

I. Amendments Introduced to the Anti-corruption Legislation of Georgia

- ***Illegal and unjustified property***

On 13 February 2004, the Parliament of Georgia adopted the following organic laws: “The Introduction of Amendments and Addenda to the Organic Law of Georgia”, “The Public Prosecutor’s Office” and the Georgian legal code “The Introduction of Addenda to the Administrative Procedural Code of Georgia.”

These laws defined the Public Prosecutor’s authority to institute legal proceedings on the transfer of illegal and unjustified property to the State within the framework of, and in accordance with, the rules stated in the Administrative Procedural Legislation.

In accordance with the Administrative Procedural Code of Georgia, if on the basis of the Public Prosecutor’s claim it was proved that a public official, his or her family member or close relative, has illegal or unjustified property, this property will be transferred to its legal owner. By “illegal”, it is meant anything obtained through illegal activities, and “unjustified” is defined as a situation where a public officer does not possess documents proving that property has been obtained legally. If identification of a legal owner is impossible, the property will be transferred to the State.

According to the law, a Public Prosecutor is responsible for requesting the confiscation of the property of a high official, his/her close relative or related person, if information is available on possible transfer of this property.

- ***Obligation to prove the origin of public official’s property and restructuring of the Informational Bureau of Property and Financial Conditions of High Officials***

On 13 February 2004 the Parliament of Georgia adopted the law, “The Introduction of Amendments and Addenda to the Law of Georgia”, and “Conflict of Interests and Corruption in Public Sector.”

In accordance with the amendments introduced to the Law an individual cannot be appointed to an official job prior to the submission of a property declaration to the Informational Bureau of Property and Financial Conditions of High Officials.

There is one important novelty. A public official is obliged to prove the origin of property mentioned in the declaration by submitting relevant documents or an explanation in writing.

The Informational Bureau of Property and Financial Conditions of High Officials was restructured by law and it was transferred to the jurisdiction of the Ministry of Justice of Georgia.

- ***Amendments and addenda introduced to the criminal procedural legislation***

On February 13 2004 the Parliament of Georgia adopted the law, “An Introduction of Amendments and Addenda to the Criminal Procedural Code of Georgia.”

Through the amendments to the law, a new concept of procedural agreement on the admission of guilt has been introduced to the Criminal Procedural Code. If a Public Prosecutor and defendant’s lawyer make an agreement in which the defendant is willing to cooperate with the prosecution, admits guilt and provides credible information to investigative bodies on a severe crime or an offence conducted by a public official, the Public Prosecutor’s Office has the right to overturn the verdict and intercede in the court to make a verdict without actual hearing of the case.

It is important to note that the disappearance of a public official being prosecuted does not interrupt the process of investigation thanks to the amendments introduced to the Law on conditions hindering criminal investigation cases against public officials.

In accordance with the Criminal Procedural Code, a Public Prosecutor is obliged to bring a suit before the court on behalf of the State if an offence has caused damage to the State.

In the Criminal Procedural Code, the concept of appropriation of property obtained illegally was introduced in parallel to procedural confiscation. In the case of a guilty verdict, the court must make a decision on the appropriation of property obtained illegally.

Previously, the Criminal Procedural Code did not address whether secret audio and videotaping made by a private person could be recognized as evidence. Amendments were made to the Law to put this issue into a legal framework.

According to the amendments introduced to the Criminal Code of Georgia, it is possible to modify a defendant's punishment, including partially or completely exonerating them from criminal liability. This can occur if he or she admits to their own guilt, or if her or his cooperation with an investigation discloses the identity of a public official or a person who has committed a very serious offense, and whose direct participation created the conditions essential for a crime.

- ***The Financial Police***

On 24 February 2004, the Parliament of Georgia adopted the Law, "Financial Police", in which the Financial Police was created as a sub-departmental organization under the jurisdiction of the Ministry of Finance of Georgia.

Through this law and amendments to the Criminal Procedural Code, the functions of the disclosure of economic crimes, inquiries and preliminary investigations were transferred to the Financial Police from other institutions. The transfer of the identification and investigative functions of economic crime, including tax concealment and smuggling, to one institution will make it possible to identify one responsible institution, improve the coordination of struggle against these types of crime and improve its efficiency. Previously this function was shared by the Ministries of Interior Affairs and Security, Tax and Customs Departments.

Changes in tax and budgetary sectors

On 24 February 2004 the Parliament of Georgia introduced amendments to the Tax and Customs Codes of Georgia. These legally defined the reimbursement mechanism for taxes paid in excess. This has been a problem and a source of corruption over a long period of time. This was made official in the Georgian Government decree No. 3, dated 13 March 2004, titled the “Registration/ Accounting and Implementation by the State Treasury of Budgetary Revenues of the State, Abkhazian and Adjarian Autonomous Republics and other Territorial Units of Georgia, and Return, Registration and Accountability of Revenues Paid in Excess or Erroneously”. Since 5 April 2005, a unified system to calculate budgetary revenues was introduced, thus improving the registration of budgetary revenues and expenses.

Georgian legal code enacted on 24 February 2004 and entitled “The Introduction of Amendments and Addenda to the Law on Budgetary System of Georgia” defines the procedures of preparation, consideration and adoption of the State Budget of Georgia in a new manner.

The Tax Administration of the Road Fund was transferred to the Tax Department of the Ministry of Finance through a legal amendment to relevant legislative acts and Georgian government Decree No.12 dated 3 April 2004 entitled “Some Measures of the Ministry of Finance of Georgia”. This unifies the previously artificially divided function of tax collection and reduces the number of government bodies regulating business.

- ***Changes related to elimination of illegal incomes***

On 17 February 2004 the Georgian Parliament ratified the Strasbourg Convention “Money Laundering, Inquiry, Collection and Confiscation of Income Generated as a Result of Criminal Activities.” dated 8 November 1990. These changes will enable the financial monitoring service of Georgia to more effectively take action against the legalization of illegal income.

II. Amendments Planned for the Implementation by the New Anti-corruption Strategy of Georgia

- ***Reform of the judiciary system***

Judiciary reform will result from constitutional changes. Specifically, the Constitutional Court and the Supreme Court will be united. Court procedures will be simplified and their costs will be reduced. The court will begin using juries and the importance of legal precedents will increase.

General judiciary reform will follow the resolution of the issue of territorial arrangement.

The reform of procedural **investigation** of judges and the implementation of European standards will create sound guarantees for the independence of judges and accountability to the Law.

- ***Reform of criminal justice procedural legislation***

On the basis of Constitutional changes a new criminal justice procedural code will be developed and adopted. Amendments will be introduced to other relevant legislative acts regulating prevention, investigation and disclosure of crime. In addition, procedures for the implementation of criminal persecution will also be introduced.

The procedural stages of inquiry and preliminary investigation will be unified. The period and conditions of investigation and imprisonment before trial will be changed, and principles of fairness for both the prosecution and defense during the criminal proceedings will be actually implemented. Finally, the Public Prosecutor and court's control over the investigation process will be made stricter.

- ***Criminalization of corruption***

Addenda will be introduced to the Criminal Code and corruption will be criminalized in accordance with international standards. It will take into account relevant international treaties and covenants, as well as recommendations of international organizations.

- *Reform of interior affairs institutions*

In the effort to reform the Interior Ministry, this body will be decentralized and local police departments created. The heads of local police departments will be selected by the relevant government body. At the first stage of the decentralization, the responsibility for the protection of public order will be transferred to the jurisdiction of the Municipal Police. This will be followed by the transfer of civil defense, fire-prevention and special messenger services. In the final stage of the decentralization, the parts of anti-criminal functions that do not require unified centralized management will also be transferred to the Municipal Police. Primary police units will be withdrawn from the Ministry's central administration. The latter will retain only managerial functions of centralized services, and assume responsibility of the coordination and control of sectors included in the system.

Mandatory standards of conduct for law enforcement bodies, especially police personnel, will be created. Clear procedures and criteria for recruitment and dismissal will be established for the recruitment of a new staff in law enforcement bodies. Regular psychological examination and drug-testing of law enforcement personnel will be commence.

One of the main directions of the Police Reform is the implementation of the Community Police. This is a new method of police activities in the attempt to establish a close relationship between policemen and citizens. It improves the police performance on crime prevention and control. In such system the police recognize society as an active partner in the fight against crime.

The main goal of the community cooperation program is to develop and maintain bilateral trust between the police and citizens. The cultivation of trust is a very complex process and requires continuous effort. It is crucial for the effectiveness of the Community Police by providing invaluable information.

The best example of organized cooperation between the Police and society is the creation of Public Councils staffed by active citizens. These councils take an active part in the development of policy related to police operations.

Other important functions of Public Councils include the monitoring of police activities, statistical analysis of its work, studying claims of violation of law by policemen, and development of recommendations to improve performance of the Police. These activities would help create the desired working environment for the Police, increase the transparency of its work and consequently, improve performance. This would provide the strongest basis for the development of trust between the Police and the society.

The Community Police and Public Council is an effective mechanism for the development of social capital, since shared values and trust in the society support the reduction of crime. The ability of members of society to cooperate and trust each other is critical to crime prevention.

- ***Reform of the Office of Public Prosecutor***

The Public Prosecutor General's Office will also be restructured. The guiding principles of the Public Prosecutor will be developed and published in order to give society the criteria for an evaluation of the effectiveness, legitimacy and incorruptibility of this office.

A specialized subdivision for the persecution of corrupt criminal offences will be set up within the Office of Public Prosecutor. It will operate in close coordination with the Inspector General's Office. The subdivision will be the main law enforcement body undertaking anti-corruption activities.

- ***Reinforcement of the existing money laundering prevention system***

Measures necessary for the implementation of the law, "Support of Elimination of Legalization of Illegal Incomes" will be put into place. Furthermore, the development and improvement of relevant legislation will continue.

Georgia will increase cooperation with foreign counterparts and relevant international organizations. This will allow the country to become more integrated into the international campaign against illicit sources of income, and improve the effectiveness of Georgian financial monitoring services.

- ***Witness protection system***

A witness protection program will be developed and implemented with the support of friendly countries and international organizations.

The program seeks to create legal guarantees for those individuals and their family members who provide important information and evidence about crime to law enforcement bodies.

This information is used to investigate and detect serious offences. The program will also ensure the security of key witnesses and their family members.

Participants will receive new identities and be moved to new undisclosed homes. They will also be given financial resources for living expenses for a period of time, professional retraining, and even new jobs.

- ***Whistleblower protection system***

The State will create legislation to protect the rights of whistleblowers when they provide information against corruption. The legislation will seek to prevent their persecution and oppression. It will also encourage positive public attitudes towards whistleblowers.

- ***Civil Service Code***

A Civil Service Code will include existing regulatory legislation regarding public servants' status and activities. This is found in the "Civil Service", "Conflict of Interests and Corruption in Civil Service" and "Special State Ranks" laws. It is also found in other legislative acts that include norms on status of public servants and guarantees for their social protection. Norms regulating civil service will be systematized and codified. The Code will be supplemented with new norms.

The following areas will be addressed in the Civil Service Code:

- The make-up of the official ranks of public servants;
- A standardized salary system and benefits system based on an individual's rank within an organization.
- Staffing schedules of public institutions;
- Job descriptions for each position and office work/record keeping in public institutions;
- Norms regulating job appointments, terms of work, job incentives and disciplinary measures, conflict of interests, and grounds for dismissal from office;
- Social guarantees and benefits for public servants; and
- Unified criteria for performance evaluation of public servants.

The Code will differentiate between the various categories of public employment, including: public servant, high official, political public official, representatives of law enforcement bodies, military servicemen, diplomatic corps representative. Different civil service regimes will be established for each. Based on the characteristics of each specific position, career principles of service will be set up, as well as principles regarding temporary and permanent job appointments.

The Code will detail a public servant's obligation to cooperate with governmental and public supervisory bodies. It will also address the rules of conduct and ethical norms of public servants.

- *Administrative procedures*

The implementation of the General Administrative Code in the practice of public institutions will be continued. Special emphasis will be made on the implementation of various types of administrative procedures. These include simple, formal public administrative procedures, administrative procedures in collegial bodies, and so forth.

Procedures for analysis and decision-making on certain issues by public institutions, and which are disseminated in different legislation, will be coordinated with administrative procedures as envisaged by the General Administrative Code.