his activities, undertakes all necessary measures on his own behalf, and makes all decisions. An investigator has the right, due to various statute-provided circumstances, to terminate or suspend, or further re-commence investigation; an inquiry body has no such right. Only an investigator is entitled to finish the investigation of a case and forward it to the court.

Procedural supervision over investigation is exercised by a superior prosecutor; each decision of the inquirer and investigator shall be approved by a prosecutor.

Articles 48 and 62 of the Code of Criminal Proceeding of Georgia provide for the norms regulating jurisdiction and departmental and personal jurisdiction. According to Article 62 of the Code of Criminal Proceeding, the Prosecutor's Office of Georgia is empowered to investigate the criminal offences committed by state political high-ranking officials, and the cases initiated following proof that bribery was committed in the public and private sectors.

In accordance with the Part 4 of Article 48 of the Code of Criminal Procedure, the Supreme Court has jurisdiction over the cases on prosecution of the state political high-ranking officials, the Ombudsman of Georgia, chairman of the Control Chamber, members of the National Bank Board, an Ambassador Extraordinary and Plenipotentiary of Georgia, other public officials. The criminal proceedings initiated against some public officials or persons equalized to them are considered by district, as well as regional courts.

The Rules for Appointing and Selecting Judges

The rules of appointing and selecting judges are regulated by the Constitution of Georgia, the Organic Law of Georgia on Common Courts and the Organic Law of Georgia on the Supreme Court of Georgia. Candidacies to judges should meet the following criteria:

1. Citizenship of Georgia
2. Competence
3. Age of 30
4. Higher education in law
5. Experience of 5 years practicing law
6. Command of the state language
7. Qualification exams (former and present members of the Constitutional Court are exempt from the qualification testing for judges, whereas the President of Georgia may submit to Parliament a nomination of a person to the judge of the Supreme Court, who has not passed the examination, but is an acknowledged practitioner of law).

A convicted person may not be appointed as a judge nor can a person who was relieved of his duties as a judge due to a disciplinary oversight, or who held a position/exercised activities incompatible with the status of a judge. In supreme courts at the regional (city) and district levels and in the autonomous Republics of Abkhazia and Adjara, a person who did not participate in a special training course for a specified period of time without a valid reason may not be elected judge.

The submission of nominations to judges in supreme courts at regional (city), district level and autonomous republics of Adjara and Abkhazia, are carried out on the basis of a competition. The Council of Justice of Georgia ensures the organization of such a competition.

Candidates to the competition are selected based on their performance during qualification examinations, business and moral reputation, professional experience and physical capacity. The Council of Justice submits to the President of Georgia nominations selected on the basis of this competition. The President appoints a judge by issuing an order. The judge will commence his duties upon the completion of a special training course.

Judges in regional (city) courts in the autonomous Republics of Abkhazia and Adjara are appointed by written consent of representative bodies of the respective territorial units.

The Chairman and members of the Supreme Court are nominated for a ten-year term by the President and approved by Parliament by majority vote.

Rules on Appointing Prosecutors or Investigators of the Prosecutor's Office

The rules of appointing prosecutors or investigators to the Prosecutor's Office are guided by the Constitution and the Organic Law on the Prosecutor's Office. According to above mentioned law, the nominee to the prosecutor or the investigator of the Prosecutor's Office should meet the following requirements:

1. Citizenship of Georgia
2. Higher education in law
3. Command of the state language

4. A 6-month to a year internship in the Prosecutor's Office. Internship is not required if a person meets one of the following criteria:
a. has worked as a judge, investigator or lawyer not less than a year
b. holds a post-graduate degree in law
c. has passed the qualification exam for judges
d. has practiced law for a period of not less than three years.

5. Qualification examinations (the General Prosecutor of Georgia and Prosecutors of autonomous republics of Abkhazia and Adjara are exempt from the qualification examinations. As well as the entities that has passed the qualification examination for judges or hold a post-graduate degree in law).

6. Take the oath of the Prosecutor's Office; be competent to assume duties from a health, business and moral perspective.
The following entities are barred from working in the Prosecutor's Office:
a. the formerly convicted
b. persons suffering from drug use, toxic mania, alcoholism, psychic or heavy chronic diseases;
c. persons ruled incapable or retarded by the court;
d. persons relieved off duties from former employment due to some discreditable evidence

Mandatory versus Discretionary Prosecution

In accordance with Article 262 of the Code of Criminal Procedure, in cases of the availability of the elements of crime, a prosecutor and an investigator are obliged to initiate criminal proceedings. for the persons enjoying immunity, there are additional mechanisms for initiation of criminal proceedings provided for by legislation (see previous comments).

There are no special procedures prescribed for investigation of corruption offences. Therefore, the particular investigative acts for this type of case needs no consent.

The cases of private prosecution should be outlined separately. Except for the cases of general prosecution, the Georgian legislation distinguishes the so-called private-public prosecution and private prosecution cases. Proceedings on the offences of private-public prosecution category shall only be initiated by the victim's complaint, although reconciliation after initiation of the proceeding is not the basis for cessation of the case. Private-public prosecution cases are provided for by Article 26 of Code of Criminal Procedure.

Article 26. Private-Public Prosecution

Proceedings on the offences provided for in section one[2] of Article 137, section one[3] of Article 138, Articles 139[4], 153[5], 157[6], 167[7], 175[8] and 189[9] of the Criminal Code of Georgia shall only be initiated by the victim's complaint to be presented to the prosecutor where the charge is made against a concrete person, or to the authority of inquiry or the investigator in other cases. Such matters are tried under the general procedure and are not subject to termination upon reconciliation of the parties, save in the case when further investigation of the matter may prejudice both the victim and the accused.

Where the case is of a special social importance with respect to any of the offences indicated in section one of this article and, additionally, the victim on account of his feeble state or dependence on the accused is unable to protect his rights and lawful interests, the prosecutor shall have the right to develop a case even in the absence of the victim's complaint only on condition that the competent victim has agreed thereto in writing.

Proceedings on the offences of private prosecution category shall only be initiated by the victim's complaint, but shall be terminated due to his/her reconciliation with the accused. Private prosecution cases are provided for by Article 27 of Code of Criminal Procedure of Georgia.

Article 27. Private Prosecution

Proceedings in respect of the offences provided for in Articles 120[10], 125[11] and 148[12] of the Criminal Code of Georgia are initiated only by

2. Rape.
3. Sexual Abuse under Violence.
4. Coercion into Sexual Intercourse or Other Action of Sexual Character.
5. Encroachment upon Right to Freedom of Speech.
6. Disclosure of Personal or Family Secrets.
7. Refusal to Provide Access to Information or Submitting Incorrect Information.
8. Disclosure of Secret of Adoption.
9. Encroachment upon Right of Intellectual Property.
10. Intentional Light Damage to Health.
11. Battery.

the victim's complaint, but shall be terminated due to his reconciliation with the accused.

Reconciliation is admissible prior to the retirement of the court/judge to the retiring room, including under the appellate, cassation or review procedure.

In case of reconciliation the parties shall agree on the compensation of legal costs. Where an agreement is not reached, the costs shall be borne by the court.

A prosecutor has the right to take part in a proceeding initiated upon a private charge before trial if it is of a special social importance, but only subject to the agreement of both parties or only upon request of the victim if he is in a feeble condition or depends on the accused. In such case the proceedings shall not be terminated on account of the parties' reconciliation.

Where in a private proceeding the parties accuse each other, the judge shall, under his ruling, admit the victim to be also the accused, and the accused to be the victim.

As we see, corruption offences do not belong to either private-public or private prosecution cases, therefore, initiation of proceedings is possible at under any ground provided for by legislation.

Article 28. Grounds for Refusal to Initiate Criminal Proceedings and Prosecution

A criminal proceeding may not be initiated and the initiated proceedings shall be terminated if:

- the criminal event or act on which account the criminal proceedings have been initiated is missing;
- the act is devoid of corpus *delicti* or the unlawful act has been committed without *mens rea*;
- a new statute overrules *the actus reus*;
- the statute, upon which the accusation is based, is deemed to be unconstitutional;
- the person has not attained the age of criminal discretion;
- the suspect, accused or the person proceeded against has died, save in the cases when the proceedings are required for rehabilitation of the deceased and for renewal of proceedings

12. Libel.

in relation to other persons on account of newly discovered circumstances;

- the limitation on prosecution prescribed by the Criminal Code of Georgia has expired;
- an act of amnesty abolishing punishment of the act has been issued;
- the convict has been pardoned;
- the Parliament of Georgia, the supreme representative bodies of the Abkhazian and Ajarian autonomous republics, the Constitutional Court of Georgia, Chairman of the Supreme Court of Georgia have not agreed to the taking of legal actions against a member of Parliament, deputy, the Ombudsman, judge accordingly;
- there is no complaint of the victim on account of the private-public and private prosecution, except for the case when prosecution is exercised by a prosecutor (Article 26(2), Article 27(4));
- the victim has conciliated with the accused with regard to the private and private-public prosecution cases, save the cases prescribed by Article 26(2) and Article 27(4);
- there exists a valid judgment on the same accusation or a court/judge's ruling/judgment for termination of proceedings initiated upon the same charge;
- there exists a ruling of the authority of inquiry, investigator or prosecutor for termination of the case or refusal to initiate proceedings on the same charge;
- the offence has been recognized as petty;
- the act has ceased to be dangerous as a result of the changed social and political situation;
- the prosecutor and victim drop the charge on the basis provided by section one of this article;
- the term provided by Article 75(4) has expired.

A case shall be terminated and a person released from criminal liability on account of a voluntary refusal to commit a crime (Article 18 of the Criminal Code).

A case shall be terminated and a person released from criminal liability on account of an effective repentance (Article 65(2), Article 67(2), Article 67(7), Article 190(3), Article 238(4), Article 252).

If the circumstances indicated in subsection a), b), c), d), e) and o), section one of this article are revealed at the stage of trial, the court shall complete proceedings and render a verdict of acquittal.

If the circumstances indicated in subsections g), h), i), section one of this article and in sections 2 and 3 of the same article are revealed at the stage of trial, the court shall complete proceedings and render a guilty verdict. Concurrently, it shall release the convict from serving the sentence.

If the circumstances indicated in subsections d), e), j), h), k), m), n) and q), section one of this article are revealed at the stage of trial, the court shall terminate the proceedings upon the revelation thereof.

The termination of proceedings on the grounds prescribed by subsections g), h) and p), section one of this article and by sections 2 and 3 of the same article is inadmissible if the accused is against it. In such case the proceedings are exercised in accordance with the prescribed order and shall be completed by the non-guilty or guilty verdict and the release of the accused from serving the sentence.

The proceedings shall be terminated in the appellate, cassation and review instances upon revealing the circumstances indicated in section one of this article.

Investigative Capacities

Provisions regulating investigation of the criminal cases are envisaged in the Code of Criminal Procedure and the Law on Operative Investigation Activities.

The Law on Operative Investigation Activities provides for the competent bodies having powers to perform operative investigation activities (Article 12). The concept of operative investigation activity is provided for by Article 7 of the same law.

Article 7. Concept of Operative Investigation Activity

1. Operative Investigation Activity having its legitimacy guaranteed under the present law constitutes the activities of empowered state bodies or officials, performing the fulfilment of tasks provided for by the 2nd Article of this law within their competences.

2. With the scope of reaching herewith-specified objectives, the bodies exercising operative investigation activity publicly or with

due observance of the rules of conspiracy, are entitled to proceed as follows:

a) interrogate a person;

b) gathering information and visual supervision;

c) check up purchasing;

d) check up delivery;

e) search of objects and documents;

f) identification of a person;

g) check up of the correspondence of the condemned, detained and arrested;

h) under an order of a judge, veiled wire-tapping and recording of phone conversations, gathering and fixation of information by channels of communication (means of communication, computer networks, line communications and station gear); supervision of the postal and telegraphic messages (except diplomatic mail);

i) under an order of a judge, veiled audio- and video recording, filming and photography; electrical observation by technical means, without prejudice to human life, health and environment;

j) under prescribed rule, infiltration of counterspy or operating officer into criminal organization;

k) under prescribed rule, establishment of secret organization.

3. Operative investigation measures stipulated under items "h" and "i" of paragraph 2 of the Article 7 shall be exercised after initiation of criminal proceedings under an order of a judge. An order, under the reasoned motion of head of the inquiry body, shall be issued by a judge on the territory of whose competence an operative investigation measure is performed; and on cases of offences provided for by Articles 143[13]-144[14], 224[15], 308-321[16], 323-331[17]

13. Illegal Imprisonment.

14. Hostage-taking.

15. Banditism.

16. Offences against Constitutional Order and Security Fundamentals.

of the Criminal Code of Georgia – judge of Judicial Criminal Board of the Supreme Court of Georgia. An application, no later than 24 hours after its receipt, is considered by a judge with participation of prosecutor and representative of inquiry body at the closed court sitting. After consideration of application and attached documents, hearing of explanations of a prosecutor and representative of inquiry body, a judge shall take one of the following decisions:

a) issue an order on execution of operative investigation measure;
b) issue a resolution concerning satisfaction of application on rejection.

4. Operative investigation measures, provided for by items "h" and "i" of the 2nd paragraph of Article 7 of the present law, which need an order of a judge, in the situation of emergency, when delay may cause termination of the essential factual data, or when it is impossible to issue an order of a judge, due to his/her absence, by a motivated decision made by head of inquiry body may be carried out before initiation of the criminal proceeding. Within the 24-hours terms before its commencement, a prosecutor shall be informed of the operative investigation measure. In this case, within 48 hours after commencement of operative investigation measure, a prosecutor is obliged to apply the respective common law court with solicitation, on the territory of which an operative investigation measure is carried out; and on cases ruled by the Ministry of State Security, State Department of Intelligence and State Department of State Security of Georgia – a judge of Judicial Criminal Board of the Supreme Court of Georgia with request to legalize an operative investigation measure. A court is obliged to consider solicitation within 24 hours after its submission at closed court sitting. After hearing of explanations of prosecutor and representative of an inquiry body, a judge shall examine the performance of operative investigation measure in accordance with the law and take one of the following decisions concerning:

a) pronouncing of an operative investigation measure legal;
b) pronouncing of an operative investigation measure illegal, cancellation of its results and termination of information collected through this measure.

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17. Terrorism.

5. A decision (order, provision) made by a judge in the cases provided for by paragraphs 3-4 of this article is exhaustive and is not subject of appeal.
6. List of actions provided for by paragraph 2 of this article may be modified or amended by virtue of this law.
7. During carrying out of operative investigation measure, a protocol is drawn up, envisaging in what conditions the technical appliance. A protocol shall be maintained with the collected materials through observance of rules provided for by this law.
8. Official persons of the bodies exercising operative technical activity shall be personally involved in carrying out of the measures provided for by paragraph 2 of this article; they can appeal for help to specialist in different domains, as well as to citizens' public or secret voluntary cooperation.

The list and concept of evidence is provided for by Code of Criminal Procedure.

Article 110. Concept of Evidence

1. Evidence is the actual data that have been obtained from the statute-provided sources and in the statute-established procedure on which basis the parties protect their rights and lawful interests, and an inquirer, investigator, prosecutor and court ascertain the existence or lack of an event or act because of which criminal procedure is exercised, whether the act has been committed by a certain person, whether he is guilty, and other circumstances being important for the proper adjudication of the matter.
2. The following are admitted as evidence in criminal procedure:
   a) evidence given by a suspect;
   b) evidence given by the accused;
   c) evidence given by the victim;
   d) expert opinion;
   e) real evidence;
   f) minutes of investigative acts, judicial acts and the minutes of a court session;
   g) other documents.
3. The information obtained and submitted by a party shall be filed, shall be subject to verification and examination by the other party, as well by a body in charge of the proceeding. The evidence

recognized as admissible may only by used in pleadings and adjudication.

4. Pursuant to the provision of law, the information obtained through operations-detective activities may become the content of an event and fact (save a document) of any procedural source, and only in this case may be admitted as evidence.

Article 126. Other Documents

1. A document may be evidence if it contains the data necessary for ascertainment of actual circumstances in a criminal matter.
2. A document is the source where information is presented or depicted in the form of words, signs, video, audio or other kind of recording, or with the application of other technical facilities, provided only that the requirements specified by this Code have been complied with.

   A document is evidential if the source of its origin is known and its reliability check is possible by other available in the case evidence.
3. A document in a criminal matter may concurrently be material evidence if, according to its properties, it is irreplaceable.
4. If the withdrawn and admitted to the matter document is necessary for routine accounting, settlement and other lawful purposes, the document or a copy thereof may be returned or delivered to the legal owner in temporary use unless it prejudices the matter.

In accordance with the Article 374 of the Criminal Code of Georgia, disclosure of information of inquiry or preliminary investigation is punishable:

Article 374.Disclosure of Information of Inquiry or Preliminary Investigation

Disclosure of the information of the inquiry or preliminary investigation by the one who was duly caution that disclosure of such information was prohibited, shall be punishable by fine or by corrective labour for up to two years in length or by jail term up to three months.

As regards the accessibility of bank information, for the investigation purposes, it is possible to obtain it on the basis of order of a judge. In addition to the above-mentioned articles,

this issue is regulated by Article 17 of the Law of Georgia on Activities of Commercial Banks:

Article 17. Secrecy of Banking

1. No person have the right to permit anybody to the confidential information, disclose or distribute, or use such information for personal gain. Mentioned information may be disclosed only to the National Bank of Georgia, considering its terms of responsibility.

2. Information about the operations and accounts of physical and juridical persons may be disclosed only to the owners of accounts, their supervisors and representatives, to the judiciary and investigation bodies in connection with current legal proceedings, and to the tax administration on the grounds of the court's decision.

3. Prior to the decision of the court, judiciary and investigation bodies, also tax administration have no rights to disclose confidential information obtained from the bank to other bodies, including mass-media, or use such information in public presentations.

The issue of protection of witnesses and agreement on admitting ones guilt should be outlined separately. The legislation of Georgia does not provide for the norms of such contents; nevertheless, one should mention that a draft of a new Criminal Code of Procedures, developed in 2002, provides for the establishment of such institutions. Once approved, it should be possible to introduce the given institutions in jurisprudence, which will be an important step towards revelation of corruption offences and increasing of effectiveness of their investigation.

Organised Crime and Corruption

The most prevalent forms of organized crime in Georgia are human trafficking, car hijacking, illegal turnover of drugs, smuggling and kidnapping.

With the given scheme, gangs of organized crime strive to neutralize the state apparatus and receive relevant information through corruption;

Organized crime relating to corruption may be fought by improving the efficiency of the police, awarding social security guarantees to employees, and honing the personnel policy.

As for coordination between the units fighting corruption and organized crime, at present these structures operate separately in the Ministry of Internal Affairs and the level of coordination between them is weak.

We believe that a unit fighting organized crime and corruption must be set up, which if furnished with special equipment and a legislative base (the witness protection and confession and avoidance as well as other mechanisms), will carry out investigative actions against corruption and organized crime under the supervision of the Prosecutor's Office.

International Aspects

In the fight against crime, the issues of international cooperation in providing legal assistance is essential. The Georgian legislation is based on the following international acts:

- Strasbourg European Convention of April 20, 1959 "on Mutual Cooperation on Criminal Cases", which was ratified by the Parliament of Georgia on 23 June, 1999 and is in force since 1 December, 1999;
- Kerkyra Agreement of October 2, 1998 on "Cooperation in Combating Crime in Particular in its Organized Forms", which was ratified by the Parliament of Georgia on 16 May 2000 and is in force since 27 June 2000;
- The European Convention of 1957 "On Extradition" is in force since 16 February, 2001.

Georgia has signed bilateral agreements on legal mutual co-operation with a number of countries (Azerbaijan, Bulgaria, Turkey, Russia, Armenia, Uzbekistan, the Ukraine, and Kazakhstan). In addition, the legal assistance is carried out on the basis of the 1993 Minsk Convention.

The issues of interaction of the Court, Prosecutor, and investigator with the relevant foreign state agencies and high authorities is regulated in Articles 247-260 of the Code of Criminal Procedure of Georgia. In particular, in accordance with Article 247, pursuant to international legal aid agreements, a court, prosecutor and investigator, with the assistance of the Ministry of Justice or Prosecutor-General's Office of Georgia, are entitled:

- to request the performance of separate investigative judicial acts on the territory of a foreign state;
- to perform the same acts on the territory of Georgia on a commission from the competent authorities of a foreign state;

- to request extradition of a Georgian citizen for bringing him to criminal responsibility and the execution of a sentence on the territory of Georgia; to extradite a foreign citizen for the same purpose;
- to request extradition of a Georgian citizen having been convicted in a foreign state for serving the sentence in Georgia; to extradite a foreign citizen having been convicted in Georgia for serving the sentence in his country.

In the absence of a legal aid, agreement with a foreign state, the issue of rendering such aid may be settled under an agreement specially made for the purpose between the Minister of Justice of Georgia or the Prosecutor General of Georgia with the corresponding officials of the given state.

for a detailed analysis of the above-mentioned issues, we present the relevant norms of the Code of Criminal Procedures.

Article 248. Sending of Commission of Performance of Procedural Act in Foreign State

Where a procedural act stipulated by this Code ought to be performed on the territory of a foreign state, an investigator, prosecutor or court may, under a procedure establishment in Article 251(1), commit its performance to a competent authority of the state with whom a legal aid agreement has been concluded.

A commission of performing an investigative act shall be sent with the assistance of the Prosecutor-General of Georgia, and a commission of performing a judicial act - with the assistance of the Justice Minister of Georgia.

If for the performance of an investigative act the present Code provides for a special court judgment/order, this judgment signed by the judge and attested by an official seal shall be annexed to the commission.

A commission shall be made in the language of the state where it is being sent, unless the international agreement provides otherwise.

In exceptional cases, a commission may be sent through technical means of communication with the subsequent acknowledgement.

Article 249. Content of Commission of Performing Procedural Acts in Foreign State

A commission of performing a procedural act shall be made in writing and signed by the sender. The commission shall be officially sealed. The commission shall contain:

- the name and address of the commissioning body;
- the actual circumstances of the case;
- the essence of the commission, in particular the content of an investigative or judicial act to be performed;
- information about a person in whose respect the commission is being sent, as well as the data on his nationality, residence and employment, activity and relation to the criminal case;
- a list of requested documents and real evidence.

Article 250. Summoning of National of Foreign State for Participation in Criminal Case

A national of a foreign state may, with his consent, be summoned for participation in a criminal case as a witness, victim, expert, civil plaintiff or civil defendant, as well as a defence counsel or legal representative on the basis of the accuser's petition.

The expenses in connection with travel and stay in Georgia of the persons enumerated in section one of this article (save a retained advocate) shall be reimbursed from the state budget.

Should a petition for summoning of these persons be dismissed, the expenses in connection with their summoning shall be borne by the petitioning party.

A request for summoning from a foreign state of a concrete person for participation in an investigative act and in trial shall be forwarded under the procedure prescribed by Article 248(2). The same request may concurrently be sent to the persons subject to summoning.

The investigative and judicial acts with the participation of a national of a foreign state as per section one of this article shall be performed in accordance with the procedure prescribed by this Code, unless an international agreement provides otherwise. Should a foreign national be summoned, he shall not

be subjected to such coercive measures as compelled attendance, arrest, detention in custody, committal to a medical institution, search, as well as to other restrictive measures, the warning on criminal liability for refusal to testify or for giving false evidence.

Article 251. Performance of Investigative and Judicial Acts in Respect of Georgian National on Commission of Foreign State

A court, prosecutor, investigator or body of inquiry shall perform investigative or judicial acts in respect of Georgian nationals on the territory of Georgia on commission of a foreign state in compliance with the procedure prescribed by this Code.

Commissions of performing investigative acts shall be executed on instructions of the Prosecutor-General of Georgia, while the performance of judicial actions on a commission of the Justice Minister of Georgia.

Commissions of a foreign state shall be executed if they contain the data provided for in an international agreement and Article 249. If a commission lacks these data or they are insufficient, additional data shall be called for.

The investigative and judicial acts which are connected with the coercion of a citizen and restriction of his constitutional rights and freedoms shall be performed if sanctioned by a foreign state's court or other competent authority.

In executing a commission, procedural rules of a foreign state may be applied if the international agreement so provides.

In the cases provided for in an international agreement, a representative of the corresponding authority of a foreign state may attend the execution of a commission.

If the execution of a commission is impossible, the documents received with the assistance of the Ministry of Justice or the Prosecutor-General's Office of Georgia shall be returned to a foreign state with the indication of the reasons having obstructed the execution thereof. The commission shall be also returned when its execution may prejudice the national interests, sovereignty and security of Georgia.

Article 252. Sending of Materials on Offence Committed by Foreign National on Territory of Georgia

If a foreign national having committed an offence on the territory of Georgia has left Georgia, all the investigative materials in the initiated case shall be delivered to the Prosecutor-General of Georgia who shall forward them to a corresponding authority of a foreign state for further criminal prosecution, or shall address with a request for extradition of the accused to the Georgian authorities.

Article 253. Consideration of Requests Concerning Offence Committed by Georgian National on the Territory of Foreign State

A request of a foreign state for delivery under investigation of the materials in respect of s Georgian national having committed on the territory of this state an offence and returned to Georgia shall be considered by the Prosecutor-General's Office of Georgia. As a result, one of the following decisions shall be made in compliance with an international agreement: on the transfer of the materials prior to the end of investigation, on the conduct of investigation and court hearing on the territory of Georgia, on the extradition of the Georgian national for purposes of investigation and court hearing to be held on the territory of the state where the offence was committed.

The evidence obtained in the course of investigation and court hearing in compliance with the procedure established on the territory of a foreign state shall have the equal legal force as other evidence collected in the case.

If a Georgian national while on the territory of a foreign state has committed an act which, according to the Criminal Code of Georgia, is an offence, but has not been convicted for this act by the foreign state's court, the competent authorities of Georgia shall be entitled to initiate criminal proceedings against the person, to carry out investigation and to render a judgment. At the same time, it is possible to call for materials and evidence from the state where the offence has been committed and in whose respect a request for extradition of the prosecuted person to the Georgian authorities has been made.

Article 254. Request for Extradition of Georgian National

In the cases and pursuant to the procedure provided for in international treaties and agreements, the Prosecutor-General's Office of Georgia shall apply to the corresponding institution of a foreign state with a request for extradition of a Georgian national who has committed an offence on the territory of Georgia, provided that the national has been charged with a crime or if a judgment of conviction that has come into a legal force has been rendered against him.

The regulations as per section one of this article shall only apply when a person is charged with an act punishable under the criminal legislation of Georgia by imprisonment for a term of more than one year or when he has been convicted for such a crime.

An extradition request shall contain:

- the given name and surname of the accused or convict;
- the content of the actual circumstances of the committed offence with the indication of sanctions under the law providing for liability for the offence;
- the instruction on the necessity of the person's arrest or detention, his interrogation and search;
- the instruction on the place, time, procedure of the person's extradition and the body to whom he ought to be extradited.

A request shall be appended with a copy of the order for bringing to liability as accused, the order for arrest, detention and search of the person, and a copy of the judgment of conviction in the event of the person's extradition.

Article 255. Terms of Extradition

A person extradited by a foreign state may not be transferred to a third state for any offence without the consent of the state having extradited him.

The procedure as per section one of this article shall not apply to the cases of crime committed by a person after his extradition.

Article 256. Extradition of Foreign National

Pursuant to an international legal aid agreement, a foreign state may request the extradition of its national being on the territory of Georgia if he is charged of a crime committed on the territory of his country, has been convicted for a crime by a court of his state, or has committed a crime against his country on the territory of Georgia.

An extradition request shall comply with the requirements established by an international agreement and ought to be addressed from the competent authorities.

A request may be delivered by applying technical means of communication with the subsequent acknowledgement.

If the Prosecutor General of Georgia considers a request as reasonable and valid, he shall give instructions on its execution, or shall ask for assistance of the Ministry of Justice of Georgia, where necessary.

Where extradition of a person is requested by several foreign states, a decision on his extradition to this or that state shall be made by the Prosecutor-General of Georgia after consultations with the Foreign Minister and the Justice Minister of Georgia.

If a foreign national, whose extradition has been requested, is serving a sentence for another offence committed by him on the territory of Georgia, his extradition may be postponed until completion of the sentence or before his release on other legal grounds. If an alien has been brought to criminal responsibility for an offence committed by him on the territory of Georgia, his extradition may be postponed until rendering of a judgment, completion of the sentence or his release on other legal grounds.

In the cases prescribed by section 6 of this article, the Supreme Court of Georgia is entitled, at the request of a corresponding authority of a foreign state, to render a ruling for extradition of the national for a definite term. If a court of the foreign state makes for the person a stricter punishment or equal to the unserved in Georgia sentence, he shall serve the sentence in his state and shall not be subject to return to Georgia.

Article 257. Refusal to Extradite

Extradition is inadmissible if:

- the person has been granted political asylum in Georgia;
- the act serving as the ground for an extradition request is not deemed to be an offence in Georgia;
- a valid judgment or a ruling/decision for termination of the case has already been rendered in respect of the person in connection with the same offence;
- the period of limitation prescribed by the Criminal Code of Georgia has expired.

Article 258. Extradition of Stateless Person

Extradition of a stateless person shall be effected under the procedure established by Article 256.

Article 259. Application of Criminal Procedural Coercive Measures against Person Subject to Extradition

Arrest, detention, committal to a medical institution for examination of a person subject to extradition, his search, the execution of seizure, the execution upon property, and the application against him of other criminal-procedural coercive measures shall be possible in the case when a request for his extradition is appended with a duly certified order/ruling issued by a competent public body for the performance of such procedural acts that restrict the constitutional rights and freedoms of citizens.

The application of the measures indicated in section one of this article shall be immediately notified to a body having requested their application.

A foreign national arrested on the basis of a request for his extradition shall not be kept in custody for more than a month unless a court order for the extension of the term is issued.

A person subject to extradition has the right to take defence in court.

Article 260. Delivery of Real Evidence and Documents

The goods and documents seized from a person subject to extradition, which may be used in a criminal case as evidence, shall be delivered to the body having requested his extradition.

The delivery of goods and documents being of material value unless they belong to a person subject to extradition, shall take place after the receipt of guarantees for their safe-keeping and return to the owner. The guarantees shall be secured by the body requesting the person's extradition.

Petitions on the provision of legal assistance:

The International Relations Department sent to CIS countries 32 petitions on the provision of legal assistance; 14 to the Russian Federation, 5 to Ukraine, 4 to the Republic of Armenia, 3 to the Republic of Azerbaijan, 3 to Byelorussia, and 2 to Tajikistan and 1 to Turkmenistan.

The International Relations Department sent 23 petitions to other foreign countries on the provision of legal assistance; 5 to Turkey, 3 to Germany, 2 to Italy, 1 to the UK, 2 to Greece, 1 to Hungary, 1 to France, 1 to England and 1 to the Netherlands.

The Georgian party received 6 petitions for legal assistance from the CIS and other countries, which were remitted to regional Prosecutor's offices according to locality: 4 from the Russian Federation, 1 from Ukraine and 1 from Germany.

Petitions on extradition of the wanted:

The International Relations Department received notification on the arrest of 3 individuals on the territories of foreign countries, who were wanted by Georgian law-enforcers. Respective petitions were prepared and forwarded to relevant bodies in Croatia, Switzerland and the Russian Federation. One individual is now wanted internationally.

Update

This section presents a brief update on events that have taken place since January 2004 with respect to the issues discussed in the previous sections.

Elections

After the vacuum left by "Revolution of Roses", it became important to hold proportional elections of the President and the Parliament Members. Despite the problems related to election lists and lack of time, presidential and parliamentary elections were held on 28 March 2004 within the terms set by the Constitution. Two political forces were the main winners. Parliament began work as of the second half of April 2004

Constitutional Changes

On 6 February 2004, Parliament adopted the Constitutional Law on Amendments to the Constitution. On the basis of this law, the existing model of the Central Government of the country was changed and the Cabinet of Ministers was established.

The President of Georgia became the head of the state and the executive power of the Georgian Government is to be performed by the newly created post of Prime-minister.

The Government of Georgia consists of the Prime-Minister, State Minister and the Ministers.

On the basis of the constitutional changes the Prosecutor's Office was taken out of the judicial authority.

The creation of the institution of a jury in the judicial system was fixed by the Constitution.

Reorganization of the Executive Power

In accordance with the Constitution, on 11 February 2004 Parliament adopted the Law on the Rules of the Structure, Authority and Performance of the Georgian Government. On the basis of this law, the ineffective institutions of the executive government were fully reorganized. of the three governmental institutions in the old model (ministry, state department, lower organization), only two were retained (ministry, lower organization). In accordance with the law, 18 state departments were merged with ministries. The number of ministries was also reduced.

The above changes optimized the number of the governmental institutions, improved the governing mechanism, and enabled the co-ordination and control of the executive power. The process of replacing the old executive government institutions with new ones is continuing.

Illegal and Unjustified Property

On 13 February 2004, Parliament adopted the Law on Amending the Georgian Organic Law on the Prosecutor's Office and the Law on Amending the Administrative Procedural Code of Georgia.

The above laws determine the authority of the Prosecutor to bring a suit for handing over illegal and unjustified property to the government in accordance with the rules and limits set by legislation.

In accordance with the Procedural Code of Georgia, if on the basis of the suit, it is proved that an official authority (his/her family member or a close relative) possesses illegal (obtained as a result of illegal activities) or unjustified (property for which the official authority does not have documents verifying legality of obtaining it) property, such property will be handed over to its lawful owner, and if the lawful owner cannot be ascertained, than to the government.

According to the Law, the Prosecutor is obliged to require from the official authority, his/her family member, close relative or person involved to sequester the property, if the data of possible selling of the property is available.

Obligation of Justification of the Property Owned by the Official Authorities and Reorganization of the Informational Bureau for Financial Performance of the Official Authorities

On 13 February 2004 the Parliament of Georgia adopted the Georgian Law on Amending the Georgian Law on Conflict of Interests and Corruption in the Public Service.

According to the amendments made to the law, a person cannot be nominated to a position before he/she submits the property declaration to the Bureau of Information on Property and Financial Condition of Official Authorities.

The fact that an official authority is obliged to justify the origin of the property shown in the declaration by submitting such a document or writing an explanatory note is a significant innovation.

On the basis of the Law, the Bureau of Information on Property and Financial Condition of Official Authorities has been reorganized and subordinated to the Ministry of Justice.

Amendments to the Criminal Procedural Legislation

On 13 February 2004, Parliament adopted the Law on Amending the Georgian Criminal Procedural Code.

On the basis of the amendments a new institution, which is a procedural agreement for admitting guilt, was included in the Criminal Procedural Code of

Georgia. If the prosecutor and the attorney of the defendant agree that the defendant gives his/her consent to cooperate with the prosecution, admits to committing the crime and provides the investigation body with true information on heinous crime or a crime committed by an official authority, the prosecutor is entitled to cancel the conviction and instead mediate with the court for a sentence without consideration of the case by the court.

On the basis of the amendment made to the law, the circumstances creating obstacles for conducting a criminal investigation against an official authority have been extirpated, namely, hiding of the official authority will no longer impede the process of investigation.

According to the Criminal Procedural Code, the Prosecutor represents the suit in court on behalf of the Government if the Government suffered consequences of the crime.

In parallel to procedural confiscation, withdrawal of the property obtained through criminal activities has been included in the Criminal Procedural Code. The court must resolve the issue of withdrawal of the property obtained through criminal activities by means of conviction.

The existing Criminal Procedural Code did not regulate the issue of recognizing as evidence a video or audio tape made by a private person in secret. By amendments to the law, this issue was included in the law.

According to the amendments made to the Criminal Code an accused can be exempted from criminal responsibility if as a result of his/her cooperation with the investigation body identify the official authority and/or a person who committed the heinous crime established, and if essential conditions for the investigation were created through his/her direct support.

Financial Police

On 24 February 2004, Parliament adopted the Georgian Law on Financial Police, according to which the Financial Police has been created with a status of a lower organization, subordinated to the Ministry of Finance.

On the basis of the above law and the amendments made to the Criminal Procedural Code, the function of revealing, holding an inquiry and preliminary investigation of the crime committed in the economic field was transferred to the Financial Police. Consolidating the functions of revealing and investigation of economic crimes, including tax violations and smuggling, into a single body (previously this function was distributed among the Ministry of Interior,

Ministry of State Security, and the Customs and Tax Department) will make it possible to distinguish one responsible institution, improve coordination of fighting against the above crimes and make it more targeted.

Changes Applied in the Field Taxes and Budget

On 24 February 2004, Parliament amended the Tax and Customs Code of Georgia. On the basis of these amendments the mechanism of excessive tax payment was determined at the legislative level, which had been a problem for a long period of time and represented a source for corruption.

On the basis of Resolution N°3 of the Government, dated 13 March 2004, on Repayment, Recording and Reporting of Income of the State Budget, Budgets of Abkhazian and Adjarian Autonomous Republics and Other Territorial Entities of Georgia and Recording and Reporting of Settlements and Excessive Payments, a unified report of the budget revenue was introduced on 5 April 2004, and which has improved the recording of budget revenue and expenses.

On the basis of the Law on Amending the Georgian Law on the Budgetary Systems of Georgia, adopted on 24 February 2004, the procedures of preparation, consideration and adoption of the state budget have been defined in innovative fashion.

By means of appropriate changes in the legislation and on the basis of resolution N°12 of the Government of Georgia, dated 3 April 2004, some activities related to the functions of administrating transportation funds taxes and the transfer of the functions to the tax payment organizations of the Ministry of Finance, the Tax payment department of the Ministry of Finance is responsible for administration of transportation funds taxes. The artificially divided tax payment function does not exist as of yet and the amount of the controlling organizations has been reduced.

Changes, Related to Suppression of Legalization of Illegal Income Generation

On 17 February 2004, Parliament ratified the Strasburg Convention of 8 November 1990 on Money Laundering, Investigation, Withdrawal and Confiscation of the Income Generated as a Result of Criminal Activities.

On 25 February 2004, Parliament adopted the Law on Amending the Georgian Law on Tools for Suppression of Legalization of Illegal Income Generation.

The above amendment will allow the Financial Monitoring Service to be more effective in addressing illegal income generation.

Steps Made for Providing Adequate Remuneration for Civil Servants

On 14 January 2004, Parliament adopted the Law on Development and Reform Fund.

According to this law, the Development and Reform Fund represents a public legal entity established by the President of Georgia. One of its purposes is to provide adequate remuneration to civil servants.

Since February 2004, a certain amount is transferred monthly to the personal accounts of the categories of civil servants, approved by the Board of Trustees. This gives a public servant an opportunity to receive minimum remuneration that in turn makes it possible to live without corruption.

The UNDP, the Georgian Government and the Development and Reform Fund signed the Public Service Reform Project, according to which the Government of Georgia has the obligation to provide the resources of the foreign donors and the Development and Reform Fund, administered by UNDP and budget funds.

Overcoming Syndrome of Impunity and Activities of the Law Enforcement Agencies

One of the most important problems in Georgia connected with corruption was the so called "syndrome of impunity". Law enforcement bodies either did not or could not reveal any illegal activity nor complete such investigations. As a result, people lost trust in law enforcement agencies. In addition, high ranking officials had a strongly grounded belief that they would not be punished, notwithstanding their illegal activity. The situation changed considerably in the first six months of 2004.

Since the changes in the personnel of the Ministry of Internal Affairs and prosecutors general office, more than 20 high-ranking officials and others close to power (among them the former Energy Minister, Head of the Georgian railway, ex-chairman of the chamber of control, high officials of the ministries of security and internal affairs, chairman of the customs department who was appointed to the position after the November events, former chairman and other high officials of the tax department, former presidents' son-in-law, and a member of the new parliament) were brought before the court for official

malfeasance and economic crime. As they had been enjoying the support of officials for many years, they were not punished by law.

It is worth noting that investigation of the majority of these cases was almost completed a long time ago, but never completely for political reasons or because the accused were involved in corrupt deals with, in general, the prosecutors' officers. Investigation of the cases of the above persons is in process. The majority of these people have paid corresponding amounts of money to reimburse the damage suffered by the Government. The amount recovered to date by the state budget is approximately GEL 45 million.

Events Which Took Place in the Autonomous Republic of Adjaria

As a result of illegal actions by the local government in Adjaria, central governance could not be realized on this territory for many years. Local government and one group had usurped the power and authority of the central government. The taxes collected on the territory of Adjaria were not transferred to the central budget; the central government was not able to control the custom, port, law-enforcement entities, etc. The leader of the local government created an illegal armed forces, declared himself its commander-in-chief, introduced a state of emergency and, lastly, dynamited bridges connecting Adjaria to other parts of Georgia.

Peaceful mass demonstrations were held against these illegal activities. With the joint efforts of the local population of Adjaria and the central government, the leader of the Autonomous Republic of Adjaria left the territory on 6 May 2004.

for the purposes of conducting new local government elections and preparing a relevant legislative base, an interim council was created for the purpose of the creation of government organs during a transitional period. New ministers and councillors were appointed.

for many years the non-democratic governance in Adjaria had a very negative impact on the region's development. Corrupt local government was widely based on the principle of nepotism, thereby creating an immoral system. to eliminate this system, a number of institutional and legislative changes need to be implemented.

Reconsideration of the System of Immunities

One of the most important issues related to the fight against corruption is redefining the system of immunities. During the assessments carried out before

2003, Georgian and foreign experts agreed that it was necessary to reduce the number of authorities enjoying immunity, the extent of such immunity, and to specify the rules and conditions to cancel such immunity.

As of January 2004, the first steps to resolve the above had been made. Namely, in January 2004, legislative acts adopted by Parliament reduced the number of individuals enjoying immunities and accordingly, the authorities, such as the Chairman of the Chamber of Control of Georgia, officers of the Prosecutor General's Office and other law-enforcement bodies, are no longer given immunity.

In April 2004, the new parliament adopted amendments for the purpose of reducing the extent of immunities. Namely, according to the amendments made to the Constitution, immunities no longer apply in cases of a criminal suit and is limited only by restriction of such procedural acts, as detention, arrest and search (of apartment, car, office or private).

Parliament has also adopted the resolution that makes the Ministry of Justice responsible for the preparation of further changes in the legislation regarding immunities.

Elaboration of New Anti-Corruption Strategy

In January 2004, analysis of the functions and performance of the existing anti-corruption structures and recommendations made by international organizations in relation to these issues was undertaken. Over the past several years numerous documents have been issued by Georgian and foreign experts to carry out and coordinate anti-corruption activities. An anti-corruption project was elaborated. However, none of these documents were implemented as there was no political will to undertake the recommended measures. Today, the Government is ready to take effective measures directed towards the punishment of corruption as well as its prevention. The issue of establishing a unified anti-corruption policy and anti-corruption strategy is on the agenda.

The National Security Council of Georgia was entrusted with the task of preparing the above document. A special, newly created department in the Council and the group of experts specially brought together for this purpose have analyzed all the correspondent documents and have drafted a new anti-corruption strategy. This draft will be submitted for approval to the Government of Georgia. If the Government of Georgia approves the draft, it will be then approved by the decree of the President of Georgia.

Non-governmental Organizations and representatives of society will be involved in the elaboration of this document, which will presumably considerably increase trust to the on-going process. Once again, the Government's commitment to fighting corruption has been made evident.

Reorganization of Anti-Corruption Structures

In January 2004, the functions of the existing anti-corruption structures and related recommendations prepared by international organizations were analyzed. for the purpose of coordination of anti-corruption measures the Georgian Anti-corruption Policy Coordination Council and Anti-corruption Bureau were created. It became clear that the legislation did not define precisely the functions of these structures and their place in the system of the governmental bodies. Consequently, a decision was made to reorganize the above structures.

The main purpose of this reorganization was to better distinguish between the functions for preventing corruption and investigation of delinquencies linked to corruption. As such, the Prosecutor General's Office became responsible for investigation and the function of prevention of corruption was transferred to the National Security Council. By transferring the function of investigation of corruption delinquencies to the prosecuting bodies, a maximum degree of investigative independence was achieved. If this function is transferred to any other structure or if a new independent investigation body is created, procedural supervision of the investigation would be carried out by the prosecutor. Within the Prosecutor General's Office, a special sub-division was created to investigate facts of corruption.

As far as handing over of the function of prevention and anti-corruption policy coordination to the National Security Council is concerned, this has increased the legitimacy of the unit holding this function and it has simplified the co-ordination of anti-corruption policy, because the Council is operating directly under the President of Georgia.

Presently, the process of refining the activities of the reorganized structures is continuing for the purpose of achieving a unified, well-established mechanism. Such a mechanism will considerably simplify the effective use of the resources to fight corruption.

Annex 1

ALTERNATIVE CORRUPTION STATUS REPORT PREPARED BY ANTI-CORRUPTION NGO COALITION

Transparency International Georgia
ABA/CEELI, Georgia Office
Save the Children, Georgia Office
ALPE – Association of Legal and Public Education
Georgia Business Confederation
"Article 42" – Human Rights Protection
IRIS/Georgia

Recent Developments and Analysis of the Situation

The presidency of Eduard Shevardnadze (1992-2003) witnessed an increase in political and economic corruption, which led to disrespect for the rule of law. As a consequence, Georgia's emerging transition to democracy was beginning to fail. Shevardnadze was forced to resign on 23 November 2003 as a result of growing popular protests following the massive falsification of the results of the elections that had taken place that same month. Nino Burjanadze, then Parliamentary Chair and one of the opposition leaders, assumed the role of acting president, as prescribed by the Georgian constitution. Within four months of this peaceful transfer of power, a new Georgian government was formed and executive and legislative branches were elected in January and March, respectively.

At present, any assessment of Georgia's anti-corruption efforts cannot be all-inclusive. The brief period that has elapsed since the recent elections should nevertheless be taken into account when estimating the success and failure of the new government as some trends can be identified even at this early stage of the new program.

The parties that enjoyed popular support following the revolution, and which are in the government today, are those that are among the most supportive of rapid reforms, some of which have already been initiated. The new Parliament has passed several laws and regulations that are expected to reduce corruption by strengthening the mechanisms to deter as well as to detect corruption. These include: changes and amendments passed

to the Law on Procuracy and Administrative Procedural Code, which provides the legal basis for the confiscation of illegal and illegally obtained property of civil servants through procuracy and the court system; changes and amendments to the Law on Conflict of Interests in the Civil Service, aimed at inspecting the integrity of state appointees before their appointment; changes to the Criminal Procedural Code providing remedies for co-operating with the investigation of serious crimes; the Law on Financial Police promoting the effective fight against financial corruption; the Law on Prevention of Money Laundering; the Law on Development and Reform Fund focusing on securing appropriate payments of key civil servant salaries in order to decrease the incidence of bribe-taking.

Along with legislative changes, decisive action has been taken to identify and prosecute corrupt officials. Since January 2004 more than 30 State officials and businessmen have been detained, arrested or are wanted on charges of corruption. In their public statements and addresses, high state officials repeatedly stress the government's commitment to eradicate widespread corruption and foster responsiveness to public needs.

It is evident that the new government's anti-corruption efforts are significant, but it is also evident that they have not been without violations. In its endeavour to restore control over its administrative functions, the authorities have bypassed some of the requirements of Georgian legislation and have tended to justify certain behaviour on the basis of the current situation.

National Anti-Corruption Plan (Strategy) Against Corruption

Corruption in Georgia has been analysed at the national level and as a part of international research:

- "Surveys on corruption" conducted by GORBI in 2002-2003, www.gorbi.com
- Global Corruption Barometer (Transparency International and Gallup International Institution) 2003, which gives the list of corrupted spheres in Georgia as well as its influence on the daily lives of its citizens: www.transparency.ge, www.transparency.org .
- The 2003 results showed that Georgia ranked fifth among the 47 countries, behind South Africa, Dominican Republic, Cameroon, and India in the perception that corruption would "increase a lot" over the next three years. Georgians also believe corruption significantly affects political life (75.3%) as well as the culture and values of society (67.2%). On the other hand, they believe that corruption affects personal and family life less so (37.1%) and similarly with the business environment (31.8%). If given magic powers to eliminate corruption from any institution, Georgians would choose to reform medical services (19.7%), the courts (18.1%), and the police (13.4%). Georgia's responses closely resemble the overall international findings, with

the exception that "political parties" were identified as the lead institution in need of reform.

- Corruption Perception Index 2002, 2003 (TI). In 2003, Georgia dropped to 124th place, as compared to the 2002 CPI where it ranked 85th. This is a more or less comparable rank to Cameroon, Azerbaijan, and Angola; among post-Soviet and East European countries, Georgia, along with Tajikistan, is at the bottom of the list.
- TraCCC. Reports on Corruption in High Education System; Reports on Money Laundering 2003, www.antimoneylaundering.ge

Public Awareness Campaigns

Several significant public awareness campaigns have been conducted by NGOs in Georgia during the last two years. These include those noted below.

The Institutional Reform and Informal Sector (IRIS)

The USAID Georgia Country Strategy has recently been modified and is now directed towards supporting the state in its fight against corruption. Accordingly, the plans of IRIS have been modified. Along with keeping its general projects, the activities of IRIS and its grantees will be expanded to include economic and social rights in the scope of work for 2004. This year, IRIS is also carrying out a wide range of activities together with and for the media, NGOs, citizens and government institutions in order to increase the level of transparency of government activities.

Georgian Young Lawyers' Association (GYLA)

GYLA will carry out roundtables and town-hall meetings in the regions. One of the topics for discussion will be public participation in the local budgeting process as a way of eliminating local corruption. These meetings will target selected audiences. The first public awareness bus tour will be organized as a new effort to combat corruption. It will start in Tbilisi and cover all of Georgia. The organizers will distribute publications, present documentaries and hold discussions on human rights and freedoms, emphasizing the issues of human rights versus government. GYLA will organize workshops for the heads of administrative agencies on the FOI issues. The publications printed by GYLA will also focus on anti corruption related issues.

As the result of the collaboration with the government, Internews Georgia will film five different public service announcements related to the anti corruption issues. Internews will also produce eight rules of law and anti corruption-related TV programs and broadcast them on one of the national TV channels.

The main topics of the Liberty Institute's Newsletter will focus on corruption issues. The Liberty Institute will also prepare and disseminate a Citizen's Charter, which will serve as a guide designed to raise public awareness on the definition of

corruption and the damages caused by corruption. Further, public debates program and round-tables will be organized in the regions to discuss important anti-corruption and regional issues, as well as promote civil rights.

The overall anti-corruption program will be backed by free legal aid clinics (NGOs: GYLA, Article 42 of the Constitution) where people can receive legal advices on various issues and, in some cases, court representation will be provided in order to ensure that anti-corruption initiatives are safeguarded.

United Nations Association of Georgia (UNAG) will cover freedom of information (FOI) issues through seminars, booklets, newspapers articles, desk calendars, posters and cartoons. The main tasks of UNAG will include working in the regions with local and state and intercity institutions in order to facilitate the implementation of FOI legislation in the regions.

Through workshops and trainings, the Young Economists' Association (YEA) has facilitated the conformity of the licensing permit agency procedures to the new laws and the requirements of the General Administrative Code. YEA has printed several guides for entrepreneurs, as well as new laws and rules to promote full awareness and reduce opportunities for corrupt practices. A variety of materials and the results of much research have been shared with society.

Lastly, the current information system within the Georgian government is uncoordinated, ineffective and prone to corruption. IRIS will assist the Ministry of Justice to reorganize its Central Chancellery and create modern Citizens Reception Hall, which will incorporate the FOI office. IRIS will continue to implement a series of training sessions for public servants of the Ministry of Justice.

Civic Participation Advocacy Campaigns, implemented by eight NGO coalitions under the Save the Children's Citizens Advocate! program. These campaigns address issues such as social benefit targeting and local budget monitoring that touch on issues of corruption.

Liberty Institute - "Rule of Law" (USAID), together with IRIS, GYLA, and Internews Georgia are to develop a regional network for human rights education activities.

TRACCC tripad reports on corruption in transnational crime

In September 2003, an anticorruption coalition was formed with 15 NGOs.

Constitutional Amendments

The Parliament elected in 1999 convened several times before the new elections of 28 March took place to approve legislative changes initiated by the President's office and the Executive Government.

On 6 February, Parliament passed the President's constitutional amendments that increased the power of the president over the Parliament, allowing the president to dissolve Parliament in a number of situations. In addition to the effect of the amendments on the relations between the executive and legislative branches, they also affected the independence of the judiciary by authorizing the president to appoint and discharge judges. As well, the president was authorized to practice the right of the Constitutional Court and annul decisions of executive government and its officials in case of their inconsistency with the constitution without involving the Court. The right to appoint prosecutors was also granted to the President, and for which he does not require Parliament's confirmation. There are other drawbacks in the new amendments, but in general, the system established under these amendments created an imbalance between different branches of the government and increased dependence on the good will of the executive.

The amendments were passed despite deep concern by civil society members and the international community at the brazen consolidation of executive power at the expense of then a powerless parliament. The speed with which the president seemed to have pushed these amendments through without the mandatory one-month public consideration period for constitutional amendments was also surprising.

Forming of New Executive Government

On 11 February 2004, Parliament adopted the Law on Structure and Authority of Government in accordance with the amendments to the constitution. Prime Minister Zurab Zhvania finalized the composition of the new Cabinet of Ministers, in which most of the new candidates were young and many had worked previously for NGOS. A significant range of other government officials, including local officials and ministry staff, were also shuffled in light of political developments.

Many of the new ministers started their work by changing Ministry personnel. In various cases, the ministers did not fire their employees but requested they write letters of resignation. Firing civil servants would have required providing specific grounds, thus complicating the process of change within the ministry. Very few state employees contradicted the will of their new administrators and although not required by the law, wrote resignation letters. Failure to protect the rights of civil servants was observed not only in firing the state personnel, but also in appointing their replacements. In a few cases vacancy announcements were placed to attract the widest potential field possible. In general, however, the competitive measures were bypassed and new people were appointed without clear selection criteria.

In order to promote open competition the vacancies should be widely publicized as required by Georgian legislation and the means provided to unsuccessful and qualified applicants who may consider that proper procedures have not been followed.

Imprisonment

The most aggressive and visible of the government's anti-corruption actions has been the arrest of a stream of powerful people accused of corruption. In six months following the November revolution, more than 30 individuals were detained, arrested or wanted on corruption charges. These included former ministers, deputy ministers, regional governors, law enforcement system representatives, other state officials, and businessmen. Several of these arrests have been shown on television, sometimes with waving of guns and men in masks destroying the doors.

Most of detainees have been charged with evading money in taxes or with stealing it from the State by other means. Although the vast majority of these individuals are legitimate objects of suspicion, no court hearings have been held to date and thus their guilt has not been proven. Nevertheless, high-ranking governmental officials do not seem to be refraining from commenting on the substance of criminal case, making it clear that the executive is not going to infringe on the independence of the judiciary.

Another major problem with the arrests is that some of the detainees have been released in exchange for payments made to the state, even though there is no legal mechanism that provides a basis for such an act. The changes that have been passed to the Law on Procuracy and Administrative Procedural Code allows confiscation of illegal property only after it is confirmed by a court decision that the property was illegally obtained. for many detainees circumstantial evidence may be available, but actual evidence of corrupt acts have not been confirmed. Nevertheless, the money obtained by the State from releasing detainees in exchange for bail has exceeded, according to the procuracy, USD 45 million. According to the statements of state officials, this money has been returned to the state budget of Georgia: however, as mentioned earlier, guilt has not been proven and it is possible that this money will need to be returned.

In conclusion, it can be said that considering the transition that the new government faces, it is vital that the new government has the support structure of public input and expertise that it needs to meet high expectations. In case of uncoordinated reforms which do not meet public approval, there will be little public commitment to see that reform implemented.

Promotion of Accountability and Transparency

Ethics in the Public Service

The issues of ethics and disciplinary liability are reviewed neither scientifically nor practically.

Despite the fact that the civil service is regulated by various laws and by-laws, the processes of creation and development of strategic plan for the Georgian Civil Service management and its consequent global change of Soviet malpractices in it are very

slow. Recruitment into the civil service is regulated more or less by legal provisions but in reality it is rather formal than merit-based in character. An individual can be recruited in the civil service and promoted depending upon his/her economic conditions, or traditions of cronyism and nepotism. Despite the fact that wages in the public service is below the minimum living expenses, the number of persons ready to get in civil service is suspiciously high.

In 1994, the Georgian Government and the National Academy of Public Administration of the United States established in Tbilisi the Georgian Institute of Public Administration. The basic mission of this institute is to train professional civil servants. In fact, just 11% of the institute graduates are employed in the civil service. This partly due to resistance from administrative agencies to recruit civil servants trained according to highly-developed public administration standards who will not be involved in corrupt practices. As a result, in most cases the institute graduates are placed on reserve with little hope for employment in the civil service.

The adoption of the Ethics Codes although of a very formal nature, no person has ever been prosecuted even on a disciplinary basis. Without provisional mechanisms, the Ethics Codes will remain simply a piece of paper. As a rule, a person giving ethical recommendations is a typical representative of a corrupted public official. The judicial branch of Georgia has the best disciplinary system, but the number of decisions rendered on disciplinary and ethical cases is very low (and gradually becoming lower) giving the impression that every part of the system is corrupt. The representatives of the court view the problem in connection with the difficulties for qualification of disciplinary and ethical offences that is exaggerated.

The Law on Civil Service (1997) refers to the English, Austrian, German, Danish, and Italian models that differentiate public employees as much as possible. As a result, their legal status is regulated by different laws and regulations. In other words, some public employees are subject to public law, while others are subject to private law. Disciplinary matters are regulated by by-laws, leading to a greater differentiated disciplinary liability system.

By-laws are characterized by the lack of material and procedural rules and regulations. As a result, a person dealing with disciplinary cases can broadly interpret existing norms and use discretionary powers freely in the decision-making process.

Up to 2002 courts reviewed disputes in the civil service as a mere form of labour dispute and relied on the Civil Law Procedure Code even though the Administrative Procedure Code came into force in 2000. The Administrative Procedure Code allows judges to review disputes on an in-depth basis by exercising their full inquisitorial power granted by law and consequently rendering a fairer and more objective decision on the case.

The basic problem of the disciplinary law is that disciplinary offences are not clearly defined. Disciplinary offences may be transformed into administrative or criminal offences, although we could obtain no information on specific cases to prove

this. The disciplinary law process is not modelled on criminal law process. In the disciplinary process there is no definition of concept of evidence and their types, institutional mechanisms for defence of the accused official, aggravating and mitigating circumstances of liability, requisites for disciplinary decision, appellation terms of the mentioned decision and other significant issues.

Research conducted by the members of Tbilisi State University Administrative Law Faculty in 2002-2003 revealed the low rate of awareness of public officials in the sphere of their disciplinary liability.

Subjects of the crimes envisaged by the Criminal Code's Articles 375 and 376 are not special subjects, *e.g.* they are not precisely defined. These subjects might be either civil service public officials or ordinary persons. From this viewpoint, there are no statistics concerning cases of corruption-related crimes. Other cases of liability for crime cover-up and non-reporting of crime are not defined in any legal document. The obligation to report mentioned above is not included in any agency's internal regulations.

The Georgian legal system does not provide for the act of whistle blowing and therefore there is an absence of mechanisms for ensuring rights and duties of whistleblowers. However, the Law on Civil Service (1997) defines the duty of a public official to inform the supervisor about his suspicions concerning the legality of an administrative directive. In the case of producing the same directive in written form, it must be executed excepting the cases when it is directed against the spouse, parent, brother, sister or other closely related persons, is harmful for an official's health, needs more qualification or other professional skills. In other cases, public employee can be held liable for any disobedience. There have been no attempts of institutional whistle blowing to date.

Public Service Bureau Reformation and Merit-Based Appointment Promotion

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

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.

(Recommendations for Georgia)

One of the priorities of the new government of Georgia was the merit-based appointment of civil servants, increasing salaries and improving the working conditions of public servants, thereby raising the prestige of serving the state.

Several serious attempts have been made to accomplish this goal. One of the most interesting is the program of a Civil Service Career Center by the Georgian Institute of Public Affairs, School of Public Administration. The project aims to improve the quality and efficiency of the civil service through the creation of a job-seekers database, a scheme of professional development, tool for better utilization of staff skill and capabilities.

The HRIC project and the Civil Service Bureau reform program draft was developed and prepared by the Georgian Institute of Public Affairs in December 2003. Presentation has been held at the highest level at the State Chancellery, with the current Premier Minster Zurab Zhvania and other officials participating in the event. The initiative also had external funds obtained through the World Bank and other international donors.

The project itself consists of two major parts: the concept of Public Service Bureau reform and the Human Resources (HR) Information Center.

The HR Information Center contains: HR resource database, experts database, potential employers database with jobs requirements, current vacancies database, testing and interviewing tools, etc. The special software should process all of the information and automatically produce a shortlist of candidates for specific vacancies, relevant tests and question packages, independent expert names for interview sessions, and other necessary information.

The new Civil Service Bureau is composed of a Council of Trustees, a Resource Center and four major departments: HR management department, an HR development department, an Organizational Development Service and a Certification/Attestation Service. The functions and responsibilities of each bureau are specified in the project.

In December 2003-January 2004 preparatory work was implemented by the initiative group of the GIPA. A civil service application form has been created and distributed via internet, mailing lists and newspapers; more than 9 000 applications have since been entered into the database. The next step may be the official adoption of the initiative and fundraising, followed by the start of the activity, but the government must lead the process.

Unfortunately, in spite of several political announcements of a completely new attitude towards hiring and promoting careers in the civil service, this initiative has not been used by the government. The Civil Service Bureau has been cancelled and part of their duties transferred to the Ministry of Justice.

Since December 2004 the “old rules’ continue to apply in the appointments of the new government – there are no open competitions announced for any of vacant positions. The difference between the old and new approaches is that almost all of the new appointees are young, mostly western-educated and have a “clean” biography in terms of corruption. Therefore, we can state that although the government’s highest

priority remains the fight against corruption; their practices are not always the most appropriate.

Code of Ethics

As indicated in the Anti-Corruption Bureau's report, a Code of Ethics for judges was adopted at the Conference of Judges in June 2001. This Code does not have the force of law and is guidance for judges. Even though it does not have the force of law, the judges refused to adopt a code that would have required them to report the wrong-doing of other judges. As a result, they voted in a much weaker Code than was initially proposed.

ABA/CEELI, together with the Judicial Training Centre and the Judges of Georgia Association, has provided training in the Code of Ethics, on a voluntary basis, for approximately 280 of the 308 judges who were in judicial positions as of July 2003. This training consists of a day-long inquiry into various hypothetical situations based on actual ethics situations confronted by judges. It is led by judges who have been trained as instructors and who helped to develop the training program.

While the Judicial Code of Ethics does not have the force of law, the Disciplinary Code for judges, adopted by Parliament, does have the force of law. Although this Disciplinary Code provides several disciplinary tools, it is interpreted that judges who engage in criminal acts, such as receiving bribes, cannot be disciplined by the Disciplinary Committee, but must be referred to the Procurator for prosecution. Only the Chairman of the Supreme Court can approve such a referral, and he would not do so without evidence. Since the Disciplinary Committee has no real investigatory powers, other than to ask for testimony from the complainant and the judge, evidence of such activities is unlikely to be found. Furthermore, the Procurator rarely prosecutes anyone for crimes of corruption, even if referrals are made.

The primary provision in the Disciplinary Code which is used by the Disciplinary Committee is one that provides for disciplining judges for "wrong decisions." In the wrong hands, this could be used as a tool to suppress decisions which the Committee members did not approve of, as the question of what is a "wrong decision" could be subjective. At the present time, the Disciplinary Committee appears to be composed of reform-minded, ethical judges and representatives of NGO's, and the process does not yet seem to have been abused. Nonetheless, judges have complained of being called up for discipline for a "wrong decision" because their interpretation of a law is different from the interpretation of a person on the Disciplinary Committee. This was considered especially egregious when the authority to discipline was vested in the staff members of the Council of Justice (COJ) who were not judges and did not have their legal qualifications. This provision has expired, but not before it was seriously abused. for example, one judge reported that a staff member of the COJ walked into her courtroom in the middle of a trial and announced that she was wanted for questioning for a disciplinary violation for making wrong decisions. Judges who defend this provision of the Disciplinary Code explain that it is the only way to discipline a corrupt judge, given that they have no investigatory powers. All they can do is to begin to observe a judge

about whom rumours of corruption are circulating. Then, upon examining the judge's decisions, a repeated pattern of illogical and incomprehensible decisions appears which leads them to conclude that there is probable cause to believe the judge is acting out of financial interest or undue influence. An example was a decision in which the judge set forth clear and convincing evidence and reasoning why the plaintiff should prevail, and concluded that the decision was awarded to the defendant. When this pattern of decisions persists, the judge can be removed for repeated "wrong decisions."

The Disciplinary Process is non-transparent and conducted in secret. Only if a decision is made to remove a judge does the disciplinary action become public.

Lawyers

There is no Code of Ethics binding on all lawyers. Indeed, until the recent implementation of the Law on Advocates which was passed in June 2001, and which did not become effective until this year, there was no real certification of who is and who is not a lawyer. A significant number of lawyers refused to learn Georgian law, and continued to argue Soviet law in the courts, although Soviet law has not been in effect for more than 12 years. Others have purchased diplomas since independence from the more than 200 institutions that have been issued licenses to give law degrees, many of which have no faculty and offer no courses. Since the general rule is that any kind of license in Georgia can be obtained with the proper amount of a bribe, it is presumed that most of these institutions purchased their licenses through corrupt practices. Some lawyers have received education from institutions which were reputable before independence, but the quality of legal education is greatly diluted by the fact that the majority of all students now have to pay significant bribes in order to enter any institution which gives legal training, as well as pay for grades and to graduate. Thus most lawyers must begin their careers by participating in corrupt practices because they do not have any alternative choice. It is difficult to expect lawyers who were not able to become lawyers except through corruption to then uphold ethical practices as practitioners.

The Law on Advocates provides for the formation of a Bar Association by 1 January 2005, by those who pass the Bar Examination between November 2003, when the first examination was administered, and 1 January 2005. Lawyers who do not pass the examination will be permitted to continue to practice until June 2006.

Although the Law on Advocates requires the adoption of a Code of Ethics and disciplinary system by the new bar association to be formed, lawyers have already begun to argue stringently to reduce the possibility of any form of discipline by insisting on adopting an ineffective code. Members of the Collegium of Advocates, a hold-over from the Soviet period, and which still constitutes the majority of all lawyers, vehemently argued, in a public hearing in Parliament — accompanied by loud cheers and applause — that it ought not to be possible to discipline a lawyer for criminal activity if he could hide that fact for six months. They were disturbed because the provision set forth in the Law on Advocates provides that he cannot be disciplined if his criminal act is not discovered within three years. Apparently they felt that that is much

too long a period for them to succeed in hiding their criminal activity. Thus there continues to be a mentality that lawyers must have a right to commit crimes and engage in unethical behaviour. Unfortunately, it seems many of lawyers developed a pattern of such behaviour during the Soviet period.

NGOs

Under the Save the Children/USAID-funded Citizens Advocate! Program the Georgian NGO Civic Development Center "Alternative" is facilitating the formulation of an NGO Code of Ethics. Often accused in the press of "grant-eating", NGOs acknowledge the need for self-regulation and transparency on their use of funds in order to regain the trust of the public. The Code is being developed by a Working Group of leading NGO activists, and will be ready for adoption by NGOs in the spring of 2004. The Code will cover general rules of conduct (such as transparency and honesty), internal regulations (human resources, finance, management), external regulations (relationships with State bodies, other NGOs, civil society, political parties, and donors), and an external body to monitor adopters' adherence to the Code.

Public Procurement and Public Subsidies, Licenses, or Other Public Advantages

Development Perspectives of the State Procurement System

The System of State Procurement holds an important place in the industry of the country as well as in the rational spending of its budget. As a result of successful reforms a progressive legal basis for state procurement has been developed and implemented in Georgia, which allowed for significant savings in the state budget. At this stage the most important is the fulfilment of norms given by Georgian law and the actual implementation of objectives.

According to the law On State Procurement, the coordination of activities related to state procurement as well as its monitoring and control, on a countrywide basis are conducted by the State Procurement Agency. Public legal person — the State Procurement Agency conducts its activities in accordance with the Decree N°223 of the President of Georgia of 5 June 2001. The legal aspects of this decree are compulsory and their non-fulfilment is a violation of Administrative Law. for publicity and civil monitoring of the State Procurement System, an Agency Monitoring Council was created and is composed of administrative bodies and of civil society representatives. The State Procurement System is decentralized and the power of state procurement is vested upon the state procurement organizations, which are responsible for the legality of these transactions. In accordance with the laws On State Procurement and On the Rules of State Procurement, the state procurement organization is obliged to do the following: to conduct state procurement rationally and in accordance with national interests, and given the necessary financial means; to conduct procurement in accordance with the yearly plan previously defined and approved, and within the time period and in the necessary format as provided by law; to provide the Agency with relevant reports of the implemented procurement; within 20 days after the approval of the state budget and the budgets of autonomous republics and other territorial units to

adopt a correct plan of state procurement; after the end of each fiscal year to write a report on state procurement of the given year and to present it to the Agency in the relevant format no later then 1 February; to provide the Agency with monthly statistical reports on state procurement.

At present, state procurement in Georgia is implemented by about 3 000 large structures and the joint value of all contracts made by these structures in the course of one year amounts to GEL 500 million. The most widely used means for state procurement amongst these organizations remains the method of personal negotiations (state procurement by means of central budget – 49%, local budgets – 86.5%). The method of price quotation is seriously stated (central budget – 15%, local budgets – 2%). The part of tenders is also significant - central budget: open tenders - 34%, closed tenders – 2%; local budgets: open tenders – 11%, closed tenders - 1%. According to the reports available at the Agency there are about 300 tenders per year. The structure of procurement has only recently become more balanced (goods still hold the most significant part, at 45%; services, 30%; labour, 25%).

Reform of the State Procurement System, which is supported by the World Bank, has gone through the following stages:

- December 1998 - adoption of the law "On State Procurement," which entered into force in July 1999;
- August 1999,- adoption of the regulations "On Rules of State Procurement";
- 1999 - creation of the Department of State Procurement in the Ministry of Economy;
- 2000 – Decree N°403 of the President of Georgia On the Necessary Actions for the Fulfilment of Georgian law on State Procurement and the Reform of the State Procurement System gives an action plan for reforms;
- 2001- adoption of amendments to the law On State Procurement. In accordance with these amendments, the State Procurement Department is separated from the Ministry of Economy and becomes an independent public legal person, the Agency of State Procurement;
- 5 June 2001 - decrees of the President of Georgia N°223 and 224 adopt regulations of the State Procurement Agency and its Overseeing Council. The President of Georgia appoints the staff of the Council and the Head of the Agency;
- 15 October 2001- Decree N°1 of the Head of the Agency adopts the regulations On the Rules of State Procurement and its joint documents;
- In 2000 Georgia, as a member of the World Trade Organization, is given the status of observer of the WTO Agreement on Governmental Procurement and negotiations begin on the inclusion of Georgia in this agreement;

- 2001- Georgia implements most of the conditions of the WTO Structural Adjustment Credit (SAC III) in the sphere of state procurement;
- From 1 January 2002 the law On Amendments to the Administrative Procedural Code of Georgia adopted forms of administrative responsibility in case of non-fulfilment of its norms;
- 28 February 2002 - Decree N°85 of the President of Georgia lists actions necessary for the improvement of the State Procurement System;
- June 2002 - discussions of the Georgian State Procurement Environment Evaluation Report at a joint forum of the Government of Georgia and the WTO;
- In accordance with the Decree N°381 of the Georgian President of 19 August 2003 and his edict N°1117 draft annexes of documentation were prepared in order to start the negotiations;
- 19 August 2003 - edict N°973 of the President of Georgia On the Actions for Further Improvement of the State Procurement System lists the necessary actions in this sphere;
- The reform of the State Procurement System is subject of serious consideration of Georgian government. This can be seen from the attention given to it at the Georgian Government Sessions as well as the numerous decrees and edicts concerning this issue (edicts of the President of Georgia N°430, 2002 and N°287, 2003; Decrees N°202 and 282, 2003, decree of the State Minister of Georgia N°40 of 2002, etc.).

In accordance with the plan for institutional development of the State Procurement System, the organizational structure of the State Procurement Agency was improved and the subdivisions of administrative proceedings and audit were created. According to the action program of the Agency, indispensable actions were implemented to provide procurement transparency and publicity. The Agency representatives participate in international events and the agency staff is able to conduct study visits in relevant foreign institutions. Along with increased monitoring, the Agency continues its work in consultations and methodology.

The Measures for Improving the Regulation of State Procurement

The following measures are to be taken in order to improve the system of state procurement.

- Continuing to develop and issue appropriate instructions to improve the methodology for implementing state procurement procedures and accountability.
- Creation of a state procurement agency website, where the agency and state procuring organizations (including local procuring organizations) will post

the quarterly analysis of state procurement, short reports, normative and methodological materials; tender information and information concerning implemented procurement.

- Establishment of State Procurement Information and Methodology Centers in the regions of Georgia and establishment of a Teaching and Consulting Center within the Agency.
- to establish the system of training the experts in state procurement, their preparation within the framework of national strategy and their licensing; organization of regular teaching seminars.
- Organization of a special procurement unit for military bodies in order to optimize procurement. This unit will manage the necessary procurement for these bodies.
- Use of forceful means for eliminating the wrongful acts of state procurement organizations and making proper reactions to their activities in cooperation with appropriate bodies.
- to carry out necessary measures for state procurement coordination optimizing the structure of budgetary expenses and preparation for improving budgetary planning.
- to establish the effective mechanism for monitoring state procurement procedures in order to prevent property from being smuggled and participation of state procurement bodies in the shadow economy.
- to extend state procurement legislation to procuring organizations engaged in the provision of social services and consumer goods despite their legal form.
- The further improvement of the state procurement system due to the accession to World Trade Organization Agreement Concerning the Government Procurement by Georgia.

The reforms are slow due to the general social and economic problems facing the country, and the bad functioning of the budgetary and financial system of the country (late adoption of state budget, violations of the laws concerning budgetary system, changing of the adopted state budget, the weakening of administration during the elections, etc.). In addition, due to the inappropriate system of accounting and accountability there are cases of withholding finances on state orders and ignoring the interests of law-abiding procuring organizations, which becomes the reason for suppliers' unwillingness to carry out state orders. Also, procurement organizations often provide the state procurement agency with inappropriate reports (statistical, quarterly and annual reports), or with late reports and materials concerning the conducted tenders, which prevents the agency from influencing the procurement process. That is why it is important to receive a timely response from the participants of procurement and society, for having a liberal legislature to guarantee the transparency of procurement procedures as well as the protection of rights of the participants.

Recent Developments

The State Agency for Procurements, with the support of the Open society – Georgia foundation, developed a package of amendments to the Existing law on "State Procurements". On 2 June 2004 the ALPE hosted the coalition meeting initiated by the Anti-Corruption Department to discuss the draft. The overall impression is quite positive and we think that in case the law is passed by Parliament, it can improve the anti-corruption measures regarding use of state budgetary funds.

The coalition suggested a greater role of the website for transparency of the state purchases. We think that all information with regard to procurement should be placed on that site and be available to the public. We consider this an important step towards establishment of the so-called E-Government, which we also consider as an effective "weapon" against corruption in state agencies.

The main innovations of the draft Law can be characterized as follows.

1. Expanding the coverage of the legislation on state procurement with funds of legal entities of private law, where the state or the local (self)-government body holds 50% of shares or over in the authorized capital.

2. Abolishing the supervisory board of the agency.

3. Placing the agency under the direct subordination of the Prime-Minister;

4. Simplifying state procurement process and procedures.

5. Reducing timelines on procedures for the selection of suppliers.

6. Acknowledging open tenders (bids) as a key procedure for affecting purchases;

7. Extending the validity of the contract to cover the period of the subsequent year in the event the budget is not approved in a timely fashion.

8. Revoking the regime of advance agreements with the agency and expanding the competencies of purchasing organizations (decentralization).

9. Developing a specific mechanism for the application of the performance criteria.

10. Revoking fees imposed for the receipt of tender documentation.

Financial Control / State Audit

According to the Georgian Constitution (1995) the Chamber of Control of Georgia is the supreme audit institution of the country. In June 1918, during the existence of the Georgian Democratic Republic, the Law of the Chamber of Control was issued. In the Republic of Georgia's 1921 constitution, the Chamber of Control was named the country's supreme audit institution. In 1921, the Soviet army annexed Georgia and the Chamber of Control became part of the USSR's national control machine for the next 70 years. In June 1992, the Chamber of Control was re-established.

The law governing the Chamber of Control was approved in April 1993 and amended in 1996. In April 1997, Parliament adopted a new law governing the Chamber of Control. The chamber has been a member of INTOSAI since 1992 and a member of EUROSAI since 1993.

The Chairman of the Chamber of Control of Georgia is elected by the Parliament on the proposal of the President. The Chairman's term of office is five years and the Chairman may be re-elected twice after his first election. The Presidium is the highest managing body of the Chamber of Control and includes 13 members: the Chairman, who is the head of the Presidium; the Chairman's deputies; the heads of departments; and the heads of the chambers of control of Georgia's autonomous republics. Half of the members of the Presidium are appointed by the President and the other half are elected by the Parliament based on the Chairman's proposal.

The Chamber of Control's authority, within its competence, is valid for all bodies of legislative, executive, and judicial authorities; local government bodies; special state funds; the National Bank of Georgia; and all other government-related organizations and entities.

Georgia's Chamber of Control principally carries out financial and compliance audits. In November 2001, the Chamber began auditing and its Department of Reforms and International Relations first implemented the performance or "value for money" audit of Georgian diplomatic representation in the United Kingdom. In 2000, at the President and Parliament's request, the Chamber began anticorruption investigations of criminal cases with the financial and technical support from the United States.

The Chamber of Control of Georgia is the supreme body of the country's finance and economic control and works on behalf of Parliament. The Chamber of Control has financial, constitutional, and organizational independence, and thus meets the SAI requirements for independence (based on the Lima Declaration). Georgia's Chamber of Control creates strategic plans and accordingly approves annual auditing plans. If there are findings, the Chairman decides to whom these reports must be issued: Parliament, the President, and/or specific ministries. The Chamber also issues annual and semi-annual budget implementation reports that are reviewed by Parliament. The Chamber of Control of Georgia is a transparent organization and its reports are accessible to all interested persons through online and quarterly magazines which are published by the press office of the Chamber of Control.

After the Soviet Union was dissolved, the old National Control became the Chamber of Control of Georgia, the nation's Supreme Audit Institution. However, standards, rules and methodology did not change. Today, as it has for the past ten years, the Presidium of the Chamber of Control approves the annual auditing plan at the beginning of December of each year and the audit activity adheres to this annual plan. The Chamber of Control audits all government agencies once every two years. The Chamber of Control audits everything that happened in the agencies during last two years including financial, performance, compliance, economy and efficiency, and sometime the investigations undertaken by these agencies. However, theses audits can be to all-encompassing. for example, the auditing of the Ministry of Defence in 1999-2002 was too broad; the auditors of the Chamber of Control were looking at everything but not at specific issues. Audit reports speak about everything that was correct and incorrect, but the reader has to read from the beginning to the end to understand what the Chamber of Control has found and what it recommends.

Different audit teams have different styles of writing reports because there are no common standards for writing reports. As a result, the quality of these reports is very low; sometimes the audit teams could not concentrate on the real problems in the agencies' activity. The main danger is that current conditions create an environment that can lead to corruption. Auditors can take bribes, close their eyes to the problems and nobody can find or blame them because the audit subject was too broad and they can say that they could not draw attention to the real problems and particular issues. The main problem for implementation of reforms in the Georgian Chamber of Control can be divided into two categories: first, staff who are afraid of changes; they worked in the Chamber of Control during the Soviet Union era; they are not young, they are not familiar with English or computers and are afraid that as a result of reforms they have lost value and, even worse, that new, young, and educated staff will gain influence and they will lose their jobs. The second category, and which is more dangerous, are those auditors and their supervisors who are involved in corruption and feel very comfortable in the current situation.

Tax and Custom System and Fiscal Treatment of Bribes

Liberalisation of Business Environment

In order for the efforts of the new government to be successful and enjoy popular support, it is essential to promote economic development in the country. The government moved swiftly to adopt the changes and amendments to the constitution as well as passing other legislative pieces that will strengthen its administrative functions. However, the process of liberalizing the business environment and improving the Georgian tax system has been comparatively slow. In March the President announced a so-called Tax Amnesty for businessmen according to which the businesses that would come forward before 1 April and duly pay previously hidden taxes to the State would not be prosecuted. However, there was not enough explanation of the relevant procedures and conditions for people to be able to understand and appreciate the reasons behind the amnesty. Many suspected the worst and abstained from revealing their past malpractices.

As for the tax system, the current commitment of the government is that the draft will be submitted to the parliament in June and adopted in September. It is expected to lower as well as simplify taxes and provide a suitable environment for the development of small, medium and large businesses. But since Georgia's 2004 budget was based on current tax regulations, the new Tax Code cannot be enforced until the next budgetary year.

The Tax Code of Georgia, adopted on 13 June 2004, is the principal law on taxation policy and administration. Other legislation regulating taxation includes the Administrative Offences Code, bankruptcy legislation, customs legislation, the Law on the Road Fund of Georgia, and the Law on the Medical Insurance Fund of Georgia.

The tax administration system is characterized by problems that seriously constrain the activities of private enterprises. Entrepreneurs complain about the complexity of the tax system, the lack of clarity in some aspects of the Tax Code. The sheer volume of taxes also places a heavy burden on businesses.

Tax laws are arbitrarily interpreted, leaving businesses unsure of their actual tax liabilities and vulnerable to corrupt deals at the hands of tax officials. Officials are motivated by the requirement to meet targets — often demanding prepayments — and the desire to supplement their low salaries with bribes. Lack of accountability on the part of tax collectors and a weak and unreliable appeals mechanism ensure that businesses remain at a disadvantage, unless they have connections ("umbrella") to protect them.

One of the most serious problems with Georgia's taxation system is its arbitrary administration, which is fed by ambiguities in the Tax Code, the emphasis on meeting targets, and corruption throughout the tax administration. These factors work together, enabling individual officials to interpret and apply the tax law to maximize their personal take. Businesses are perpetually unsure of their actual liabilities and are vulnerable to corrupt demands by tax authorities.

The language of the Tax Code is extremely complex. Provisions are not well defined, which enable tax authorities to interpret them differently. This leads to a system in which businesses are at the discretion of individual tax collectors who are not bound by clear norms and are not required to be consistent in their own assessments.

Businesses have reported the perception that they are dealing not with an institutional authority, but with individuals who have the power to assess high penalties, freeze accounts or take money from accounts. This vulnerability sets the stage for bribery and corruption.

The corruption of tax officials is essentially ensured by their low wages. Tax officials can make much more money by soliciting bribes. Businesses report that bribes are suggested in lieu of inspections and payments of penalties.

The system of taxation administration in Georgia is so problematic that it can be considered as one of the biggest constraints to business operations and it serves as the main impediment to eliminate corruption in the private sector. The flawed taxation administration system is a key contributor to the defective business environment and corruption.

The most serious problems in the tax administration system relate to the arbitrariness and inconsistency of tax administration policies and the poor enforcement of regulations. The pervasive institutional problems should be resolved by the tax reform. Changes must be made in tax administration directly, as well as in those aspects of the system that distort incentives for proper administration. Both donors and international financial institutions have assisted Georgia in tax policy and administration. USAID's Comprehensive Tax Department Reform Program includes restructuring of the Tax Department on a functional basis, human resources reforms, training, computerization, establishment of an internal audit unit, and development of a taxpayer education program.

The customs legislation of Georgia is based on the constitution and consists of the Customs Code, related laws, and subordinated legislative acts on specific issues such as valuation, tariffs and duties and clearance procedures.

Georgia's geopolitical situation and the effective lack of control of the borders with Abkhazia and South Ossetia pose an overwhelming challenge to the State Custom Department (SCD). This is further complicated by the lack of political will to implement change within the SCD. As a result, ongoing efforts to strengthen the SCD are stalled and frustrated, as various groups seek to protect their interests. The business community members in Georgia characterize the customs procedures as time consuming and highly discretionary.

In December 2000, a Customs Reform Committee was established and charged with the finalization of a customs reform and modernization strategy as well as an action plan for implementation. This program covered a range of issues including:

- internal organization of the Customs Department
- staffing
- remuneration
- performance management and accountability
- automation and modernization of operational procedures consistent with standard international practices
- introduction of internal/external control and audit procedures, and
- infrastructure.

Extensive technical assistance has been provided under a number of international and bilateral initiatives with the European Union, the United States, the World Bank, the International Monetary Fund and the United Nations.

The World Bank provided an administrative cost survey, which was comprised of questions about customs procedure (customs broker, customs clearance, storage at custom terminal, mandatory insurance). The objective was to quantify human, time and financial expenditures. The results showed that respondents needed on average 2-3 days to clear goods through customs, thus increasing the risk and cost of doing business in Georgia.

A comprehensive program of reform is required in order to effect change in the operation, effectiveness and integrity of the customs service in Georgia. The implementation of customs reform requires political will and commitment on the part of the responsible officials. The private sector should be consulted on the appropriate aspects of the reform process.

The Association of Young Auditors of Georgia together with journalists will conduct an independent investigation. The objective of this investigation is to reveal and give documented evidence that some officials of the regional tax inspection are involved in corrupt agreements with entrepreneurs and on the basis of bogus audit evaluations promote the non-payment of taxes as well as money laundering. Furthermore, these corrupt officials are themselves often the owners of audit companies or have a corrupt deal with the head of such a company and often go as far as to personally explain to entrepreneurs how to lower taxes.

Corporate Accounting and Auditing Standards

The Ministry of Finance is the state comptroller in the book-keeping and accounting fields. Its competence is to adopt the norms and rules of accounting for public legal entities, publishing relevant instructions and orders for implementation in practice.

The Commission of Accounting Standards functions within the Parliament of Georgia. Basically, it adopts international accounting standards translated into Georgian, maintains temporary accounting standards and the structure of accounting plan. All adopted standards and methods are satisfactory from an accounting perspective, but none is directly intended to address anticorruption activities. However, indirect methods of auditing have received little attention in Georgia, but which are effective tools for uncovering fraudulent activity, tax evasion and money laundering. The Association of Young Auditors intends to carry out training in indirect auditing methods for the officers of the Tax Inspectorate and other relevant institutions of Georgia.

The Board of Auditing Activities also functions within the Parliament of Georgia. It elaborates the methodological recommendations and auditing standards; licenses and registers auditors and auditing companies; and provides examination and determines the

qualification level of auditors. As the Commission of Accounting Standards, the Board of Audit Activities is also responsible to the Parliament of Georgia.

In some cases, the source of corrupt deals is the process of licensing. There are different types of auditing licenses: bank, insurance, stock market, special funds, investing companies and other economic entities. The license should expire after five years. According to our information, obtaining the license costs approximately USD 500. Under the reports of the Chamber of Control of Georgia, some audit companies have issued positive reports on the auditing performed at several enterprises. However, there have been many instances of fraud related to payment and tax calculations. The Chamber of Control has reported to the Board of Audit Activities and asked for termination of licenses of the mentioned companies, but the Board ignored the request.

The Board of Auditing Activities provides the attestation of auditors. The process of attestation is not transparent and its fairness is under question. The right to observe the process of qualifying examination is limited to the members of exam commission, who are appointed by the head of the Board of Auditing Activities on the approval of the chairman of the commission.

In Georgia the legal basis for accounting, book-keeping and auditing activity are the following laws: Law on Entrepreneurs, Law on Regulations of Accounting and Book-keeping and Law on Audit Activity. The rules of accounting and book-keeping equally concern all enterprises, except for the rules established for small enterprises. Such simplified rules are applied to small enterprises (except for joint stock companies) which have no more then ten full staff members and the profit of one fiscal year does not exceed GEL 40 000. The heads of entities are obliged to present an annual report (balance and profit-expense report) during the first three months after the end of the fiscal year, as well as a report concerning the activities of the enterprise; the authorities of small enterprises must provide the list of property and obligations and income-expense report [Law concerning Entrepreneurs, Article 13, 1994 (amended in 1996)].

The standards adopted by the International Committee of Accounting Standards were implemented by Georgian legislature. The standards define the competence and the powers of the state accounting regulating body — the Ministry of Finances cooperates with the Commission of Accounting Standards at the Parliament of Georgia on independent professional accounting organizations on these issues.

Joint stock companies, LTDs, LLPs, joint responsibility societies and cooperatives, banks, insurance companies and intermediary companies in the insurance industry must conduct accounting and financial book-keeping in accordance with international and temporary standards of accounting; small enterprises and non-commercial legal entities have the right to conduct accounting and financial book-keeping in accordance with these standards [Georgian law on Law on regulations of Accounting and Book-Keeping, 1999 (amended in 2000)].

Georgian law concerning auditing activity determines the legal basis for and regulates matters related to auditing activities in Georgia and is applied to all auditing inspections of enterprises. Under the law, auditing inspections are obligatory for those economic entities (enterprises), the organizational-legal form of which requires limited property liability of owners, for banks, insurance companies, non-budgetary funds, stock and commodity markets, stock eminent, investment institutions, and other persons the list of which is approved annually by the Ministry of Finance. The mentioned enterprises are responsible to inform the tax inspection by 31 December of each fiscal year about the contract concerning auditing services. The audit evaluation is filed to the tax inspection authority together with the annual book-keeping reports. The audit evaluations of special state funds and other persons, defined by the Ministry of Finance, must be filed to the Ministry of Finance.

The audit expenses are to be covered by the initiator of the audit. The economic entities have the right to choose an auditing company. The content and the conditions of the contract set between the entrepreneur and auditing company are confidential. Auditors are independent of their clients and third parties, including state bodies and owners and heads of auditing companies where they are employed [Law of Georgia concerning auditing activity, 1995 (amended in 1997, 1999)].

There are also independent professional accounting organizations the competences of which are as follows: interpretation of international accounting standards; development of temporary accounting standards; improvement of accountant skills and professional licensing. These organizations are less engaged in the legislative process.

Very often auditing companies, in exchange for money, encourage the heads of enterprises to hide income and thus decrease the amount of taxes they have to pay. These so-called "independent auditors" give positive evaluations without any inspection for as little as USD 30-100.

The Criminal Code of Georgia does not consider punishable such acts as issuing false auditing reports. Fines are not differentiated for large, medium and small enterprises for the violation of terms of filing the declarations as well as the accuracy of the given information. The Administrative, Tax and Criminal Codes of Georgia promote corrupt agreements in this sphere and need immediate amendments.

Access to Information

The Freedom of Information Chapter of the General Administrative Code of Georgia regulates the principles of accessing information from state and local government institutions. This Chapter also states the regulations related to the secret information and classified information.

In order to obtain public information Georgian citizens are authorized to submit a request (preferably written) to a public agency (the term defined by the General Administrative Code covers all state institutions, ministries, etc). A public agency shall

release public information immediately or not later than ten days (the conditions are further stated in the Code).

If access to public information is denied, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint. The agency shall also specify the legal reasons for the denial. The negative decision must be sufficiently justified.

Public information kept by a public agency shall be entered into the public register.

In accordance with Article 36 of the General Administrative Code, a public servant responsible for accessibility to public information should be appointed. Some agencies that have to perform exceptional activities (for example, when agencies are asked to release a large extent of information), apart from designating a freedom of information (FOI) officer, establish a special unit authorized to release public information. In practice, public relations units are created to carry out the FOI related functions of agencies. Unfortunately, there still are many public agencies where a public servant/unit is not yet appointed/established. In such cases, interested persons can turn directly to the head of the agency. Unfortunately in most cases, even if the public servant is appointed, the decision as to whether or not to issue public information is still made by the heads of agencies.

Present legislation envisages that media representatives and ordinary citizens (any natural or legal person) have equal rights to request public information from state and local government institutions or other public agencies. Sometimes, in practice, journalists and NGOs receive more privileges than private persons.

The present government has decided to start a new wave of reforms against corruption and a strategy document will soon be adopted. One of the main spheres of governmental activities will be to promote anti-corruption initiatives.

One of the most important aspects of public awareness in terms of fighting corruption is the transparency of the activities of public agencies. The awareness of public servants is increased with respect to releasing public information. Although due to recent political changes, many public officials previously trained have left their positions and there is thus a great need in improving their skills in order to increase the effectiveness of the work done. It is worth mentioning that citizens, journalists and representatives of NGOs are more aware of their rights concerning the procedures for requesting information. It is a well-known fact that FOI Chapter is one of the best-implemented laws in Georgia, which is conditioned mostly by the special interest of diverse donors.

Recent work undertaken by the Georgian NGO United Nations Association under its IRIS/USAID-funded project "Promotion of Implementation in Public Institutions of the Freedom of Information Chapter of the General Administrative Code" has revealed a number of problems in citizen access to information.

- Low level of awareness of public servants, some of whom have never even about the existence of the Code or its Chapter on Freedom of Information. Many are not aware of the deadlines set by the legislation for provision of information;
- Lack of regulation on the cost of copies of public information, which has frequently impeded citizen access;
- Lack of guidance by public officials about what type of information should be regarded as a personal secret.
- Non-appointment or unclear responsibilities in many public institutions of the officer responsible for provision of public information.
- Incomplete registers where, for example, oral requests for information are not recorded.

A wide public campaign is being launched to raise public awareness among Georgian citizens in regard to freedom of information. On the one hand, implementation and popularization of FOI Chapter of the General Administrative Code is supported at the state level through the Presidential Decree N°95 issued on 15 March 2001 on Some of the Prior Anti-Corruption measures. On the other hand, there are diverse NGOs and international organizations in Georgia contributing to the promotion of the aforementioned issues, such as USAID and its partner organizations (IRIS, Urban Institute, NDI, etc). Due to their activities, particularly the elaboration of legal amendments, funding of projects, conducting seminars, workshops and trainings, publishing leaflets, guidebooks and other undertakings, the awareness of public servants is increased with respect to releasing public information. It is also worth mentioning that citizens and journalists are also better aware of their rights concerning the procedures for requesting information.

Private Sector Initiatives and Civil Society Involvement

Fighting corruption is a cross-cutting theme of civil society activity. As the problem of corruption in Georgia is multi-faceted and intertwined with other political and economic problems, it is difficult to determine precisely what can be deemed as "anti-corruption activities".

Civil society analysis of the phenomenon of corruption tends to focus on three dimensions. Many civil society actors see current levels of corruption as the outcome of a weak state and its inability to enforce the rule of law. The formulation of many laws provides gaps and loopholes that allow corruption by patronage clans, often in league with public officials. Finally, citizens who are unaware of their rights are easily exploited.

Civil society anti-corruption efforts may therefore be classified under three broad approaches: 1) promoting transparency in State bodies; 2) legal and administrative reform; and 3) citizen rights awareness and protection. This report provides examples of

these approaches but in no way constitutes a comprehensive inventory of civil society efforts.

Promoting transparency and accountability is a major area of civil society anti-corruption efforts. This includes monitoring and publicising the activities and budgets of government institutions, and investigative journalism and whistle blowing. Some notable examples of this approach are listed below

- *NGO watchdog activities:* Eurasia Foundation and Open Society Georgia Foundation provided grants to six regional NGOs in September 2002 to implement these activities aimed at reducing corruption and increasing transparency in local government by raising public awareness and involvement in government decision-making. One NGO in Akhaltsikhe responded to citizen complaints by rushing to the scene of an attempted bribe to film the incident. Another NGO found a budget line for school heating hidden in the Kutaisi city budget, and ensured its proper disbursement. A newspaper in Poti regularly exposes city officials' corrupt acts.

- *"60 Minutes":* this popular weekly television program aired by Rustavi 2 often features investigations into corruption issues. After accusing the Minister of Interior of corruption in April 2002, the Minister tried to close down the station. Due to massive public protests, Shevardnadze dismissed his entire government, including the Minister. The program has received an award from International Reporters and Editors;

- *Government budget monitoring:* the Young Economists of Georgia Association specializes in helping local government bodies to develop budgets, negotiate fund transfers from the central government, and to facilitate citizen oversight of budget management. The association has conducted successful activities in the cities of Zugdidi, Kutaisi, and some central ministries.

- *Election monitoring:* major election monitoring efforts have been mounted by the International Society for Fair Elections and Democracy, and by the Georgian Young Lawyers Association. These NGOs have the right under the Unified Election Code to place observers in any polling station, to monitor vote counting at any level, and to file complaints with the courts. ISFED filed over 400 cases following the November 2003 parliamentary elections.

- *Investigative journalism support:* IREX, Liberty Institute and the Caucasus School of Journalism and Media Management conduct activities and training to advance journalists skills and the pursuit of investigative journalism.

- *Promotion of public meetings and budget discussions:* these include several organizations, including the Urban Institute and a number of sakrebulo (local council) associations.

- *Political party accountability:* some NGOs have programs to publicise parliamentarians' voting records, and to hold political parties accountable for

their election promises or their voting records. Liberty Institute's new program "Toward Public Accountability in the Energy Sector" will track politicians' statements and votes on a specific issue.

Another major area of civil society involvement is in promoting legal and administrative reform. Such programs range from assisting government agencies in implementing legislation and training public servants, to monitoring and criticising government performance of its obligations. Examples include those listed below.

- Judicial reform, supported by ABA, includes technical assistance to the Ministry of Justice in developing a modern public register electronic format and personnel training.

- Review of implementation of the Freedom of Information Act. This project, implemented by the United Nations Association of Georgia with funding from IRIS, revealed poor implementation of this section of the Administrative Code, hindering citizens' access to information. These included: 1) a low level of awareness of public servants' of their obligation to provide information upon citizen request; 2) lack of regulation on the cost of copies of public information; 3) confusion about what type of information should be regarded as a personal secret; 4) non-appointment or unclear responsibilities in many public institutions of the Officer Responsible for Provision of Public Information; and 5) incomplete registers where, for example, oral requests for information are not recorded;

- Promotion of Application of the Administrative and Criminal Codes in the Autonomous Republic of Adjara: this project undertaken by the Young Scientists Union of Batumi, aims to ensure citizens' access to public information, and access to the courts and due process when they bring a complaint against a government body. The project combines training of officials and citizen awareness;

- "Ten Steps Toward Democracy": a large number of Georgian NGOs signed a document calling for reforms in ten areas. Several of these address corruption directly, such as "Pass a law on expropriation of groundless property and income of State officials", "Strengthen guarantees for safety of private property", and "Grant financial and administrative independence to educational institutions". NGOs use this document in negotiations with political parties, and several parties have signed onto the program;

- NGO Anti-Corruption Coalition: on 19 September over 20 organizations signed a Memorandum of Understanding with Georgia's Anti-Corruption Bureau, to work together to implement the ACNET Anti-Corruption Action Plan. The NGO coalition is composed of a broad range of international and national NGOs, and currently includes two regional coalitions based in the cities of Gori and Kutaisi;

Citizen rights awareness and protection is a third category of civil society anti-corruption efforts. Examples of such efforts include the following.

- Clarifying licensing procedures for businesses: with IRIS support the Young Economists Association is designing a guidebook to help business people obtain licences and permits for the manufacture of food and tobacco products;
- Legal aid to citizens: notable examples of these efforts include GYLA's mobile legal clinics, supported by IRIS. These clinics serve disadvantaged citizens in poor urban neighbourhoods;
- Civic education: many NGOs have civic education programs, including visits to Parliament and the courts, school textbooks, awareness programs, youth parliaments, and other activities. Examples include the Association for Legal and Public Awareness, IFES, Norwegian Refugee Council, International Center for Civic Culture, and others;
- Voter education: many international and local NGOs implemented voter education programs prior to the 2003 parliamentary elections, including IFES, ISFED, Mercy Corps, CARE, Transparency International Georgia, and IREX.
- Public opinion research and formation: Transparency International produces its annual Corruption Perception Index, where Georgia generally features close to the bottom of the list. A 2002 national public opinion survey, "Public Attitudes Toward NGOs", conducted by the Centre for Strategic Research and Development of Georgia found that combating corruption was the number one public expectation of NGOs (48.7%).

Political Party Financing

In the summer of 2003, the Anti-Corruption Council of Georgia with support of Council of Europe initiated a political financing transparency campaign, which consisted of seminar of political parties, NGOs and media on the issues, travel of political parties and media representative to Strasbourg for the training and weekly meetings of this group. Each party had to present their campaign spending in a particular format for public discussion.

Only two of parties managed to fill out these forms on some point, but even in those cases it was impossible to verify the reliability of the figures. Political representatives spent most of the meetings on blaming each other for the different abuses and falsifications. As a result no official document has been published.

Criminalization of Corruption

Concept and Definition of a "Public Official"

Georgian legislation does not provide exact and clear definitions for the terms of public official and persons equal thereto. The Law on Civil Service is confusing from the viewpoint of producing a comprehensive definition of public official. The Criminal Code does not explain who can be considered as a public official and person equal thereto for crimes envisaged by clauses 322-342.

The definition of a public official can be considered of utmost importance for the further deduction of either its legal status and its overall capacity, or its legal liability. From this viewpoint, Georgian legislation is full of vagueness and inaccuracies that is mainly caused by inconsistency between the terms of public official offered by different laws.

Law on Civil Service defines four basic types of civil service employees. They are:

- state-political official;
- public official;
- technical employee working on labour contract basis; and
- employee working on either labour contract basis or appointed for a definite period of time for accomplishment of non-permanent objectives.

According to the same law state-political officials are: the president, member of parliament, member of government, members of representative agencies of Adjara and Abkhazia (Georgian autonomous republics), members of governmental agencies of Adjara and Abkhazia, and heads of government agencies of Adjara and Abkhazia. Public officials are persons elected or appointed to established posts in state agencies.

The Criminal Code views state-political officials and public officials and persons equal thereto as subjects of the crimes related to corruption. It is interesting that the legal status of those two remaining types of employees, in cases of corruption-related infringements by them, is not clearly defined by law despite their influential role in shaping public policy and in delivering public goods and services. Furthermore, there is no legal piece identifying the persons who could be equal to public officials. This loophole provides a great possibility for the law enforcement system representatives to interpret the term of "person equal to public official" freely and realise their discretionary powers in this sort of case where they are prone to commit corruption-related crimes themselves.

Georgian legislation does not include any provisions of delegation of state authority, but there are huge cases when commercial enterprises by means of privatisation or administrative contracts deal with administration of public goods and

services. At the same time, criminal liability of legal persons is not stated in the Criminal Code. As for the cases of equalisation of officials of legal persons with public officials given in the Criminal Code, during our research we could not obtain any of them from the law court materials.

The Law on Conflict of Interests in Civil Service and Corruption specifies a set of public officials having disciplinary, administrative or criminal liability for corruption related offences. Unfortunately, the list is not and cannot be exhaustive because each administrative agency has a different structure and therefore is staffed by officials with different functions and authorities, and who are prone to corruption as well.

The term of an international public official is not used in Georgian legislation. The Parliament of Georgia has not ratified yet the OECD Convention on Combating Bribery of Foreign Public Officials (1997). Consequently, the Criminal Code does not criminalize corruption-related actions committed by international foreign officials.

Georgian legislation has to provide exact definitions of public official and person equal thereto that are subjected to disciplinary, administrative and criminal liability.

Immunities

Parliamentary Immunity

Until April 2004 Article 52 of the Georgian Constitution defined the immunity as follows: "*Criminal prosecution of a MP, his/her detention or arrest, the search of his person, place of residence, car or workplace is allowed only at the Parliament's permission, except when caught red-handed. In such a case, Parliament must be notified immediately. If Parliament does not agree to the Member's detention, he/she must be released immediately. The General Prosecutor of Georgia brings the proposal on the above-mentioned actions against an MP to the Parliament. The discussion of the issue and decision-making procedures is determined by the Parliament's internal regulations*."

The present definition of the immunity status found in the Georgian Constitution can be explained by the historical background. The Parliament of 1992-95, which adopted the present Constitution, dealt with the problem of withdrawal of the immunity status on several occasions. The immunity status was active at that time; however, under the previous formulation of the immunity status it was still possible to arrest an MP if he was caught red-handed without the consent of Parliament. In this way, several MPs were arrested and the opposition despite great efforts was not able to free them. That is why the new Constitution amended the former immunity status and now the consent of the Parliament is necessary in order to arrest an MP.

The attitude of the population towards the issue varies. Some believe that the present immunity status is perfect and does not require any changes; some believe that

the immunity granted to the MPs is too wide and should be limited, and others argue that immunity facilitates criminalization of politics and should be abolished.

It should also be mentioned that in 1999-2003, 14 immunity withdrawal proposals were brought before Parliament. Ten out of 14 cases concerned high level crimes. However, not a single case resulted in the withdrawal of immunity.

Transparency International implemented a study on Parliamentary immunity in July-October 2003. Interviews were conducted with both current MPs and with candidates for the upcoming parliamentary elections. The Parliament Immunity Status Survey Report is available at www.transparency.ge in Georgian and in English.

Findings of the survey support the hypothesis that most MPs believe that immunity is necessary for the implementation of their duties, but at the same time provisions of this status should be changed and limited due to the fact that immunity is often used as a shield from criminal prosecution.

From the results it can be seen that 46.03% of the current MPs believe that immunity status is necessary for an MP to fulfil his duties, 24.87%, believe that immunity is not necessary but desirable, and 29.10% state that immunity status is not necessary at all. However, it is very interesting to note that although a great number of MPs consider immunity to be necessary, the majority (61.38%) believes that the current formulation of immunity needs to be changed. It is also important to compare the responses on the first and third questions. Although the majority of MPs surveyed (75.13%) believe that MPs often use immunity status as a means of avoiding criminal responsibility, the majority consider immunity to be necessary. Finally, despite the above-mentioned responses on the third question, the majority of the MPs surveyed (80.95%) still believe that in the event of committing a crime, MPs should have privileges as compared to the ordinary citizens.

The results showed that the majority of candidates surveyed (53.31%) believes that immunity status is desirable, but not necessary; however, the great majority of them (78.46%) believe that the current formulation of the immunity status needs changes. Despite the fact that the majority of the candidates surveyed (84.38%) believe that the MPs often use the immunity status in order to avoid criminal responsibility, still the greater number (95.38%) state that the MPs should have privileges compared to the ordinary citizens.

After the elections of March 2004, the new ruling party National Movement/Burjanadze/Democrats implemented their promise and adopted changes to the Law on Parliament Members. Parliament must now approve not the releasing of immunity, but the keeping of it. As a result, if a prosecutor presented evidence of the guilt of the person, Parliament can vote to stop or continue with prosecution.

Confiscation of Proceeds from Corruption

Georgian legislation does not envisage confiscation as a basic or additional criminal punishment. Confiscation was abolished in 1997 pursuant to a decision of the Constitutional Court of Georgia that stressed the unconstitutional character of confiscation as a punishment contradictory to the absolute right of ownership enshrined in the Constitution. According to the Constitution deprivation of property is admissible in the case of public necessity followed with appropriate reimbursement. Unfortunately, this provision has caused the disappearance of procedural confiscation in Georgia. From a global perspective the decision stimulated indirectly corruption-related crimes that in turn led to the development of systematic corruption and political instability.

The Criminal Code still includes a provision on the possibility to forfeit instruments of crime in addition to general criminal punishment (Criminal Code, article 41). Forfeiture is viewed as a provisional measure but only for the Breach of Customs Regulations (Criminal Code, Article 214). Forfeiture of proceeds from a crime is not included in the provision about forfeiture, notwithstanding its organic relation to the crime instrumentalities. The court dealing with a particular criminal case resolves forfeiture matters where it uses broad discretionary powers in interpreting the following indefinite terms given in the Criminal Code (Article 52): state and public necessity, interests of defence of particular persons' rights and freedoms, and objectives of crime prevention. Forfeiture is not indicated among the sanctions of corruption-related crimes of public officials.

In the Criminal Procedure Code there are some elements of procedural confiscation, but they are vague and incomprehensive and do not produce an effective mechanism for deprivation of unlawful property. In particular, there is no formal definition of procedures, circumstances and way for its use, eligible persons for its enforcement, etc. The concept of temporary deprivation of property in terms of seizure is not highlighted in the Criminal Procedure Code.

At the same time the Criminal Procedure Code provides provisional measure for confiscation and seizure by instituting freezing concept much more satisfactorily than others. Chapter 24 of the Code's (Articles 190-201) is dedicated to freezing where the following issues are regulated: objectives and reasons for freezing, restrictions of ownership while property is frozen, property that cannot be frozen, petition about implementation freezing and rules for its review, decision of the judge and court decision on freezing and rules for its implementation, record about freezing, storage of frozen property, and restitution of property in cases of rehabilitation of convict or accused person.

Evidence such as instrumentalities and proceeds from crime, after their recorded assessment by the respective agency, can be frozen. Hence, freezing of instrumentalities and proceeds from corruption-related crimes is possible, but there have been no such cases in reality. If frozen property has any value they are subject to procedural confiscation, but the law does not regulate issues concerned with it. This is why freezing loses its role and objectives.

for the reimbursement of damages caused by a crime the Criminal Procedure Code envisages the possibility of civil litigation next to the criminal one. Thus an interested person can be both a civic and a criminal litigant at the same time. Dual litigation does not seem to be a reasonable way for dealing with crime and compensation for its consequent damages, due to the high costs of procedure (time and financial resources) for the parties involved. When it is impossible to deal with a criminal case, the duty for reimbursement for damages is carried by the State, although this provision will come into force in 2005 only. Until then, tithe person must defend his rights and accomplish legal acts himself.

Unfortunately, the vast majority of the current Georgian Parliament (1999-2003) has opposed any attempt of particular MPs to amend the Criminal Code and Criminal Procedure Code in relation to confiscation of proceeds of crime and to regulate confiscation issues properly according to the relevant International Agreements and Acts Georgia has signed. This fact stresses the weak political will to elaborate anti-corruption mechanisms.

According to the data on legal cases, there is no case of corruption-related crime involving a public official where procedural confiscation was used. It should be taken into consideration that only a very small percentage represents the cases of registered and investigated corruption-related crimes.

Liability of Legal Persons

Civil Liability

The existence of independent property, one of the main characteristics of a legal person, is directly connected to the civil responsibility of a legal person. The property of a legal person (even in the cases where public legal persons are involved, the only founder of which is the State) is involved in the cases of property liability. A legal person is liable to its creditors only by its property and not the property of its members. This means that the organization is responsible for its obligations with respect to third persons.

The Georgian Civil Code does not exclude, however, the possibility for the civil liability of legal persons. In the cases where the authorized representative of the organization fails to lead the organization in goodwill, the breach of such obligations may be the basis of liability; in other words, if the organization was damaged due its authorized representative acting in bad faith, this person is liable to pay damages to the organization.

Administrative Liability

Administrative liability is a means of responsibility which is used against the person who breached administrative law, in order to make him or her follow the laws

and common rules, and to prevent the violator and other people from committing further violations in future.

Natural as well as legal persons will face administrative liability in cases where there is a wrongful culpable act or omission which violates state or public order, property, civil rights and liberties, or the established system of governance, and for which legislation establishes administrative liability and if these violations due to their character do not call for criminal responsibility in accordance with the current legislature.

Administrative liability (fine) in the case of legal persons will arise for the following violations: the breach of trade law by entrepreneurial persons (trade with food and non-food products, trade with beverages, the rules for keeping and distributing oil, production of excise products without excise, illegal reproduction of an original piece, phonogram or video gram, falsification, illegal use of brand, abuse of consumer rights, illegal use of marks of ecologically safe products), the violation of rules concerning ordering, production and dissemination of advertisements, the non-fulfilment of duties of responsible persons of the anti-monopoly service, the non-availability of relevant information stipulated by law to the anti-monopoly service, the violation of industrial rules, the violation of rules concerning tax-payers registration in the state tax-collecting bodies, the non-procurement of documents concerning income and expenditures, lowering of taxes, incorrect accounting and the non-provision of relevant documentation to the tax-collecting bodies, the non- respect of demands of officials of the tax-collecting bodies, the violation of customs control regime, declaration rules and customs law (in case if the act does not have signs of criminal activity), breach of rules regulating organization, and conduct of public gatherings and manifestations.

Criminal Responsibility

In Georgian criminal law the subject of a criminal activity is a natural person. According to the criminal law code the basis of criminal responsibility is a crime or wrongful culpable act committed by natural person against the property protected under criminal law.

As to the matter concerning corruption Chapter 35 of the Criminal Code considers crimes committed by civil servants in Articles 338-339 for acts of active and passive bribery. According to Article 333, the abuse of power by a civil servant or person equal thereto which caused injury to natural or legal person, society and the State, gives rise to criminal responsibility.

The organic law on Suspension and Prohibition of the activities of Civic Associations determines the sanctions against civic organizations for the actions defined in chapter 37 of the Criminal Code. According to Article 4 of the above-mentioned law, the court will suspend/terminate the actions of those civic associations which aim at the overthrow of the constitutional order or changing it by forceful means, endangering the sovereignty of the country, violates of territorial integrity, uses propaganda of war and

force, or facilitates national conflict. This does not exclude the criminal liability of natural persons who are the members of the organization.

Investigation and Enforcement

1. Distribution of powers and responsibilities among police, prosecutor [and investigative magistrate] in the investigation and pre-trial stage of criminal proceedings.

2. Mandatory versus discretionary prosecution.

3. Investigative capacities.

4. Organized crime and corruption.

Definitions

There is no legal definition of organized crime in the Criminal Code. It is a kind of a group crime with an organizer. Article 24 Part 1 of the Criminal Code provides that the organizer is the person who organized the crime or led to its commission, or who created or led an organized group.

Article 27 Part 2 of the Criminal Code provides that the crime is committed by direct intent by an organized group if the persons taking part in the crime were united with the intent to commit an offence.

Part 3 of the same article provides that an organized group commits a crime if it was committed by a strongly interrelated group of persons who get involved with each other with the intent to commit a crime.

Any kind of crime may be committed by an organized group, including bribery, as implied in the Criminal Code.

The Ministry of Internal Affairs has a department to fight against organized crime, but its capacity does not include the duty to fight against corruption. This is the responsibility of the Department to Fight against Economic Crimes of the same Ministry.

Organized Crime and Corruption as Related to Smuggling Through Abkhazia and South Ossetia

In the conflict zones of Abkhazia and South Ossetia, well established smuggling networks emerged and which is comprised of corrupt officials, law enforcement structures and criminal groups from both sides (Georgian-Abkhazian and Georgian-Ossetian), Georgian guerrillas, Russian peacekeepers, and an impoverished and marginalized part of the population (first of all IDPs, refugees, and people residing in conflict zones).

The smuggling networks in Abkhazia and South Ossetia increase the crime rate, create corrupt economic interests in powerful political groups, and contribute to the existing political status quo. Groups in power benefit both financially and politically. Smuggling and conflicts are the two pillars which help political clans inside and outside Abkhazia and South Ossetia to control material and coercive resources, limit democracy, and keep political power for an indefinite time. In Abkhazia, Vladislav Ardzinba's (*de facto* President of Abkhazia) clan controls the entire shadow economy in the republic. In South Ossetia, clan control of both illegal and legal businesses prompted Eduard Kokoity's (*de facto* President of South Ossetia) crackdown on the groups in power. In the rest of Georgia, some high ranking officials from the legislative (members of parliament) and executive branches (the officers of law enforcement structures, officials of State Chancellery representatives of regional and district government structures) participate in and/or protect contraband business.

Criminal groups in both regions are flexible and quickly build criminal networks which are often internationalized and bring in representatives from the conflicting sides. Examination of the situation in Abkhazia and South Ossetia confirms this general trend, and any observer can easily see how successfully Georgian, Abkhaz, and Ossetian criminal groups and law enforcement bodies cooperate in smuggling in Abkhazia and South Ossetia.

Smuggling would be impossible if there were no criminal networks that link various criminal groups with corrupt officers of law enforcement bodies and government officials through systems of bribery and/or direct participation of the latter. Criminal groups operate in the Gali district and Kodori Gorge of Abkhazia, and in the Zugdidi district of Samegrelo. There are also Georgian and Ossetian criminal groups in Tskhinvali and Gori that are part of the smuggling networks that control and implement different contraband operations in the Ergneti market, the transhipment point of smuggled goods. These groups collaborate with each other regardless of their ethnic origins and political orientation. They have different, sometimes paradoxical, partnerships with other criminal groups, law enforcement bodies and governmental structures (or individual government officials) in other parts of Abkhazia, South Ossetia, and Georgia. Various illegal (drugs and arms) or legal goods (fuel, cigarettes, scrap iron, timber, flour and nutrition products), which flow from Russia, Turkey or any other country through the territory of Abkhazia or South Ossetia to Georgia, or in the opposite direction, are protected through a system of bribes and "roofs"[1] (krisha) of influential government officials outside and on the secessionist territories. Some of the organized criminal groups controlling the trade turnover of the Ergneti market in South Ossetia have patrons in the State Chancellery of Georgia and Ministry of Internal Affairs. Some Georgian guerrilla groups controlling the flows of contraband goods through Abkhazia are allegedly closely related and protected by the legitimate government of Abkhazia in exile.

---

1. A "roof" is a patron/protector usually associated with a representative of a governmental organization that protects criminal activity.

An example is the smuggling of fuel across the ceasefire line in Abkhazia: Abkhazian armed formations convey the contraband fuel through middlemen to Georgian guerrillas or Georgian law enforcement structures who then convey the smuggled goods into the Samegrelo region. Russian peacekeeping forces do not need middlemen or a chain of custody comprising Georgian or Abkhazian armed formations, and deal in the contraband themselves. In some cases, the Russians receive the share/bribe from the flows of smuggled goods across the cease fire line. The shares from the realization of smuggled goods also reach and are distributed among the structures of the central government in Tbilisi, including the government of Abkhazia in exile.

Abkhazia is divided into four areas controlled by four criminal groups. The group of Western Abkhazia controls the transportation of oil, tobacco and nutrition products, and is partially involved in drug smuggling to Russian territory. The Gagra group (mainly local Armenians) controls timber export and is complicit in drug production and trade. The Gudauta group (mainly Abkhazians) is totally involved in the drug business and supervises drug exports. The Chechen-Abkhazian group controls the eastern zone of Abkhazia. Turnover of goods across CFL, the Sukhumi railway station, transport routes and entrepreneurial activities in the eastern part are also under their control.[2] It should be noted that the distinction between official security and police forces, criminals, and various armed formations is totally blurred in Abkhazia and in South Ossetia.

Georgian guerrillas have a dual role: a) a political role that causes them to fight the Abkhaz, and b) a criminal role that creates an incentive for them to cooperate with Abkhaz militia and criminal groups. Those armed formations fight because for both political and criminal reasons. The latter could be promoted by disagreements on division of spoils. It is arguable that the guerrilla activity might be motivated by both criminal and ideological zeal combined in one campaign. Both reasons give them the excuse and justification to keep their weapons and control smuggling. Georgian and Abkhaz criminals operate together and often cooperate in robberies, looting and, most importantly, smuggling.

The activities of crime groups in South Ossetia and the district of Gori are also closely connected to smuggling. The most important representative, Robota, of the organized crime groups controlling Ergneti market was seized by law enforcers in August 2003. He had extensive links with Ossetian criminal groups and Georgian police officials. Robota's groups closely cooperated with the Ossetian criminal group headed by Alan Dzigoev; they were jointly involved in illegal trade operations as well as controlled the business of illicit car trafficking in South Ossetia. Robota's group even had a legal cover – Express Service Ltd – that was offering the safe escort of illegal goods in exchange of remuneration for their service.[3] A well established kidnapping network can be linked to Alan Dzigoev's group. The groups of Marek and Erik Dudaevs are among Ossetian

2. Report by V. Khaburdzania, Minister of State Security on the activities implemented in 2002, http://www.sus.ge/#. This information was also confirmed by various Russian internet sources.

3. For instance, the price for escort of contraband flour to Mtskheta (nearby Tbilisi) was GEL 800, or less than USD 400.

criminals who frequently attack civilians and representatives of law enforcement bodies on territories controlled by Georgians. This group is untouchable from the Ossetian side; it acts publicly before peacekeepers and is involved in drug trafficking.

It would be a mistake to speculate that law enforcement bodies are entirely connected to criminal groups and smuggling networks even though many facts prove that some representatives of law enforcement bodies are involved in smuggling. In conditions where salaries are symbolic and there is a total lack of responsibility for violations of human rights, the "law enforcement" bodies of Georgia use their power for personal enrichment and the cruel oppression of any public protest. It appears that the smuggling network operates with the indirect (receiving various shares/bribes from illegal trade turnover) or direct (escorting illegal freights) participation of law enforcers.

All the main actors (law enforcement bodies, criminal groups, and Russian peacekeepers), particularly in the Gali and Zugdidi regions and in the Ergneti market, along with their links to other groups or individuals, compose a smuggling network which successfully operates and expands its influence, involving more and more poor people in the contraband trade.

The July-September 2003 anti-smuggling operation of the Government of Georgia was not effective and could not bring significant additional revenues to the state budget, in that it only concentrated on administrative measures against petty illegal traders and did not bring criminal cases against big wholesale smugglers.

The improvement of legislation, institutional reforms, training of personnel, creation of computerized systems of control and information, and a new style of management coupled with criminal penalties (including confiscation of means of crime and asset forfeiture) and administrative measures against big wholesale smugglers, organized crime groups, and corrupt governmental and law enforcement officials would be useful for the fight against smuggling.

International Aspects

By different provisions of the Criminal Procedure Code and remedial legislation, the public prosecutor has the right to make a decision on extradition. Such decision is final and may not be appealed.

Article 42 of the Constitution was applied to Chechen refugees who were to be extradited. We brought a suit before the district court against the public prosecutor's decision on the basis of the European convention on human rights. The district court denied the request because of the aforementioned provisions. The organization appealed this judgment before the High Court of Georgia. On 28 October 2002 the high court issued a precedent by which the person concerned has the right to appeal both the public prosecutor's decision and court instances.

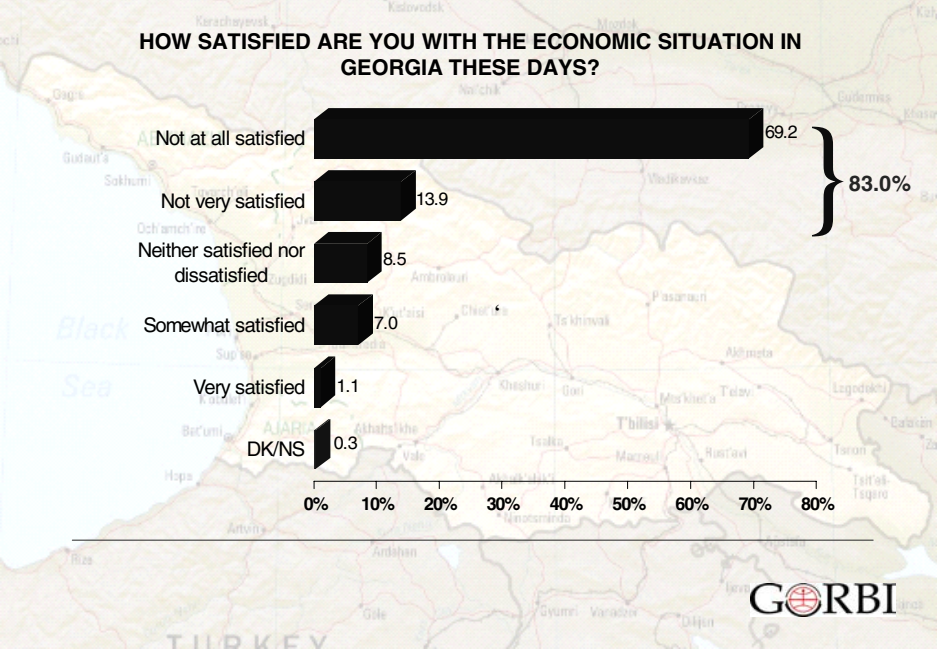
Annex 2

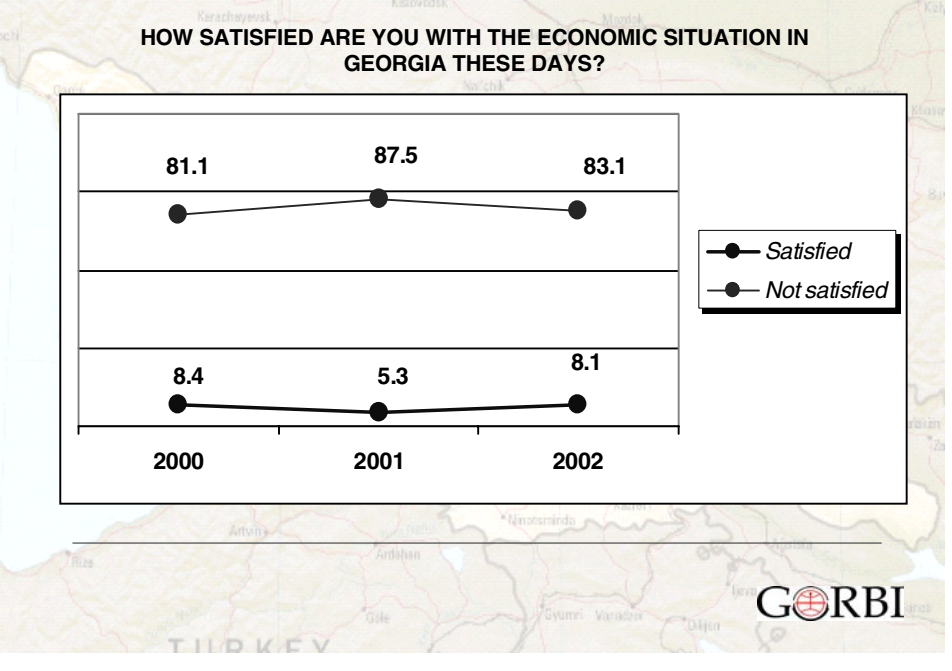
CORRUPTION SURVEY IN GEORGIA – SECOND WAVE: JUNE 2002

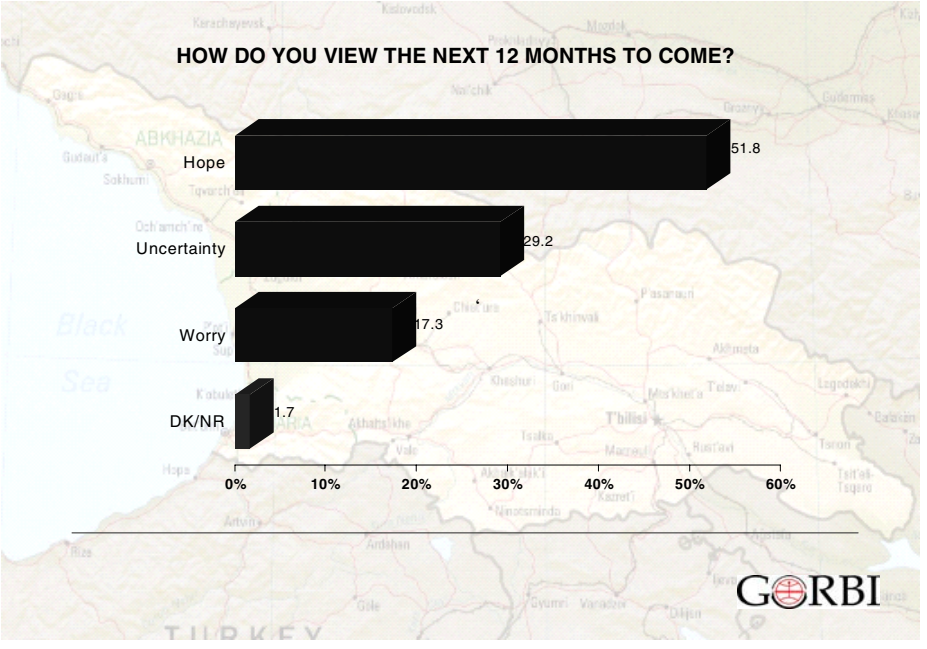
PROJECT CHARACTERISTICS

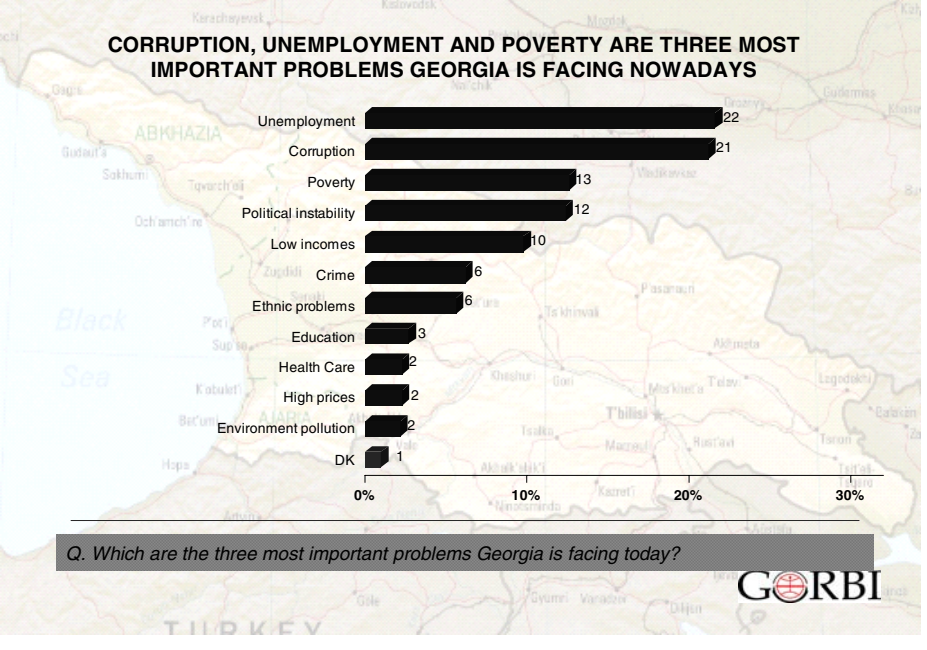
- This survey was conducted and sponsored by Georgian Opinion Research Business International (GORBI)
- Carried out through one-to-one interviews
- Sample size (N) = 1,000 respondents
- Conducted in 15 principal regions throughout Georgia (including both urban and rural areas)
- Employs a nationally representative sample through multi-stage random probability sampling of the Georgian adult population (age 18+)
- Conducted by GORBI's own experienced team of local interviewers and supervisors
- Processed / analyzed in Tbilisi at GORBI's office
- Field work was carried out in June
- In East Europe countries the project was funded by USIAD, and the project coordinator was VITOSHA Bulgaria.

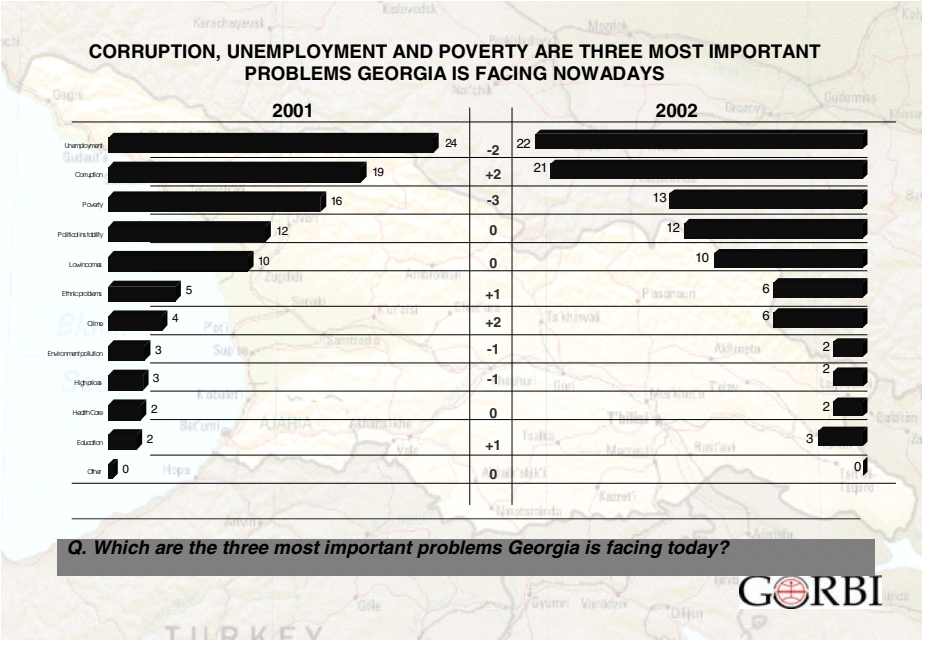
GORBI

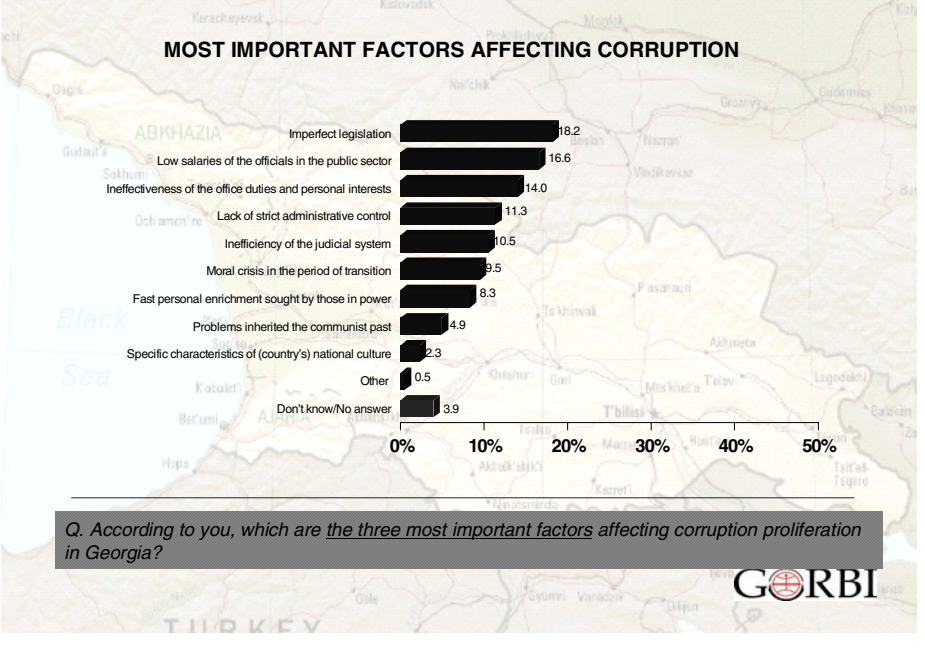

HOW SATISFIED ARE YOU WITH THE ECONOMIC SITUATION IN GEORGIA THESE DAYS?
Not at all satisfied
69.2
Not very satisfied
13.9
Neither satisfied nor dissatisfied
8.5
Somewhat satisfied
7.0
Very satisfied
1.1
DK/NS
0.3
83.0%
0%
10%
20%
30%
40%
50%
60%
70%
80%
GORBI


HOW SATISFIED ARE YOU WITH THE ECONOMIC SITUATION IN GEORGIA THESE DAYS?
81.1
87.5
83.1
8.4
5.3
8.1
2000
2001
2002
Satisfied
Not satisfied
GORBI


HOW DO YOU VIEW THE NEXT 12 MONTHS TO COME?
Hope
51.8
Uncertainty
29.2
Worry
17.3
DK/NR
1.7
0%
10%
20%
30%
40%
50%
60%
GORBI


CORRUPTION, UNEMPLOYMENT AND POVERTY ARE THREE MOST IMPORTANT PROBLEMS GEORGIA IS FACING NOWADAYS
Unemployment
22
Corruption
21
Poverty
13
Political instability
12
Low incomes
10
Crime
6
Ethnic problems
6
Education
3
Health Care
2
High prices
2
Environment pollution
2
DK
1
0%
10%
20%
30%
Q. Which are the three most important problems Georgia is facing today?
GORBI


CORRUPTION, UNEMPLOYMENT AND POVERTY ARE THREE MOST IMPORTANT PROBLEMS GEORGIA IS FACING NOWADAYS
2001
2002
Unemployment 24 -2 22
Corruption 19 +2 21
Poverty 16 -3 13
Political instability 12 0 12
Low income 10 0 10
Ethnic problems 5 +1 6
Crime 4 +2 6
Environment pollution 3 -1 2
High prices 3 -1 2
Health Care 2 0 2
Education 2 +1 3
Other 0 0 0
Q. Which are the three most important problems Georgia is facing today?
GORBI

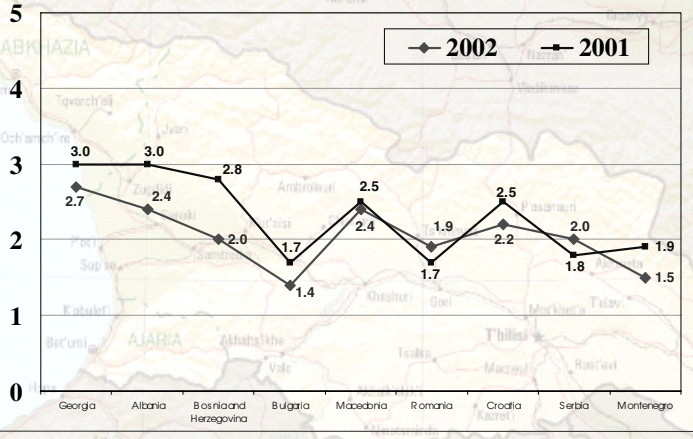

MOST IMPORTANT FACTORS AFFECTING CORRUPTION
Imperfect legislation 18.2
Low salaries of the officials in the public sector 16.6
Ineffectiveness of the office duties and personal interests 14.0
Lack of strict administrative control 11.3
Inefficiency of the judicial system 10.5
Moral crisis in the period of transition 9.5
Fast personal enrichment sought by those in power 8.3
Problems inherited the communist past 4.9
Specific characteristics of (country's) national culture 2.3
Other 0.5
Don't know/No answer 3.9
0%
10%
20%
30%
40%
50%
Q. According to you, which are the three most important factors affecting corruption proliferation in Georgia?
GORBI

CORRUPTION INDEXES OF DIFFERENT COUNTRIES

	Acceptability in Principle	Susceptibility to corruption	Corruption pressure	Involvement in corrupt practices	Spread of corruption	Practical efficiency of corruption	Corruption Expectations
Georgia	2.7	3.5	1.2	0.7	7.4	7.2	5.6
Albania	2.4	4.5	3.4	2.0	7.0	6.6	5.5
Bulgaria	2.0	2.9	2.5	1.5	6.0	5.9	5.0
Bosnia and Herzegovina	1.4	2.5	1.4	0.7	6.4	6.4	5.1
Macedonia	2.4	3.0	2.3	1.6	6.8	6.1	6.1
Romania	1.9	3.7	1.9	1.1	6.9	7.1	6.2
Croatia	2.2	2.6	1.4	0.6	5.3	5.8	4.9
Serbia	2.0	2.7	2.2	1.4	6.0	6.5	5.1
Montenegro	1.5	2.6	1.8	1.0	6.0	6.7	4.5

GORBI

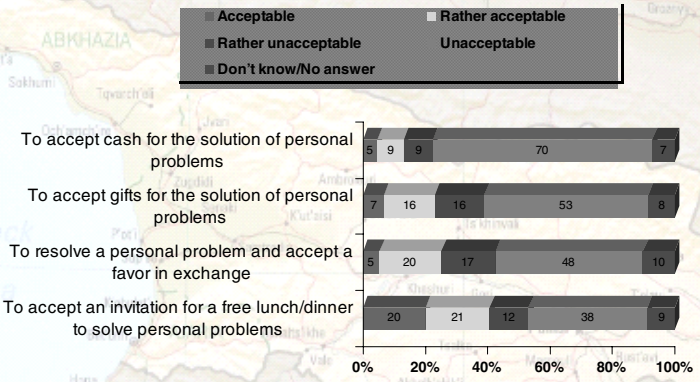
FIGURE 1. ACCEPTABILITY IN PRINCIPLE



This index reflects the extent to which various corrupt practices are tolerated within the value system.

GORBI

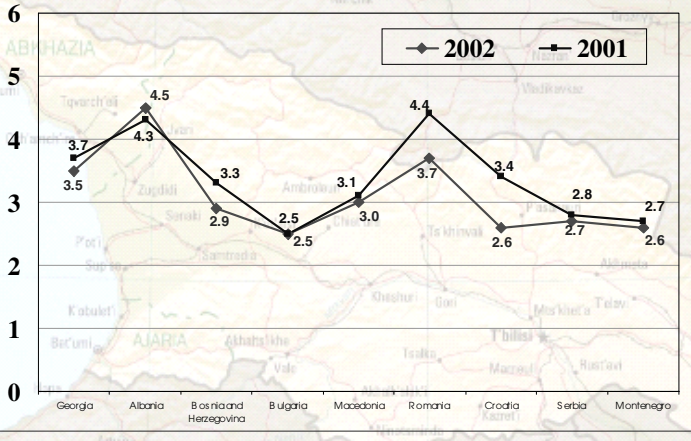
ACCEPTANCE OF RECEIVING CASH, GIFT OR FAVOR BY STATE OFFICIALS



Q. According to you, how far acceptable are the following, if performed by officials at Ministries, municipalities and mayoralties?

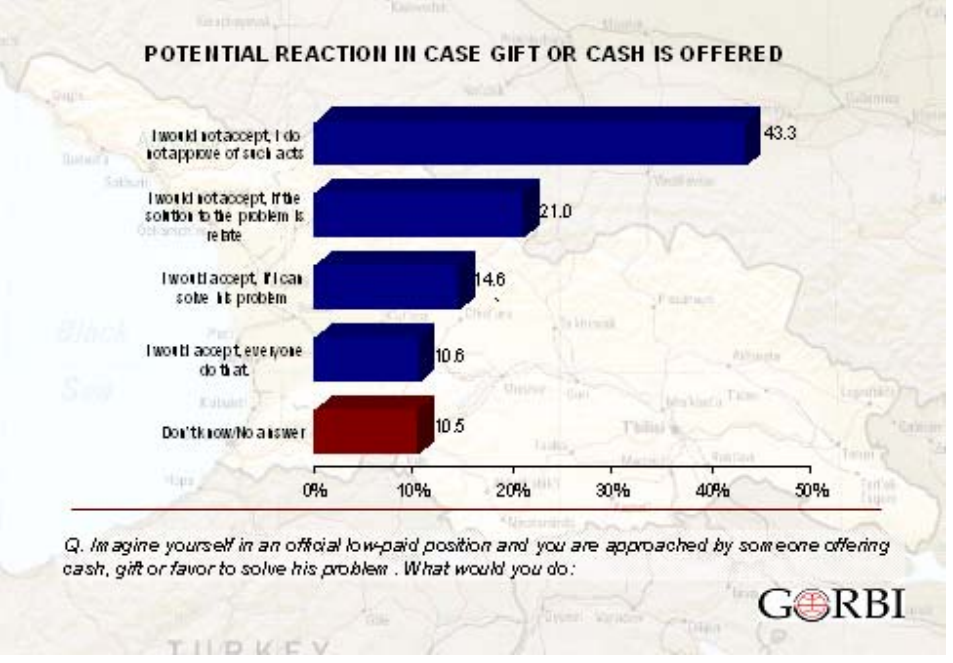
GORBI

FIGURE 2. SUSCEPTIBILITY TO CORRUPTION



This index measures citizens' inclination to compromise on their values under the pressure of circumstances.

GORBI


POTENTIAL REACTION IN CASE GIFT OR CASH IS OFFERED
I would not accept, I do not approve of such acts
43.3
I would not accept, If the solution to the problem is rebate
21.0
I would accept, If I can solve his problem
14.6
I would accept, everyone do that
10.6
Don't know/No answer
10.5
0%
10%
20%
30%
40%
50%
Q. Imagine yourself in an official low-paid position and you are approached by someone offering cash, gift or favor to solve his problem . What would you do:
GORBI

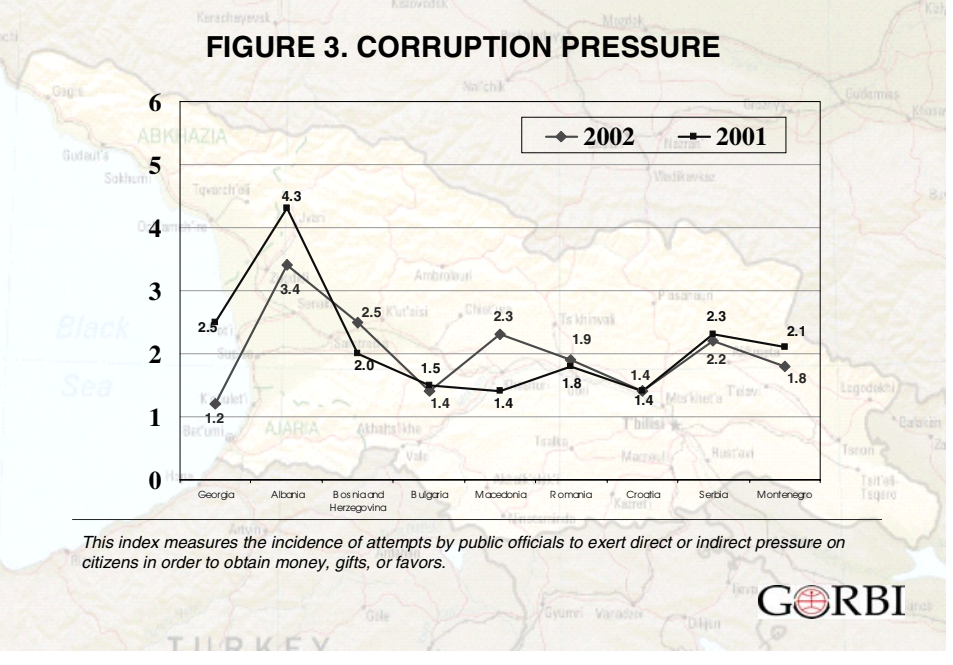
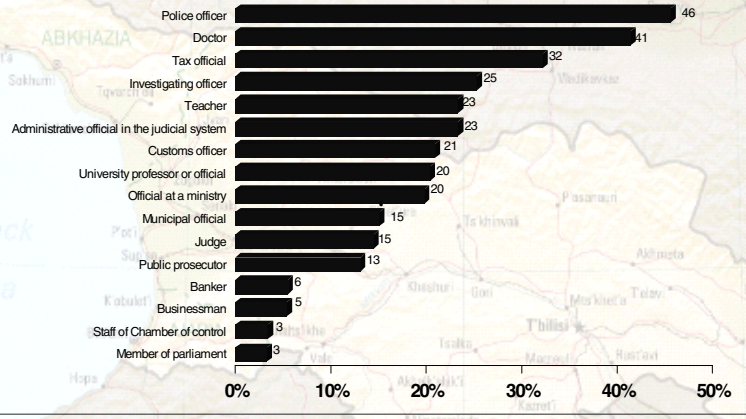


FIGURE 3. CORRUPTION PRESSURE
2002
2001
6
5
4
3
2
1
0
4.3
3.4
2.5
2.5
2.0
1.5
1.4
2.3
1.4
1.9
1.8
1.4
1.4
2.3
2.2
2.1
1.8
1.2
Georgia
Albania
Bosnia and Herzegovina
Bulgaria
Macedonia
Romania
Croatia
Serbia
Montenegro
This index measures the incidence of attempts by public officials to exert direct or indirect pressure on citizens in order to obtain money, gifts, or favors.
GORBI

ACCEPTANCE OF RECEIVING CASH, GIFT OR FAVOR BY OFFICIALS



Q. If in the course of the past year you have been asked for something in order to have a problem of yours solved, you were asked by:

GORBI

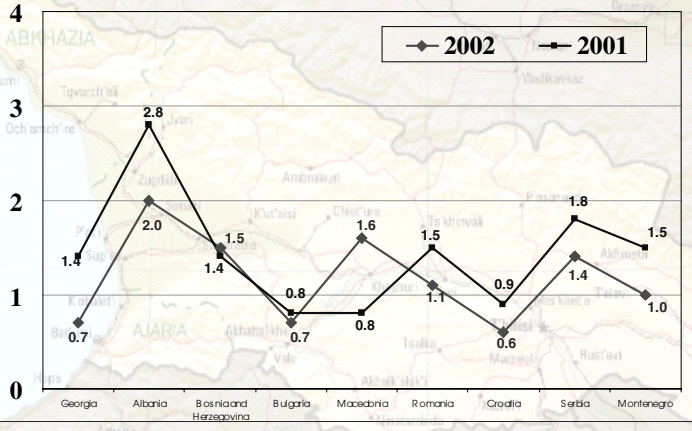
ACCEPTANCE OF RECEIVING CASH, GIFT OR FAVOR BY OFFICIALS

	2001	2002
Police officer	44	46
Doctor	37	41
Tax official	29	32
Investigating officer		25
Teacher	17	23
Administrative official in the judicial system	16	23
Customs officer	31	21
University professor or official	24	20
Official at a ministry	15	20
Municipal official	21	15
Judge	18	15
Public prosecutor	16	13
Banker	13	6
Businessman	7	5
Staff of Chamber of control	7	3
Member of parliament	3	3

Q. If in the course of the past year you have been asked for something in order to have a problem of yours solved, you were asked by:

GORBI

FIGURE 4. INVOLVEMENT IN CORRUPT PRACTICES



The index reflects the self-assessed involvement of the respondents in various forms of corrupt behavior.

GORBI

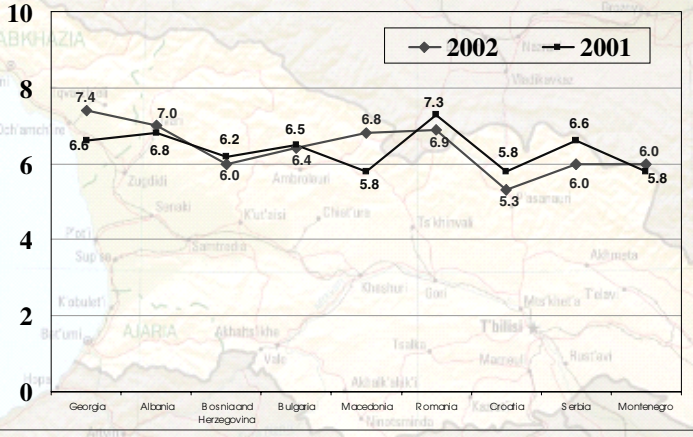
ACCEPTANCE OF RECEIVING CASH, GIFT OR FAVOR BY OFFICIALS

When ever you have contacted officials in the public sector, how often in the Last year they have:			*Whenever you have contacted officials in the public sector, how often in the last year you have had to*		
Directly demanded cash, gift or favor		Not demanded directly	Give cash to an official	Give gift to an official	Do an official a favor
In all cases	12.0	3.0	9.9	1.0	0.5
In most of the cases	9.2	6.4	10.2	4.5	2.5
In isolated cases	11.2	11.9	10.0	8.2	4.3
In no cases	57.5	68.4	61.9	77.3	83.1
Do not know/No answer	10.0	10.4	8.0	9.0	9.5

Q. If in the course of the past year you have been asked for something in order to have a problem of yours solved, you were asked by:

GORBI

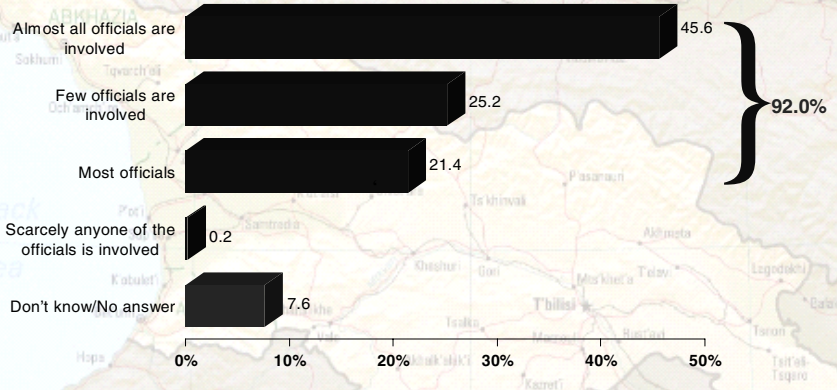
FIGURE 5. SPREAD OF CORRUPTION



This index registers citizens' assessments of the spread of corrupt practices among public sector employees.

GORBI

CORRUPTION IS AS WIDESPREAD AS KHACHAPURI IN GEORGIA



Q. How far is corruption proliferated among the officials in the public sector?

GORBI

FIGHTING CORRUPTION IN TRANSITION ECONOMIES: GEORGIA - ISBN 92-64-01077-7 © OECD 2005

LEVEL OF SPREADING OF CORRUPTION IN DIFFERENT INSTITUTIONS

	Most or almost most involved, %	Few or scarcely anyone involved, %	Don't know/ No answer, %
Customs officers	70	20	10
Tax officials	70	20	10
Police officers	70	19	11
Ministers	65	23	12
Public prosecutors	63	25	12
Members of parliament	63	25	12
Investigating officers	63	24	13
Judges	61	28	11
Officials at ministries	54	31	15
Lawyers	54	33	13
Municipal councilors	52	32	16
Administration officials in the judicial system	52	33	15
Municipal officials	49	37	14
Business people	37	47	16
Bankers	37	40	23
Political party and coalition leaders	36	45	19
Doctors	34	54	12
Local political leaders	33	47	20
Representatives of non-governmental organizations	30	46	24
University professors and officials	28	55	17
Teachers	16	71	13
Journalists	11	72	17

Q. According to you, how far is corruption proliferated among the following groups:

GORBI

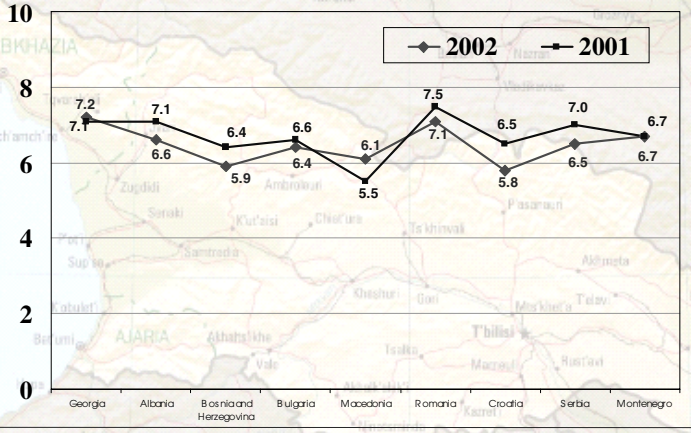
LEVEL OF SPREADING OF CORRUPTION IN DIFFERENT INSTITUTIONS

	Most or almost most involved, %		Few or scarcely Anyone involved, %		Don't know/ No answer, %	
	2001	2002	2001	2002	2001	2002
Customs officers	66	70	29	20	5	10
Tax officials	70	70	27	20	3	10
Police officers	73	70	23	19	4	11
Ministers	57	65	37	23	6	12
Public prosecutors	59	63	36	25	5	12
Members of parliament	56	63	39	25	5	12
Investigating officers		63		24		13
Judges	56	61	39	28	5	11
Officials at ministries	54	54	40	31	7	15
Lawyers	47	54	47	33	6	13
Staff of chamber of control	46	52	45	32	9	16
Administration officials in the judicial system	46	52	45	33	9	15
Municipal officials	47	49	47	37	7	14
Business people	33	37	60	47	7	16
Bankers	36	37	52	40	12	23
Political party and coalition leaders	30	36	57	45	13	19
Doctors	27	34	70	54	3	12
Local political leaders	30	33	57	47	13	20
Representatives of non-governmental organizations	20	30	63	46	17	24
University professors and officials	21	28	72	55	7	17
Teachers	8	16	88	71	4	13
Journalists	10	11	82	72	8	17

Q. According to you, how far is corruption proliferated among the following groups:

GORBI

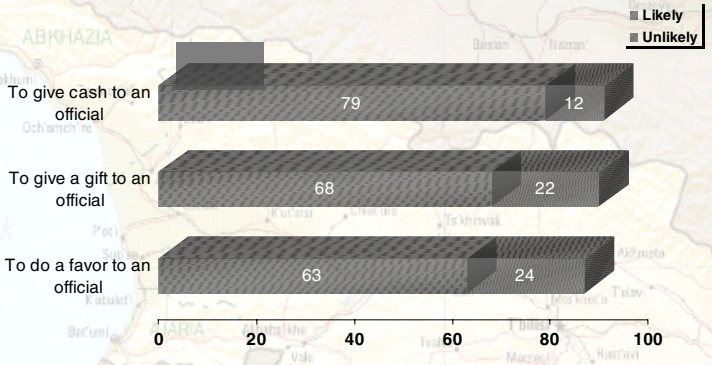
FIGURE 6. PRACTICAL EFFICIENCY OF CORRUPTION



This index shows citizens' assessments of the extent to which corruption is becoming an efficient means of addressing personal problems.

GORBI

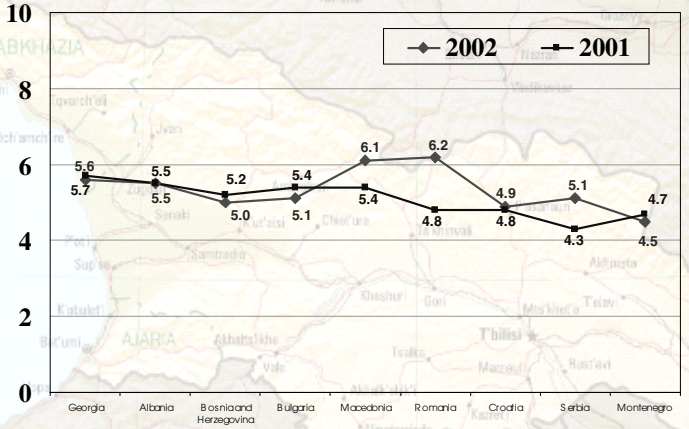
EFFECTIVENESS OF BRIBING AN OFFICIAL



Q. In order to successfully solve one's problem is it likely or is it not likely he/she to have to note: Do not know/No answer; To give cash to an official (9.0%), To give a gift to an official (10.6%), To do a favor to an official (12.6%)

GORBI

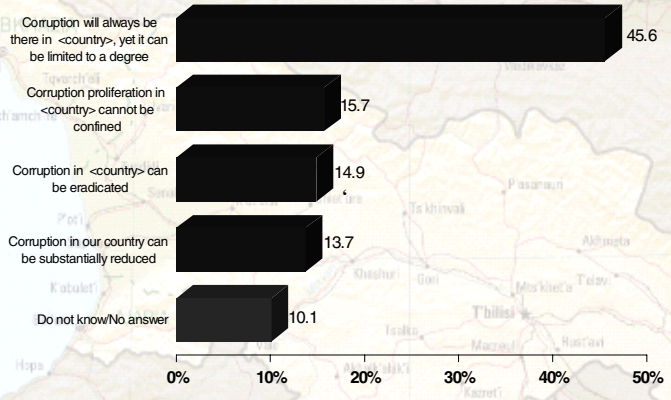
FIGURE 7. CORRUPTION EXPECTATION



This index registers citizens' assessments of the capacity (potential) of their societies to cope with the problem of corruption.

GORBI

CORRUPTION WILL ALWAYS BE THERE IN "COUNTRY", YET IT CAN BE LIMITED TO A DEGREE



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Annex 3

PRESIDENT OF GEORGIA

PROVISION

#758 21 JULY 2001 TBILISI

About Some Anti-corruption Measures

In order to carry out the anti-corruption activities effectively in Georgia, to provide further anti-corruption measures with legal and organizational support, on the basis of paragraph 2 of Article 1 and subparagraphs "a" and "h" of the 1st Paragraph of the Article 2 of the Anti-corruption Policy Coordination Council Provision, approved by Presidential Decree #131 of April 13, 2001:

1. the Ministry of Justice should:

a) By October 1, 2001, work out proposals on entrepreneurial activity in order to eliminate incompliance in normative acts concerning the state control over entrepreneurial activity and prepare draft law on "Differentiation of Powers of Supervisory Bodies and Rule of Implementation of Control".

b) By September 1, 2001 prepare amendments and additions to the Law of Georgia on "Normative Acts" in order to make the discussion and adoption of the draft law on amendments in Tax and Customs legislation available only on spring sessions; the law on mentioned amendments should be put in effect from the next fiscal year; following the amenmdments introduced, the respective normative acts should be adopted and published not later than 3 months after the law is effected and put in effect from the day it is put in action.

c) By September 1, 2001 and further, twice a year in official printing body – "Sakartvelos Sakanonmdeblo Matsne" ("Legal Messenger of Georgia") should be published the data of the state register of legal acts indicating the dates of validation and expiry, if any;

d) By September 1, 2001 present draft on legal amendments, that should cover the change or elimination of the consideration of draft law in the hasty and simplicated manner, provide with the complete list of the cases, when it is possible to put the law in action earlier than 14 days after publishing; to define more precisely the necessary props of the explanatory note, the results when they are worked up violating the rules and the rules of introduction of amendments and changes to the normative acts;

e) By September 1, 2001 present the draft law on "Legal Entity of the Public Law" concerning the matter of introduction of amendments and additions to the Law of Georgia", which will include the folloowing issues:

e.a) ensure the compatability between the Law on "Legal Entity of the Public Law" and Civil Code of Georgia concerning the legal condition of the legal entity of the Public Law;

e.b) define the purposes for creation of legal entity (civil purposes), types and limited circle of the basis for creation, and improve the procedures of creation of legal entity;

e.c) establish particular mechanizms to define the functions of the Legal Entity of Public Law;

e.d) comlete reglamentation of the implementation of state control over activities of the Legal Entity of the Public Law;

e.e) introduce the unique system of state registration of the Legal Entities of the Public Law;

f) by September 1, 2001 present the packet of draft laws of Georgia on amendments and additions to other legal acts of Georgia, following the draft law defined by subparagrapf "e" of this paragraph, which will cover the issue of bringing in compliance the Law on "Legal Entity of Public Law" on introduction of amendments and additions to the Law of Georgia" with the new law (among them, provisions defined by laws on purposes, functions and powers of the existing legal entities of the Public Law).

2. By September 1, 2001 the Ministry of Finance should:

a) present the report on results of the payment of tax debts by installments by enterprises on the basis of Law of Georgia on "Restructuring the Tax Debts";

b) in collaboration with the Ministry of Economy, Industry and Trading present the proposals on the further effect of the Law of Georgia on "Restructuring the Tax Debts", expediency of introduction of amendments and additions to it.

3. The Tax Revenues Ministry of Georgia should:

a) by September 1, 2001 present the information on further improvement of implemented measures and procedures in order to impose responsibility, defined by legislation, upon the persons empowered to represent enterprises having tax debts, who has not declared discharge of bankruptcy proceedings;

b) by August 1, 2001 and further quarterly, provide with publishing of the official written answers of the tax and custom bodies on the typical questions given by entrepreneuers to be available for other entrepreneuers;

4. By September 1, 2001 the Customs Department of Georgia should publish the complete and certified information on customs procedures and all the necessary documents.

5. By August 1, 2001 the Ministry of Building and Urbanization should present:

a) the information on conditions of use of measures of administrative liability in the sphere of architectural-building activivities (including fines imposed by local self-government and governmental bodies);

b) the proposals on introducing amendments in the existing legislation in order to increase the effectiveness of the system and quantity of fines;

6. By October 1, 2001 the Ministry of Justice, Ministry of Transport and Communications and Ministry of Internal Affairs should work out and present proposals on the rules of registration of the means of transportation in unified civil register, definition of amount of registration fees, simplification of the procedures for making

civil deals concerning the means of transportation, and expediency of passing the registration authority to civil body.

7. By August 1, 2001 the Ministries of Tax Revenues and Finance should present:

a) proposals on elimination of the budgetary transit (balancing, regulating) accounts in such a manner, that the payer could receive back odd amount or incorrectly transferred amount of money; this should be carried out by the treasury service of the Ministry of Finance;

b) the draft law on introducing the amendments to the Article 240 of the Tax Code, according to which transfer of one type of the prior tax to another one will be forbidden.

8. The Ministry of Finance of Georgia should present by September 1, 2001:

a) proposals on proportional distribution of expenditures for the organizations being on budgetary financing of amount, defined by the expenditure part of the budget.

b) information on use of foreign credits and services according to the Law of Georgia on "State Debt";

c) proposals on introducing amendments to Law of Georgia on "State Debt", which will cover the measures by Ministry of Finances to monitor and ensure effective control of the spending of credits and grants.

9. The MInistry of State Property Management, Ministry of Defense, Ministry of Justice, Ministry of Internal Affairs, State Intelligence Department, Special Servisce of State Defence, State Department of State Border Defence should present by August 1, 2001 informations on entrepreneurial subjects being in the governance of the mentioned power structures and proposals on their transfer to the Ministry of State Property Management.

10. The State Minister in collaboration with the respective bodies should ensure the elaboration of Code of Ethics of the Civil Officials.

11. Apply to the Chamber of Control to present by November 1, 2001 proposals and respective draft normative acts on unique system of financial control and standards, in collaboration with the Ministry of Finance and other concerned bodies.

12. By November 1, 2001 the Ministry of Finance of Georgia should work up and submit the draft law on Budget Code, which should provide:

a) work out new detailed classificator to differenciate revennues and expenditures;

b) definition of rules and quantities of transfer to budget of non-budgetary amounts taking into account interests and responsibilities of the organization;

c) regulation of the matters of receving, accounting and using of special resources;

d) define the rule of adding amount to the budget from enterprises, created by state share participation and forwarding the resourses from budget in order to widen the material-technical basis of this enterprises;

e) in order to cover budget deficit, forbid the procedure of pawning or flow of amounts in other ways, except the cases defined by Law of Georgia on "State Budget";

f) instead of using any forms of payment to cover the budgetary expenditures, implementation of money reimbursement, according to the rules defined by law;

g) reflect in the budget every credit received by the state; also, with the draft law of Georgia on the State Budget present the list, in form of appendix, of credits

received by state guarantee, financial aids and investments, reflection of the issue of their purposeful usage in governmental report on covering the state budget and the documents concerned;

h) governmental report on covering the state budget reflecting the expenditures by paying units;

i) work up the improved mechanism of expenditures sequester;

j) create unique system of planning the local budgets.

13. By September 1, 2001 the State Logistical Service of Georgia should present the respective draft normative act on use of office automobiles and selection of their license plates.

14. The information, proposals and drafts given in this decree should be presented to the Anti-corruption Policy Coordination Council for consideration.

15. By December 1, 2001 the Anti-corruption Policy Coordination Council should submit to the President of Georgia the list of those officials, who execute their official duties, imposed upon them by this decree, in inapropriate manner.

E. Shevardnadze

Annex 4

PROVISION
OF THE PRESIDENT OF GEORGIA
#430 17 APRIL 2002
TBILISI

On Approval of the Schedule of Anti-corruption Measures

In order to ensure the complex and consequent implementation of Anti-corruption measures in Georgia, under 2nd Paragraph of the 1st Article of Anti-corruption Coordination Council Provision approved by the Presidential Decree #131 of April 13, 2001 and under Subparagraphs "a" and "h" of the 2nd Article of the same Provision:

1. Approve the enclosed schedule of Anti-corruption Measures.
2. Ministries and Agencies should submit to Anti-corruption Policy Coordination Council of Georgia and State Minister of Georgia information, proposals and drafts, provided for by schedule approved by this Provision.
3. Anti-corruption Policy Coordination Council of Georgia should present monthly the issue on progress of the measures provided for by schedule at Government Session.

E. Shevardnadze

FIGHTING CORRUPTION IN TRANSITION ECONOMIES: GEORGIA - ISBN 92-64-01077-7 © OECD 2005

Approved by Presidential Provision #430of April 17, 2002

Direction 1: Improvement of the Effectiveness of the State Administration System			
	Recommendation	**Executor**	**Terms**
1.1	**Reorganization of the Executive Structure**		
1.1.1	**Main Principles of Organizational Reforms**	**State Minister**	**April 30, 2002**
	to avoid discreditation of the reform idea and for the insurance of public support, it is necessary to prepare Draft Law, according to which each program, that takes into consideration any important changes in the State Institute, should be implemented only in that case, if: • detailed program implementation work plan is prepared for the whole period of the program; • the program has the detailed financial calculation, indicating the financing sources; • the program has calculations of human resources of the necessary qualification and their resources; • before adoption, the program was published 2-3 months earlier for discussion (except documents containing secret issues); • the program is attached by the mechanisms of receiving proposals, comments and information from the population during the whole period of its implementation; • the program is attached by the expected maximum, possible detailed calculations 1, 3, 5 and 10-years perspectives of economical, social and political effects (among them work places); • the program is attached by monitoring implementation mechanism and concrete measurable indicators of valuation; • the program is attached by the expected obstruction prognosis in the process of its implementation and possible alternative ways .		
1.1.2	**Reorganization of Ministries, State Departments and State Inspections -**	**State Minister**	**July 1, 2002**
	for the purpose of reorganization, the activities should be carried out in the following consequence: • In the period of two weeks, a standard form should be prepared and approved by Decree of the State Minister, according to which all Ministries, State Departments, State Inspections and other independent bodies should present a report on the last year's work;		

	• All agencies should present information according to the approved form in the period of one month; • Proposals and Draft legislative amendments should be worked out, taking into consideration the new structure of executive power. Moreover, it is purposeful to implement unique reorganization of the central bodies of the executive power upon condition that during 4-5 years the structures will not undergo changes. As result of reorganization, 10-12 Ministries should be established, which will accumulate structural units existing in the Ministries and independent State Departments. Existence of central unit of an independent administration will be admissible where, due to its special functions, it is impossible to include it in any Ministry and Law provides for its independent status.		
1.1.3	**for the purpose of Structural Reorganization of the State Chancellery, proposals should be presented, under which:**	**State Minister**	**April 30, 2002**
	1. According to the international experience, the place and role of the State Chancellery in the system of Executive Power is defined precisely.		
	2. The functions of the State Chancellery employees are defined so that they were not able to duplicate or overlap the functions of Ministries, as the political officials in charge of various branches. Eradicate parallelism between the State Chancellery and the structural units of central administration.		
	3. Reduce the number of the State Chancellery staff.		
1.1.4	**In order to define precisely the status of the lower-level agencies and increase their effectiveness:**	**State Minister**	**June 1, 2002**
	1. Prepare amendments to the Law on "Rule of Activities and Structure of the Executive Power" to define precisely the legal status, procedures and conditions of creation, functioning, financing, administering and accounting of the lower-level agencies.		
	2. Make inventory of the provisions (statutes) of the existing lower-level agencies, study their actual activities and decide on expedience of their existing status.		
1.2	**System of the State Service and Status of the State Official**		
1.2.1	**Optimization of the Staff Number and Increase of Reimbursement**	**State Minister**	**June 1, 2002**
	In respect to the reorganization of Executive Power and in order to ensure the increase of salaries stage-by-stage:		
	1. In parallel with structure's optimization, being on budgetary financing, a program of reduction of State officials should be worked out, under condition that: • the quantity of State officials will reduce at least in one fourth;		

	• the reduction of total number of State officials will be reduced taking into account branch priorities and organizational specification and not according to the total percentage quote; • the staff number in particular State organizations will be reduced according to inner structural optimization, and not on the basis of mechanical equality of all structural lower-level agencies'; • the resources disengaged in result of the reduction held in State Bodies, should be utilized for the improvement of salaries in the same organization; • the capable mechanisms should be created in order to insure the legality of the process of reducing the State officials and monitoring bureau for the protection of rights of the reduced staff should be designed.		
	2. Draft State Budget 2003 should provide for that the minimum salary rate in a public service is approached to that of provided for by Law of Georgia on "Existence Minimum" and officially fixed existence minimum.		
	3. The circle of officials under the Law of Georgia on "Structure and Rule of Activities of the Executive Power" should be defined that will be given substantially high salary (not less then 1000 GEL) expecting the enlargement of this circle annually. Moreover, before enlargement of the mentioned circle, legislative amendments should be worked out enabling the State Servant to pursue other reimbursable activities, except the cases of conflict of interests.		
	4. During the step-by-step period of salary increase combined remunerable activities should be allowed, upon condition that the requirements of legislation on conflict of interests will be maintained.		
1.2.2	**Status and Guarantees of the State Official -**	**Bureau of the State Service**	**June 1, 2002**
	to define the status of public official and to insure with proper guarantees, the proposals should be prepared, taking into account the following recommendations:		
	1. Work out the Law on Ranking of State Officials that will arrange the issue of State privileges, together with the other matters.		
	2. Enlarge the role of State Service Bureau in the sphere of management; for this purpose, it should be granted the function of coordination and monitoring and should be responsible for the quality of work, including court procedures relating to the personnel matters.		
	3. Work out long-term program in order to increase public officials' qualification system and to create High Administrative School of Georgia. This Institute together with foreign experts should carry out the preparation of teachers, textbooks, methodic documents for different organizational centers and programs.		

Direction 2: Liberalization of Business Environment			
2.1	**Legal Regulation of Control**		
2.1.1	During preparation of the Draft Law on "Differentiation of Rights among the Supervisory Bodies and Control", provided for by the Presidential Provision #758, the special attention should be paid to: • the precise establishment of State controlling function; • grounding of the necessity of each type of control; • eradication of parallelism in the controlling sphere; • unification of State control methodology and procedures according to control types and tasks; • establishment of easy operative procedural norms to lodge appeal for activities of controlling agencies; • perfection of staff policy of the controlling bodies, among them, to ensure social guarantees and staff qualification enlargement; • all the controlling agencies of business sphere should be defined according to this Law.	Ministry of Justice	August 1, 2002
2.1.2	The full inventory of all normative acts connected with State control should be carried out and proposals to eradicate normative incompliance should be elaborated.	Ministry of Justice	May 15, 2002
2.1.3	In accordance with the Presidential Decree N 95, the Leaders of the Supervisory Bodies should approve the forms of documents to be transmitted to the controlled agencies by the controlling bodies, containing the full information on the rights of parties in the process of examination.	State Minister, Leaders of the Supervisory Bodies	May 1, 2002
2.2	**Transparency of Control**		
2.2.1	In order to keep Business Structures informed, in respect to publishing of the commemorative-informational materials including all the necessary normative deeds and comments, titles of all the normative acts relating to State control should be issued in “Legal Messenger”, including the dates of their validity and publishing.	Ministry of Justice	June 1, 2002
2.2.2	The proposals for the protection of rights of businesspersons and creation of monitoring system of the activities of controlling agencies should be worked out, taking into consideration the participation of non-governmental organizations.	State Minister	May 1, 2002
2.3	**Licensing Sphere**		
	Legislative Regulation -	**State Minister**	**June 1, 2002**
	Agencies, which according to the draft law on "Grounds for Issuing Licenses and Permissions for Business Activities" adopted by the Parliament of Georgia by first hearing, has	Bodies empowered to issue licenses	

	obtained the right to issue license or permission, should ensure the elaboration of the respective Draft Law within three months including the list of additional conditions and information; the Ministry of Justice should ensure coordination of the preparation process.	and permissions Ministry of Justice	
2.4	**Tax Sphere**		
2.4.1	**Improvement of the Tax System -**		
	for the purpose of perfection of the tax system, proposals should be prepared, taking into account the following recommendations:	Ministry of Finance Ministry of Tax Revenues	June 1, 2002
	1. to carry out the optimization of the quantity of goods subject to excise;		
	2. In order to avoid contraband and unregistered export-import operations and for the prevention of these violations, to form close informational unions with the fiscal and Customs main economical partner countries' services, in order to, on one hand, create unified and beneficiary the so-called "mirror" system of data comparison; and on the other hand, to implement step by step Tax and Customs legislation harmonization process.		
	3. to improve the fulfillment of those normative deeds which are connected with the establishment of cash machines and trade receipts in trade net.		
2.4.2	**Inventory and Availability of the Tax and Customs Legislation -**	**Ministry of Tax Revenues**	**July 1, 2002**
	In order to ensure inventory-making and availability of Tax and Customs legislation, the activities should be carried out in the following order:		
	1. Within one month, the Ministry of Justice should report to the Anti-corruption Policy Coordination Council on the normative acts regulating Tax and Customs sphere, which will contain the information about those normative deeds that were to be implemented in accordance with laws in force and international laws, which of them is adopted (issued) and published by fixed rules, which normative deeds are to be adopted (to be issued).		
	2. to carry out and adopt (issue) the normative deeds proposed in the information by the Ministry of Justice of Georgia.		
	3. to design a webpage, where the acting Tax and Customs legislation and other documents will be placed, among them constantly updatable full base of respective court decisions.		

2.5	**Regulation of Monopolistic Spheres**		
	Differentiation between Competences and Status -	**Ministry of Economy, Industry and Trading** **Anti-monopolistic Service**	**April 30, 2002**
	Prepare proposals to differentiate Anti-monopolistic functions between Natural Monopolies and State services of regulating-supervisory insurance spheres and Anti-monopolistic Service. This proposal should provide for additional measures of insurance of organizational, financial and legal autonomy of Anti-monopolistic Service, particularly, measures to be undertaken to re-establish it as Legal Entity of Public Law.		
2.6	**Standardization and Certification**		
2.6.1	**Voluntary System of Licensing; Working out of Technical Regulations -**	**Georgian Standard** **Ministry of Finance**	**May 31. 2002**
	Taking into account the obligations committed by Georgia upon accession to the World Trade Organization, the following issues should be prepared:		
	1. 3-years program of transfer to the system of voluntary certification. The program should include the criteria of necessary certification.		
	2. On the basis of the requirements of the Law on "Standardization", the rule of technical time-limit elaboration, adoption and publishing should be worked out. The publishing of Standardization programs should begin.		
2.6.2	**The System of issuing Certificates by Private Firms -**	**Georgian Standard**	**August 31, 2002**
	The proposals should be presented, in order to create effective and transparent system of issuing certificates, whereby: • to define concrete requirements for certification agencies laboratories; • to establish the responsibility forms and obligations of agencies issuing certificates; • The process of selection and accreditation of certifying agencies should become transparent and public.		

2.6.3	**Supervision over Certified Good -**	**Georgian Standard**	**May 31. 2002**
	Proposals should be presented in order to define precisely periodicity of the certified products, terms, procedures, empowered bodies, rights and responsibilities of the supervisory bodies and entrepreneurs. The mentioned system should comply with the requirements of law on State Supervision over Entrepreneurial Activity.	**Respective Bodies of the Executive Power**	
2.6.4	**Publishing of Standards -**	**Georgian Standard**	**June 1, 2002**
	In order to make new and old standards available to the entrepreneurs, the relative measures should be implemented, whereby: • to create web site which will cover all the necessary information on existing standards; • define the rules of adoption, approval and registration of the newly produced products; • to publish in the official printing body – Legal Messenger – the list of acting standards, indicating the dates of adoption, place and date of publishing;		
2.6.5	**Registration Certificates at Customs Points -**	**Ministry of Tax Revenues**	**May 31, 2002**
	The proposals should be presented on procedures provided for by the Unified Order of the Georgian Standard and Customs Department on "Rule of Carrying in the Goods Subject to Compulsory Certification" and expediency of the system of registration certification.	**Georgian Standard**	
Direction 3: Financial Management of the State Resources			
3.1	**Budgetary Order**	**Ministry of Finance**	**April 30, 2002**
	1. The Budgetary Code, prepared by Ministry of Finance in accordance with the Presidential Provision #758, should be reviewed and submitted to the Parliament, in order to achieve: • Budget transparency by assigning approved and detailed indicators of funding sources for budget revenues, expenses and deficits; • establishment of main principles of budgetary federalism like long-term economical norms, merging of central and local budgetary burden and etc.; • transparency and publicity of the implementation process; • further institutional improvement of the treasury services; • introduction of preliminary registration system of spending expenses; • introduce the system of budgetary statements and guarantee of stability in the fiscal year;		

	• improvement of the management of State debts (including unified register for debts) and elaboration and implementation of the measures to accumulate the due debts in the budget.		
	2. Reflect the incomes of the budgetary subjects in the Treasury service on the unified income account and perform their distribution under the Budget Law of the year in domain of allocations.		
3.2	**Improvement of the Local Financial-Budgetary System**		
	to change corruptive environment in the budgetary-financial sphere, the proposals should be presented for the following purposes: a) to ensure institutional and economical independence of the local and state budget. Establish the system of planning in the local budgetary process and eradicate budgetary deficit; b) to elaborate principles of State Transfer Policy and distribution of State transfers on the basis of program ensuring minimum of budget level and financing the delegated competences; c) to create the system of public control of the local budget with the public participation and submit to public "Short Budgets" and reports into popular language.	**Ministry of Finance** **Bodies of Local Government and Self-government**	**June 1, 2002**
3.3	**Mechanisms of Supervision over Spending of the Budgetary Resources**		
	General Inspections -	**Ministry of Justice**	**April 30, 2002**
	In order to establish the institution of General Inspection: 1. Adopt the law on "Inspector General", which, along with the internal financial (in accordance with the International Audit Standard #610) control, should cover the mechanisms of control of keeping the norms of ethics, system of management, labor discipline, fulfillment of decisions of the Ministries and normative acts, etc.		
	2. to study work results of General Inspections and inner control services in different Ministries and Agencies with the purpose of merging their functions.		
	3. Creation of the General Inspection should be performed by means of internal reorganization of the Ministries and institutions without the additional staff units. Independence, reimbursement should be guaranteed by law.		

3.4	**Rule of State Shares**		
	Creation of Holding Company -	**Ministry of State Property Management**	**June 1, 2002**
	Work out proposals to create Holding Companies in order to rule the State shares. The proposals should provide for a plan of concrete activities that should be implemented in order to create modern system of governance by holding companies of State shares.		
3.5	**Foreign Credits and Aids**		
	In order to improve mechanisms of receiving and spending of foreign aids and credits and to ensure publicity, the following measures should be taken:	**Ministry of Finance**	**June 1, 2002**
	1. In order to ensure the operative and transparent mechanisms of governing of the foreign credits and aids, foreign countries' experience should be studied; moreover, the received credits and aids should be completely registered; the mentioned information should be published in the official printing body to make it available to the broad masses of population, thus, strengthening the public monitoring;		
	2. to fill the "holes" of inexpedient utilization of the foreign credits and aids by means of revision of the legal basis regulating the latter;		
	3. Following the advantageous taxation of the foreign grants and humanitarian aid, strengthen their administering procedures and State supervision;		
	4. Each State grant and credit should be completely reflected in the State Budget;		
	5. Elaborate inter-related system of State and public monitoring of the investment projects financed by amounts received from abroad.		
	6. Prepare the respective institutional ground in order to direct financing sources of budgetary deficit to finance only investment projects and to use treasury obligations as the only source of financing the deficit.		
Direction 4: Education			
4.1	**Pre-School Education**		
	The proposals and legislative initiatives should be prepared in respect to focusing on socially insecure strata of kindergartens.	**Ministry of Labor, Health and Social Security**	**June 1, 2002**
4.2	**School Education**	**Ministry of Education**	**May 1, 2002**
	In order to improve the system of school education, the legal initiatives should be prepared providing for: • Simplification of administration of school		

	education in such a direction that will reduce supervision of the Ministry and strengthen public monitoring. The function of the Ministry should be limited to providing with national educational programs and evaluation of their implementation. The rest of functions (private studying schedule of the school, relation with donors, teacher control, etc.) should be delegated to society (school and management Councils) and bodies of self-government; • Changing of the functions of district school administration and division of regional education: their main function should be that of aiding and not control and administration; • According to the legislation, a financial norm counted for one pupil should be elaborated; • The issues of Leadership should be arranged at the legislative level reducing the State interference at maximum.		
4.3	**Primary and Secondary Professional Education**	**Ministry of Education**	**May 1, 2002**
	The proposals on improvement of the professional institutions should be prepared – the professional standards should be worked out and implemented. The primary and secondary professional institutions should be focused on labor market.		
4.4	**Higher Education**	**Ministry of Education**	**May 1, 2002**
	A draft law on Higher Education should be prepared, which will reflect the tendencies of modern higher education and mechanisms of operation and accounting of higher educational institutions, as well. The goal of this draft law should be: • At the legislative level, denoting of rating system, parallel lecture courses, evaluating of the teachers by students; • At the legislative level, involving of the higher educational institutions in the national evaluation system. Decrease of the graduation and entrance exams to the single value. elaboration of the provisions regulating the transfer to this system; • Introduction of the new rule of creation of the branches of the higher educational institutions; • to change the State order by grant system. Allowance of placing grant in the State higher educational system by student. Consequently, elaboration of financial norm for a single student and establishment of model of utilization of this norm; • Elaboration of basic principles for examination		

	of licenses of the existing private educational institutions; • Elaboration of the legislative basis for accreditation system in order to provide for the invitation/participation of the local and foreign evaluation, as well.		
4.5	**Education by Hasty and Individual Schedule**		
	The proposals should be prepared relating to the expediency of studying by hasty schedule (in order to arouse the question of its abolishment).	**Ministry of Education**	**June 1, 2002**
Direction 5: Power Structures			
5.1	**Registration of Crimes and Investigation**	**National Security Council**	**June 1, 2002**
	1. Elaborate proposals concerning consolidating of the investigative structures in the frames of one agency;		
	2. Elaborate the packet of legal and organizational measures against economic crime, Under the packet, the function of fight against economic crime will be imposed upon one State structure, the others will provide the latter with respective information.		
	3. Elaborate and implement the unified inter-institutional system of registering crime, which will be available to every competent body and ensure automatic detection of the statements made by citizens.		
5.2	**Judicial Expertise**		
	1. The law on judicial expertise should be prepared, providing for: • guarantee of independence and impartiality of the expert; • introduce the system of accreditation of the experts and expertise institutions (including private); • create the Association of Experts and adopt the Code of Professional Ethics; • create the system of increase of expert qualification;	**Ministry of Justice**	**July 1, 2002**
	2. The amendments to the Procedural Code of Criminal Law should be prepared, in order to implement the principle of competition in the sphere of judicial expertise – so that the defence party can appoint expertise without permission of accusing party.		
5.3	**Military Service**	**Ministry of Defense**	**January 1, 2003**
	1. to carry out reorganization of the Military Commissariats with the reorganization of local Self-government system, to bring in order the system of registration of the military liable persons.		

	2. to abolish the Military Training Departments in the Higher Educational Institutions, system of granting the military ranges and release from military liability (Institutes desiring to teach military discipline should finance Military Training Department by own (not budgetary) resources.		
	3. to reduce the conscription period to 1 year.		
	4. Every local government should publish 6 months before recruiting the number of recruits from respective territories and the list of persons military liable but not undergone the military service and those released from military service, subject to it according to age. 3 months before recruiting one should indicate in the list persons who recruitment was delayed under obstacles provided for by law or were released from military liability indicating well-founded reasons. 1 month before recruiting – indicate those persons who desire voluntarily to undergo military service. On the day of recruitment, in attendance of the parents and interested persons, drawing of lots should be held to define who will fill the rest of vacancies.		
5.4	**Military Legislation**	**Ministry of Defense**	**January 1, 2003**
	1. to prepare and publish in number available to every soldier new edition of military charters, which will provide for modern standards and mechanisms of protection of their rights (military ombudsman, lawyers);		
	2. to make inventory of the regulating normative basis, bring subordinate normative acts in accord to legislation and publish the collection of complete military legislation;		
	3. to forbid under law imposing upon a military servant such a duty that is not related to military service.		
5.5	**Civil Control over "Power" Structures**	**National Security Council**	**May 31, 2002**
	An organizational reform of the Ministries of Defense and Internal Affairs should be implemented, in order to: • differentiate between Civil and Military (Police) structures within the Ministries; • the military (police) sub-units within the Ministries should be led directly by professional policemen and military persons; • the other Departments and Services should be formed stage-by-stage of civil persons and subordinate directly to the Minister or his Deputies (not the Heads of military Departments);		

5.6	**State Procurement in "Power" Structures**	**Military Bodies**	**May 31, 2002**
	1. Procurement performed by military bodies should be included in domain of general legislation regulating this sphere.		
	2. Large procurements (exceeding 50.000 GEL) should be performed by civil services, not included in these structures.		
	3. The centralized management services of the mentioned agencies should be reorganized, to evade them from being under subordination of the Military persons and separate financial, management, supervisory and accounting functions and sub-units implementing these functions.		
5.7	**State Secret**	**Ministry of State Security** **State Inspection of Protection of State Secret**	**June 1, 2002**
	1. Revise the acting legislation on State Secret on the basis of General Administrative Code to reduce the categories of the State Secret and circle of persons empowered to make information secret. Enhance the mechanisms of appellation and make information public.		
	2.Elaborate 3-year plan of reorganization of Secret Security Services, their modern equipment and re-training of the personnel.		
Direction 6: Representative Democracy			
6.1	**Political Unions**	**Ministry of Justice**	**August 1, 2002**
	1. The Draft Law on introduction of amendments to the Organic Law of Georgia on "Political Unions of the Citizens" should be prepared providing for:		
	• Democratic Inter-party Organization (to recognize Assembly as the highest body of Political Unions' Party Members or representatives; periodical election of managing agencies; taking the most important decisions by voting; taking decisions by Higher Officials, Executive and Controlling Agencies with qualified majority; informational transparency of Political Unions and etc.); • Financial Transparency (maximal precision of published declarations, prevention of anonymous donations); • Inter-state and non-regional or territorial status (establishment of minimal rate of party member; existence of regional departments; establishment of members' minimal number in regional departments); • Periodical determination of own status (necessity of participation in elections);		

	• Necessity of protection of democratic procedures by political unions while introducing them in representative agencies (selection of candidates for election lists at the Assembly);		
	2. The Code of Administrative Law-Violations and Criminal Code should be amended, providing for imposing of strict administrative and/or criminal liability against financial publicity (receiving illegal donations and concealing them).		
6.2	**Status of the Members of Parliament**	**Parliamentary Secretary of the President**	**June 1, 2002**
	Request the Parliament of Georgia to work out Draft Law on "Introduction of Additions to the Law of Georgia on "Status of the Member of Parliament", which should provide for the grounds for undue depriving of the powers, precise procedures and rules.		
6.3	**Code of Ethics for MPs**	**Parliamentary Secretary of the President**	**June 1, 2002**
	Request the Parliament of Georgia to elaborate Code of Ethics for the Members of the Parliament, that, in case of conflict of interests, will define the ways and further actions to be taken by the Member of Parliament.		
6.4	**Lobbyist Activities**	**Ministry of Justice**	**June 1, 2002**
	Draft normative acts should be elaborated, that will ensure the eradication of illegal lobbing cases and define the obligatory measures of violating of norms of lobbyist activities.		
6.5	**Limitation of Immunity**	**Ministry of Justice**	**June 1, 2002**
	It is necessary to prepare the issue of reviewing the system of immunities in the country, taking into account the recommendations by GRECO		

Explanatory Note

Draft Presidential Provision on "Approval of the Schedule of Anti-corruption Measures"

In accordance with the Provision, Anti-corruption Policy Coordination Council is an advisory body of the President of Georgia, the main function of which is to improve the basic directives of the National Anti-corruption Program and prepare respective recommendations.

According to legislation, the activities of existing anti-corruption bodies in Georgia is focused on coordination of measures related to implementation of the system changes, the final goal of which is substitution of the corrupt environment.

for this purpose, the first steps have been made by elaboration of the Anti-corruption Program, Presidential Decree #95 of March 15, 2001 and Presidential Provision # 758 of July 27, 2001.

It was the first attempt to create proposals for fundamental change of the existing system in various spheres. In result of the tasks provided for by the mentioned legal acts, a number of draft normative acts have been prepared taking into account Anti-corruption Program Recommendations and in case of granting them normative force, important changes will be implemented in such spheres as budgetary processes, rule of State-shared enterprises, State supervision, licenses and permission, etc.

Monitoring of the above-mentioned Decree and Provision showed that through anti-corruption line by coordination of the Governmental Agencies, it is possible to prepare concrete proposals and their realization will allow us to change the existing corrupt background in the State.

Presented schedule of measures provides for Anti-corruption Recommendations, included in Draft Anti-corruption Program of Georgia. In our opinion, timely and complex implementation of the mentioned recommendations will foster eradication of the corrupt background.

Measures provided for by presented schedule are divided into several directions:

1. Reorganization of the Executive System and Increase of Remuneration in the Public Service;
2. Liberalization of the Business Environment;
3. Financial Management of State Resources;
4. Measures to be implemented in the Educational System;
5. Power Structures;
6. Representative Democracy.

The contents and goals of each recommendation are considered below. Currently, we would like to underline that approving the presented schedule of measures will be the first step towards real changes. However, the role of Anti-corruption Bureau and Anti-

corruption Policy Coordination Council will not end at this point. Despite the fact that the Anti-corruption Bureau does not participate in implementation of the tasks provided for by schedule, it plays significant role in preparation of proposals. for this purpose, Bureau will cooperate with each agency, being assigned to prepare proposals and undertake measures.

Proceeding from the above-mentioned, Anti-corruption Policy Coordination Council, in the shortest terms, will elaborate schedule, which provides participation of the Anti-corruption Bureau in the preparation process and presentation of the monitoring results to Anti-corruption Policy Coordination Council.

Annex 5

D E C R E E

OF THE PRESIDENT OF GEORGIA

#131
DATED 13 APRIL 2001

ON APPROVAL OF THE PROVISION OF ANTI-CORRUPTION POLICY COORDINATION COUNCIL

The Provision of Anti-corruption Policy Coordination Council shall be approved.

E. Shevardnadze

Approved
by the Presidential Decree # 131
of April 13, 2001

PROVISION

of Anti-corruption Policy Coordination Council

Part I.
Status, Constitution and Function of the Anti-corruption Coordination Council

Article 1. Status of Anti-corruption Coordination Council

1. Anti-corruption Coordination Council (hereinafter – Coordination Council) is an Advisory Body of the President of Georgia, which is established in compliance with the 3rd part of the 2nd article of the Law on "Structure and Rule of Activities of the Executive Power".

2. Coordination Council works out the schedule of measures of the National Anti-corruption Program and coordinates implementation of these measures.

3. Coordination Council is accountable before the President of Georgia.

Article 2. Functions of the Coordination Council

1. The basic functions of the Coordination Council are:

a) Improvement of the basic directives of the National Anti-corruption Program taking into account current social, political and economic events; to elaborate the schedule of measures provided for by Program;

b) Monitoring of the implementation of measures by State Bodies and High Officials as provided for by National Anti-corruption Program;

c) Preparation of recommendations on the basis of analysis of the monitoring results and proposals to present them to the President of Georgia, in order to implement effectively measures of the Anti-corruption Program;

d) Working out of recommendations in order to prevent corruption in the State Structures;

e) Collaboration with the representatives of non-governmental organizations, mass-media, entrepreneurs and other groups of citizens, in order to involve them in implementation and monitoring of the measures provided for by the Anti-corruption Program;

f) Fostering of the establishment of Anti-corruption Education System among the population and working out of effective models of anti-corruption propaganda;

g) Collaboration with international anti-corruption programs and initiatives;

h) Preparation of draft legal acts in order to implement measures of Anti-corruption Program.

Article 3. Constitution and Procedure of Establishment of the Anti-corruption Coordination Council

1. Anti-corruption Policy Coordination Council comprises of the Secretary and 12 Members.

2. Chairman of the Coordination Council is the President of Georgia.

3. In capacity of Council Members, the president of Georgia invites persons of fair reputation, who enjoy society's confidence and authority.

4. Among 12 members of the Coordination Council, at least 6 should represent society, who are not engaged in the Public Service.

5. The members of Coordination Council are invited by the President of Georgia for two-year term. After 2 years, half of the Council members are renewed. Two months before expiration of the term, identities of the six members whose term will be prolonged for two years, is decided by lot. Secretary of the Council, without lot, is included in list of members, whose term is prolonged for two years. The same person may be invited as member of the Coordination Council two times on end.

6. to substitute an untimely outgoing member, a new member is convoked for the remaining term through the similar procedure and conditions as applied to the outgoing one.

7. The members of the Coordination Council will be recouped costs incurred for participation in the Council activities.

Article 4. Rights of the Coordination Council

1. Coordination Council has the right to convoke any high-ranking official at the meeting and hold public discussions of particular items of the Anti-corruption Program.

2. Coordination Council and its members have the right to request from the state agencies and high-ranking officials the submission of conclusions and other information necessary for the consideration of an issue in reasonable terms prescribed by the Council, except the limitations provided for by law.

3. Coordination Council has the right, upon necessity, to address the state agencies and high-ranking officials with a letter of recommendation with respect to the cases considered.

Article 5. Meetings of the Coordination Council

1. Coordination Council meets at least once monthly, upon request of the President of Georgia or at least five members of the Council.

2. The members of the Coordination Council are notified of the date and agenda of the meeting by the Secretary of the Council at least three days earlier the meeting, and in case of extraordinary session – immediately.

3. A member of the Coordination Council may request to put on the agenda a particular issue, and notify the Secretary of the Council thereupon at least 4 days earlier the meeting. The Council may, by the majority of the present votes, put on the agenda the issue arisen by a member, without preservation of these requirements.

4. A question is submitted to the Council meeting by the Secretary of the Council or a member of the Council, who was requested by the Council to prepare an issue or who requested to put the issue on the agenda.

5. The meeting of the Coordination Council is presided by Chairperson of the Council or, upon his instructions, the Secretary of the Council.

6. The meetings of the Coordination Council are open, unless otherwise provided for by law.

7. The minutes are kept at the meeting of the Coordination Council, which is signed by the Secretary of the Council and a person keeping the minutes. A member of the Council may request to have his/her individual opinion completely included in the minutes of the meeting. The minutes of the meeting is the public document, except those parts of the minutes, classification of which is applicable under law.

Article 6. Secretary of the Coordination Council

1. The Secretary of the Coordination Council is appointed to and dismissed from the position by the President of Georgia.

2. The Secretary of the Council:

a) Directs the personnel of the Coordination Council;

b) Within the limits of the budget approved by the Coordination Council, manages the material and financial resources of the Council personnel;

c) Provides the activities of Coordination Council with the organizational and technical support;

d) Represents the Council in relations with the third party without special power of attorney;

e) Organizes the meetings of the Coordination Council and provides the preparation of the issues to be submitted to the meeting;

f) Provides the members of the Council with the respective information;

g) Conducts the affairs;

h) Draws up the annual financial report to present to the Coordination Council.

3. Intended for the financing of the Coordination Council and activities of the Council personnel, the Secretary of the Council is responsible for relationships with the Fund provided for by the Article 11 of the present Provision.

4. The Secretary of the Council may not simultaneously pursue other profitable activities.

Article 7. Cases of Conflict of Interests

1. The member of the Coordination Council is obliged to refrain from participation in the consideration of the issues, in respect to which s/he has a personal interest.

Part II.
Structure and Functions of the Personnel of the Coordination Council

Article 8. Personnel of the Coordination Council

1. In order to provide the Anti-corruption Policy Coordination Council and its members with the informational, analytical, material and technical support, the personnel of the Council is set up.

2. The personnel of the Council are only accountable before the Coordination Council.

Article 9. Procedure of Appointment and Dismissal of the Council Personnel

1. The employees of the personnel of the Council are appointed to and dismissed from the position by the Secretary of the Council, in result of the detailed consideration of the experience and reputation of each candidate.

2. The question of dismissal of the employee of Council personnel may be put in the case if:

a) there is a grounded suspicion of commitment of the corrupt violation;

b) there is convincing information concerning overt abuse of official powers by him/her, which has caused or may have caused discredit of the Council;

c) despite the written warning, performs his/her official duties in inappropriate manner.

Article 10. Structure of the Council Personnel

1. The personnel of the Council comprises of the following subdivisions:

a) Department of Anti-corruption Policy Monitoring and Analysis;

b) Department of Public Relations;

c) Department of Cooperation with International Anti-corruption Programs and Initiatives;

d) Department of Administrative and technical provision.

2. The List of members of staff of the Council and the rules of internal behavior is approved by the President of Georgia upon presentation of the Secretary of the Council.

Part III.
Financial Provision of the Coordination Council

Article 11. Financial Provision of the Activities of the Coordination Council

1. In order to ensure independence and stability of the Coordination Council, financing of activities of the Coordination Council, its personnel and invited experts is undertaken from the Foundation Assisting to the Implementation of the National Anti-corruption Program, which has the status of the legal entity of the Private Law.

2. The Foundation is established by the State, as well as the foreign and international organizations, which express preparedness thereupon.

3. Administration of the Foundation and management of funds is undertaken by the Foundation Board under the procedure provided for by the Statute of the Foundation and legislation.

Annex 6

DECREE
OF THE PRESIDENT OF GEORGIA
187 MAY 8, 2001 TBILISI

ON ESTABLISHMENT OF ANTI-CORRUPTION BUREAU OF GEORGIA AS LEGAL ENTITY OF PUBLIC LAW AND INTRODUCTION OF AMENDMENTS TO PRESIDENTIAL DECREE # 131 OF APRIL 13, 2001

In accordance with the Law of Georgia on "Legal Entity of Public Law":
1. The Anti-corruption Bureau of Georgia shall be established as the legal entity of Public Law.
2. The enclosed Provision of Anti-corruption Bureau of Georgia - legal entity of Public Law shall be approved.
3. The Ministry of State Property Management (L. Dzneladze) and City Administration of Tbilisi (I. Zodelava) shall decide the allocation of the Anti-corruption Bureau of Georgia.
4. State control over the Bureau activities is performed by the President of Georgia by means of Anti-corruption Policy Coordination Council. The forms and limits of the state control are determined by the Provision of the Bureau.
5. Introduce the following amendments to the Provision of the Anti-corruption Coordination Council approved by Presidential Decree # 131 dated 13 April 2001 on "Approving of Provision of Anti-corruption Coordination Council":
a) Article 6:
a. a) "a" and "b" subparagraphs shall be removed from the 2nd paragraph;
a. b) the words "Council and the Council personnel" shall be substituted with the word "Council" in the 3rd paragraph;
a. c) paragraph 4 shall be removed;
b) title of the 2nd chapter and articles 8, 9 and 10 shall be completely removed from the Provision;
c) the words "its personnel" shall be removed from the 1st paragraph of the 11th article.

E. Shevardnadze
Approved by Presidential Decree #187 of May 8 2001

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PROVISION
of Anti-corruption Bureau of Georgia – Legal Entity of Public Law

I. General Provisions

1. The title of the Legal Entity of Public Law is "Anti-corruption Bureau of Georgia - Legal Entity of Public Law" (hereinafter in the text - Bureau).

2. The Bureau is established on the basis of Law of Georgia on "Legal Entity of Public Law" under Presidential Decree and represents Legal Entity of Public Law, has a bank account (including the foreign currency), a seal with its title and emblem.

3. The Bureau is established in order to provide the Anti-corruption Policy Coordination Council within the President of Georgia (hereinafter in the text - Council) with informational, analytical, material and technical support.

II. Goals, Functions and Sphere of Activities

4. The Bureau is established to provide the Anti-corruption Policy Coordination Council and its Members organizational, technical, expert and informational support.

III. Bureau Administration and Personnel

5. Director of the Bureau is Secretary of Coordination Council, who is appointed to and dismissed from the position by the President of Georgia under the rule provided for by Provision of Anti-corruption Policy Coordination Council.

6. Secretary of the Council – Director of the Bureau:

a) Guides and conducts the activities of the Bureau;

b) Under the rule provided for by legislation, manages the property and finances of the Bureau; he is in charge of correct and purposeful exploitation of the property and monetary resources of the Bureau;

c) Represents Bureau in relations with the third party;

d) Draws up the annual financial report to present to the authorized body;

e) Approves the rules of internal behavior of the Bureau;

f) Performs other duties, as provided for by this Provision and the existing Legislation.

7. The list of members of staff is approved by the President of Georgia.

8. Director of the Bureau has a Deputy, who conducts the activities of the Bureau in the absence of Director.

9. Under rule provided for by the existing legislation, the Bureau employees are appointed to and dismissed from the position by Director of the Bureau, taking into account results of consideration of each candidate.

IV. Financial Provision

10. The sources of financing of the Bureau are:

a) Special resources apportioned from the State Budget of Georgia;

b) Other revenues allowed under Georgian legislation.

11. Resources and revenues received by the Bureau are completely concentrated to implementation of the goals and functions of the Bureau.

12. Once a year or upon request, Bureau presents to the Council a financial report.

V. State Control

13. State control over legality, purposefulness and effectiveness of the activities implemented by the Bureau is performed by the President of Georgia by means of Anti-corruption Policy Coordination Council.

14. State control over financial-economic activities of the Bureau is implemented by rules provided for by Legislation.

VI. Structure of the Bureau

15. Bureau comprises of the following subdivisions:

a) Group of Anti-corruption Policy Monitoring and Analysis;

b) Legal Group;

c) International Relations Group;

d) Public Relations Group;

e) Administrative-technical Group.

VII. Rules and Terms of Liquidation

16. The Bureau is liquidated in case if the Council ceases its responsibilities or other cases provided for by legislation. Liquidation of the Bureau is carried out under the Presidential Decree.

VIII. Rule of Introduction of Amendments and Additions to Provision

17. Introduction of amendments and additions to the Provision is carried out under Presidential Decree.

Annex 7

LAW OF GEORGIA

ON CONFLICT OF INTERESTS AND CORRUPTION ON PUBLIC SERVICE

Chapter 1.
General Provisions

Article 1.

This Law establishes general principles of prevention, disclosure, and elimination of conflict of interests and corruption on public service and general principles of imposing liability for infringement of the law and the bases for legal regulations.

Article 2.

In this Law, the term ***"official"*** implies the following persons: the President of Georgia; member of Parliament of Georgia; the heads and the deputies of the Supreme Representative Bodies of the Autonomous Republics of Abkhazia and Adjaria ; the heads and the deputies of the Supreme Executive Bodies of the Autonomous Republics of Abkhazia and Adjaria; the Minister of Georgia and his/her deputy; the chairman of the Georgian State Department, the chief of the State Inspection of Georgia and their deputies; the heads of Georgian State Bureau and Department; heads and the deputies of the Departments and Bureaus of the Ministries of Interior Affairs, Security and Defense, as well as persons equated to them; the heads and deputies of the Custom and Tax department of Georgia, also regional and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi, and Tskhinvali,) also the head of city district tax and custom services; the head and deputy of Georgia state antimonopoly service, Georgia Military Commissar; Military Commissars of a region and city (Tbilisi, Batumi, Rusatvi, Sokhumi, Poti, Kutaisi, and Tskhinvali) and also the city districts, the chairman, deputy, and the member of the Presidium of the Chamber of Control, the President and the member of the Council of National Bank of Georgia, the member of the Advisory Board of the President of Georgia, the member of the National Commission of the Regulation of Electricity, the chairman, deputy, and secretary of the Central Election Commission of Georgia, State Trusty and his/her deputy of the President of Georgia, the head of local representative agency of a region and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi, and Tskhinvali), also the heads of the local representative agencies of a city districts; the heads of the local executive agencies of a city and region (Tbilisi, Batumi,

Rustavi, Sokhumi, Poti, Kutaisi, and Tskhinvali), also the heads and their first deputies of local executive agencies of city districts; Judge; Prosecutor General of Georgia and his deputy, the head of the department of Prosecutor General of Georgia, the Prosecutors of region and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi, and Tskhinvali), also the Prosecutors of the city districts, other bodies elected, appointed or approved by the Parliament of Georgia in accordance with the Constitution.

Article 3.

1. ***"Corruption on public service"*** is the misuse of an official position or the opportunities relevant to this position by an official in the aim to gain material or other benefits prohibited by the law, also to transfer those benefits, or to assist in gaining and making those benefits legitimate.
2. ***"Corruptive delinquency"*** is an act that contains the signs of corruption subjected to disciplinary, administrative or criminal liability in accordance with the law.
3. ***"Conflict of interests on public service"*** **is conflict** of interests between the property and other personal interests of an official and the interests on public service.

Article 4.

for the purposes of this Law:

a) ***"Family member"*** implies spouse, minor child and stepchild of an official and a person permanently residing with him/her.
b) ***"Close relative"*** implies a member of a family, direct ascent and decent line relative, stepchild, sister and brother, and also stepchildren of a parent or a child of a person.

Article 5.

for the purposes of this Law:

a) ***"Gift"*** is any kind of property or release from liabilities passed to a person free of charge or in favorable terms as well as any service rendered in the obviously favorable terms by a person who as a rule receives compensation for it.
b) A grant, scholarship, premium or award transferred by governmental or international organization will not be considered as a gift.
c) A gift given to an official by a family member or a close relative, as well as printed publications gifted by another person, except the editions of historical or bibliographical value are not subjected to limitations under this Law.

Article 6.

As for the purpose of this Law ***"enterprise control"*** implies authority of a person (body) to any concrete enterprise (entrepreneur) for him/her personally or through a person under his/her supervision to checkup the enterprise business, to establish any restriction

or favor on entrepreneurial business, to issue a license, certificate or other kinds of permissions concerning his/her entrepreneurial activity.

Chapter II
Restriction in Acts

Article 7.

An official has no right to apply the authorities gained on public service or its relevant opportunities against the interests of public service, or for solution of an issue that is not covered by his/her terms of office.

Article 8.

An official has no right to disclose or use for any other purposes information containing official secret or any other kind of confidential information, which has become known to him/her within his/her official duties and publicity of which is limited under the acting legislation.

Article 9.

1. An official who is obliged to serve or make decisions free of charge under the public service has no right to receive or require the compensation or any other kind of benefit for such a service.
2. An official who for the public service is obliged to render a service or make a decision for consideration in the officially fixed amount is prohibited to receive the more amounts or require on such.
3. An official has no right to get any compensation from the information created or searched by the State Treasury organ, as well as for publication of a work, report or any other material made on the grounds of such information.
4. Limitation determined by the subdivision 3 of this Article does not apply in an event if the information is public and any interested person has an access to it.

Article 10.

1. An official has no right to make a property deal with that treasury agency where he/she holds position.
2. An official has no right to make a property deal with the close relatives or their representative as a public servant.
3. The deal made by the violation of the requirements determined by the first and second subdivisions of this article is void.

Article 11.

1. An official whose obligation within the board agency is to make decision regarding his property or private interests, is obliged to inform other members of the board or his direct supervisor about this, and has to refuse to participate in decision making.
2. An official whose obligation is to make sole decision regarding his property or other private interest has to declare self-recusal and to inform his supervisor (supervising agency) about this in a written way, who has to make an appropriate decision or entrust other official to make decision.
3. An official has a right to sign a decision, in case determined by the second subdivision, on the basis of written permission of his direct supervisor (supervising agency) and this has to be underlined in the decision.
4. Requirements determined by this article does not apply to the President of Georgia, Member of the Parliament of Georgia, the heads and deputies of the supreme representative and executive agencies of the Autonomous Republics of Adjaria and Abkhazia.

Article 12.

1. An official, a member of his/her family has the right to receive a gift, if the total amount of gifts received within a year does not exceed 20- times amount of the living minimum.
2. An official, a member of his/her family has no right to receive a gift from the body or the institution or the representative of foreign or international organization, except as a symbol or souvenir during the protocol or other official event. In such case the value of a gift received from one of the sources should not exceed a half amount of the living minimum.
3. An official, his/her close relative has no right:
   a) to receive a gift handled to him/her because of his position ;
   b) to receive a gift from the person whose issue was/is under his discussion, or it is preliminary known that official has to discuss it during the implementation of his/her public service duties.
   c) to receive a gift from the person who is under supervision of an official, except the case when it is perceived that receiving a gift is acceptable by society. In this case the value of a gift received from a person under the supervision of an official should not exceed a half of the living minimum.
4. An official, his/her close relative are obliged to return a gift receiving of which is prohibited to a person from whom he/she received it, or to the state treasury, or treasury institution during 72 hours after he/she received a gift, or after he/she finds out about this fact.
5. If the special estimation is necessary for the establishment of the value of a gift its approximate market price will be calculated (within the 10 % error).

Chapter III
Positional Incompatibility

Article 13.

1. The issues of positional conflicts are regulated by the Constitution of Georgia, Organic Law, this Law, and other normative acts.
2. The restrictions determined by the chapter III of this Law does not apply to an official (a member of his/her family) whose positional conflicts are regulated by the Constitution of Georgia or Organic Law.
3. An official has no right to implement any kind of paid work except scientific, pedagogical, or creative, or to hold any position in an other treasury institution or treasury enterprise, or to implement any kind of paid work or to hold a position in the agency or institution of a foreign country.
4. An official, a member of his/her family has no right to hold a position or implement any kind of work in an enterprise registered in Georgia the control of which is conducted by an official or belongs to his/ her authorities.
5. An official has no right to hold any position in an enterprise.
6. An official, a member of his/her family has no right to own shares or part of a stock in an enterprise the control of which is implemented by an official or belongs to his/her authority.
7. An official has no right to be a representative or a trusty of a physical or a legal body, or to represent or defense in the cases of criminal, civil, or administrative law violation against or in front of the treasury institution, except the case when he/ she is a guardian of a physical person.
8. A close relative of an official can not be appointed on the position of a public servant, except by the competition, which is under the supervision of an official. This restriction does not apply to the employees of the health care and educational institutions.
9. An official, a member of his/her family is obliged to retire from a incompatible position, or to terminate incompatible work within 10 days after the appointment on the position, if something else is not determined by the Constitution or the Law.
10. An official will present the documents concerning the elimination of his/her incompatibility and a member of his/her family to his/her direct superior official (agency), also to the appropriate staff department.
11. An official has to be fired from an occupied position if he/she or a member of his/her family violates the requirements of position incompatibility determined by this law, if something else is not determined by the Constitution or Law

Chapter IV
Declaration and Publication of Economic Interests

Article 14.

1. An official is obliged to fill in and present property declaration within a month after his/her appointment.
2. An official is obliged to fill in and present property and financial declarations while he holds a position annually from January 1 till January 31.
3. The rule determined by first subdivision of this article does not apply to those judges the terms of presentation of property declaration are determined by the Organic Law of Georgia on the Courts of General Jurisdiction.
4. An official is obliged to fill in and present property and financial declarations within a month after retiring from a position.
5. An official is free from filling in and presenting declarations if he/she left a position because of electing, appointing, or confirming on a position where the filling of declaration is obligatory.
6. The declarations are presented to the informational bureau of a property and financial state of the officials.
7. The financial and property declarations of an official have to be filled according to the forms attached to this Law.

Article 15.

1. The Property State Declaration of an official should contain exhaustive information concerning:

a) the total value of movables and immovable property owned by an official and his/her family members in Georgia and abroad, as well as the list of those movables and immovables the single value of which exceeds the 15- times amount of the living minimum, mentioning the type, owner, market value and location of an immovable;
b) securities owned by an official and members of his/her family in Georgia or abroad, mentioning the type of securities, owner, nominal value and quantity of those securities;
c) deposits or/and accounts opened in Georgian or foreign bank or/and other credit institution on his/her behalf or on behalf of members of his/her family, mentioning the essential elements of bank or credit institution, account or deposit holder, account number and amount on a deposit or account;
d) cash sums at his/her disposal or at the disposal of his/her members of the family the amount of which exceeds 15 times living minimum except those determined by subparagraph "c" of this Paragraph, mentioning the owner and the amount of the sum;
e) his/her involvement or involvement of the members of his/her family in entrepreneurship in Georgia and abroad, the person involved in entrepreneurship and form of partnership, full name and legal address of an enterprise, mentioning the registering body and date of registration of an enterprise;
f) any kind of paid activities fulfilled by him/her or his/her family member in Georgia or abroad, except working in an enterprise, mentioning the person fulfilling work, held position or content of the work-engagement, as well as mentioning the work where the person holds position or is engaged in working.
g) any active agreement made by him/her and member of his/her family in Georgia or abroad, which contractual amount exceeds 15 times living minimum, except those

agreements determined by "a"-"f" subparagraphs of this Paragraph, the type of agreement, subject of the agreement and its value, the date of making agreement and time of its activation, as well as mentioning the body that has fulfilled state registration and certification of an agreement;

h) identification data of a member of an official's family (name, surname, place of birth, year, month and date, relative kind or other kind of alliance.)

2. The data existing for the day of its filling shall enter into the property state declaration.

Article 16.

1. Financial declaration of an official should contain an exhaustive information about:

a) the movable or/and immovable property bought or gifted in Georgia or abroad by him/her or a member of his/her family, the value of which exceeds 15 times living minimum, mentioning the type of property, the form and price (value) of buying or/and gifting, as well as mentioning the location of immovable and the organ that has fulfilled registration and certification;

b) securities either bought or/and gifted by him/her or a member of his/her family, the type of securities, nominal price and amount, type and price of bought or/and gifted thing as well as mentioning the organ that has fulfilled registration or certification of the above mentioned.

c) Deposits or/and accounts opened or/and existed in a bank or other credit institutions on his/her behalf or on the behalf of the members of his/her family in Georgia or other foreign country, requisites of the institution, mentioning the type of an account or/and deposit and the person who has opened an account, an amount on a deposit or/and account, the date when the deposit or/and account was opened or/and closed, as well as the sum received from deposit or/and account;

d) his/her involvement or involvement of members of his/her family in entrepreneurship in Georgia and abroad, the person involved in entrepreneurship, form of partnership and its duration, full name and legal address of an enterprise, mentioning the registering body, date of registration of an enterprise and amount of money received from the involvement in entrepreneurship;

e) any paid activity fulfilled in Georgia or abroad by him/her or the member of his/her family, except that working in an enterprise, mentioning the person fulfilling work, held position or content of the work-engagement, the time period of holding position and income received from this position, as well as mentioning the work where the person holds (held) position or is engaged (was engaged) in working.

f) any kind of gifts received by him/her or the member of his/her family in Georgia or abroad, mentioning the person who received and who passed the gift, the type of present and its market price;

g) any active agreement made by him/her and member of his/her family in Georgia or abroad, which contractual amount exceeds 15 times living minimum, except those agreements determined by "a"-"f" subparagraphs of this Paragraph, the type of agreement, subject of the agreement and its value, the date of making agreement or/and time of its expiration and time of its activation, the material result gained

from the agreement as well as mentioning the body that has fulfilled state registration and certification of an agreement;

h) any other incomes and outcomes, the value (amount) of which exceeds 15 times living minimum, except the incomes or/and outcomes determined by the subparagraphs "a" –"g" of this Paragraph, mentioning the form and amount (value) of the relevant incomes or/and outcomes, as well as determining the person who has had incomes and/or outcomes;

i) identification data of a member of an official's family (name, surname, place of birth, year, month and date, relative kind or other kind of alliance.)

2. The data existing for the day of its filling for one calendar year shall enter into the financial declaration.

Article 17.

1. If the cost of property to be entered in to the declaration requires the special estimation the tentative market value shall be indicated (in limits of 10% errors.)

2. If the information to be entered in declaration is a state or an official secret or is confidential the publicity of which is limited under the acting legislation, this information shall be reflected only in the special (secret) column of the declaration mentioning the owner, type, amount and market price of property (movables and immovables, foreign and national currency) and securities.

3. In case determined by paragraph 2 of this Article, the person who fills in the Declaration should attach the written notice on that legal act under which the information to be entered in the Declaration belongs to the state or job secret or/and is another kind of confidential information the publicity of which is limited.

Article 18.

1. In order to receive declaration, provide publicity and control of the property and financial state of an appropriate official, as well as to perform other functions determined by acting legislation the Information Bureau of Property and Financial State of Officials (hereinafter: "Bureau") should be established at the Chamber of Control of Georgia to ensure:

a) providing technical instructions on correct filling in of declaration by an official;
b) free acceptance of declaration form by an official;
c) accepting and keeping of the filled declaration;
d) publicity of the content of the declaration;
e) on the bases of the list given in the paragraph 2 making the register of those officials who are obliged to fill in the declaration and nominating them to the President for approval as well as preparation and presentation of the amendments and supplements to the president of Georgia for approval to be made in the register;
f) performing other functions determined by the legislation.

2. The Bureau is headed by its chairman who is approved by the Parliament of Georgia under the nomination of the President of Georgia for the term of 4 years.
3. The President of Georgia fires the chairman of the Bureau.
4. The structure and procedure of work of the Bureau is determined by its statute which has to be approved by the President of Georgia according to the nomination made by the chairman of the Bureau.

Article 19.

1. Any physical and legal body has the right to request, receive and familiarize with the copy of declaration, except the secret column of the declaration.
2. No fee or obstacle should be established for receipt of the copy of declaration, except the necessary payment for making the copy.

Chapter V
Liability for Corruptive Violation

Article 20.

1. Violation of the requirements of this Law causes liability under the Georgian criminal and other administrative codes.
2. Deliberate violation of the requirements of this Law, if it does not represent criminal or administrative violation, causes disciplinary liability in accordance with the rule determined by the law.
3. If an official performing corruptive violation, against which the disciplinary measures had already been issued, except firing from the position, performs another corruptive violation during the year, he/she is subjected to an obligatory firing from the position.
4. The requirements determined by the paragraphs 2 and 3 of this Article do not apply to the President of Georgia, members of the Parliament of Georgia, representative of the government, heads and deputies of the Supreme Representative and Executive bodies of the Autonomous Republics of Adjaria and Abkhazia, the heads of region and city (Tbilisi, Batumi, Rustavi, Sokhumi, Poti, Kutaisi, and Tskhinvali,) Local Representative bodies.

Chapter VI
Transitional Provisions

Article 21.

1. Request to be made to the President of Georgia to nominate the candidate to the Parliament for approval on the appointment on the position of a chairman of the informational bureau concerning property and financial state of an official, by the end of fall session of 1997.

2. The Chamber of Control has to establish the informational bureau on financial and property state of an official before March 30, 1998.
3. The chairman of the informational bureau on property and financial state of the officials has to present to the President of Georgia the charter of the bureau before March 30, 1998.
4. The chairman of the informational bureau on property and financial state of the officials has to present to the President of Georgia for confirmation the positional register of those officials for whom the filling of financial and property declarations are obligatory in accordance with this Law.
5. The living minimum has to be determined as 100 Lari for the purpose of implementation of this Law, before the executive government of Georgia determines the living minimum.
6. The Ministry of Finance of Georgia has to separate "the expenses of the informational bureau on property and financial state of the officials" as separate division in the Law of Georgia on the Budget.
7. The terms of presentation of property and financial declarations by the officials determined by the article 2 of this Law has to be prolonged till May 31, 1998.
8. The Ministry of the State Property Management has to provide the informational bureau on property and financial state of the officials till January 1, 1998.
9. Chapter IV of this Law is to be applied only to the President of Georgia, Member of Parliament of Georgia, heads and deputies of the representative and executive agencies of the Autonomous Republics of Abkhazia and Adjaria, also the bodies and their deputies elected, appointed, and confirmed by the Parliament of Georgia in accordance with the direct instructions of the Constitution of Georgia.

Chapter VII
Final Provisions

Article 22.

1. This Law, except the chapter IV has to be enacted on 15th day upon its publication.
2. The chapter IV has to be enacted after January 1, 1998.

President of Georgia — Edward Shevardnadze
Tbilisi,
October 17, 1998

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Annex 8

BUREAU FOR INFORMATION ON ASSETS AND FINANCES OF PUBLIC OFFICIALS OF GEORGIA

The Bureau for Information on Assets and Finances of Public Officials was founded on May 1998 on the basis of the law „On Conflict of Interests and Corruption in Public Service", as an organizational structure in the institutional frames of the State Anti-corruption Policy.

In accordance to the law, the declaring of property and financial condition of public official and their family members became obligatory. The declaration aimed at disclosure of public officials' financial and economic interests, the transparency of their activities (consequently, the increase of public confidence towards them).

The institution of declaration enables the society to receive the information on the personal economic and financial interests of a public official and find out whether the public official places the public, i.e. the state interests higher than his personal interests. The question should be answered whether a post occupied by a public official is the source for the illegal improvement of his economic condition and consequently, corruption.

The process of declaring is performed by the Bureau for Information on Assets and Finances of Public Officials.

The activities of the Bureau during the past period may be divided into three main directions. Below we shall briefly clarify each of them.

One of the principle directions of the activities of the Bureau for Information has been recognized as a legislative activity, which aims at the completion and improvement of the legislative base of the institution of declaration. The legislative basis and the experience of the institutional activities did not exist in practice. With active participation of the Bureau for Information, the three laws for introducing of amendments and supplements have been prepared in the Law of Georgia "On Conflict of Interests and Corruption in Public Service". As a result of given amendments, the forms of declarations became improved and more informative, essentially extended the number of public officials and etc.

Taking into consideration that the attitude of the society has changed towards the process of declaring, the legal basis for conducting of this process was changing as well.

The elaboration of respective subordinate acts was necessary for the implementation of the Bureau activities and the realization of the functions imposed thereto. During the past years Bureau worked out 10 drafts of Presidential Provisions, including "the Guidelines for Technically Correct Filling of Declaration of Assets and Finances of Public Officials", "the Rule of Declaration of Assets and Finances of Public Officials", "the Rule for Ensuring Publicity of the Declarations of Public Officials" and etc. We would like to mention that currently the Bureau proceeds with its activities in this direction.

One more direction is worth to be mentioned, which is related to the creation of an organizationally independent unit and its activities as well.

It is important that the staff of the Information Bureau have been chosen through public contest. Notwithstanding the poor budget, during the last year the small material-technical base was created. The Information Bureau draws attention to the introduction of modern technologies. There had been enabled relatively perfect computerization, formation of the declarations and the process of declaring of computer data bases, created corresponding computer programmes. Currently, there are programmes of issuance of certificates verifying submission of declarations, staff registration, archive, incoming and outgoing mail in the Bureau. After the completion of the declaration period, the produced declarations are scanned and the electronic archive filled. The interested persons can get the corresponding information about the process of declaration.

The main goal of the Bureau is the publishing and maximal insurance of objectivity of the declarations of assets and finances of public officials.

Thus, it is obvious that the main criteria estimating the effectiveness of the Bureau activities is expressed through truthfulness and general availability of this information.

Consequently, the main direction of the Bureau activities is the obtaining of full information on assets and finances of public officials, the systematization of this information and its publishing.

Currently, there are 15 000 declarations in the Information Bureau. In accordance to the legislation, the main direction of the Bureau activity is the control over the submission of declarations of public officials in the specified period of time. During the last four years in cases of non-presenting of the declaration in within the terms, the corresponding administrative offence report was drawn up and 910 cases of administrative law infringements have been sent to the court. Each third of them were charged with the administrative penalty in the amount of 150 laris. The Information Bureau sent the corresponding documents, pursuant to the Article 355 of the Criminal Code of Georgia to the General Prosecutor's Office against those nine public officials who did not present the declarations within the two-week period.

As we have mentioned, for the perfect implementation of the declaring process and for providing control by the society, the decisive importance has the publicity of the

declarations presented by public officials. In accordance to the legislation currently in force, after expiration of one- month term from the day of submission of declarations, any legal or a natural person has the right after the demand to receive the copies of declarations or get familiarized at the Bureau for Information.

During the accounting period, 4 700 applications to receive the copy of declaration of a public official have been submitted to the Bureau for Information. The interest of representatives of mass media is intense towards the process of declaring. The representatives of mass media are the main lever of public control over the completeness of declaration data at current stage.

The main attention was paid to cooperation with public organizations. We should single out the cooperation with public organizations – "Free Journalists Union" and "Fair Elections". The Bureau for Information was in close cooperation with representatives of foreign organizations as well.

During the past period a number of press conferences were dedicated to the declaration theme, systematically submitted information to mass media about the running of the declaring process, the main point and purpose of the institute of declaration, and its perspectives. If we reason according to the statistical data, since July 1998, almost 400 publications have been issued and more than 170 reportages broadcasted.

Every year the informational bulletin on the economic interests of public officials, which includes the analytic information on the property, incomes and expenditures of a public official is prepared in the Bureau. The purpose of publishing of the bulletin is transmission of impartial information. Although, it should be mentioned, that owing to the State budget problems Bureau promulgates bulletins in a limited edition.

The short explanatory dictionary of economic and legal terms, which consists of explanations of 1 500 specific terms is prepared in the Bureau for Information. It seems that, after promulgation, the dictionary helps significantly the interested reader and primarily to the declaring-public official to determine the interpretation of several theoretical and practical essences with respect to the legal status of their property and finances.

In accordance to the assignment of the President of Georgia, and the Provision on "Some First-range Anti-corruption Measures", the Bureau for Information drafted proposals on the improvement of the mechanisms of supervision over the data recorded in the financial declarations and the measure of strengthening of liability for the entering of incorrect data in declarations. The proposals pertain to the draft law "on Changes and Amendments in Some Legislative Acts" and the list of measures to be taken additionally to check the correctness of the data entered in the declarations as well. We should attract your attention to that fact, that proposals, which are not connected to the process of declaring, somehow are presented on the basis of accumulation of public opinion.

The press conference was dedicated to the decision of the above-mentioned problems, where the representatives of corresponding state structures, public organizations and mass media were invited. A constructive dialogue was held, which showed the role of the declaration institute in the establishment process of a civil society.

The past period clearly showed the positive and negative aspects of the institute of declaring. At the first stage the declaration process, as a preventive measure against corruption, notwithstanding its positive features, such as publicity and transparency, the society and the majority of public officials expressed their distrustfulness. The major part of mass media declared that the public official will try forge the declaration data, does not show the property, which he has in reality and consequently nobody will require an answer. The basic argument of their negative attitude towards the declaration process was the syndrome of impunity.

From the above-mentioned we consider that first of all the institute of declaring should play an important role in the establishment of objective transmittal and culture of perception.

At this stage, we can mention that the institute of declaring has succeeded. The Bureau has firmly founded itself in the society, as a structure, which in accordance to the legislation carries out its activities. The Information Bureau possesses the information about the economic interests of public officials, the analyses of which is already possible, moreover – essential. The above-mentioned is confirmed by the public opinion, which is directed to the necessity to re-check the declaration data.

Certainly, as each new event, today's situation of the institute of declaration is not the limit of its development and thus, is not ideal. Eradication of deficiencies, taking aim at long-term proposals and outlining the future plans – are those realistic abilities, which will give the institute of declaration - as a bridge between the State and a society, the possibility for further establishment.

Annex 9

INFORMATION ON DISCIPLINARY RESPONSIBILITY AND DISCIPLINARY PROCEEDINGS AGAINST JUDGES OF THE COURTS OF GENERAL JURISDICTION

Information on Disciplinary Responsibility and Disciplinary Proceedings against Judges of the Courts of General Jurisdiction 2002

Body executing disciplinary proceedings	Instituted and held in disciplinary liability	Considered	Consideration Results							To be considered
			Uncharged	Acquitted	Received Letter of Recommendation	Issued			Dismissed	
						Reproof	Reprimand	Severe Reprimand		
	case	case			person	person	person	person	person	case
Supreme Court of Georgia	43	40			9	12	4	6	5	3
Council of Justice of Georgia	17	17			8	7		1	1	
Tbilisi District Court	8	8			1	4	2	1		
Kutaisi District Court	9	9			3	1	1			
Total	***77***	***74***			***21***	***24***	***7***	***8***	***6***	***3***

Information on Disciplinary Responsibility and Disciplinary Proceedings against Judges of the Courts of General Jurisdiction 1.07.2000 - 25.05.2001

Body executing disciplinary proceedings	Instituted and held in disciplinary liability	Considered	Consideration Results							To be considered
			Uncharged	Acquitted	Received Letter of Recommendation	Issued			Dismissed	
						Reproof	Reprimand	Severe Reprimand		
	case	case	person	person	person	person	person	person	person	case
Supreme Court of Georgia	18	14			2	4	4	1		4
Council of Justice of Georgia	42	31	6	3	11	8	6	2		11
Tbilisi District Court	1									1
Kutaisi District Court	6	6		1		2	2	1	1	
Total	***67***	***51***	***6***	***4***	***13***	***14***	***12***	***4***	***1***	***16***

Annex 10

EXTRACT
CODE OF ADMINISTRATIVE OFFENCES OF GEORGIA

Article 159[5]. Incorrect Selection o Means or Methods for Implementation of Public Procurement

Incorrect selection of means or methods for implementation of public procurement in order to evade tender or price quotation, or artificial partition of public procurement in order to evade the monetary thresholds the public procurement implementation means prescribed by the Law of Georgia on Public Procurements and respective normative acts,-

Shall incur fine of the head of organization from two up to three hundred minimum amount of the salary.

Article 159[6]. Violation of Rules of Implementation of Public Procurement

While implementation of the public procurement through tender, drawing up of announcement on tender or tender documents incorrectly, or violation of the rules of publishing announcement,-

shall incur fine of the respective members of the tender commission from two up to three minimum amount, and fine of tender commission chairperson – from three up to four hundred minimum amount of the salary.

Improper (partial) assessment of qualification data, qualification selection and tender proposals of the applicants,-

shall incur fine of the respective members of the tender commission from two up to three minimum amount, and fine of tender commission chairperson – from three up to four hundred minimum amount of the salary.

Violation of rules of conclusion of tender agreement on the public procurement,-

shall incur fine of a person in charge of the procuring organization (when implementing public procurement through negotiations with one person or price quotation) from two up to three hundred minimum amount of the salary, or fine of the respective members of the tender commission (when implementing public procurement through open or closed tender) from two up to three minimum amount, and fine of tender commission chairperson – from three up to four hundred minimum amount of the salary.

Article 159[7]. Violation of Rules for Evasion of Conflict of Interests when Implementing Public Procurement

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Violation of rules and terms of evasion of conflict of interests prescribed by the Law of Georgia on Public Procurements at implementation of public procurement,-
shall incur fine of a respective senior official of the procuring organization from two up to three hundred minimum amount of the salary.

Article 159[8]. Failure to Fulfill the Requirement of the Public Procurement Agency
Failure to execute a decision of the Public Procurement Agency at consideration of a dispute on public procurement under the administrative procedure,-
shall incur fine of a person in charge of the procuring organization (when implementing public procurement through negotiations with one person or price quotation) from two up to three hundred minimum amount of the salary, or fine of the respective members of the tender commission (when implementing public procurement through open or closed tender) from two up to three minimum amount, and fine of tender commission chairperson – from three up to four hundred minimum amount of the salary.

Article 159[9]. Failure to Deliver the Statute-provided Information to the Public Procurement Agency
Failure to deliver to the public procurement agency the information provided for by the Law of Georgia on Public Procurements or respective normative act, or delivery of false information,-
shall incur fine of a head of the procuring organization from two up to three hundred minimum amount of the salary,

Annex 11

LAW OF GEORGIA ON GEORGIAN CHAMBER OF CONTROL

Chapter 1
General arrangements

Article 1.

Chamber of Control of Georgia (hereinafter Chamber of Control) is a supreme independent state institution of financial control that supervises the use of state resources and other non-material valuables. Its objectives are as following: protection of national public property, control and analysis of the legality, compliance and effectiveness of the use of public material and financial resources.

Article 2.

Chamber of Control is independent in its work and is accountable to Parliament. Its authority, structure and order of activities are determined by the Constitution of Georgia, present Law and other legislative statements of Georgia.
The Chamber of Control shall exercise control on the principles of legality, objectivity, independence and openness.

Article 3.

Chamber of Control recognizes the Statute and main principles of other basic documents of INTOSAI and EUROSAI. It stands for consolidation and intercommunication, exchange of experience and collaboration with international audit organizations and Supreme Audit Institutions around the world.

Article 4.

The Chamber of Control shall be a legal entity, have a seal with a State Emblem of Georgia and its name.
The location of the Central Office of Chamber of Control is in the City of Tbilisi.

Chapter 2
Objectives of the Chamber of Control

Article 5

The Chamber of Control shall have the following objectives:

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- to control over the legality, compliance and effectiveness of the expenditure of the State Budget, and the Budgets of the autonomous republics and other local territorial units of Georgia;
- to control legality, rationality and effectiveness of the allocation and use of foreign and local state credits, control over the management of the state debts;
- to control over the effectiveness and expedience of the use of the state property.
- to review and evaluate discrepancies in the established indicators of the State Budget and prepare proposals directed to elimination thereof and to improvement of the budgetary process as a whole;
- to evaluate the validity of income and expenditure items of draft state budget;
- to control over the legality and timely movement of resources of the State Budget in the banks of Georgia and other credit institutions;
- according to Georgian Parliament's proposal to carry out financial examination of draft laws and the standard by-laws as well as programs which are covered by the State Budget or which influence the formation and execution of the formation of such funds;

Article 6.

The control powers of Chamber of Control are extended to the legislative, executive and judicial institutions, local public bodies, special public funds, Georgian National Bank and all other institutions

Article 7.

The control powers of Chamber of Control are also extended to bodies of local self-government, enterprises, organizations, banks and other alliances regardless of types and forms of ownership, provided they receive, remit, use resources of the State Budget and enjoy tax, customs and other privileges granted by state law.

Article 8.

Chamber of Control can revise any physical and juridical body's contract and loans which are guaranteed by the state.

Chapter 3
Composition and structure of Chamber of Control of Georgia

Article 9

1. Chamber of Control is a single, centralized system which consists of Central Office of Chamber of Control, Chamber of Control of Abkhazian and Adjarian Autonomous Republics, Chamber of Control of Tbilisi and Bureaus of Chamber of Control of other territorial units of Georgia.
The Presidium of Chamber of Control makes the decision about the creation of the Bureaus of the Chamber of Control.

Article 10

Chairman of Chamber of Control shall exercise the overall management of Chamber of Control. The Chairman of Chamber of Control is appointed by the majority of total number of the parliamentarians in accordance with the presentation of the President of the State for a five year term. Resignation of the Chairman of Chamber of Control is possible only by the Parliament decision in accordance with the Article 64 of the Georgian Constitution.

Article 11.

The Chairman of Chamber of Control shall:

- direct the activity of Chamber of Control in accordance with the Georgian Constitution, this law and other relevant regulations;
- makes decisions on the organizational tasks about the activity, control and audit of Chamber of Control;
- presides over a meeting of the Presidium of Chamber of Control;
- presents candidates of relevant high officials of Chamber of Control;
- appoints and resigns responsible persons of Chamber of Control, appoints and resigns Chairmen of Controls of Abkhazia and Adjaria in accordance with agreement of Supreme Council of Abkhazia and Adjaria;
- determines staff and structure of the institutions of the Georgian Chamber of Control in accordance with the quantity of employees and salary fund approved by Parliament of Georgia.
- submits reports to Parliament twice a year (first time -relevant to the Government report by the Budget preliminary implementation, and second time- to the total Government report by the Budget implementation);
- submits annual reports on the activities of Chamber of Control;
- represents Chamber of Control in interrelations with other organizations and international institutions;
- to implement his responsibilities, gives orders which are the highest normative in the system of Chamber of Control;
- can and if asked he must attend Parliament sessions, Committee and Commission meetings; at his request Parliament, Committee and Commission permits him to make a report;
- in case of absence of Chairman of Chamber of Control or his inability to perform tasks his duties are passed on to the first vice-chairman.

Article 12.

Chairman of Chamber of Control has several deputies, one of which is the first deputy.

Article 13.

The President of Georgia appoints and resigns the Chairman's deputies in accordance with a presentation of the Chairman of Control of Georgia.

Article 14.

Chairman of Chamber of Control presents the candidates to the post of his deputies to Parliament during one month period after his appointment as a Chairman of Chamber of Control.

Article 15.

Chairman's deputies can and if asked they must attend Parliament sessions, Committee and Commission meetings; at their request Parliament, Committee and Commission permits them to make a report.

Article 16.

Chairman of Chamber of Control and his deputies must be the citizens of Georgia who have the high education and experience of professional activity in at least one of the following spheres: State Administration, State Control, Economics and Finance.

Article 17.

Detention, house, car and personal search of the Chairman of Chamber of Control is possible only with the Parliament's approval. The only exception is when he is caught on the place of crime. The information about the detention should be immediately presented to the Parliament and if the Parliament does not agree he must be released immediately.

Article 18.

The Chairman's activity must be free and without any pressure from outside and in accordance with his request the relevant institutions must provide his personal security.

Article 19.

Chairman of Chamber of Control and his deputies must suspend their membership in political parties.

Article 20

The Presidium is a supreme collegiate body of the Chamber of Control.
It consists of the Chairman, deputies and other members which are appointed by the Parliament in accordance with the presentation of Chairman of Chamber of Control.

Article 21.

Chairman of Chamber of Control presents the candidates of other members of the Presidium to Parliament during one month period after his appointment as a Chairman of Chamber of Control

Article 22.

The Presidium of Chamber of Control:

- determines main directions of activity of Chamber of Control.;

- adopts working plans, regulations and other interdepartmental normative statements of Chamber of Control;
- hears the most important audit results;
- hears the reports on the work done by Abkhazian, Adjar and Tbilisi Chambers of Controls and Bureaus of Chamber of Controls;
- approves draft Budget of Chamber of Control to be submitted to Parliament;
- considers and approves reports to be submitted to Parliament;
- approves the structure of Chamber of Control in accordance with presentation of the Chairman of Chamber of Control;
- makes decisions by a majority of votes and this decision must be executed by the Chairman of Chamber of Control;
- is held at least once a month.

Article 23.

The members of the Presidium of Chamber of Control can express their particular point of views in a written form which must accompany the Presidium's resolution.

Chapter 4
Chambers of Control of Abkhazia, Adjaria and Tbilisi

Article 24.

General Management of Chamber of Control of Abkhazia, Adjaria and Tbilisi is implemented by their Chairmen.

Article 25.

The Chairman of the corresponding Chamber of Control shall:

- direct the activity of Chamber of Control in accordance with the Georgian Constitution, present law and other relevant regulations;
- directs activity, control and audit of Chamber of Control;
- presides over a meeting of the Presidium of Chamber of Control;
- submits annual report on the activity of the corresponding Chamber of Control to the Central Office of the Chamber of Control.
- gives orders to implement responsibilities;
- can and if asked he must attend the meetings of the Presidium of Chamber of Control, Supreme Council of autonomous republics, Council of Ministers and local government.

Article 26.

Chairmen of Chamber of Control of Abkhazia, Adjaria and Tbilisi must suspend their membership in political parties.

Article 27.

The Presidium is a collegiate body of Abkhazian, Adjar and Tbilisi Chambers of Control.
The members of such Presidiums are appointed by the Presidium of Chamber of Control of Georgia in accordance with a presentation of Chairmen of the corresponding Chambers of Control.

Article 28.

The Presidiums of Abkhazian, Adjar and Tbilisi Chambers of Control shall:

- hear the most important audit results;
- approve draft reports and working plans to be submitted to the Chamber of Control;
- make decisions by the majority of votes;
- be held at least once a month.

Article 29.

The members of the Presidiums of the Abkhazian, Adjar and Tbilisi Chambers of Control can express their particular point of views in a written form which must accompany the Presidium's resolution.

Article 30.

The annual reports on the activities of Abkhazian and Adjar Chambers of Control are submitted to the Presidium of Chamber of Control of Georgia, corresponding Supreme Councils of Abkhazian and Adjar Autonomous Republics.

Chapter 5
Bureaus of Chamber of Control of the territorial units of Georgia

Article 31.

General Management of Bureaus of Chamber of Control of the territorial units of Georgia, other than Abkhazia, Adjaria and Tbilisi, is implemented by their Head.

Article 32.

The Head of the Bureau shall:

- direct the activity of Bureau in accordance with the Georgian Constitution, present law and other relevant regulations;
- directs activity, control and audit of Bureau;
- presides over a meeting of the board of Bureau;
- submits annual report on the activity of the Bureau to the Central Office of the Chamber of Control.
- gives orders to implement responsibilities;
- can and if asked it must attend the meetings of the Presidium of Chamber of Control and local government.

Article 33.

Chairmen of Bureaus and their deputies must suspend their membership in political parties.

Article 34.

The board is a collegiate body of Bureau of Chambers of Control.
The members of such boards are appointed by the Presidium of Chamber of Control of Georgia in accordance with a presentation of the Heads of the corresponding Bureaus.

Article 35.

The board of Bureaus shall:

- hear the most important audit results;
- approve draft reports and working plans to be submitted to the Chamber of Control;
- make decisions by the majority of votes;
- be held at least once a month.

Article 36.

The members of the board of Bureaus can express their particular point of views in a written form which must accompany the board's resolution.

Chapter 6
Procedures of Chamber of Control

Article 37.

to achieve its aims Chamber of Control shall carry out operative control, complex audit, subject investigations and expertise.

Article 38.

Instructions of the President and the Parliament of Georgia shall be subject to mandatory inclusion in the plans of the Chamber of Control.

Article 39.

The proposals made by the Parliament Committees and Commissions shall be subject to mandatory consideration in the course of preparation of the plan of Chamber of Control.

Article 40.

Unscheduled control measures shall be conducted on the bases of the resolutions of the President, Parliament or of the temporary investigation commission of the Parliament, as well as by the decision of the Presidium of Chamber of Control of Georgia, Presidiums of Chambers of Control of Abkhazia, Adjaria and Tbilisi and by the Boards of Bureaus of Chambers of Control.

Article 41.

Internal matters of operation of Chamber of Control, the function of interaction between the structural units of the above mentioned offices, the procedure of investigating cases, preparing and implementing of all types and forms of control and other measures shall be determined by the common regulations of the Chamber of Control.

Article 42.

The scope, time and location of the audit are determined by the Chairman of Chamber of Control, and correspondingly on a local level - Chairmen of the Chambers of Control of Abkhazia, Adjaria and Tbilisi and the Heads of local Bureaus of Chambers of Control.

Article 43.

Audit can be carried out only with the permission and program approved by the Chairman of the relevant Chamber of Control or the Head of the relevant Bureau.

Article 44.

If the review has to be carried out in Chamber of Control, a resolution and a program of this review must be sent to the entity to be controlled.

Article 45.

The entity is responsible for submitting complete report on program issues to the corresponding office of Chamber of Control during two weeks after the resolution has been received.

Article 46.

If the report is not submitted by the entity in due time collegian body of the corresponding office of Chamber of Control can intercede for the resignation of the Head of that entity.

Article 47.

On the base of audits, reviews and investigations a report is made. The related officials of the corresponding offices of Chamber of Control are responsible for the correctness and rightness of those reports. Chamber of Control submits the reports to the audited entities.

Article 48.

If the investigation reveals crime the law enforcement bodies must be immediately informed about findings.

Article 49.

In carrying out the audits Chamber of Control can invite external experts and consultants.

Article 50.

If the audited entity hampers the implementation of the audit or doesn't meet the requirements of the audit Chamber of Control can give the order to the Head of the audited entity. This order must be executed.
Order must be signed by .Chairman of the corresponding Chamber of Control or the Head of Bureau.

Article 51.

1. If the findings reveal certain violations Chamber of Control gives the order to the audited entity or high ranking body to improve the situation.
This order must be executed. The order must be discussed during a twenty days if there is no other period mentioned in this order.

Article 52.

Chamber of Control must be informed about the decisions and steps made by this order.

Article 53.

Chamber of Control can intercede for the resignation of the Head of the State Budget entity and gives recommendations about resignation of the Head of a non-state budget entity to the higher ranking body of this non-state budget entity if such entities don't meet the requirements of the lawful order.

Article 54.

for effective, operative control of the budget revenue and expenditure, the financial bodies, treasure, taxation and customs offices, and also every budget entity must submit the reports to Chamber of Control in accordance with the forms established by Chamber of Control.

Article 55.

Monthly report about budget revenues and expenditures must be submitted not later than 15 of the forthcoming month, six-month report - not later than the 1August of the current year, and the annual report - not later than 15 February of the forthcoming year.

Article 56.

If the report is not submitted by the entity in due time or the report is not complete Chamber of Control can intercede for the resignation of the Head of that entity.

Article 57.

The physical and juridical bodies can appeal against decisions made by the offices of Chamber of Control during 30 days either in the Higher Chamber of Control or in appropriate court.

Chapter 7
Relationship between the Chamber of Control and Parliament of Georgia

Article 58.

Chamber of Control shall submit the reports to Parliament in accordance with Georgian Government's reports on the State Budget implementation not later than two weeks after the submission of the Government reports by the President of Georgia.

Article 59.

Chamber of Control submits simultaneously reports with President of Georgia on the execution of the current State Budget.

Article 60.

Chamber of Control submits annual report on its activity to the Parliament not later than 1 of June of the forthcoming year. The Parliament makes a relevant decision after a discussion of this report. The annual report shall be published in the official journal of the Parliament.

Article 61.

Chamber of Control can, and if necessary must present the findings of most important audits to the corresponding Committee or Commission of the Parliament.

Article 62.

Chamber of Control can present its proposals about the improvement of the taxation system. Chamber of Control presents these proposals before the end of the fiscal year. The proposals of Chamber of Control will be canonized in such a way that they will not influence the current year.

Article 63.

The activity of Chamber of Control is revised by the Commission which can be organized by Parliament's decision.

Chapter 8
The relationship between Chamber of Control and other control institutions

Article 64.

Law enforcement institutions, taxation office, state financial control institutions, internal audit offices and other public institutions must support Chamber of Control within their competence.

Article 65.

Other control institutions shall be established by the law.

Article 66.

Chamber of Control coordinates the activity of the financial control institutions to control effectively and to prevent parallelism.

Article 67.

Chamber of Control as a coordinate body can give the recommendations about the changes of the control subject and data as well as a joint investigation or other operative measures to which are included in the coordination process. This recommendation can be given with the agreement with the board which shall be established with the coordinate bodies.

Article 68

The Board's activity is directed by the Chairman of Chamber of Control. The activity if the Board is regulated by the order of this Board.

Article 69.

Chamber of Control can review the activity of other financial control bodies.

Article 70.

Chamber of Control establishes the internal control standards, audit standards and other related regulations and manuals which must be maintained by all financial bodies.

Chapter 9
Responsibilities, power and legal guarantees of the employees of Chamber of Control

Article 71.

In performing their official duties the employees of Chamber of Control shall have the right to:

- obtain freely any necessary information and documents from any officials during the audit
- carry out inventory in the audited entity in accordance with standards;
- accept explanations from the officials of the audited entity;
- if necessary seal cash boxes, cash offices and office premises, warehouses and archives, and upon identification of falsifications, forgeries, embezzlement and abuses, to impound necessary documents, leaving a certificate of impoundment and copies or a list of impounded documents.

Article 72.

Institution employees of Georgian Chamber of Control must observe public interests of Georgia, protests its property and not to exceed their authority in the process of audits and controls and they are also responsible for keeping commercial secrets of the audited organizations.

Article 73.

During the audit the employees of Chamber of Control must not interfere with the activity of the audited entity, and also, they must keep secret the results of the audit until the audit report is signed.

Article 74.

It is necessary for all officials to fulfill all the lawful requirements of the employees of Chamber of Control.

Article 75

The officials of the audited entity must support the employees of Chamber of Control in performing their duties.

Article 76.

Pressure, threat and other non-legal activity are prohibited to be used towards the auditors Those who will break these requirements are to be penalized by the law.

Article 77.

All auditors on duty have a right to reserve hotel accommodation and all kind of public transportation.

Chapter 10
Concluding provisions

Article 78.

Financing of Chamber of Control is carried out from the State Budget of Georgia. The Parliament approves the forthcoming budget and maximal amount of the staff of the Chamber of Control in accordance with the presentation of the Budgetary and Finance Committee of the Parliament.

Article 79.

The salary of Chairman of Chamber of Control must be not lower than that of the Deputy Chairman of the Parliament.

Article 80.

In case of trial, Chamber of Control of Georgia is free of public duty and if a case is heard at the International Court of Arbitration all costs are compensated from Georgian Budget.

Article 81.

Chamber of Control is mainly formed with the lawyers and economists.

Chapter 11
Temporary provisions

Article 82.

If the audit reveals certain sums of money which is the possession of the State and local Budgets they must be taken by the taxation office. 30% of the penalty from the amount which was disbursed in the State or local Budget shall be used by Chamber of Control for its material and technical improvement as well as for the stimulation of the employees of Chamber of Control. This article is in effect till the general regulation on stimulation in state institutions is adopted.

Article 83.

After the election of local institutions in Georgia, control over the local budgets shall be changed and the establishment of the local control institutions to control local budgets will be determined by the law.

President of Georgia
Edward Shevardnadze
Tbilisi, 15 April of 1997.

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Annex 12

TAX CODE OF GEORGIA

Extract

Adopted on June 13, 1997, with amendments

Chapter 43. Liability

Article 251. Liability for Failure to Withhold Tax at the Source of Payment

Taxes not withheld at the source of payment shall be collected from the physical or legal person from whom the person received the income without withholding the tax.

Article 252. Fine on Overdue Tax Payments

1. If any tax amount is not paid by the due date, the taxpayer is obliged to pay interest on such amount for the period from the due date to the date that the tax is paid at the rate of 0.15 percent per each overdue day. At the same time, when the taxpayer spends money from the accounts not registered in the tax service, he/she will be subject to a fine in the amount of 30 percent of tax arrears or money spent for other purposes, and in the case of repeating the violation within an year after applying the above mentioned sanction 50 percent of the above sums.

2.In the case of overpayment of tax in violation of the tax legislation, interest shall be paid to the taxpayer from the date of the application for a refund of the overpayment to the date on which the refund is made. Where an overpayment is credited, the refund is considered to be made on the due date of the tax against which the credit is taken. for purposes of this part, a refund is considered to be made if the taxpayer receives the payment within seven days thereafter. The rate of interest is equal to the rate charged by the National Bank of Georgia for borrowing from the government for each quarter.

Article 253. Penalties for Late Submission of Returns

1. Taxpayers who fail to submit a timely tax return and accounting forms stipulated by legislation, are liable for a penalty equal to 5 percent of the amount of tax required to be

shown on the return for each delayed complete (incomplete) taxable month's return, but not in excess of 25 percent of the mentioned amount.
2.The penalty under part 1 of this Article is limited to the greater of 200 Lari up to 1000 Lari for overdue payment of the tax for each complete (or incomplete) month during which the failure continues.

3.for the purpose of this Chapter, unpaid tax is the difference between the amount payable and the amount of tax paid by the due date.

Article 254. Penalties for Reduction of Taxes

1.for reducing the amount of tax in returns and reports, the taxpayer is to be fined in the amount of 25% of the reduction.
2.If the reduction referred to in part 1 of this Article is substantial, the taxpayer is liable for a penalty in the amount of 50 percent of the reduction.
3.A reduction of tax is substantial if it exceeds 2,000 Lari or 25 percent of the tax required to be shown on the return.
4.The penalty under this Article does not apply to a reduction of the tax amount as a result of incorrect written directions issued by respective bodies.

Article 255. Liability of Banks and Other Institutions Conducting Certain Types of Banking Transaction

The following sanctions shall be collected from banks and other institutions conducting certain types of banking transactions which fail to meet the requirements of
Article 233 of this Code:

a.in the form of financial sanctions 10 percent of the amount of debit transactions effected on settlement and other accounts of physical and legal persons failing to meet the requirements of sections "a" and "b" of Article 233 of this Code;
b.fine for failing to observe the order priority for debiting from settlement or other account of physical persons the amounts of taxes to the budget and for delaying the transferring to the budget of amount debited from the accounts of their taxpayer customers, and for returning to the taxpayer not executed payment orders in the amounts set forth in Article 252 of this Code. In this case taxpayers shall not pay fine.

Annex 13

EXTRACT
THE LAW OF THE REPUBLIC OF GEORGIA *ON ENTREPRENEURS*

(adopted: 28.10.1994. Came into force: 01.03.1995)
(published: Sakartvelos parlamentis uckebebi, 1994, Nr. 21-25, Art. 455)

CLAUSE 13. Accounting and Reporting

13. 1. The rules of Accounting and Reporting is small enterprises shall differ from those in all other types of enterprises. The simplified rules shall apply with respect to enterprises of not more than 20 full-time employees. Full-time shall be defined as an eight-hour working day.

The rules of Accounting and Reporting shall equally apply with respect to all enterprises with the exception of the cases when other rules shall be established with respect to small enterprises.

13. l. 1. Managers shall be responsible for the conducting of Book-keeping and Accounting in accordance with current Legislation of Accounting and Reporting of the Republic of Georgia. Book-keeping must be complete, correct, comprehensible, based on the system of double accounting, consistent with the accounting policies and with appropriate figures of the previous year. The assessment must correspond to the principles of far-sighted entrepreneur as well as to the principle of minimum assessment and the principle of prudence of the statement of Profit and Loss.

l3. 1. 2. Accounting in small enterprises must be correct, complete, comprehensible, and consistent with the accounting policies and the data of the corresponding previous year. Such enterprises must have a register sheet for the purpose of determining the balance and drawing up
the account of profit and loss by way of annual account.

l 3. 2. Managers shall be obliged to enter the information on plots of land, requirements and debts, amounts of cash and other assets into the register at the commencement of their activity and by the end of each financial year. In addition to it they must note the value of particular assets in accordance with the principle of prudence and make up a balance sheet.

The duration of the financial year must not exceed twelve months.

While drawing up a register sheet the state of assets may be determined with respect to their types, quantity and cost via the recognized accounting methods on the basis of audits, this process must correspond to the recognized international principles of accounting. The value of assets indicated on the balance sheet must correspond to registered values.

While drawing up a balance sheet by the end of the financial year, the carrying out of asset valuations shall not be compulsory in the case of appropriate accounting disclosing assets with respect to their types, quantity and cost without material inventory. It shall not be necessary to enter assets into the balance sheet at the end of the financial year if:

a) Company has, via material inventory or some other reliable method, entered those objects with respect to their types, quantities and costs, into the sheet of special inventory drawn up within three months prior to the end of economic year or within two months after the end of the year on the basis of the state of one of the days;

b) the proper assessment of material values actually available by the end of economic year is provided via the appropriate accounting on the basis of special inventory sheet.

13.3. Managers shall be obliged to keep the following documents for ten years:

a) account books, inventory sheets, balance sheets as well as working instructions necessary to comprehend thereof, and other organizational documents;

b) incoming and outgoing business mail;

c) certificates of entries of current account books (accounting documents).

13.4. Company managers must, within the first three months of economic year, draw up the annual balance of previous economic year, account of profit and loss (annual account) as well as the activity report, and submit final account; managers of Small Enterprises must enter their accounts (proprietary state and account of profit and loss) into enterprise documents. Annual account shall be drawn up in national currency. Managers must sign such accounts with the indication of the date.

13.5. Courts of law may, in the cases of arising of disputes, demand the submission of account books of one of the contestants on its own initiative or on the basis of the application of one of the parties. In the case of account books being submitted during the course of dispute their contents may be familiarized with in the presence of the parties provided that the contents shall concern the matter of dispute. The extracts thereof must be copied out in the case of necessity. Other date of the books must be submitted to the court of law in the only case of such data being necessary for the checking of correctness of Accounting. In the cases related to proprietary disputes, particularly when hearing the cases of inheritance or of the division of Company the count may demand the submission of all the books for the purpose of fully familiarizing

itself with the contents thereof. Those capable to submit the necessary documents via video, audio or other technical facilities shall be obliged to submit at their expense the technical means necessary to read those documents; they must, in the case of necessary, either print those documents or submit,
without the above technical means, their readable reproductions.

13.6. Rules concerning the structure of Annual Balance and Account of Profit and Loss as well as the definitions are the integral part of the Law and are given in the Appendix to this Law.

Annex 14

TAX CODE OF GEORGIA

Adopted on June 13, 1997, with amendments

Extract

Article 68. Principles for Recording Income and Expenditures

1.The taxpayer is obliged to maintain accurate and timely records of income and expenditures on the basis of documented data, using methods provided for in this Chapter, assigning them to the relevant reporting period in the course of which they were received or borne in such a manner as to clearly reflect the taxable income (profit). The taxpayer should maintain records for tax purposes using the cash basis method or the accrual basis method.

2. The taxpayer is obliged to record all transactions connected with its activities and ensure the control of their beginning, course, and end. At the same time, contents of economic transaction, its subject, amount and titles of parties participating in this transaction are to be described completely and clearly in the primary reporting documentation. Besides the stated, for the purpose of economic activity, upon supply of goods within the country it is obligatory to issue strict registration bill of lading, according to the form and procedure defined by the Ministry of Tax Revenues. Without this kind of document transportation storage and sale of goods is prohibited.

3. Taxable income must be defined by the same method which is used by the taxpayer for bookkeeping. At the same time, the adjustment of income must be made only in compliance with the requirements of this Code. If according to the deductions foreseen in the Code the accounting at a of taxpayer and marginal norms stated by the Code are different, then in order to determine taxable object the taxpayer should provide tax recording of the deductions.

4. Taking into account the provisions of this Article, the taxpayer should maintain records for tax purposes using the cash basis method or the accrual basis method, on condition that the taxpayer uses the same method during the tax year.

5.If the taxpayer maintains records using the accrual basis method, the moment of receipt of income shall be deemed to be the period following 90 days from the moment

of supply of goods, fulfillment of a work, or rendering of a service; but if the payment is made prior to that period, then the moment of payment.
6. In the case of a physical person, the requirement to keep records using the accrual basis method applies only to income from entrepreneurial activity.

7. If an accounting method of the taxpayer has changed, adjustments to elements connected to the taxpayer must be made in the year the accounting method is changed, so that none of the elements is left out or included twice.

Annex 15

THE GENERAL ADMINISTRATIVE CODE OF GEORGIA

CHAPTER 3
FREEDOM OF INFORMATION

Article 27. The definition of terms

The terms used in this Chapter have the following meanings within this Chapter:

(a) "Public agency" means a state or self-government agency or institution, or the person who exercises statutory authority on behalf of a public agency pursuant to law or contract, or artificial person of Public Law or Private Law that receives funding from the State Budget.
(b) "Corporate public agency" means a public agency that incorporates a governing or advisory board consisting of more than one public servant, and in which decisions are jointly made or prepared by more than one public servant.
(c) "Member of a corporate public agency" means a public servant who participates in decision-making of a corporate public agency with the right to vote.
(d) "Official" means the person indicated in Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service.
(e) "Session" means the hearing of a matter by members of an agency for the purpose of preparing or rendering a decision on behalf of the public agency.
(f) "Publicizing" means entry of public information into a public register in accordance with law and making public information accessible for the public.
(g) "Public database" means data that is systematically collected, processed and stored by a public agency or public servant.
(h) "Personal data" means public information that allows identification of a person.
(i) "Executive privilege" means the exemption of a public agency or public servant from the obligations stipulated by this Chapter.

Article 28. Accessibility of public information

Public information shall be open except as provided in applicable legislation, or when openness expressly and inevitably undermines:
(a) national security, but only if there is a reasonable presumption that the disclosure of such information will undermine the completion of a military, intelligence or diplomatic action that is planned or being implemented, or the physical safety of persons involved, or

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(b) the investigation of a criminal offense, if there is a reasonable presumption that the disclosure of such information will undermine the identification of confidential sources of law-enforcement or intelligence agencies, interfere with the prevention, detection and elimination of an offense and prosecution of an offender, or endanger life and physical safety of any person or violate a suspect's or defendant's right to the secrecy of investigation, except when the decree regarding their search was issued.

Article 29. Executive privilege

Names of the public servants participating in the preparation of a decision by an official shall be protected from disclosure by means of the executive privilege.

Article 30. The decision designating public information to be classified

The decision designating public information to be classified may be rendered if law provides express requirement to protect such information from disclosure, establishes concrete criteria for such protection, and provides exhaustive list of classified information.

Article 31. The extension of the term for keeping public information classified

The decision designating public information to be classified or extending the term for keeping public information classified, except as provided in applicable regulation, may be rendered for the term of not more than five years. Such decision and the decision concerning the collection and processing of personal data shall be promulgated within three days after their adoption.

Article 32. The openness of a session

The session conducted by any corporate public agency shall be open and public, except as provided in Article 28 of this Code.

Article 33. The procedure for publicizing secret information

After classified information is declassified, any part of classified public information or protocol of the closed session of a corporate public agency that can be separated on reasonable grounds shall be publicized.

Article 34. The private session of a public agency

A corporate public agency shall publicly announce about forthcoming session, including its place and agenda a week ahead. If the agency decides to close the session, it shall make appropriate announcement. If the place, time or agenda of the session was changed, the agency shall immediately announce the changes. The agency shall publicize the results of the ballot regarding closing of a session and the protocol of decision.

Article 35. Public register

All public information kept by a public agency shall be entered into the public register. Reference to public information shall be entered into the public register within two days after its acquisition, creation, processing or publicizing, indicating its title and the date of receipt of the information, and the title or name of the natural or artificial person, public servant, or public agency, which provided the information or to which it was sent.

Article 36. Ensuring the accessibility of public information
A public agency shall designate a public servant who will be responsible for ensuring the accessibility of public information.

Article 37. Claim of public information

Everyone may claim public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information. If there is the danger of damaging the original, a public agency shall provide access to the original under supervision.

Article 38. Accessibility of the copy of public information

A public agency shall provide access to the copy of public information. No fees shall be charged for distributing public information, except for copying costs.

Article 39. Accessibility of personal information

A person may not be denied access to the public information, which allows his identification, and which shall not be accessible to other persons according to this Code. A person may have access to his personal information that is kept in a public agency, and may obtain copies of such information free of charge.

Article 40. The decision on providing or denying access to public information

1. A public agency shall render a decision on providing or denying access to public information immediately or not later than ten days, if responding to a claim for public information requires:
(a) the acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information,
(b) the acquisition and processing of separate and large documents that are not interrelated, or
(c) consultation with its subdivision that operates in another area, or with another public agency, if those are interested in the decision-making on the matter.
2. A public agency shall inform the applicant about the decision, its ground, and applicable regulation.

Article 41. Denying access to public information

If access to public information was denied or the session of a corporate public agency was closed, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies, which provided their suggestions regarding the decision.

Article 42. The information that may not be classified

Everyone shall have access to information concerning:
(a) the environment and hazard that constitutes a threat to life and health,
(b) the fundamental principles and objectives of a public agency,
(c) the description of the structure of a public agency, the procedures forassigning and dividing functions among public servants and decision-making procedures,
(d) names and office addresses of those servants of public agencies, who hold important positions or are responsible for public relations,
(e) the results of open ballots in a corporate public agency,
(f) the election of a person to an elective office,
(g) the results of auditing or inspection of the activity of a public agency and court materials on the cases where a public agency acted as a litigant,
(h) the title and location of the public database of a public agency and the name and office address of the person responsible for the database,
(i) the purpose, area of application and legal grounds for collecting, processing, storing and disseminating data by a public agency,
(j) availability or non-availability of personal information of applicant in a public database, the procedures for gaining access to such information, including the procedures allowing the identification of a person, if the person or his representative filed the request to gain access to or modify personal information of the applicant,
(k) the category of persons who may gain access to the personal information contained in a public database pursuant to law, and
(l) the composition and sources of the data contained in a public database and the category of persons, concerning whom information is collected, processed and stored.

Article 43. The procedures for processing personal data

A public agency shall:
(a) collect, process and store only those data that are expressly provided by law and are necessary for the proper functioning of the agency;
(b) develop and establish the program for controlling the conformity of collection, processing, storage and content of the data with statutory goals and terms;
(c) destroy the data that is unrelated to the statutory goal when demanded by a person or required by a court's decision; destroy inaccurate, unreliable, incomplete and irrelevant data and replace them with accurate, reliable, updated and complete data;
(d) store amended data, indicating the date of their use, together with original data for the period of their existence, but note less than five years;

(e) during the collection of personal information about any person obtain information directly from that person and other sources, only if all possibilities of obtaining information from an initial source were exhausted, except as provided in Article 28 of this Code, and only if the public agency is expressly authorized by law to collect, process and store personal data about persons of certain category;
(f) enter into a public register the information about the collection and processing of personal data and about the claim of data by a third person or a public agency; date, type and objective of a claim and the name/title and address of the applicant;
(g) immediately notify a concerned person at his current address of the claim of his personal data by a third person or a public agency, except as provided in Article 28 of this Code;
(h) before transferring personal data to another person/public agency take all reasonable measures for double-checking whether those data are accurate, relevant, updated and complete;
(i) during the collection, processing and storage of personal data inform a concerned person about the objectives and legal grounds for processing personal data, whether the person is required to provide personal information, the sources and composition of personal information and third persons who may gain access to it.

Article 44. Confidentiality of personal data
1. Personal data, except for those of an official, may not be accessible for anyone without the consent of the person concerned or reasoned decision of a court, as provided in Article 28 of this Code.
2. A court may render the decision declassifying personal data only if it is impossible to prove essential facts on the case on the basis of other evidence, and if all possibilities of obtaining this information from other sources were exhausted.

Article 45. Accessibility of personal data

Personal data may be accessible for the purpose of conducting a scientific research. This rule excludes the possibility of identifying a person.

Article 46. The revision or destruction of data

A person may demand the revision of data or the destruction of illegally obtained data. The burden of proof concerning the legality of collection of personal data shall rest with a public agency. Before the revision of public information a person's statement concerning inaccuracy of that information shall constitute public information and shall be attached to the pubic information. A public agency or public servant shall render a decision on this matter within ten days.

Article 47. The nullification or amendment of a decision. Claim for damages

1. A person may file a claim in a court demanding the nullification or amendment of the decision of a public agency or public servant, and claim material or non-material damages for:

(a) denying access to public information, partly or completely closing the session of a corporate public agency, or designating public information to be classified,
(b) the creation and processing of incorrect public information,
(c) the illegal collection, processing, storage and dissemination of personal data, or illegal furnishing of personal data to another person or public agency, or
(d) the infraction of other requirements of this Code by a public agency or public servant.
2. The burden of proof shall rest with the public agency or public servant that acts as a defendant in a court.

Article 48. The request for classified information by a court

A court may request for and review classified public information to investigate the legality of designating this information to be fully or partly classified.

Article 49. Reporting

On December 10 every year a public agency shall report to the Parliament and President of Georgia regarding:
(a) the number of requests to provide or modify public information provided to the agency and the number of decisions denying the requests,
(b) the number of decisions complying with or denying requests, the names of the public servants rendering those decisions and the decisions of corporate public agencies to close their sessions,
(c) the public databases and the collection, processing, storage, and furnishing of personal data by public agencies, and
(d) the number of violations of this Code by public servants and the imposition of disciplinary penalties upon officials.

Article 50. The openness of previous public information

Public information under Articles 28 and 29 of this Code, except for commercial, professional, and private secret, shall be open if created, sent or received before October 28, 1990. Such information may not allow the identification of persons indicated therein for life.

Annex 16

ORGANIC LAW OF GEORGIA ON THE PROCURACY (ADOPTED: NOVEMBER, 21, 1997)

ARTICLE 31. Requirements for Candidates for the Position of Prosecutor or Procuracy Investigator

1. A citizen of Georgia with high legal education, fluent in legal language, having two years of work experience in the Procuracy, having successfully passed a qualification examination administered by the Qualification Examination Commission of the Council of Justice of Georgia, having taken the oath of a member of the Procuracy, and whose morality and health conditions are appropriate for employment in the Procuracy, has the right to be appointed to the position of prosecutor or investigator of the Procuracy.

2. The Prosecutor General of Georgia and an official having a scientific degree in criminal law, criminal procedure law or sentence implementing law are exempt from the qualification examination.

3. A person not less than 30 years old with not less than five years of work experience in the Procuracy organs, or as a judge, lawyer, or investigator has the right to be appointed to the position of Prosecutor General of Georgia, Deputy of the Prosecutor General of Georgia, Chief Military Prosecutor of Georgia, Prosecutor and Deputy in the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecutor, District Prosecutor and Deputy District Prosecutor, Regional Military and Transport Prosecutor, Regional (City) Prosecutor or Prosecutor of the Sentence Implementing Departments.

4. An employee of the Procuracy has to pass qualification courses once every three years. The rules and the provisions of such courses are defined by the Prosecutor General.

5. Advisors and technical personnel of the Procuracy will be hired on a contract basis. The Prosecutor General determines the rules for appointment and discharge of advisors and technical personnel of the Procuracy.

6. The position of a Procuracy employee is incompatible with all other positions, except such employee can engage in scientific, artistic or pedagogical activity.

7. An employee of the Procuracy cannot be a member of a political union, or be involved in political activities.

8. An employee of the Procuracy is forbidden to arrange a strike or to participate in a strike.

ARTICLE 32. The Oath of a Procuracy Employee

1. An employee of the Procuracy before appointment to the position takes the following oath before the Prosecutor General: I ... swear before God and nation to implement the duties of the Procuracy employee and during the implementation of my duties to obey the Constitution of
Georgia and the law.

2. The Procuracy employee oath can be taken without consideration of a religious aspect. The text of the oath is signed by the Procuracy employee taking the oath and is filed in his/her personnel file.

ARTICLE 33. Reasons for Rejection of the Appointment to the Position of Procuracy Employee

A person cannot be appointed to the position of a Procuracy employee in the following cases:

a) the person has a criminal record;

b) the person is a drug user, addicted to alcohol, or has a mental or chronic disease;

c) the person is disable to work;

d) the person has been discharged from another position for violation of his duties.

Annex 17

THE CODE OF CRIMINAL PROCEDURE OF GEORGIA EXTRACT

Article 190. Grounds for and Purpose of Seizure of Property

for the purpose of securing a civil action or other property payments, as well as a procedural confiscation, the court may seize property, including bank accounts of the suspect, accused or person on trial and the person bearing material responsibility for his actions provided that there are data to suppose that they may conceal or sell the property.

Article 191. Restriction of Proprietor's Competence upon Seizure of Property

The seizure of property prohibits the proprietor or the person in whose use it is to dispose of it, as well as to use it, where appropriate.

Article 192. Property not Subject to Seizure

1. The essential food products, heating, objects of professional activity and other goods which secure normal living conditions for the accused and his family members may not be seized.
2. Seizure may not be applied to the property of institutions, enterprises, organizations, public and professional associations, except for the share of joint property which separation is possible without prejudice to their economic activities.

Article 193. Petition for Seizure of Property and Procedure for its Hearing

1. In the existence of the grounds for seizure of property prescribed by Article 190 of this Code, the inquirer, investigator or prosecutor shall ascertain where and in whose hands the property is. for this purpose, in order to detect money, securities and things, the necessary investigative acts may be conducted in banks, pawn-shops, cloak-rooms, in postal and other institutions.
2. The inquirer, investigator or prosecutor shall, under procedure established by Article 140, make and file with the court a reasoned petition for seizure of property. to secure the judge's order, the petition shall indicate all necessary data. The petition of the inquirer for securing the judge's order on seizure of property shall be sanctioned by the prosecutor.
3. The petition shall be considered by the judge under the procedure established by Article 140.

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Article 194. Judge's Order and Court Ruling/Decision on Seizure of Property

1. Seizure of property is effected on the basis of the judge's order, a copy of which is delivered to the inquirer, investigator or prosecutor in compliance with his petition or on the basis of a reasoned ruling/decision of the court hearing the matter.
2. The judge's order or the court ruling/decision shall indicate: whose property is seized, where and with whom it is kept, of which things, securities, money, valuables it consists if it has been ascertained by the investigator; which share of the joint property is seized; who is commissioned with the execution of the order of seizure; whether search is admissible if the voluntary handing over of the property has been denied where and who is authorized for conducting search; to what extent seizure shall extend for securing the action.
3. If the property, money, valuables are kept in several places and with different people, the appropriate number of the judge's orders or court ruling/decisions on seizure of property shall be issued.

Article 195. Decision on Seizure of Property in Urgent Necessary Cases

1. In urgent necessary cases, if there are grounds to suppose that the property may be concealed or destroyed, the inquirer, with the prosecutor's sanction, the investigator or prosecutor are competent to pass a reasoned decision on seizure of property. The decision shall indicate the data provided for in Article 194(2).
2. The decision shall be executed by the person having passed it, after which it ought to be reported to the judge within 24 hours.
   The judge shall either attest the legality of the decision or declare it unlawful and revoke the imposed seizure of property.

Article 196. Procedure for Execution of Judge's Order or Court Ruling/Decision on Seizure of Property

1. An inquirer, investigator or prosecutor shall hand in judge's order and, in exceptional cases, his decision on seizure of property to the person in whose possession the property is with the property transfer request. If the request is waived or in the existence of reliable evidence of the incomplete transfer of property, it shall be subject to search under a procedure prescribed by this Code.
2. Pursuant to the court ruling/decision, seizure of property shall be imposed by an executor.
3. The executor himself shall specify the goods and valuables subject to seizure within the extent indicated in the judge's order or court ruling/decision.
4. Seizure of property shall be attended by a commodity expert entrusted with the assessment of property.
5. The extent of damage resulted from an offence and the value of the property subject to seizure shall be defined at the market average.
6. Upon seizure of cash deposits, any transactions with them shall be suspended.

7. In the case of matrimonial or family property, the accused share shall be subject to seizure; however, in the existence of data evidencing that the joint property has been acquired or replenished at the expense of criminally gained resources, the entire property or part thereof may be seized.
8. In determining a share of property subject to seizure, the degree of participation of each of the accused in the committed offence shall be taken into account. In all cases, the value of the accused property under execution shall not exceed the total extent of the damage resulted from participation of all the accused.

Article 197. Record of Seizure

1. Seizure of property shall be entered by an inquirer, investigator or prosecutor in a record made in compliance with the provisions of Article 287 and by an executor in an inventory.
2. A record/inventory shall indicate: the accurate description of the property subject to seizure; the quantity, size, weight, degree of wear and tear; other individual characteristics and the price; what is to be seized and left in storage; whether the property or part thereof belongs to other persons; the statements made in respect of actions of the person effecting seizure.
3. A copy of the sealed record/inventory shall be handed in against receipt to the person whose property is under execution. If seizure of property is effected in the absence of the person, a copy of the record/inventory shall be handed in to one of the adult family members of the person or to a representative of a body of local government or self-government.
   Upon seizure of property on the territory of an institution, enterprise, or organization, a copy of the record shall be handed in against receipt to a representative of authorities.

Article 198. Storage of Seized Property

1. Property under execution shall, save immovable and large-size, be seized.
2. Precious metals, gems, foreign currency, securities shall be kept in storage in a state banking institution, while bonds and lottery tickets - in saving banks. Cash shall be deposited with the court within whose jurisdiction the criminal case falls. Other items under execution shall be sealed and stored in the body on the petition of which the property has been seized, or shall be delivered in storage to a representative of the local executive governmental or self-governmental authority.
3. The seized property, save the property indicated in section 2 of this article, shall be sealed and left in storage of the proprietor, owner or adult family member of the accused. The person concerned shall be informed of the responsibility provided by law for the alienation or damage of property, following which a written undertaking shall be obtained therefrom.

Article 248. Sending of Commission of Performance of Procedural Act in Foreign State

1. Where a procedural act stipulated by this Code ought to be performed on the territory of a foreign state, an investigator, prosecutor or court may, under a procedure establishment in Article 251(1), commit its performance to a competent authority of the state with whom a legal aid agreement has been concluded.
2. A commission of performing an investigative act shall be sent with the assistance of the Prosecutor-General of Georgia, and a commission of performing a judicial act - with the assistance of the Justice Minister of Georgia.
3. If for the performance of an investigative act the present Code provides for a special court judgment/order, this judgment signed by the judge and attested by an official seal shall be annexed to the commission.
4. A commission shall be made in the language of the state where it is being sent, unless the international agreement provides otherwise.
5. In exceptional cases, a commission may be sent through technical means of communication with the subsequent acknowledgement.

Article 249. Content of Commission of Performing Procedural Acts in Foreign State

A commission of performing a procedural act shall be made in writing and signed by the sender. The commission shall be officially sealed. The commission shall contain:

a) the name and address of the commissioning body;

b) the actual circumstances of the case;

c) the essence of the commission, in particular the content of an investigative or judicial act to be performed;

d) information about a person in whose respect the commission is being sent, as well as the data on his nationality, residence and employment, activity and relation to the criminal case;

e) a list of requested documents and real evidence.

Article 250. Summoning of National of Foreign State for Participation in Criminal Case

1. A national of a foreign state may, with his consent, be summoned for participation in a criminal case as a witness, victim, expert, civil plaintiff or civil defendant, as well as a defence counsel or legal representative on the basis of the accused petition.
2. The expenses in connection with travel and stay in Georgia of the persons enumerated in section one of this article (save a retained advocate) shall be reimbursed from the state budget.
   Should a petition for summoning of these persons be dismissed, the expenses in connection with their summoning shall be borne by the petitioning party.

3. A request for summoning from a foreign state of a concrete person for participation in an investigative act and in trial shall be forwarded under the procedure prescribed by Article 248(2). The same request may concurrently be sent to the persons subject to summoning.
4. The investigative and judicial acts with the participation of a national of a foreign state as per section one of this article shall be performed in accordance with the procedure prescribed by this Code, unless an international agreement provides otherwise. Should a foreign national be summoned, he shall not be subjected to such coercive measures as compelled attendance, arrest, detention in custody, committal to a medical institution, search, as well as to other restrictive measures, the warning on criminal liability for refusal to testify or for giving false evidence.

Article 251. Performance of Investigative and Judicial Acts in Respect of Georgian National on Commission of Foreign State

1. A court, prosecutor, investigator or body of inquiry shall perform investigative or judicial acts in respect of Georgian nationals on the territory of Georgia on commission of a foreign state in compliance with the procedure prescribed by this Code.
2. Commissions of performing investigative acts shall be executed on instructions of the Prosecutor-General of Georgia, while the performance of judicial actions - on a commission of the Justice Minister of Georgia.
3. Commissions of a foreign state shall be executed if they contain the data provided for in an international agreement and Article 249. If a commission lacks these data or they are insufficient, additional data shall be called for.
4. The investigative and judicial acts which are connected with the coercion of a citizen and restriction of his constitutional rights and freedoms shall be performed if sanctioned by a foreign state's court or other competent authority.
5. In executing a commission, procedural rules of a foreign state may be applied if the international agreement so provides.
6. In the cases provided for in an international agreement, a representative of the corresponding authority of a foreign state may attend the execution of a commission.
7. If the execution of a commission is impossible, the documents received with the assistance of the Ministry of Justice or the Prosecutor-General's Office of Georgia shall be returned to a foreign state with the indication of the reasons having obstructed the execution thereof. The commission shall be also returned when its execution may prejudice the national interests, sovereignty and security of Georgia.

Article 252. Sending of Materials on Offence Committed by Foreign National on Territory of Georgia

If a foreign national having committed an offence on the territory of Georgia has left Georgia, all the investigative materials in the initiated case shall be delivered to the Prosecutor-General of Georgia who shall forward them to a corresponding authority of a

foreign state for further criminal prosecution, or shall address with a request for extradition of the accused to the Georgian authorities.

Article 253. Consideration of Requests Concerning Offence Committed by Georgian National on the Territory of Foreign State

1. A request of a foreign state for delivery under investigation of the materials in respect of s Georgian national having committed on the territory of this state an offence and returned to Georgia shall be considered by the Prosecutor-General's Office of Georgia. As a result, one of the following decisions shall be made in compliance with an international agreement: on the transfer of the materials prior to the end of investigation, on the conduct of investigation and court hearing on the territory of Georgia, on the extradition of the Georgian national for purposes of investigation and court hearing to be held on the territory of the state where the offence was committed.
2. The evidence obtained in the course of investigation and court hearing in compliance with the procedure established on the territory of a foreign state shall have the equal legal force as other evidence collected in the case.
3. If a Georgian national while on the territory of a foreign state has committed an act which, according to the Criminal Code of Georgia, is an offence, but has not been convicted for this act by the foreign state's court, the competent authorities of Georgia shall be entitled to initiate criminal proceedings against the person, to carry out investigation and to render a judgment. At the same time, it is possible to call for materials and evidence from the state where the offence has been committed and in whose respect a request for extradition of the prosecuted person to the Georgian authorities has been made.

Article 254. Request for Extradition of Georgian National

1. In the cases and pursuant to the procedure provided for in international treaties and agreements, the Prosecutor-General's Office of Georgia shall apply to the corresponding institution of a foreign state with a request for extradition of a Georgian national who has committed an offence on the territory of Georgia, provided that the national has been charged with a crime or if a judgment of conviction that has come into a legal force has been rendered against him.
2. The regulations as per section one of this article shall only apply when a person is charged of an act punishable under criminal legislation of Georgia by imprisonment for a term of more than one year or when he has been convicted for such a crime.
3. An extradition request shall contain:
   a) the given name and surname of the accused or convict;
   b) the content of the actual circumstances of the committed offence with the indication of sanctions under the law providing for liability for the offence;
   c) the instruction on the necessity of the person's arrest or detention, his interrogation and search;

d) the instruction on the place, time, procedure of the person's extradition and the body to whom he ought to be extradited.

4. A request shall be appended with a copy of the order for bringing to liability as accused, the order for arrest, detention and search of the person, and a copy of the judgment of conviction - in the event of the person's extradition.

Article 255. Terms of Extradition

1. A person extradited by a foreign state may not be transferred to a third state for any offence without the consent of the state having extradited him.
2. The procedure as per section one of this article shall not apply to the cases of crime committed by a person after his extradition.

Article 256. Extradition of Foreign National

1. Pursuant to an international legal aid agreement, a foreign state may request the extradition of its national being on the territory of Georgia if he is charged of a crime committed on the territory of his country, has been convicted for a crime by a court of his state, or has committed a crime against his country on the territory of Georgia.
2. An extradition request shall comply with the requirements established by an international agreement and ought to be addressed from the competent authorities.
3. A request may be delivered by applying technical means of communication with the subsequent acknowledgement.
4. If the Prosecutor General of Georgia considers a request as reasonable and valid, he shall give instructions on its execution, or shall ask for assistance of the Ministry of Justice of Georgia, where necessary.
5. Where extradition of a person is requested by several foreign states, a decision on his extradition to this or that state shall be made by the Prosecutor-General of Georgia after consultations with the Foreign Minister and the Justice Minister of Georgia.
6. If a foreign national, whose extradition has been requested, is serving a sentence for another offence committed by him on the territory of Georgia, his extradition my be postponed until completion of the sentence or before his release on other legal grounds. If an alien has been brought to criminal responsibility for an offence committed by him on the territory of Georgia, his extradition may be postponed until rendering of a judgment, completion of the sentence or his release on other legal grounds.
7. In the cases prescribed by section 6 of this article, the Supreme Court of Georgia is entitled, at the request of a corresponding authority of a foreign state, to render a ruling for extradition of the national for a definite term. If a court of the foreign state makes for the person a stricter punishment or equal to the unserved in Georgia sentence, he shall serve the sentence in his state and shall not be subject to return to Georgia.

Article 257. Refusal to Extradite
Extradition is inadmissible if:

a) the person has been granted political asylum in Georgia;

b) the act serving as the ground for an extradition request is not deemed to be an offence in Georgia;

c) a valid judgment or a ruling/decision for termination of the case has already been rendered in respect of the person in connection with the same offence;

d) the period of limitation prescribed by the Criminal Code of Georgia has expired.

Article 258. Extradition of Stateless Person
Extradition of a stateless person shall be effected under the procedure established by Article 256.

Article 259. Application of Criminal Procedural Coercive Measures against Person Subject to Extradition

1. Arrest, detention, committal to a medical institution for examination of a person subject to extradition, his search, the execution of seizure, the execution upon property, and the application against him of other criminal-procedural coercive measures shall be possible in the case when a request for his extradition is appended with a duly certified order/ruling issued by a competent public body for the performance of such procedural acts that restrict the constitutional rights and freedoms of citizens.

2. The application of the measures indicated in section one of this article shall be immediately notified to a body having requested their application.

3. A foreign national arrested on the basis of a request for his extradition shall not be kept in custody for more than a month unless a court order for the extension of the term is issued.

4. A person subject to extradition has the right to take defence in court.

Article 260. Delivery of Real Evidence and Documents

1. The goods and documents seized from a person subject to extradition, which may be used in a criminal case as evidence, shall be delivered to the body having requested his extradition.

2. The delivery of goods and documents being of material value unless they belong to a person subject to extradition, shall take place after the receipt of guarantees for their safe-keeping and return to the owner. The guarantees shall be secured by the body requesting the person's extradition.

Annex 18

ANTI-CORRUPTION ACTION PLAN FOR ARMENIA, AZERBAIJAN, GEORGIA, THE RUSSIAN FEDERATION, TAJIKISTAN AND UKRAINE[1]

PREAMBLE[2]

We, the Heads of Governmental Delegations from Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan and Ukraine at the 5th Annual meeting of the Anti-Corruption Network for Transition Economies on the 10th of September, 2003, in Istanbul, Turkey:

BUILDING on the guidance of the Anti-Corruption Network for Transition Economies expressed at its 4th Annual meeting in Istanbul in March 2002 to develop a special sub-regional Anti-Corruption Action Plan for those transition economies not yet engaged in targeted sub-regional initiatives;

CONVINCED that corruption is a widespread phenomenon and is inimical to the practice of democracy, erodes the rule of law, hampers economic growth, discourages domestic and foreign investment, and damages the trust of citizens in their governments;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption requires strong action by governments as well as the effective involvement of all elements of society including business and the general public;

RECOGNISING the value of co-operation and action-oriented knowledge sharing both among the countries participating in this Action Plan and with other

1 The Action Plan is open for endorsement by other transition economies not engaged in targeted sub-regional initiatives; Kazakhstan and the Kyrgyz Republic joined the Action Plan at a later stage.

2 The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles towards policy reform which participating countries politically commit to implement on a voluntary basis and which can provide a basis for donor assistance.

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countries active within the framework of the Anti-Corruption Network and other regional and international anti-corruption initiatives;

RECALLING that national anti-corruption measures can benefit from existing regional and international instruments and good practices such as those developed by the countries in the region, the Council of Europe (CoE), the European Union (EU), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Organisation for Security and Co-operation in Europe (OSCE), and the United Nations (UN);

WELCOMING the pledge made by donor countries and international organisations to support the countries of the region in their fight against corruption through technical cooperation programmes;

ENDORSE this Anti-Corruption Action Plan as a framework for developing effective and transparent systems for public service, promoting integrity in business operations and supporting active public involvement in reform; and commit to take all necessary means to ensure its implementation.

PILLARS OF ACTION

PILLAR 1.
Developing Effective and Transparent Systems for Public Service

Integrity in the Public Service

- Establish open, transparent, efficient and fair employment systems for public officials that ensure the highest levels of competence and integrity, foster the impartiality of civil service, safeguard equitable and adequate compensation and encourage hiring and promotion practices that avoid patronage, nepotism and favouritism;
- Adopt public management measures and regulations that affirmatively promote and uphold the highest levels of professionalism and integrity through the promotion of codes of conduct and the provision of corresponding education, training and supervision of officials in order for them to understand and apply these codes; and
- Establish systems which provide for appropriate oversight of discretionary decision-making; systems which govern conflicts of interest and provide for disclosure and/or monitoring of personal assets and liabilities; and systems which ensure that contacts between government officials and business services users are free from undue and improper influence, and that enable officials to report such misconduct without endangering their safety and professional status.

Accountability and Transparency

- Safeguard accountability of public service through, *inter alia*, appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on decision making and performance;
- Ensure transparent procedures for public procurement, privatisation, state projects, state licences, state commissions, national bank loans and other government guaranteed loans, budget allocations and tax breaks. These procedures should promote fair competition and deter corrupt activity, and establish adequate simplified regulatory environments by abolishing overlapping, ambiguous or excessive regulations that burden business;
- Promote systems for access to information that include such issues as political party finance, and electoral campaign funding and expenditure.

PILLAR 2.
Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take concrete and meaningful steps to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat bribery of public officials, including anti-money laundering legislation that provides for substantial criminal penalties for the laundering of the proceeds of corruption;
- Ensuring the existence and enforcement of universally applicable rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities. This includes the strengthening of investigative and prosecutorial capacities by fostering inter-agency co-operation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence, by protecting those persons who bring violations to the attention of authorities and by conducting thorough examinations of all revelations of corruption; and
- Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by providing (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching for and identifying forfeitable assets as well as prompt international seizure and repatriation of such assets.

Corporate Responsibility and Accountability

- Promoting corporate responsibility and accountability so that laws, rules and practices with respect to accounting requirements, external audit and internal company controls are fully applied to help prevent and detect bribery of public officials in business. This includes the existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery in the books, records, accounts and financial statements of companies;
- Ensuring the existence and the effective enforcement of legislation to eliminate tax deductibility of bribes and to assist tax inspectors to detect bribe payments; and
- Denying public licenses, government procurement contracts or access to public sector contracts for enterprises that engage in bribery or fail to comply with open tender procedures.

PILLAR 3.
Supporting Active Public Involvement in Reform

Public Discussion and Participation

Encourage public discussion of the issue of corruption and participation of citizens in preventing corruption by:

- Initiating public awareness campaigns and education campaigns at different levels about the negative effects of corruption and joint efforts to prevent it with civil society groups such as NGOs, labour unions, the media, and other organisations; and the private sector represented by chambers of commerce, professional associations, private companies, financial institutions, etc.;
- Involving NGOs in monitoring of public sector programmes and activities, and taking measures to ensure that such organisations are equipped with the necessary methods and skills to help prevent corruption;
- Broadening co-operation in anti-corruption work among government structures, NGOs, the private sector, professional bodies, scientific-analytical centres and, in particular, independent centres;
- Passing legislation and regulations that guarantee NGOs the necessary rights to ensure their effective participation in anti-corruption work.

Access to Information

Ensure public access to information, in particular information on corruption matters through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption
- Measures which ensure that the general public and the media have freedom to request and receive relevant information in relation to prevention and enforcement measures.
- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

IMPLEMENTATION

In order to implement these pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms. Participating governments of the region will take measures to publicise the Action Plan throughout government agencies, NGOs engaged in the fight against corruption, and the media; and in the framework of the Advisory Group Meetings, to meet regularly and to assess progress in the implementation of the measures provided for in the Action Plan.

IMPLEMENTATION PLAN

Introduction

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan, and Ukraine voluntarily agree to implement in order to combat corruption and bribery in a co-ordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in participating governments, it should remain flexible so that new ideas and priorities can be taken into account as necessary. This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by participating countries, regional institutions and international organisations.

Identifying Country Mechanisms

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific. to address these differences, each participating country will identify priority reform areas which would fall under the three pillars, and aim to implement necessary measures in a workable timeframe.

Mechanisms

Advisory Group: to facilitate the implementation of the Action Plan, each participating government will designate a national coordinator who will be their representative on a Advisory Group. The Advisory Group will also comprise experts on methodical and technical issues to be discussed during a particular Steering Group meeting as well as representatives of participating international organisations and civil society. The Advisory Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilise donor support.

Funding: Funding for implementing the Action Plan will be solicited from international organisations, governments and other parties from inside and outside the region actively supporting the Action Plan.

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Fighting Corruption in Transition Economies

Georgia

What progress have transition economies made in fighting corruption?
This book presents the outcomes of a review of legal and institutional frameworks for fighting corruption in Georgia, which was carried out in the framework of the Anti-Corruption Network for Transition Economies based at the OECD. The review examined national anti-corruption policy and institutions currently in place in Georgia, national anti-corruption legislation, and preventive measures to ensure the integrity of civil service and effective financial control.

The review process was based on the OECD practice of mutual analysis and policy formulation. A self-assessment report was prepared by the government of Georgia. An international group of peers carried out expert assessment and elaborated draft recommendations. A review meeting of national governments, international organisations, civil society and business associations discussed the report and its expert assessment, and endorsed the recommendations.

This publication contains the recommendations as well as the full text of the self-assessment report provided by the government of Georgia. It will provide an important guide for the country in developing its national anti-corruption actions and will become a useful reference material for other countries reforming their anti-corruption policy, legislation and institutions.

For more information, please refer to the Web site of the Anti-Corruption Network for Transition Economies ***www.anticorruptionnet.org*** as well as the Web site of the OECD Anti-Corruption Division ***www.oecd.org/corruption***.

Other editions in this series cover assessments of anti-corruption efforts in Armenia, Azerbaijan, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine.

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