

**Mechanism for the Review of the Implementation
United Nations Convention against Corruption**

**Outcome of Desk Review
Review of Georgia**

Reviewing countries: Cyprus and Hungary

Year II - Phase I

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Georgia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Georgia, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from the Republic of Cyprus, Hungary and Georgia, by means of telephone conferences, e-mail exchanges and in-person dialogue, involving the following experts:

Georgia:

- Mr. Otar Kakhidze, Head of the Analytical Department, Ministry of Justice.
- Ms. Ketevan Abashidze, Senior Legal Advisor, Analytical Department, Ministry of Justice.

Cyprus:

- Mr. Christoforos Mavrommatis, Head, Financial Crime Unit, Cyprus Police Headquarters.
- Stavroulla Andreou, Drug Law Enforcement Unit , Cyprus Police Headquarters

Hungary:

- Pol. Lt. Col. Miklós Gáspár, National Protective Service.

The Secretariat:

- Mr. Jason Reichelt, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC
- Ms. Constanze von Söhnen, Associate Expert – Anti-Corruption, Corruption and Economic Crime Branch, UNODC

6. A country visit, agreed to by Georgia, was conducted from 23 to 27 May 2012 in Tbilisi. Meetings were held with the following institutions: Ministry of Justice, Ministry of the Interior, the judiciary and academia. A meeting with representatives of the society, including Transparency International, the Georgian Young Lawyers Association and the Liberty Institute, was also held.

Generally, as it can be seen from the documents, law texts and construing explanations provided by Georgia, the implementation of UNCAC is in a progressive condition.

Notes: as previously agreed between the representatives of the State Party under review and the reviewing State parties the relating results of The GRECO Evaluation Report on Georgia on Incriminations (2010) are additionally taken into consideration during the present review process. According to pre-arrangement between State parties participating in the review process provisions of Chapter III are reviewed by Hungary, Chapter IV is reviewed by Cyprus.

III. Executive summary

1. INTRODUCTION

1.1 Legal system of Georgia

The United Nations Convention against Corruption (“the Convention”) was ratified by the Parliament of Georgia on 4 November 2008. The power to enter into treaties is contained in Article 65 of the Georgian Constitution, and requires the signature of the President and ratification by Parliament.

The 1995 Constitution represents the supreme law of Georgia. In 2010, the Parliament approved amendments to strengthen coherence with international legal norms and standards. The amendments significantly transformed the structure of the Government, enhanced the protection of private property, strengthened judicial independence and local governments and increased the role of political parties.

The judicial system is comprised of the Regional (City) Courts, the Appellate Court, the Supreme Court and the Constitutional Court. Binding international treaties are self-executing, and prevail over domestic laws other than the Constitution.

1.2 Overview of the anti-corruption legal and institutional framework of Georgia

Anti-Corruption Interagency Coordination Council

Established in 2008, it is chaired by the Minister of Justice and includes representatives of each branch of Government as well as non-governmental and international organizations. Its mandate includes developing national anti-corruption policy and monitoring its implementation. The Analytical Department of the Ministry of Justice serves as a permanent Secretariat for the Council.

Public Council of the Prosecution Service

It was created to increase the transparency and public supervision of recruitment, retention, promotion and dismissal of staff of the Prosecution Service. The Public Council participates in selection and training, and also supervises the implementation of the Strategy and Action Plan for the Reform of the Prosecution Service.

Anti-Corruption Department of the Prosecution Service of Georgia

Established in 2010, its primary mandate is to investigate and prosecute significant corruption cases, including those against high-level officials.

Office of the Public Defender (Ombudsman)

It is an independent body with jurisdiction to review and investigate public complaints of human rights violations in Georgia, which can include corruption offences.

National Anti-Corruption Strategy and Action Plan

Adopted for the first time in 2005, it defined the main anti-corruption principles and focused on eradicating public corruption. This included the development of clear anti-corruption policies, vigorous prosecution and new approaches to good governance.

In 2010, a new Strategy was adopted, designed to consolidate achievements and outline priority areas. This was followed by the development of a new Anti-Corruption Action Plan, focusing on the prevention of corruption and proposing several objectives, including: a) Modernization of the public service; b) Competitive and corruption-free private sector; c) Enhancing the administration of justice; d) Increased interagency coordination; and e) Prevention of political corruption.

A significant innovation is the recent establishment of Public Service Halls in major cities throughout Georgia, which offers all public services for citizens under one roof to obtain passports, register property or interact with the Government in other ways. Five locations are open, with eleven more to follow. In addition, Georgia will establish Village Development Centres to serve rural areas.

2. IMPLEMENTATION OF CHAPTERS III AND IV

2.1 Criminalisation and Law Enforcement (Chapter III)

2.1.1 Main findings and observations

Bribery offenses; trading in influence (articles 15, 16, 18, 21)

Active bribery of national public officials is addressed in Article 339 of the Criminal Code (CC), which makes it an offence to promise, offer or give, directly or indirectly, money, securities, other property, material benefit or any other unlawful advantage to an official or third party beneficiary. Passive bribery is addressed in Article 338, and covers both requests and acceptance of money or other benefits to perform or not perform a particular act. Foreign public officials and officials of foreign public international organizations are included in these Articles.

Article 339 makes both active and passive trading in influence a criminal offence, and conforms to the requirements of the Convention. This statute encompasses both acting and refraining from acting, and does not require that influence was actually exerted or desired results were achieved.

Active and passive bribery in the private sector are criminalized in Article 221. Passive bribery goes beyond the minimum requirements of the Convention, and prohibits either the request or the receipt of benefits by private sector officials.

Laundering of proceeds of crime; concealment (articles 23, 24)

Georgia has adopted comprehensive criminal provisions to address money laundering in Articles 194, 194¹ and 186. Significantly, in 2010, the Government prioritized the investigation of money laundering and financial aspects of criminal activity in Georgia. As a result, from 2009 to 2011, money laundering prosecutions rose from 6 to 143, while convictions rose from 1 to 123.

Money laundering is defined broadly in Article 194 to include “giving a legal form to the illegal and/or undocumented property [...] for purposes of concealing its illegal and/or undocumented origin”. The inclusion of “undocumented property” extends liability to include property that is suspected of being derived from criminal activity. Articles 186 and 194¹ also criminalize the knowing use, acquisition, possession or realization of proceeds derived from criminal activity without the additional purpose of concealment. The scope of Article 194 was amended to include conversion or transfer of criminal proceeds with the purpose of helping another person evade the legal consequences of the underlying criminal activity. In addition, Article 124¹ of the Criminal Procedure Code (CPC) permits law enforcement monitoring of bank accounts to identify suspicious financial transactions and to facilitate asset tracing.

Predicate offences are not enumerated so as to maximize the scope of the money laundering provisions. The definition of property includes both tangible and intangible property, including intellectual property and licensing rights.

Georgia plans to officially furnish copies of its money laundering legislation to the Secretary-General of the United Nations in the near future.

Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)

Embezzlement is criminalized in Article 182 and makes illegal the unauthorized appropriation or embezzlement of another’s property, including in the private sector.

Article 332 criminalizes the abuse of official authority by public officials who act to the detriment of the public interest for the purpose of deriving profit or advantage. Criminal liability is extended to intentional, as well as reckless and negligent, behavior, thereby going beyond the minimum requirements of the Convention.

Although Georgia has not specifically criminalized illicit enrichment, it is considered that such cases are covered by the money laundering provisions. In addition, the recent implementation of an online asset declaration mechanism for senior public officials aids in monitoring and investigation.

Obstruction of justice (article 25)

Article 372 prohibits conduct to influence witnesses, victims, experts or interpreters to induce false testimony. Legal persons may be held criminally responsible, with penalties including suspension of licenses, fines or liquidation.

Articles 364 and 365 prohibit the use of physical force, threats or intimidation to interfere with the exercise of the official duties by a judicial officer or law enforcement official. Such protections are expressly extended to jurors and defence attorneys. Such offences committed by a public official are subject to enhanced penalties.

Liability of legal persons (article 26)

The scope of such liability, defined in Article 107², comprises money laundering, commercial bribery, passive and active bribery and trading in influence. Penalties include liquidation, deprivation of business license, fine and/or forfeiture of property. Criminal liability of legal persons does not extend to misappropriation or embezzlement.

The release from criminal responsibility of the natural person who committed the act shall not be a basis to relieve the legal person from criminal responsibility. In addition, the criminal liability of legal persons is without prejudice to the criminal liability of the natural person who committed the offence.

Participation and attempt (article 27)

The CC criminalizes aiding and abetting, attempt and preparation for both perpetrators and co-perpetrators. The joint participation of two or more persons in the commission of a crime is covered by Articles 23 to 25, which divides participants into “organizers”, “instigators” and “accomplices”.

Attempt to commit a crime, including corruption offences, is covered by Article 19. In addition, Georgia has criminalized the preparation to commit a crime under Article 18.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Courts must take into account the gravity of the offence and the person’s criminal history at sentencing. Sentences can include restriction of liberty, imprisonment, deprivation of the right to hold a position, deprivation of a business license, correctional labour and community service. Sanctions imposed are without prejudice to the exercise of disciplinary power against civil servants.

Article 173 of the CC defines the scope of immunity from arrest. Except with regard to the President or a person with diplomatic status, immunity from arrest does not apply in cases where the person is caught during the commission of a crime. The CPC allows for immunity from prosecution, but not criminal investigation. In addition, immunity can be lifted by Parliament.

Articles 16 and 166 of the CPC convey discretionary power to initiate criminal prosecution only to the Office of the Prosecutor, acting in the public interest.

Preventive measures to ensure that a defendant appears in court are set forth in Article 198, and left to the discretion of the presiding judge. Such measures include bail and pre-trial detention, among others.

Early release or parole from a sentence upon conviction is governed by Article 72 of the CC, which allows for conditional release if completion of the sentence is no longer necessary for the correction of the sentenced person. Rehabilitation and reintegration into society are fundamental principles governing both the imposition of sentence and decisions regarding early release.

Georgian law sets forth procedures in corruption cases for the removal, suspension or reassignment of public officials, while safeguarding the presumption of innocence. Officials convicted of a corruption offence are deprived of the right to occupy an official position or pursue a range of public sector activities, including holding office in an enterprise owned by the State, for a period of time governed by the CC.

Persons who participate in criminal activity are encouraged to provide useful information and assistance to law enforcement for investigative and evidentiary purposes. Georgia permits release from criminal liability in cases where active bribery of public officials, trading in influence or commercial bribery has been reported. This applies to the bribe-giver, but not to the bribe-taker.

Protection of witnesses and reporting persons (articles 32, 33)

Georgia has had in place witness protection measures since 2006. In 2011, a new protection program covering witnesses, victims and their families was established. Protective measures include withholding identity, closing proceedings, sealing documents, allowing for shielded testimony, applying special security measures and temporary relocation. Victims have certain rights, enumerated in Article 57 of the CPC, including the right to give a statement to the court regarding sentencing and damages incurred.

In 2009, Georgia adopted amendments to the Law on Conflicts of Interest and Corruption in Public Service that prohibit, among other things, discriminating against, intimidating or exerting pressure on whistleblowers; initiating criminal, civil, administrative or disciplinary proceeding against whistleblowers; or dismissing or temporarily discharging whistleblowers from their official position.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Article 52 of the CC permits the criminal confiscation and forfeiture of property that was acquired through criminal means. These measures extend to objects and instrumentalities of the offence and encompass all crimes. Proceeds of crime that have been intermingled with legitimate property are subject to confiscation up to the assessed value of the intermingled proceeds. The rights of bona fide third parties are protected by provisions of the Civil Code.

There are two mechanisms for the application of an order to freeze assets. First, under Article 154 the prosecutor submits a motion to the court to freeze particular assets, which the court shall determine within 48 hours of filing, with or without a hearing. The second, in Article

155, enables the prosecutor to adopt an emergency temporary freeze without a court order when there is probable cause that the property will be hidden or destroyed.

In addition, pursuant to Chapter XLIV¹ of the Civil Procedure Code, authorities can execute civil forfeiture of illicit or undocumented property which is not directly connected to underlying criminal activity.

Frozen property is administered by the investigative body which executed the order. Confiscated assets are managed by the Service Agency of the Ministry of Finance, and subject to an online public auction via the eAuction system.

Neither commercial nor professional secrecy are barriers to tracing and identification of assets, including search and seizure.

Statute of limitations; criminal record (articles 29, 41)

Article 71 sets forth limitations periods based on the gravity of the offence: less serious (6 years), serious (10 years) and especially serious (25 years). For certain corruption offences (abuse of authority, bribery and trading in influence), the limitations period is enhanced to 15 years or, if particularly serious, 25 years. The time begins to run from when the offence is committed, and is suspended if the criminal suspect absconds from justice, and resumes from the moment of arrest. The statute is also suspended for the term during which a criminal suspect is under protection of immunity.

Pursuant to Article 53 of the CC, courts must take into account the gravity of the offence and the person's criminal history in determining an appropriate sentence upon conviction.

Jurisdiction (article 42)

Article 4 of the CC establishes jurisdiction over all criminal offences committed within the territory of Georgia. A crime shall be deemed to have been committed in the territory of Georgia if it began, continued or terminated in the territory of Georgia.

Article 5 establishes jurisdiction for criminal offences which took place outside of the territory of Georgia if committed against the interests of Georgia. Extraterritorial jurisdiction may be extended to citizens of foreign states for serious offences. Article 5 extends jurisdiction to foreign citizens acting outside of Georgia if they are exercising public authority on behalf of Georgia and commit any enumerated corruption offence, which includes active and passive bribery, commercial bribery or trading in influence.

Consequences of acts of corruption; compensation of damage (articles 34, 35)

Under Article 54 of the Civil Code, a transaction that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void. Corruption is considered a relevant factor to annul or rescind a contract. The Civil Code also permits private lawsuits in property transactions that are conducted in bad faith.

Under Article 992 of the Civil Code, a person who causes harm to another person by unlawful, intentional or negligent action shall be held liable to compensate the injured party.

Article 309¹⁶ of the Civil Procedure Code allows legal proceedings against the criminally responsible party for damage caused.

Specialised authorities and inter-agency coordination (articles 36, 38, 39)

Georgia employs a multi-agency approach to corruption. In addition to the institutional structure described in section 1.2, there are several investigative divisions responsible for corruption cases and law enforcement coordination, including within the Chief Prosecutor's Office, the Ministry of Internal Affairs and the Ministry of Finance. Their mandates include receiving information on corruption allegations, investigating offences and referring cases for prosecution. The Anti-corruption Department of the Prosecutor's Office supervises corruption investigations for all of the Ministries.

Regarding internal investigation, Inspectorates General (IGs) of the Ministry of Justice and Ministry of Interior, and Internal Audit Departments of other Ministries, have been established to verify legal compliance, detect fraud and investigate unethical behaviour.

The investigative bodies cooperate through a regular exchange of information, including through the Anti-Corruption Interagency Coordination Council described in section 1.2 and the creation of ad hoc joint investigative teams. In addition, several agencies have adopted memoranda of cooperation between them. Law enforcement cooperation was significantly enhanced by the launch, in 2011, of the Integrated Criminal Case Management System, which is an electronic platform maintained by, and shared among, law enforcement agencies and prosecutors.

2.1.2 Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The recent implementation of an online asset declaration mechanism for senior public officials, accessible to the public free of charge, facilitates the gathering of information and aids in monitoring and investigation.
- Abuse of official authority by public officials who act to the detriment of the public interest extends to intentional, reckless and negligent behavior.
- The release from criminal responsibility of the natural person who committed the criminal act shall not be a basis to relieve the legal person from criminal responsibility.
- Legal persons may be held criminally responsible for the offence of influencing or coercing witnesses in criminal cases, with penalties including suspension of licenses, fines or liquidation.

- The eProcurement system allows citizens to bid on and purchase confiscated property, provides for more transparent procurement practices and aids in the detection and investigation of corruption offences.
- Jurisdiction extends to foreign citizens acting outside of the territory of Georgia if they are exercising public authority on behalf of Georgia and commit any enumerated corruption offence, which include active bribery, passive bribery, commercial bribery or trading in influence.

2.1.3 Challenges and recommendations

The following steps could further strengthen existing anti-corruption measures:

- Continue to implement the National Anti-corruption Strategy and the Anti-Corruption Action Plan.
- Continue to prioritize the investigation and prosecution of money laundering and financial aspects of criminal activity, particularly in corruption cases.
- Amend Article 107² (liability of legal entities) of the CC to include in its scope of application Article 182 (misappropriation or embezzlement).
- Consider incorporating into the domestic legal system appropriate measures to provide protection to persons in the private sector who report offences of corruption to the competent authorities.
- Continue to support existing mechanisms and consider additional measures to facilitate and encourage cooperation between national investigating and prosecuting authorities and the private sector entities in corruption matters.

2.2. International cooperation (Chapter IV)

2.2.1 Main findings and observations

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

International cooperation, including extradition, is covered by the law on International Cooperation in Criminal Matters of 2010.

Georgia has bilateral treaties containing provisions on extradition with 7 regional countries, and is party to several multilateral treaties. Being of general nature, they cover all types of crimes punishable under the CC, including corruption offences.

Georgia also considers the Convention as a legal basis for extradition based on the principle of reciprocity. If no treaty is applicable, the Ministry of Justice is authorized under Article 2 to conclude an ad hoc agreement for a specific case with the appropriate foreign authorities.

Since 2009, one extradition request regarding a corruption offense was received and 12 were sent. None was based on the Convention but on the European Convention on Extradition or bilateral treaties.

Dual criminality is a prerequisite under Article 18. The offense for which extradition is sought must be punishable by the laws of both Georgia and the foreign state by the deprivation of liberty of at least one year. In case of a judgment, the sentence must be at least four months of imprisonment. The dual criminality requirement is examined broadly, based on factual circumstances and underlying conduct.

Extradition requests can be transmitted through the channels of communication established by a treaty or ad hoc agreement or, in case no regulation exists, through direct channels or Interpol (Article 3). The request does not require prima facie evidence. Although Georgia does not recognize simplified extradition proceedings, the final decision is made within the shortest terms, especially when the fugitive is under provisional arrest.

Although extradition may be refused for political offences, a crime is not considered to be political if Georgia has an obligation to extradite under an international treaty or ad hoc agreement. Requests cannot be refused on the ground that the offence involves fiscal matters.

Extradition of Georgian nationals is restricted. If no such treaty exists, Georgian law provides for domestic prosecution (Articles 21 and 42). Between 2007 and August 2010, 46 such cases were transferred to the relevant authorities; 23 of them, including 3 cases from 2007, are still pending. Evidence submitted by the requesting State has equal legal force as evidence obtained in Georgia, provided that it is collected in observance of the procedures and rules of the foreign State.

If extradition, sought for enforcing a sentence, is refused on the ground of nationality, enforcement under domestic law is only possible if a relevant international treaty or ad hoc agreement so permits. In direct application of the Convention, this would be decided on a case-by-case basis.

Due process and enjoyment of rights under the CPC is observed at all stages of the extradition proceeding (Article 34).

Georgia is a party to bilateral and multi-lateral agreements regarding transfer of sentenced persons. In the absence of a treaty, cooperation can be carried out on the basis of an ad hoc agreement or the reciprocity principle.

Georgia has no specific provision regulating the transfer of criminal proceedings in cases of concurrent jurisdiction. However, in case of conflict, an ad hoc agreement could be concluded as well as the use of extradition or mutual legal assistance.

Mutual legal assistance (article 46)

Georgia has bilateral mutual legal assistance (MLA) agreements with 6 regional countries and is party to several multilateral treaties. Article 46 of the Convention (e.g. Para. 9-29) can be applied directly due to the self-executing nature of international treaties. If no treaty provides the possibility of rendering assistance, the Ministry of Justice is authorized to conclude ad hoc agreements, or to cooperate on the basis of the reciprocity principle.

The law on International Cooperation in Criminal Matters does not define specific types of procedural actions, which means that all kinds of assistance are available for foreign states, if

the Georgian investigative authorities are authorized to conduct such actions in domestic cases.

The Ministry of Justice is the central authority responsible for sending and receiving MLA requests. Requests are to be made in Georgian or English. Georgia has never received or sent an MLA request on the basis of the Convention, but has received and sent several requests in regard to corruption offenses based on other multi- or bilateral treaties. The average time needed for execution was 2-3 months. MLA requests can be transmitted through any communication.

MLA can be refused if granting the request would prejudice the sovereignty, security, public order or other essential interests, if execution of the request would contradict legislation or if the crime for which the assistance is requested is a political or military offence. A request shall also be refused if it may prejudice the universally recognized rights and fundamental freedoms of an individual. Bank secrecy is not a ground for refusing a request. The only requirement is that the disclosure of the requested information should be authorized by a court or other competent body of the requesting State. The requesting State must be notified of the reasons for refusal.

In case the foreign authority requests the execution of coercive measures (e.g., search and seizure), dual criminality is a pre-condition. Assistance may only be afforded if it is also authorized by the competent authority of the requesting State.

Although Georgia has never received a request for confiscation based on a foreign judgment, such request could be executed under Article 52. In these cases, Georgia becomes the legal owner of the confiscated property and a Georgian court may thereafter order the asset be transferred to the requesting State. Alternatively, ad hoc agreements or decisions are possible. Georgia can recognize and enforce foreign non-criminal confiscation orders in accordance with the procedures defined by law.

Any information or other materials obtained through MLA shall not be used for any purpose other than indicated in the request unless prior consent is given.

Georgia will generally bear the ordinary costs of executing requests (Article 4).

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Regarding police cooperation, Georgia has concluded several international agreements. Almost all have provisions for Convention offences. Georgia aims to conclude further such bilateral treaties as well as a strategic agreement with Europol.

The agreements identify the competent authorities responsible for cooperation, and facilitate rapid and effective assistance. The Georgian contact point is the Criminal Police Department in the Ministry of Internal Affairs. In case of urgency, some agreements allow for verbal requests, which subsequently shall be confirmed in writing.

The Ministry of Internal Affairs actively cooperates with neighbouring countries, international organizations, and its counterparts of GUAM (Georgia, Ukraine, Azerbaijan, Moldova) in the

field of counter-terrorism, organized crime and other dangerous crimes, and with police attachés of the European Union Member States.

The Law on “Operative Searching Activity” provides a broad range of special investigative techniques, which can be used to gather evidence, conduct surveillance and undercover operations. In 2010, monitoring of internet activity and gathering electronic evidence to prevent and fight cybercrime were added.

Special investigative techniques can be initiated upon the request of foreign law enforcement authorities on the basis of international agreements. In the absence of an agreement, law enforcement authorities may cooperate to the fullest extent under an ad hoc agreement or on the basis of the reciprocity principle.

2.2.2 Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- Effective law enforcement cooperation, which enables direct contact and facilitates the provision of timely cooperation based on the “one phone call” principle, in the framework of GUAM, among others.
- Availability of plentiful methods of assistance for foreign States, which are available throughout the course of criminal investigations.

2.2.3 Challenges and recommendations

The following steps could further strengthen existing anti-corruption measures:

- Continue efforts to strengthen the capacities and collaboration of law enforcement authorities in the fight against transnational crime through the conclusion of further bilateral and multi-lateral agreements.
- Continue to examine dual criminality as broadly as possible, including in cases in which an extradition request is based on the Convention, and consider concluding further bilateral and/or multi-lateral treaties to implement simplified extradition procedures.
- In case extradition of Georgian nationals is refused and proceedings are transferred to national authorities, take decisions on pending cases within a reasonable time after all evidence has been received from the foreign State.
- Continue to prioritize international cooperation in corruption offenses and to consider the potential of the Convention as a basis for extradition and mutual legal assistance in relevant cases.

3. TECHNICAL ASSISTANCE NEEDS

Georgia has identified no technical assistance needs at this time.

IV. Implementation of the Convention

A. Ratification of the Convention

7. Georgia ratified the Convention on the 04. November 2008. Georgia deposited its instrument of ratification with the Secretary-General on that date. Ratified treaties in Georgia are self-executing.

Please clarify the treaty implementation mechanism. Are they self-executing? Or does there need to be additional legislative or other action?

B. Legal system of Georgia

The Constitution of Georgia, adopted in 1995, represents the cornerstone of the Georgian legislation. Article 6 of the Georgian Constitution says that the Constitution is the supreme law of the state, while all other legal acts shall be issued in accordance with the Constitution. The legislation of Georgia corresponds with universally recognized norms and principles of international law.

On 15 October, 2010, the Parliament of Georgia approved changes to the Constitution, which were prepared by the State Constitutional Commission established in 2009, through the inclusive process involving a wide spectrum of stakeholders, domestic and international experts, civil society representatives, academics, political parties and the general public. The amendments were debated during three parliamentary hearings, as well as three hearings in the committees, during which the agreement was reached with the parties representing the opposition. The recommendations of the European Commission for Democracy through Law (the Venice Commission) were taken into account. These amendments significantly transformed the structure of the Government of Georgia and the balance of powers among the various branches of government. As a result, the Constitution enhanced the protection of private property, strengthened the independence of the judiciary and local governments and increased the role of political parties in the decision-making process. The amendments introduced the so-called “mixed system” of governance, which provides for a clearly defined system of checks and balances, where the different branches balance each other to avoid the concentration of power in any single branch.

The system of Common Courts is comprised of the Regional (City) Court, the Appellate Court and the Supreme Court of Georgia. Apart from the system of common courts, the Constitutional Court is also entitled to exercise judiciary power. The Constitutional Court of Georgia is the judicial body of constitutional review. The Constitutional Court considers the constitutionality of international treaties and agreements, and normative acts, and individual complaints regarding the same issue. The judgment of the Constitutional Court is final.

Institutional System:

Anti-Corruption Council

With respect to the institutional system in the field of Corruption, in 2008, the Anti-Corruption Interagency Coordination Council (hereinafter “the Council”) was established.

The members of the Council are representatives of executive as well as legislative and judicial bodies, the experts of non-governmental and international organizations. The Council is chaired by the Minister of Justice of Georgia. In 2010, the membership of the Council was revised and enlarged in order to increase institutional capacity of the mentioned institution. Moreover, the amendment to the Law on Conflicts of Interest and Corruption in Public Service entered into force, strengthening legal basis for effective functioning of the Council. Anti-Corruption Council is a very strong preventive organ which sets the anti-corruption policy and effectively monitors its implementation. The Council is responsible for designing and approving anti-corruption strategies and action plans; drafting amendments to relevant legal documents; adopting monitoring report on implementation of the action plan, etc. Thus, the Council serves as an authoritative institution responsible for the prevention of corruption.

Secretariat

The Anti-Corruption Council has a Permanent Secretariat – the Analytical Department of the Ministry of Justice, which performs administrative and analytical work for the Council. The Department organizes the meetings of the Council, prepares and revises working materials and documents, is responsible for final drafting of the Strategies and Action Plans to be submitted to the Council for approval, carries out research and analysis the issues related to the fight against corruption. In addition, the Secretariat participates in drafting reports to various international organizations (such as GRECO, OECD, etc.).

Group of Experts

There is an expert level working group of representatives of all relevant institutions created under the Anti-Corruption Council. This is the group which works on a wide array of corruption preventive measures according to their field of expertise. The group of experts in close cooperation with the Secretariat elaborates policy documents as well as reports on the implementation of the Action Plan, that are eventually submitted to the Council for approval.

Public Council of the Prosecution Service of Georgia

The Public Council of the Prosecution Service of Georgia was created in order to increase the transparency and public supervision over the system of recruitment, attestation, as well as dismissal of the staff of the Prosecution Service of Georgia. The Council participates in the selection process of interns and organization of trainings for them. It also supervises the implementation of the Strategy and Action Plan of the Reform of the Prosecution Service of Georgia. Members of the Parliament of Georgia, representatives of Judiciary, the Council of Europe and US Department of Justice, as well as experts are represented in the Council.

Anti-Corruption Department of the Prosecution Service of Georgia

In 2010, a specialized law-enforcement agency - the Anti-Corruption Department - was established at the Chief Prosecutor's Office of Georgia. The main task of the Department is to investigate and prosecute corruption cases of high importance.

- National Anti-Corruption Strategy and Action Plan

In 2005, Georgia adopted its first anti-corruption strategy. The 2005 Strategy defined the main principles in relation to the fight against corruption and was focused on the eradication of deeply rooted corruption practices in the public institutions. Very straightforward and strict policy towards corruption, vigorous prosecution of corruption cases, new approaches and practices of good governance, enabled Georgia to minimize and eventually get rid of corruption practices in Government.

Recent developments revealed the need to set new objectives in order to be prepared for new challenges, while consolidating the achievements. In order to maintain, strengthen and enhance successful results as well as to create a mechanism based on best international practices, the new National Anti-corruption Strategy policy document outlining priority areas in fight against corruption was adopted in 2010.

Adoption of strategy was soon followed by a new Anti-Corruption Action Plan. The comprehensive Action Plan of the Government of Georgia tackles every aspect of prevention of corruption by identifying corruption sensitive areas and proposing specific targeted activities within the framework of the following objectives:

- *Modernization of Public Service;*
- *Development of Administrative Service;*
- *Modernization of State Procurement;*
- *Reform of Public Finance System;*
- *Development of Tax and Customs Systems;*
- *Competitive and Corruption-Free Private Sector;*
- *Enhancing Justice Administration;*
- *Increased Interagency Coordination for Prevention of Corruption;*
- *Improved System of Political Party Financing;*
- *Prevention of Political Corruption.*

Political System:

With respect to the political system improvements, significant achievements have been made within the legislative framework on the political party financing issues. In that regard, recently, at the request of the first deputy Chairman of the Parliament of Georgia, the European Commission for Democracy Through Law (“the Venice Commission”) of the Council of Europe and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (“OSCE/ODIHR”) have prepared an opinion (hereinafter “the Opinion”) on the draft Law on amendments and additions to the Organic Law on Political Unions of Citizens of Georgia.¹

According to this Opinion stated above, the broad majority of the draft amendments to the Organic Law concern political financing from the perspective of transparency, supervision and sanctions, thereby aiming at introducing improvements recommended by the Council of Europe Group of States against Corruption (“the GRECO”) or which are pertinent from the point of view of the Recommendation of the Council of Europe’s Committee of Ministers no. Rec(2003)4.

This Opinion in conclusion states that the draft amendments and additions to the Organic Law on Political Unions of Citizens have successfully addressed many international standards in the field of political finance and in particular many GRECO recommendations, with a view to establishing a more uniform and transparent legal framework. In particular, the following positive points should be underlined:

- the ban of corporate donations (donations by legal persons);
- the introduction of a requirement for bank wire transfers of donations; and

¹ Available at: http://www.venice.coe.int/site/dynamics/N_Recent_ef.asp?L=E.

- the inclusion of the Control Chamber (Audit Office) as a body controlling the reports of the parties.

Georgia has undergone anti-corruption assessments in the past, and provided the most recent GRECO report in that regard.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

The Criminal Code of Georgia foresees an Article criminalizing active bribery of national public officials. Under the Article 339 (Active Bribery) of the Criminal Code of Georgia it is an offence to promise, offer or give, directly or indirectly, money, securities, other property, material benefit or any other unlawful advantage to an official or a person with an equal status, in favour of the bribe-receiver or a third person, in order that official or a person with an equal status to perform or not to perform any action or to use his official position to that end or to exercise official patronage in favour of the bribe-giver or a third person. Sanction provided for this offence is fine or corrective labour for two years term or restriction of liberty for the same term and/or deprivation of liberty for up to three years term.

Criminal Code of Georgia - Article 339. Active Bribery

Criminal Code of Georgia - Article 339. Active Bribery

1. Promising, offering or giving, directly or indirectly, of money, securities, property, material benefit or any other undue advantage to a public official or a person with an equal status, for himself or herself or for anyone else in order that public official or a person with an equal status to act or to refrain from acting in the course of carrying out his/her official rights and duties, in favour of the bribe giver or a third person, as well as to use his official position for that end or to exercise official patronage, shall be punished by fine or corrective labour for a term of two years or the restriction of liberty for the

- same term and/or the deprivation of liberty for a term up to three years.
2. Giving bribe to an official or a person with an equal status in exchange of the commission of an illegal act shall be punished by fine or the deprivation of liberty for a term from four to seven years.
 3. The conduct defined in paragraphs 1 and 2 of the present Article committed by an organized group, shall be punished with the deprivation of liberty for a term from 5 to 8 years.

Note:

1. If the briber reports the act of bribery voluntarily to the law enforcement agencies, the briber will be relieved from criminal responsibility. The respective decision lies with the prosecution.
2. For the action foreseen by this Article a legal person shall be punished by fine.

Please provide examples of cases and attach case law if available

(b) Observations on the implementation of the article

Article 15 Subparagraph (a) is a mandatory provision. The State party under review with Criminal Code of Georgia (hereafter: Criminal Code or CC) Article 339 reached the mandatory requirements that UNCAC Article 15 Subparagraph (a) includes according to Legislative Guide for the Implementation of the United Nations Convention against Corruption (hereafter: Legislative Guide) Paragraph 183. Subparagraph (a); Paragraph 193-198 considering Paragraph 192.

The elements/terms of the offence appear to be in compliance with the requirements/terms of UNCAC.

During the analysis of the provided text of Criminal Code Article 339, supplementary information on the element “committing intentionally” has been taken from the GRECO report.

Georgia reported that Section 2 of the bribery statute is an aggravating circumstance.

The reviewing experts were satisfied with the answers provided.

(c) Successes and good practices

The referred legislation of Georgia and the related UNCAC provision are almost verbatim.

In respect of successes and good practices in implementing the article, it is noteworthy to mention Article 70¹ (**Release from Criminal Liability for Defendant’s Cooperation with Investigation Authorities**) of the Criminal Code of Georgia ensures release from criminal liability for defendant’s cooperation with investigation authorities. This investigation must be of specific character and importance.

In particular, pursuant to this Article, on special occasions, when a defendant’s cooperation with investigation authorities results in identification of an official or/and person(s) committing an especially grave crime and the defendant immediately facilitates the creation of essential conditions for detection of such crime, the court may fully release the defendant from criminal liability.

In general, if person reports such an offense unknown to the prosecution, that person will be released from criminal liability. The decision on this matter is left to the discretion of the prosecutor, and governed by a policy listing the guidelines required to be considered.

Based on this Article the investigation on the crime in question has been simplified. In most cases the defendants cooperate with investigation authorities and facilitate the creation of essential conditions for detection of the crime, because it is in their interest to be released from criminal liability.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

The Criminal Code of Georgia foresees an Article criminalizing passive bribery of national public officials. Under the Article 338 (Passive Bribery) of the Criminal Code of Georgia it is an offence to request or accept money, securities, other property, material benefit or any other unlawful advantage, or accepting such a promise or offer, committed by a public official or a person with an equal status, in exchange for performing or not performing, in favour of the bribe-giver or a third person, any action as well as using his official position for that end or exercising official patronage. Sanction provided for this offence is deprivation of liberty from six to nine years term.

Criminal Code of Georgia - Article 338. Passive Bribery

Criminal Code of Georgia - Article 338. Passive Bribery

1. Receipt or request by a public official or a person with an equal status directly or indirectly of money, securities, property, material benefit or any other undue advantage, or acceptance of an offer or a promise of such an advantage, for himself or herself or for anyone else, to act or refrain from acting in the course of carrying out his/her official rights and duties, in favour of the bribe-giver or other person, as well as use his or her official position for that end or to exercise official patronage, shall be punished by the deprivation of liberty from six to nine years.
2. The same act committed:
 - a) by a state official with political status;
 - b) in respect of a large amount of bribe;
 - c) by a group, due to an agreement in advance,shall be punished by the deprivation of liberty for a term from seven to eleven years.
3. The conduct defined in paragraphs 1 and 2 of the present Article, committed:
 - a) by the person previously convicted for bribery;
 - b) repeatedly;
 - c) through extortion;
 - d) by an organized criminal group;
 - e) in respect of an especially large amount of money, -shall be punished by the deprivation of liberty for a term from eleven to fifteen years.

Note:

For the purposes of this article a large amount of bribe is money, securities, other property or material benefit above 10,000 GEL and especially large amount of bribe is an amount exceeding 30,000 GEL.

- The **Deputy Minister of Labour, Healthcare and Social Security** of Georgia, Mr. Nikoloz Fruidze, was convicted and prosecuted under art. 333.1; 338.3. “e” and art.180.3. “b” together with art. 25 of the Georgian Criminal Code. We was proved to have lobbied for one of the private companies participating in the tender for vaccines and taken the bribe of 40,000 USD.
- In 2010 Mr. Alexi Chikvaidze, the **Deputy Minister for Education and Science**, was prosecuted under articles 332.1 and 338.3.”b” of the Georgian Criminal Code.
- Mr. Davit Tughushi held a position of the Senior **Deputy Head of the Material-Technical Support Unit of the State Procurement Department** at the Ministry of Defense. Mr. Shota Khomeriki served as a **Senior Manager at State Procurement Department** within the same Ministry. They have taken a bribe of 95,000-100,000 GEL from Ltd “Dema+” in return of signing an agreement related to the sale of provisions to the Ministry. Both individuals were prosecuted under art. 338.2. “g” and art.338.3. “e” of the Georgian Criminal Code.
- In 2010, the **head of LEPL “National Centre of Intellectual Property – Sakpatenti”**, Mr. Davit Gabunia was prosecuted under following articles of the Georgian Criminal Code: 338.3. “b”, “d” and “e”; 194.2. “a”; 338.2. “b”. Several other individuals were also prosecuted.
- Mr. Papuna Khachidze was serving as a **Deputy Governor of Samtskhe-Javakheti Region** from 2005. From 2009 he was **the Head of a Forest Unit at the Ministry of Environmental Protection and Natural Resources**. He was prosecuted under following articles of the Georgian Criminal Code: 338.1. (three episodes); 337; 194.2. (g); 194.3. (b); 194.3. (b) and (g) together with art. 25.
- The **Deputy Head of Environmental Protection Inspection** and two other individuals from the same agency, **the Head of Forest Managing Department** and a certain businessman were accused of passive bribery, abuse of function and illicit enrichment.
- The **Head of Amelioration Policy Unit at the Georgian Ministry of Agriculture** was prosecuted for passive bribery (art. 338) and aid in falsifying the official documents (art.25 and art. 362). The representatives of LEPL Amelioration Association were also prosecuted.
- The **Head of Ozurgeti Municipality** was prosecuted under art. 338.1. and art. 338.2. (b) for taking a bribe of 15,000 GEL.
- Kutaisi City Cleaning Service is a structural unite of Kutaisi City Hall. **The Head of this Service** was prosecuted for abuse of function and passive bribery. The bosses of a private company who won a tender announced by the Cleaning Service were also prosecuted (art. 194.3 (g) and 210.1).

(b) Observations on the implementation of the article

Article 15 Subparagraph (b) is a mandatory provision. The State party under review with Criminal Code of Georgia Article 338 has reached the mandatory requirements that UNCAC Article 15 Subparagraph (a) includes according to Legislative Guide Paragraph 183. Subparagraph (b); Paragraph 199-204 considering Paragraph 192.

The elements/terms of the offence appear to be in compliance with the requirements/terms of UNCAC.

The reviewing experts were satisfied with the answers provided.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

Active bribery of foreign public officials as well as officials of public international organizations is a criminal offence under the Criminal Code of Georgia and is covered by the Article 339.

Under the Criminal Code of Georgia a foreign public officials as well as officials of foreign public international organizations are covered by the term “person with an equal status to a public official”. Definition of the person with an equal status is provided for in Note 2 to the Article 332 (Abuse of Officials Authority) of the Criminal Code of Georgia and this definition applies to all crimes provided in Chapter XXXIX (Offences in relation to Exercising Public Service).

This Chapter includes Articles from 332 to 342 of the Criminal Code of Georgia.

Note 2 to the Article 332 provides as follows:

For the purposes of Chapter XXXIX, persons with an equal status to a public official also include a foreign public official (including member of legislative bodies and/or agencies exercising administrative authority), as well as any person who performs any public functions for another state, an official or contracted staff member of an international organization or agency, as well as any designated or non-designated person who performs functions equal to such official or staff member, arbitrators and jurors who perform any public functions for another state, member of international parliamentary assemblies, representative of international criminal court, judge or official of international court or judicial body.

Criminal Code of Georgia - Article 339. Active Bribery

Criminal Code of Georgia – Article 332. Abuse of Official Authority - Note 2

Criminal Code of Georgia - Article 339. Active Bribery

1. Promising, offering or giving, directly or indirectly, of money, securities, property, material benefit or any other undue advantage to a public official or a person with an equal status, for himself or herself or for anyone else in order that public official or a person with an equal status to act or to refrain from acting in the course of carrying out his/her official rights and duties, in favour of the bribe giver or a third person, as well as to use his official position for that end or to exercise official patronage, shall be punished by fine or corrective labour for a term of two years or the restriction of liberty for the same term and/or the deprivation of liberty for a term up to three years.
2. Giving bribe to an official or a person with an equal status in exchange of the commission of an illegal act shall be punished by fine or the deprivation of liberty for a term from four to seven years.
3. The conduct defined in paragraphs 1 and 2 of the present Article committed by an organized group, shall be punished with the deprivation of liberty for a term from 5 to 8 years.

Note:

1. If the briber reports the act of bribery voluntarily to the law enforcement agencies, the briber will be relieved from criminal responsibility. The respective decision lies with the prosecution.
2. For the action foreseen by this Article a legal person shall be punished by fine.

Criminal Code of Georgia - Article 332. Abuse of Official Authority

1. Abuse of official authority by an official 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 deprivation of liberty to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term of three years.
2. Abuse of official authority by a political official,-
shall be punishable by fine or by deprivation of liberty from three to five years, by deprivation of the right to occupy a position or pursue a particular activity for the term of three years.
3. The act referred to in Paragraph 1 or 2 of this article, committed:
 - a. Repeatedly;
 - b. under coercion or by using arms;
 - c. by insulting dignity of a victim,-shall be punishable by deprivation of liberty from five to eight years, by deprivation of the right to occupy a position or pursue a particular activity for the term of three years.

Note:

1. Subjects of the offences foreseen by the present Chapter also include staff members of the Legal Entities of Public Law (except political and religious unions), who exercise public authority, members of the arbitration courts, private enforcers, as well as any other person, who pursuant to legislation of Georgia conducts public authority.
2. For the purposes of this Chapter, persons with an equal status to a public official also include foreign public officials (including member of legislative bodies and/or agencies exercising administrative authority), as well as any person who performs any public function for another state, an official or contracted staff member of an international organization or agency, as well as any designated or non-designated person who performs functions equal to such official or staff member, member of international parliamentary assemblies, representative of international criminal court, judge or official of international court or judicial body.
3. For the purpose of the Articles 338-339¹ of present Criminal Code, subjects of the crime are also jurors (candidates for jurors), that undertake the functions pursuant to the legislation of Georgia.

(b) Observations on the implementation of the article

The definition of “foreign public official” used by the State party under review in Note 2 CC Art. 332. appears to cover the requirement given in Article 2 Subparagraph (b) of UNCAC (see Legislative Guide paragraph 206.).

Foreign public officials and officials of foreign public international organizations are included in these Articles.

Georgia has one bribery statute that is very broad and covers all bribery conduct, including those connected to international business and international aid. It was noted that the jurisdiction of the bribery legislation is broad. The reviewing experts were satisfied with the answers provided.

(c) Successes and good practices

The issue of a particular importance together with Article 70¹ of the Criminal Code of Georgia (mentioned above) is the remark of Article 339 (**Active Bribery**) of the Criminal Code of Georgia, according to which if the briber reports the act of bribery voluntarily to the law enforcement agencies the briber might be relieved from criminal responsibility.

Based on these provisions stated above, the investigations on the crime in question have been simplified and significant results have been achieved in this respect. In most cases, the defendants cooperate with investigation authorities and facilitate the creation of essential conditions for detection of the crime, because it is in their interest to be released from criminal liability.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

Passive bribery of foreign public officials and officials of public international organizations is a criminal offence under the Criminal Code of Georgia and is covered by the Article 338.

Under the Criminal Code of Georgia a foreign public officials as well as officials of foreign public international organizations are covered by the term “person with an equal status to a public official”.

Definition of the person with an equal status is provided for in Note 2 to the Article 332 (Abuse of Officials Authority) of the Criminal Code of Georgia and this definition applies to all crimes provided in Chapter XXXIX (Offences in relation to Exercising Public Service). This Chapter includes Articles from 332 to 342 of the Criminal Code of Georgia.

Criminal Code of Georgia - Article 338. Passive Bribery (full text see above)
Criminal Code of Georgia – Article 332. Abuse of Official Authority - Note 2

Note 2 to the Article 332 provides as follows (full text see above):

For the purposes of Chapter XXXIX, persons with an equal status to a public official also include a foreign public official (including member of legislative bodies and/or agencies exercising administrative authority), as well as any person who performs any public functions for another state, an official or contracted staff member of an international organization or agency, as well as any designated or non-designated person who performs functions equal to such official or staff member, arbitrators and jurors who perform any public functions for another state, member of international parliamentary assemblies, representative of international criminal court, judge or official of international court or judicial body.

Please provide examples of cases and attach case law if available

(c) Observations on the implementation of the article

Article 16 Paragraph 2 is a non-mandatory provision of the Convention. See observations on Article 15 Subparagraph (b) and Article 16 Paragraph 2. The reviewing experts were satisfied with the response provided.

(c) Successes and good practices

See the information mentioned above.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

Embezzlement is criminalized by article 182 (Misappropriation or Embezzlement) of the Criminal Code of Georgia. In the line of paragraph 1 of this Article, illegal appropriation or embezzlement of other's immovable object when the latter was under legitimate possession or disposal of misappropriator or embezzler, shall be punished by fine or restriction of liberty for the term not exceeding three years and/or by deprivation of liberty from three to five years term.

Criminal Code of Georgia – Article 182. Misappropriation or Embezzlement

Article 182. Misappropriation or Embezzlement

1. Illegal appropriation or embezzlement of other's movable object, if this object was under legitimate possession or disposal of misappropriator or embezzler, - shall be punishable by fine or by restriction of freedom for up to three years in length or by deprivation of liberty for the term not exceeding four years.
2. The same act:
 - a) by a group's conspiracy;
 - b) repeatedly;
 - c) that has caused a substantial damage;
 - d) by using one's official position,-shall be punishable by fine or by deprivation of liberty ranging from three to seven years in length, by deprivation of the right to occupy a position or pursue a particular activity for up to three years in length.
3. The act referred to in Paragraph 1 or 2 of this Article, committed:
 - a) by an organized group;
 - b) in large quantities;
 - c) by the one who has been twice or more than twice convicted of illegal appropriation or embezzlement of other's movable objects, -shall be punishable by prison sentences ranging from seven to eleven years in length, by deprivation of the right to occupy a position or pursue a particular activity for up to three years.

(b) Observations on the implementation of the article

Article 17 of the Convention is a mandatory provision. According to the recommendations formulated in the Legislative Guide paragraph 216. "the required elements of the offence are embezzlement, misappropriation or other diversion by public officials of items of value entrusted to them by virtue of their position". In the next steps of the review process the reviewing experts requested supplementary information on construing of the following elements of the cited Criminal Code of Georgia – Article 182: Paragraph 2. Subparagraph. d): "by using one's official position". Georgia reported that using one's official position is an aggravating factor that adds time to the sentence to cover public officials acting in their official capacity. It was noted that the enhanced penalties apply to public officials who commit this crime, including prohibition from office for 3 years.

Although the statute cited above notes only a "movable object", the updated Georgian legislation indicates "object or property right." Property right in this case covers intellectual property rights as well. [GET THE NEW STATUTE FROM GEORGIA]

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

Summary of information relevant to reviewing the implementation of the article

Active trading in influence is criminalized by the Criminal Code of Georgia and is accordingly covered by the first paragraph of Article 339¹ (Trading in influence).

Criminal Code of Georgia – Paragraph 1 of Article 339. (Trading in influence)

Criminal Code of Georgia – Article 339¹ (Trading in influence)

1. Promising, offering or giving, directly or indirectly of money, securities, other property, material benefit or any undue advantage to a person, who asserts or confirms that he/she is able to exert an improper influence over decision-making of public official or a person with an equal status, for the interest of himself/herself or other person, whether or not influence is exerted or whether or not the supposed influence leads to the intended results
shall be punishable by fine or by corrective labour up to two years or by restriction of freedom for the similar term and/or by deprivation of liberty for up to two years.
2. Request or receipt, directly or indirectly, of money, securities, other property, material benefit or any undue advantage by a person, who asserts or confirms that he/she is able to exert an improper influence over decision-making by public official or a person with an equal status for the benefit of himself or herself or anyone else, from the person who acts for his/her interests or interests of anyone else, as well as acceptance of such offer or promise, whether or not influence is exerted or whether or not the supposed influence leads to the intended results
shall be punishable by deprivation of liberty from three to five years
3. The Act referred to in paragraph 2 of this Article, committed by the organized group,
shall be punishable by deprivation of liberty from four to seven years.

Note:

1. Person who has committed crime envisaged by paragraph 1 of present article shall be released from criminal liability if he/she voluntary informs a prosecuting body on the commission of crime.
2. Legal person shall be punishable by liquidation or by deprivation of the right to pursue a particular activity or by liquidation and fine.

→ The **Head and the Deputy Head of the Supervisory Agency at Kutaisi City Hall** were prosecuted for passive bribery (338.1) and trading in influence (339¹.1). The founder of Ltd “Meokhi” and Director of Ltd “Shagu+” were also prosecuted under art. 194/3. (g) and 210.1 with the same criminal case.

(b) Observations on the implementation of the article

Active trading in influence is a non-mandatory offence in the Convention. The legislation provided by Georgia covers the elements of the offence established in Art. 18 Subparagraph. (a) of the Convention with regard to the requirements of the paragraph 286 of the Legislation Guide.

Article 339 makes both active and passive trading in influence a criminal offence, and conforms to the requirements of the Convention. This statute encompasses both acting and refraining from acting, and does not require that influence was actually exerted or desired results were achieved.

Group of States against Corruption (the GRECO) in its Third Evaluation Report recommended (Recommendation ii) to ensure that the offence of active trading in influence (Article 339¹ of the Criminal Code of Georgia) clearly covers instances where the advantage is not intended for the influence-peddler him/herself but for a third party.

(c) Successes and good practices

The national law of Georgia has been brought in compliance with GRECO 3rd Round recommendations stated above.

In addition, the issue of particular importance is the remark of Article 339¹ (Trading in influence) of the Criminal Code of Georgia as well, according to which Person who has committed crime envisaged by paragraph 1 of the same article shall be released from criminal liability if he/she voluntarily informs a prosecuting body on the commission of crime.

Based on this remark (together with Article 70¹ of the Criminal Code of Georgia) the investigation on the crime in question has been simplified and significant results have been achieved in this respect. In most cases the defendants cooperate with investigation authorities and facilitate the creation of essential conditions for detection of the crime, because it is in their interest to be released from criminal liability.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

Passive trading in influence is criminalized under the second paragraph of Article 339¹ (Trading in influence) of the Criminal Code of Georgia. According to this Article:

For the interest of oneself or third person demanding or accepting money, securities, other property, material benefit or any unlawful advantage, directly or indirectly, by that person, who asserts or confirms that he/she can unlawfully influence decision of public official or person equal thereto, notwithstanding the fact whether such influence indeed took place or/and desirable result of influence was achieved is punished by deprivation of liberty from three to five years.

Criminal Code of Georgia - Article 339¹ (Trading in influence)

Criminal Code of Georgia - Article 339¹ (Trading in influence)
(see above)

(d) Observations on the implementation of the article

Passive trading in influence is a non-mandatory offence in the Convention. The legislation provided by Georgia appears to cover the elements established in Art. 18 Subparagraph (b) of

the Convention with regard to the requirements of paragraph 289 of the Legislation Guide. The reviewing experts were satisfied with the answers provided.

Article 339 makes both active and passive trading in influence a criminal offence, and conforms to the requirements of the Convention. This statute encompasses both acting and refraining from acting, and does not require that influence was actually exerted or desired results were achieved.

(c) Successes and good practices

See the information mentioned above.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

Abuse of official authority is foreseen by article 332 of the Criminal Code of Georgia, which states that abuse of official authority by an official or a person equal thereto in detriment of public interest for the purpose of deriving profit or advantage for the abuser or a third party, that caused substantial infringement of legal interest of individual, society or state shall be punished by fine or restriction of liberty up to three years term, restriction of the right to occupy a position or pursue a particular activity for three years term.

The same act committed by a state official with political status is punished by fine or restriction of liberty for the term ranging from three to five years, deprivation of the rights to occupy a position or pursue a particular activity for the term not exceeding three years.

Criminal Code of Georgia - Article 332. Abuse of Official Authority

Article 332. Abuse of Official Authority

1. Abuse of official authority by an official 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 deprivation of liberty to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term of three years.
2. Abuse of official authority by a political official,- shall be punishable by fine or by deprivation of liberty from three to five years, by deprivation of the right to occupy a position or pursue a particular activity for the term of three years.
3. The act referred to in Paragraph 1 or 2 of this article, committed:
 - a. Repeatedly;
 - b. under coercion or by using arms;
 - c. by insulting dignity of a victim,- shall be punishable by deprivation of liberty from five to eight years, by deprivation of the right to occupy a position or pursue a particular activity for the term of three years.

Note:

1. Subjects of the offences foreseen by the present Chapter also include staff members of the Legal Entities of Public Law (except political and religious unions), who exercise public authority, members of the arbitration courts, private enforcers, as well as any other person, who pursuant to legislation of Georgia conducts public authority.
2. For the purposes of this Chapter, persons with an equal status to a public official also include foreign public officials (including member of legislative bodies and/or agencies exercising administrative authority), as well as any person who performs any public function for another state, an official or contracted staff member of an international organization or agency, as well as any designated or non-designated person who performs functions equal to such official or staff member, member of international parliamentary assemblies, representative of international criminal court, judge or official of international court or judicial body.
3. For the purpose of the Articles 338-339¹ of present Criminal Code, subjects of the crime are also jurors (candidates for jurors), that undertake the functions pursuant to the legislation of Georgia.

→ Mr. Gela Berdzenishvili was serving as a **Deputy Minister for Defense** from 9 February till 27 August 2009. In that capacity he was a Deputy Head of Procurement Commission. In March 2009 he abused his functions by giving illegal advantage to Ltd “Clean Line” and accordingly, did not spend the state procurement budget rationally. He was prosecuted under art. 332.1 of the Georgian Criminal Code.

(b) Observations on the implementation of the article

The related Article of the Convention is a non-mandatory provision. The legislation provided by Georgia appears to cover the elements established in Art. 19 of the Convention with regard to the requirements of the paragraph 292 of the Legislation Guide.

Georgia reported that “profit or privilege” is used in the same way as in bribery or undue advantage. The language is intended to be very broad in scope in its application, not as a limiting factor. It is construed as any “undue advantage”. In some cases, this statute is used as an alternative to a prosecution for bribery if there is not sufficient evidence to cover all of the necessary elements of bribery.

It was also noted that additional consequences attach to public officials who are convicted of this offense, including a bar from office. In addition, Georgia reported that “abuse” includes both action and inaction. Finally, when there is no mental state noted in the offense, as is the case here, then any mental state applies, including intentionally, recklessly and negligently.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

With regard to the issue of illicit enrichment two major aspects are of particular importance: Article 194 of the Criminal Code of Georgia criminalizing Legalization of Illegal Income and Article 52 of the Criminal Code of Georgia authorizing forfeiture of proceeds of crime.

According to Article 194 (Legalization of Illegal Income) of the Criminal Code of Georgia:

Legalization of illegal income, i.e. converting illegal or/and ungrounded property into legal one (by using, purchasing, owning, conversing, holding over or any other action) in order to hide its illegal origin, as well as its real nature, source of origin, location, investment, movement, hiding or disguising its ownership or any other right related to it, -is punished by a fine or by imprisonment from three to six years.

Note:

1. Unjustified property or income received from the property, shares, are considered illegal under this article, if such property is gained by violation of law by a person or a member of his/her family, close relative or anyone related to the person.
2. Unjustified property or income received from the property, shares are considered illegal under this article if the person, his family, close relative or related person does not own documents proving legal means of gaining such property.
3. Term “large amount” in this article is meant amount of income from thirty thousand GEL to fifty thousand GEL; excessively large amount means income above fifty thousand GEL.
4. Legal person is punishable by liquidation or confiscation of the right of activity and by a fine for the actions considered in this article.

The criminal legislation of Georgia does not contain a separate, stand-alone article of illicit enrichment. However, the reference to Article 194 (Legalization of Illegal Income) does contain an important reference to “unjustified property or income” which should be subject to forfeiture procedures under Article 52 of the Criminal Code or civil confiscation procedures under Chapter XLV1 of the Civil Procedure Code.

For what concerns Article 52 (Forfeiture of property) of the Criminal Code of Georgia, based on this Article:

Forfeiture of property shall mean forfeiture of crime object and/or tool, object intended for the commission of crime and/or criminally obtained property in favour of the state, without compensation.

Moreover, forfeiture of object and/or tool of crime or object intended for the commission of crime shall mean forfeiture of property from suspect’s, accused person’s or convicts ownership or lawful possession, in favour of the state, without compensation. Forfeiture of object and/or tool of crime or object intended for the commission of crime shall be made by the court, for all intentional crimes provided by this Code, in cases where object and/or tool of crime or object intended for the commission of crime is evident and its forfeiture is necessary for state or public need, protection of individual’s rights or freedoms, or for the prevention of crime.

In addition, forfeiture of criminally obtained property means forfeiture of property obtained by criminal means (any object or immaterial good, as well legal documents giving title to property), including any proceeds from such property or its equivalent, in favour of the state, without compensation. Forfeiture of criminally obtained property shall be decided by court,

for all intentional crimes provided by this Code, in cases where property is proven to be obtained as a result of crime.

Criminal Code of Georgia – Article 52. (Forfeiture of property)

Article 52. Forfeiture of property

1. Forfeiture of property shall mean forfeiture of crime object and/or tool, object intended for the commission of crime and/or criminally obtained property in favour of the state, without compensation.
2. Forfeiture of object and/or tool of crime or object intended for the commission of crime shall mean forfeiture of property from suspect's, accused person's or convicts ownership or lawful possession, in favour of the state, without compensation. Forfeiture of object and/or tool of crime or object intended for the commission of crime shall be made by the court, for all intentional crimes provided by this Code, in cases where object and/or tool of crime or object intended for the commission of crime is evident and its forfeiture is necessary for state or public need, protection of individual's rights or freedoms, or for the prevention of crime.
3. Forfeiture of criminally obtained property means forfeiture of property obtained by criminal means (any object or immaterial good, as well as legal documents giving title to property), including any proceeds from such property or its equivalent, in favour of the state, without compensation. Forfeiture of criminally obtained property shall be decided by court, for all intentional crimes provided by this Code, in cases where property is proven to be obtained as a result of crime.

Article 194. Legalization of Illicit Income (Money Laundering)

1. Legalization of illegal income, i.e. converting illegal or/and ungrounded property into legal one (by using, purchasing, owning, conversing, holding over or any other action) in order to hide its illegal origin, as well as its real nature, source of origin, location, investment, movement, hiding or disguising its ownership or any other right related to it, - is punished by a fine or by imprisonment from three to six years - shall be punishable by fine or by imprisonment from three to six years in length.
2. The same action, perpetrated:
 - a) by a group;
 - b) repeatedly;
 - c) by the person convicted of such offence - shall be punishable by fine or by imprisonment from six to nine years in length.
3. The same action:
 - a) committed by an organized group;
 - b) by using one's official position;
 - c) involving generation of income in especially large quantities – shall be punishable by imprisonment from nine to twelve years in length.

Note:

1. Unjustified property or income received from the property, shares, are considered illegal under this article, if such property is gained by violation of law by a person or a member of his/her family, close relative or anyone related to the person.
2. Unjustified property or income received from the property, shares are considered illegal under this article if the person, his family, close relative or related person does not own documents proving legal means of gaining such property.
3. Term "large amount" in this article is meant amount of income from thirty thousand GEL to fifty thousand GEL; excessively large amount means income above fifty thousand GEL.
4. Legal person is punishable by liquidation or confiscation of the right of activity and by a fine for the actions considered in this article.

Article 186. Acquisition or Sale knowingly of an Object Obtained by Criminal Means

1. Use, acquisition, possession or realisation of an object obtained by criminal means, - is punished by a fine, or socially useful work for a term from one hundred and eighty hours to two hundred hours, or correctional work for a term of up to one year or imprisonment for a term of up to two years.
2. The same act, committed:

- a) by a prior consent of a group;
 - b) repeatedly;
 - c) against a car;
 - d) in large quantities;
 - e) by the one who has been twice or more than twice convicted of misappropriation or extortion of other's movable object, -
- Shall be punishable by fine or by deprivation of liberty for the term extending from two to five years;
3. The act referred to in Paragraph 1 or 2 of this Article, committed:
- a) by an organized group;
 - b) by using one's official position, -
- Shall be punishable by deprivation of liberty for the term extending from four to seven years;

Note: Legal entity for the act referred in this article shall be punished by liquidation or by deprivation of right to pursue a particular activity and by fine.

(b) Observations on the implementation of the article

Article 20 of the Convention is a non-mandatory provision. As it is declared by Georgia in the self-assessment checklist submitted, the criminal legislation of Georgia contains the elements of the article in parts in the national legislation. Georgia reported that the statute applies to all persons, including public officials. The recently established asset reporting mechanism for senior public officials is used by investigators for verification purposes as well as for the initiation of investigations.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

Active bribery in the private sector is criminalized by the Article 221 (Commercial bribery) of the Criminal Code of Georgia. According to the first paragraph of Article 221 of the Criminal Code of Georgia: Promising, offering, giving or rendering money, securities, other property of render property service or/and other illegitimate benefits directly or indirectly to a person who holds managerial, representative or other special position or works in a commercial or other type of organization, in order to ensure that such person performs or abstains to perform any activity in the abuse of his official capacity, for the interest of the briber or a third person, is punished by fine or restriction of liberty up to two years and/or deprivation of liberty up to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years or without it.

Criminal Code of Georgia - Article 221 (Commercial bribery)

Article 221. Commercial bribery

1. Offering, promising or giving, directly or indirectly, of money, securities, property or any undue advantage or rendering property service to a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order for that person to act or refrain from acting in breach of his/her duties, for the interest of the briber or other person,
shall be punished by fine or restriction of liberty up to two years and/or deprivation of liberty up to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years or without it.
2. The action referred to in Paragraph 1 of this Article, committed:
 - a) by a group;
 - b) repeatedly,shall be punished by fine or by restriction of liberty up to four years and/or by deprivation of liberty for the term extending from two to four years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years.
3. Request or receipt of offering, promising or giving, directly or indirectly, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order that person to act or refrain from acting in breach of his/her duties, for the interest of the briber or other person.
shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years.
4. The action referred to in Paragraph 3 of this Article, committed:
 - a) by a group;
 - b) repeatedly;
 - c) through extortion,shall be punished by fine or by deprivation of liberty from four to six years, deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years.

Note:

1. The perpetrator of the crimes 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. The respective decision lies with the prosecution.
2. Legal person shall be punishable by liquidation or by deprivation of the right to pursue a particular activity or by liquidation and fine.

(b) Observations on the implementation of the article

Article 21 of the Convention is a non-mandatory provision. Having taken into consideration the conclusions drawn in the GRECO Report, the legislation provided by Georgia appears to be in full compliance with the standards of the Convention.

GRECO in its Third Evaluation Report recommended (Recommendation i) to ensure that the offence of bribery in the private sector (Article 221 of the Criminal Code of Georgia) is construed in such a way as to unambiguously cover instances where the advantage is not intended for the bribe-taker him/herself but for a third party.

(c) Successes and good practices

The national law of Georgia has been brought in compliance with the recommendations stated above.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

Passive bribery in the private sector is criminalized by the Article 221 (Commercial bribery) of the Criminal Code of Georgia. Pursuant to the third paragraph of Article 221 (Commercial bribery) of the Criminal Code of Georgia: Request or receipt of offering, promising or giving, directly or indirectly, for the interest of himself/herself or other person, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order that person to act or refrain from acting in breach of his/her duties, for the interest of the bribe giver or other person, shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity up to three years term.

Criminal Code of Georgia - Article 221 (Commercial bribery)

Criminal Code of Georgia - Article 221 (Commercial bribery)

3. Request or receipt of offering, promising or giving, directly or indirectly, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order that person to act or refrain from acting in breach of his/her duties, for the interest of the briber or other person, shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years.

(b) Observations on the implementation of the article

In the conclusions from the GRECO review (paragraph 75), the experts noted that Georgia appeared not to be in full compliance with the requirement., since Article 221. Paragraph 3. “makes no reference to situations in which the recipient of the bribe is someone other than the bribe-taker”. Georgia reported that the Code was amended to be in compliance with this provision, and now covers third persons as well, as indicated in the legislation provided above.

Passive bribery goes beyond the minimum requirements of the Convention, and prohibits either the request or the receipt of benefits by private sector officials.

(c) Successes and good practices

See the information mentioned above.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

The scope of embezzlement (discussed with regard to Article 17 - Question 69 of the Self Assessment Checklist) covers private sector as well.

See the information provided with regard to Article 17.

(b) Observations on the implementation of the article

Article 22 of the Convention is a non-mandatory provision. Observations on Article 17 apply to this Article as well. The statute covers both the public and private sectors.

Georgia reported that fiduciary duties of private sector actors are envisaged under Article 9.6. of the Georgian Law on Entrepreneurs, which states that heads of private corporations and board members “should fulfill their duties in good faith, based on common sense and belief that the actions they undertake are in the best interests of the corporation”.

Although Georgia has not specifically criminalized illicit enrichment, it is considered that such cases are covered by the money laundering provisions. In addition, the recent implementation of an online asset declaration mechanism for senior public officials aids in monitoring and investigation.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(a) Summary of information relevant to reviewing the implementation of the article

Money laundering is criminalized by Articles 194 (Legalization of Illicit Income), 194¹ (Use, Acquisition, Possession or Realization of the Object Received through the Illicit Income

Legalization) and 186 (Acquisition or Sale Knowingly of an Object Obtained by Criminal Means) of the Criminal Code of Georgia.

The above-mentioned provisions cover all the physical and material elements provided by Article 6(1) of the 2000 UN Convention against Transnational Organized Crime and Article 3(1)(b)&(c) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).

More specifically the physical and material elements of money laundering provided by the Vienna and Palermo conventions are covered in the following way:

The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property, is covered by Article 194 of the Criminal Code of Georgia which defines money laundering as “giving a legal form to the illegal and/or undocumented property (use, acquisition, possession, conversion, transfer or other action) for purposes of concealing its illegal and/or undocumented origin”.

Article 194 of the Criminal Code of Georgia not only covers the required elements of money laundering offence but it also goes beyond them and provides more broad criminalization of money laundering, which is extended to undocumented property, includes other possible acts that can be used in money laundering and extends the scope of purposive element of money laundering to the purpose of concealing undocumented origin of property as well.

An alternative purposive element of money laundering according to the Vienna and Palermo conventions, which is conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action is simply covered by Articles 186, 194¹ and 194 of the Criminal Code of Georgia.

Articles 186 and 194¹ of the Criminal Code of Georgia do not require purposive element, in particular they criminalize knowingly use, acquisition, possession or realization of direct and indirect proceeds without any further need to establish the purpose of offender. For the purposes of the above-mentioned articles the terms conversion and transfer fall under the term realisation.

However the same act may also fall under the ambit of article 194 (Legalization of Illicit Income), based on the definition of intention provided by Article 9 of the Criminal Code of Georgia (General part), if person in the course of commission of the above-mentioned conversion or transfer of property foresaw the inevitability of concealment and disguise of its true nature, originating source, location, allotment, circulation, ownership and/or other related property right.

The elements of concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime are also covered by Article 194 of the Criminal Code of Georgia, which explicitly defines money laundering as well as concealing or disguising its (illegal and/or undocumented property) true nature, originating source, location, allotment, circulation, ownership and/or other related property right.

The ancillary offences are covered by Articles 18 (Preparation of Crime), 19 (Attempted Crime), 23 (Complicity), 24 (Types of Complicity) and 25 (Liability of Perpetrator and Accomplice) of the Criminal Code of Georgia.

Criminal Code of Georgia – Articles 186, 194 and 194 ¹

Article 194. Legalization of Illicit Income (Money Laundering)

1. Legalization of illegal income, i.e. converting illegal or/and ungrounded property into legal one (by using, purchasing, owning, conversing, holding over or any other action) in order to hide its illegal origin, as well as its real nature, source of origin, location, investment, movement, hiding or disguising its ownership or any other right related to it, - is punished by a fine or by imprisonment from three to six years - shall be punishable by fine or by imprisonment from three to six years in length.
2. The same action, perpetrated:
 - a) by a group;
 - b) repeatedly;
 - c) by the person convicted of such offence - shall be punishable by fine or by imprisonment from six to nine years in length.
3. The same action:
 - d) committed by an organized group;
 - e) by using one's official position;
 - f) involving generation of income in especially large quantities – shall be punishable by imprisonment from nine to twelve years in length.

Note:

1. Unjustified property or income received from the property, shares, are considered illegal under this article, if such property is gained by violation of law by a person or a member of his/her family, close relative or anyone related to the person.
2. Unjustified property or income received from the property, shares are considered illegal under this article if the person, his family, close relative or related person does not own documents proving legal means of gaining such property.
3. Term “large amount” in this article is meant amount of income from thirty thousand GEL to fifty thousand GEL; excessively large amount means income above fifty thousand GEL.
4. Legal person is punishable by liquidation or confiscation of the right of activity and by a fine for the actions considered in this article.

Article 23. Complicity

Complicity in the crime shall be and intentional joint participation of two or more persons in the perpetration of the crime.

Article 186. Acquisition or Sale knowingly of an Object Obtained by Criminal Means

1. Use, acquisition, possession or realisation of an object obtained by criminal means, - is punished by a fine, or socially useful work for a term from one hundred and eighty hours to two hundred hours, or correctional work for a term of up to one year or imprisonment for a term of up to two years.
2. The same act, committed:
 - a) by a prior consent of a group;
 - b) repeatedly;
 - c) against a car;
 - d) in large quantities;
 - e) by the one who has been twice or more than twice convicted of misappropriation or extortion of other's movable object, shall be punishable by fine or by deprivation of liberty for the term extending from two to five years;
2. The act referred to in Paragraph 1 or 2 of this Article, committed:
 - a) by an organized group;
 - b) by using one's official position, -

Shall be punishable by deprivation of liberty for the term extending from four to seven years;

Note:

Legal entity for the act referred in this article shall be punished by liquidation or by deprivation of right to pursue a particular activity and by fine.

Article 194¹. Use, Acquisition, Possession or realisation of the object received through the illicit income legalization

1. Knowingly use, acquisition, possession or realisation of the object received through the illicit income legalization, -

shall be punishable by fine or by socially useful labor from 180 to 200 hours or by corrective labour for up to 1 year or by deprivation of liberty for up to 2 years.

2. The same act committed:

a) By a prior consent of a group;

b) Repeatedly;

c) Involving generation of income in large quantities,-

Shall be punishable by fine or by deprivation of liberty for the term extending from two to five years;

3. The act referred to in paragraph 1 and 2 of this Article committed:

a) By an organized group

b) By using one's official position;

c) Involving generation of income in especially large quantities,-

Shall be punishable by deprivation of liberty for the term extending from four to seven years;

Note:

1. for this Article income is considered to be in large quantities from thirty thousand to fifty thousand Lari, as for especially large quantities – profit from fifty thousand Lari.

(...)

4. For the act referred to in this Article legal entity is punished by liquidation or by deprivation of the right to pursue a particular activity and fine.

Please provide examples of cases and attach case law if available

(b) Observations on the implementation of the article

Article 23 of the Convention is a mandatory provision. Georgia appears to be in compliance with the article. The legislation even goes beyond the minimum standards with extending the scope of the offence to undocumented property as well. There is no limitation on what can count as a predicate offence.

Georgia has adopted comprehensive criminal provisions to address money laundering in Articles 194, 194¹ and 186. Significantly, in 2010, the Government prioritized the investigation of money laundering and financial aspects of criminal activity in Georgia. As a result, from 2009 to 2011, money laundering prosecutions rose from 6 to 143, while convictions rose from 1 to 123.

Money laundering is defined broadly in Article 194 to include “giving a legal form to the illegal and/or undocumented property [...] for purposes of concealing its illegal and/or undocumented origin”. The inclusion of “undocumented property” extends liability to include property that is suspected of being derived from criminal activity. Articles 186 and 194¹ also criminalize the knowing use, acquisition, possession or realization of proceeds derived from criminal activity without the additional purpose of concealment. The scope of Article 194 was amended to include conversion or transfer of criminal proceeds with the purpose of helping another person evade the legal consequences of the underlying criminal activity. In addition, Article 124 of the Criminal Procedure Code (CPC) permits law enforcement monitoring of bank accounts to identify suspicious financial transactions and to facilitate asset tracing.

(c) Successes and good practices

Fight against money laundering is one of the priorities for the Government of Georgia. In order to create strong AML system since 2007 the criminalisation of money laundering has been upgraded for several times in line with the requirements of Vienna and Palermo conventions and FATF recommendations. The detailed information on the legislative changes has been provided in our previous submission. The recent important amendment to the criminal legislation was the introduction of the alternative purposive element (conversion, transfer of property for purposes of helping any person to evade the legal consequences) to the money laundering criminalization (Article 194 of the CCG). Based on the amendments of October 28, 2011 the paragraph 1 of Article 194 of the Criminal Code of Georgia was formulated in the following way:

“Article 194. Legalization of Illicit Income (Money Laundering)

1. Legalization of illicit income, i.e. giving a legal form to the illegal and/or undocumented property (use, acquisition, possession, conversion, transfer or other action) for purposes of concealing its illegal and/or undocumented origin and/or of helping any person to evade the legal consequences, as well as concealing or disguising its true nature, originating source, location, allotment, circulation, ownership and/or other related property right
- Shall be punishable by fine or deprivation of liberty from 3 to 6 years.”

As a result of the constant efforts of Georgia towards the improvement and strengthening of its anti-money laundering system, nowadays Georgia has achieved remarkable results in respect to detection, investigation and prosecution of money laundering.

Statistical data of prosecutions for money laundering speaks about significant positive developments in this area: In 2007 only 2 persons were prosecuted for money laundering, 4 in 2008, 6 in 2009, 29 in 2010 and 143 persons in 2011. The statistics of convictions which have been rendered by Georgian courts in the same years are as follows: 2 in 2007, 5 in 2008, 1 in 2009, 19 in 2010 and 123 persons in 2011.

The predicate offences that have been identified in recent years are tax evasion, fraud, embezzlement and misappropriation, corruption, abuse of power, illegal entrepreneurship, and infringement of the customs rules, environmental crimes, theft and falsification of documents. Due to the present wide criminalisation of money laundering, as it is not necessary requirement to establish the existence of the specific predicate offence, there is also a large number of autonomous money laundering prosecutions and convictions, where predicate offences are not specified.

According to the practice of investigation and prosecution of money laundering cases the most common ways in which the money was laundered were as follows: use of false documents in order to conceal and disguise illicit origin of proceeds; intermingling of proceeds of crime with legal businesses to make appearance that they are also legal; use of fictitious and offshore companies, fictitious directors and representatives; providing the competent AML bodies with false information regarding trading with goods and having particular business in order to justify the movement of illicit money.

As it is seen from the statistics above, in 2010 and 2011 the number of money laundering prosecutions and convictions have been increased, which respectively is a positive sign of

rising effectiveness of the system. The main reasons which served the bases for the above-mentioned progress are as follows:

- The recent amendments to the AML legislation, especially in the criminalization of money laundering, which brought the Georgian legislation in full compliance with Vienna and Palermo conventions and FATF recommendations. (The detailed information is provided in the previous submission).
- The Recommendation of the Minister of Justice: in January 2010, the Minister of Justice of Georgia issued recommendations on rules and methodology to detect crimes of money laundering, correctly apply Article 194 (legalization of illicit income) of the Criminal Code and improve the quality of investigation of money laundering;
- The regular trainings which have been provided for the investigators and prosecutors of Georgia in the AML/CFT area, in order to strengthen financial investigations as a tool for detecting money laundering, terrorism financing and other offences.

Thus, due to the comprehensive money laundering criminalization, above-mentioned recommendation of the Minister of Justice and numerous AML/CFT trainings, in recent years the law enforcements authorities of Georgia started to more proactively apply money laundering article. Respectively the numbers of detection, investigation and prosecution of money laundering and subsequent convictions have been increased. The fact that the above-mentioned numbers are relatively high can be attributable to the significant increase of efficiency in the law enforcement authorities.

In the light of the foregoing the articles criminalising the money laundering are effectively implemented in Georgia. The Government of Georgia continues its efforts in strengthening its AML system by keeping the relevant legislation constantly upgraded as well as by multifaceted capacity building of the law enforcement authorities.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

The elements of concealment or disguise of the true nature, source, location, disposition, movement or ownership of property or rights with respect to property, knowing that such property is the proceeds of crime are also covered by Article 194 of the Criminal Code of Georgia, which explicitly defines money laundering as well as concealing or disguising its (illegal and/or undocumented property) true nature, originating source, location, allotment, circulation, ownership and/or other related property right.

See the information provided with regard to Paragraph 1 (a) (i) of Article 23 (question 83 of the Self Assessment Checklist).

Criminal Code of Georgia - Article 194

Law texts - See above at Paragraph 1 (a) (i) of Article 23 (question 83 of the Self Assessment Checklist).

(b) Observations on the implementation of the article

Please see above at Paragraph 1 (a) (i) of Article 23

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

Acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime is covered by Articles 186 (Acquisition or Sale knowingly of an Object Obtained by Criminal Means) and 194¹ (Use, Acquisition, Possession or realisation of the object received through the illicit income legalization) of the Criminal Code of Georgia. Article 186 criminalises knowingly use, acquisition, possession or realisation of an object obtained by criminal means; while Article 194¹ criminalises knowingly use, acquisition, possession or realisation of the object received through the illicit income legalization.

Criminal Code of Georgia - Article 186, 194¹

Law texts - See above at Paragraph 1 (a) (i) of Article 23

(b) Observations on the implementation of the article

Mandatory provision. Georgia reported that “object” noted in the legislation actually means “property”, which includes both tangible and intangible property. Georgia reports that licenses are covered within this definition.²

² Please note that, in order to extend the scope of articles 186 and 194¹ of the CCG to the immaterial property, by the amendments of October 28, 2011 the word “object” was changed by the word “property” in the said articles. Please see the amended texts of articles 186 and 194¹ below.

The above-mentioned amendments entered into force on November 16, 2011.

(c) Successes and good practices

Article is effectively implemented. In 2010 and 2011 (11 months) 291 persons were convicted for the commission of crime envisaged by Article 186 of the Criminal Code of Georgia.

Article 23 Laundering of proceeds of crime

As you are already informed from our previous comments the term “property” covers licenses. As on November 16, 2011 the term “property” was introduced to the above-mentioned articles instead of the term “object”, since the said date both articles clearly cover licences as well.

In the light of the foregoing, conclusion that licenses are not explicitly covered by articles 186 and 194¹ of the CCG is not relevant and shall be deleted.

Article 194¹. Use, Acquisition, Possession or Realization of the Property Received Through the Illicit Income Legalization

1. Knowingly Use, acquisition, Possession or realization of the property received through the illicit income legalization, -

- Shall be punishable by fine or by socially useful labor from 180 to 200 hours or by corrective labor for up to 1 year or by deprivation of liberty for up to 2 years;

2. The same act committed:

a) By a group with prior agreement;

b) Repeatedly;

c) Generating of income in large quantity,-

Shall be punishable by fine or by deprivation of liberty for the term from 2 to 5 years;

3. The act referred to in paragraph 1 and 2 of present Article committed:

a) By an organized group

b) By using one's official position;

c) Generating of income in especially large quantities,-

Shall be punishable by deprivation of liberty for the term from 4 to 7 years;

Note:

1. For the purposes of this article income in large quantity shall mean income from 30, 000 GEL to 50, 000 GEL and especially large quantity shall be income above 50, 000 GEL.

2. For the commission of act referred to in this Article legal entity shall be punished by liquidation or by deprivation of the right to pursue an occupation and fine.

Article 186. Acquisition or Sale Knowingly of a Property Obtained by Criminal Means

1. Knowingly use, acquisition, possession or realisation of a property obtained by criminal means,

- Shall be punished by a fine, or socially useful work for a term from one hundred - Shall be punished by a fine, or socially useful work for a term from one hundred and eighty hours to two hundred hours, or correctional work for a term of up to one year or imprisonment for a term of up to two years.

2. The same offence committed

a. by a group with prior agreement

b. Repeatedly,

c. Against an automobile,

d. In large quantities

e. By a person who had already been convicted twice or more for unlawful appropriation or extortion of other's belongings

- shall be punished by a fine or imprisonment for term from two to five years.

3. The offence referred to in the first or second paragraphs of this article and committed,

a. By an organised group,

b. with the abuse of official position,

- Shall be punished by imprisonment for a term from four to seven years. (28.04.2006 N2937)

Note: Legal person having committed offences stipulated by this article shall be punished by liquidation or deprivation of the right to exercise activities or a fine.

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

The complicity is punishable based on the general norm in Article 25 of the Criminal Code of Georgia. Complicity under the Criminal Code of Georgia is defined as joint participation of two or more persons in the perpetration of the crime (Article 23 of the Criminal Code of Georgia). Article 24 describes types of complicity: the organizer (the one who staged the crime or supervised its perpetration, as well as the one who established an organized group or supervised it); the instigator (the one who persuaded the other person to commit the offence); the accomplice (the one who aided the perpetration of crime). Pursuant to Article 19 of the Criminal Code of Georgia an attempt to commit a crime is punishable if it is “a deliberate action that was designed to perpetrate a crime but the crime was not completed”. Article 18 criminalizes the preparation for a crime.

The preparation of all types of money laundering envisaged by Article 194, Article 194¹ and Article 186, except para.1 and 2 of Article 194¹, of the Criminal Code of Georgia³ is fully punishable under the Criminal Code of Georgia; The definition of preparation is provided by Article 18 of the Criminal Code of Georgia. As it is indicated in the paragraph 3 or Article 18 criminal liability for preparation of a crime is provided by a relevant article of the Criminal Code, which establishes liability for a completed crime, with a reference to this article.

Conspiracy of crime is similar to the notion of preparation in the Criminal Code of Georgia. According to paragraph 1 of Article 18 of the Criminal Code of Georgia, preparation is intentional creation of conditions for the perpetration of crime.

³ Please note that by the amendments of October 28, 2011 , preparation of money laundering envisaged by para.1 and 2 of Article 194¹ was criminalised as well.

The above-mentioned amendment entered into force on November 16, 2011.

Please see the amended text of Article 18 of the CCG below:

Article 18. Preparation for a crime

1. Intentional creation of conditions for commission of a criminal offence shall be considered as a preparation for a crime.

2. Criminal liability shall be imposed only for preparation of grave and particularly grave criminal offences as well as offences stipulated by the first paragraph of Article 182, the first and the second paragraphs of Article 186, **the first and the second paragraphs of Article 194¹**, the first paragraph of Article 202, the first – the third paragraphs of Article 221, the first and the second paragraphs of Article 332, the first paragraph of Article 339, the first and the second paragraphs of Article 339/1, the first – the third paragraphs of article 365 and the first paragraph of article 372 of the present Code.

3. Criminal liability for preparation of a crime is provided by a relevant article of the present Code, which establishes liability for a completed crime, with a reference to this article.

Criminal Code of Georgia

Article 18. Preparation of Crime

1. Preparation of the crime is intentional creation of conditions for the perpetration of the crime.
2. Criminal liability shall be prescribed for the preparation of only serious or especially serious crimes, as well as preparation of the crimes prescribed by the Section 1 of the Article 182; the Section 1 and 2 of the Article 186; the Sections 1-3 of the Article 221; the Sections 1 and 2 of the Article 332; the Section 1 of the Article 339; the Sections 1 and 2 of the Article 339¹; the Sections 1-3 of the Article 365 and Section 1 of the Article 372.
3. Criminal liability for the preparation of the crime shall be determined by the relevant Article of this Code which envisages liability for completed crimes, by giving reference to this article.

Article 19. Attempted Crime

1. Attempted crime shall be a deliberate act that was designed to perpetrate a crime but the crime was not completed.
2. Criminal liability for attempted crime shall be determined under the relevant article of this Code which provides for liability for completed crimes, by giving reference to this article.

Article 23. Complicity

Complicity in the crime shall be and intentional joint participation of two or more persons in the perpetration of the crime.

Article 24. Types of Complicity

1. The organizer shall be the one who organized or supervised the perpetration of a crime, as well as the one who established or supervised an organized group.
2. The instigator shall be the one who persuaded the other person into perpetration of a crime.
3. The accomplice shall be the one who aided the perpetration of a crime.

Article 25. Liability of Perpetrator and Accomplice

1. Criminal liability shall be imposed upon the perpetrator and accomplice only for their own guilt on the basis of joint illegal act, in consideration of the character and quality of the part that each of them took in the perpetration of a crime.
2. Criminal liability of co-perpetrator shall be determined in compliance with the relevant article of this Code, without giving reference to this article.
3. Criminal liability of the organizer, instigator and accomplice shall be determined under the relevant article of this Code, by giving reference to this article, except those cases when they at the same time were the co-perpetrators of the crime.
4. If the act of the perpetrator or accomplice involves the sign characteristic for an illegal act, then this sign will be attributable to another perpetrator or accomplice whose act did not involve this sign, if he/she was aware of this sign.
5. The personal sign, which is characteristic for the guilt and/or the personality of one of the perpetrators or accomplices, shall be attributable to the perpetrator or accomplice whom this sign is characteristic for.
6. For the complicity in a crime, perpetrator of which is a special subject foreseen by the present Code, a person will be subject to the criminal responsibility as the organizer, instigator or accomplice.
7. If the perpetrator has not completed the crime, the accomplice shall be subject to criminal responsibility for the preparation of or complicity in the attempted crime. Criminal responsibility for the preparation of the crime will be imposed upon the one who failed, due to circumstances beyond his control, to persuade other person into perpetration of the crime.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the subparagraph.

In 2011, 3 persons were convicted for the preparation of money laundering.
Please also see the information mentioned above.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Georgia has all crimes approach in respect to the criminalization of money laundering. Accordingly all offences which are provided for in the Criminal Code of Georgia are predicate offences for money laundering. Moreover criminalization of money laundering in Georgia is extended to administrative violations as well which is beyond the requirement. In particular, the definition of illicit property in the note of Article 194 of the Criminal Code of Georgia makes general reference to the infringement of Law, which includes both criminal and administrative laws.

In pursuant to the Note of article 194 of the Criminal Code of Georgia:

1. For the purposes of this article, illicit property shall mean a property, also the income derived from that property, stocks (shares) that is gained by offender, his/her family members, close relatives or the persons affiliated to him/her through the infringement of the law requirements.

2. For the purposes of this article, undocumented property shall mean a property, also the income derived from that property, stocks (shares) if an offender, his/her family members, close relatives or the persons affiliated to him/her are unable to present a document certifying that the property was obtained legally, or the property that was obtained by the monetary funds received from the realization of the illegal property.

(b) Observations on the implementation of the article

Mandatory provision. The State Party under review appears to be in full compliance with the Convention. The provision goes beyond the minimum requirements with the broader criminalization of predicate offences.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

The predicate offenses for money laundering extend to conduct that occurred in another country, which would have constituted a predicate offense had it occurred in Georgia, notwithstanding it constitutes an offense in foreign country or not.

Articles 194, 194¹ and 186 of the Criminal Code of Georgia which provide for the criminalization of money laundering do not make any distinction between the laundering of internal and foreign proceeds and thus treat both of them equally. The same is true according to the established practice as well.

It is also relevant to mention that according to the paragraph 2 of Article 4 of the Criminal Code of Georgia a crime is considered to be committed on the territory of Georgia which is commenced, continued, ceased or ended on the territory of Georgia.

Article 4. Applicability of Criminal Code towards crime committed on the territory of Georgia

1. The one who has committed a crime on the territory of Georgia shall be subject to the criminal responsibility as provided by the present Code.
2. The crime shall be considered as committed 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 crime committed on the continental shelf of Georgia and in the Exclusive Economic Zone of Georgia.
3. The one who has committed a crime on or against the vessel authorized to use the national flag or identification mark of Georgia, shall be subject to the criminal responsibility under this Code unless otherwise provided by the international treaty of Georgia.
4. If the diplomatic representative of a foreign State, as well as the person enjoying diplomatic immunity has committed a crime on the territory of Georgia, the issue of their criminal responsibility will be determined in accordance with rules of international law.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the subparagraph. Georgia reported that there is no limitation on predicate offences, which can therefore include foreign offences so long as they would be offences if committed in Georgia.

In 2011, 7 persons have been convicted for laundering the proceeds of foreign predicate offences. Please also see the information provided above.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

Georgia has not furnished the copies of its laws that give effect to Article 23 of the UNCAC and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations. However, it is noteworthy that it is planned to furnish the copies of respective laws in the nearest future.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

Money laundering offence in Georgia is equally applicable against persons who committed the predicate offence and third persons. Respectively domestic system does not contain fundamental principles that preclude the application of money laundering offence to the persons who committed the predicate offence. The above-mentioned can be clearly established from the texts of Article 194, Article 194¹ and 186 as well.

See law texts above.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the subparagraph.

In 2011, more than 30 persons have been convicted for self-laundering. Please also see the information mentioned above.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The issue of concealment or continued retention of property is regulated by the Criminal Code of Georgia.

In particular, pursuant to Article 186 (Acquisition or Sale knowingly of an Object Obtained by Criminal Means) of the Criminal Code of Georgia knowingly use, acquisition, possession or realisation of an object obtained by criminal means, is punished by a fine, or socially useful work for a term from one hundred and eighty hours to two hundred hours, or correctional work for a term of up to one year or imprisonment for a term of up to two years.

Furthermore, according to Article 194¹ (Use, Acquisition, Possession or realisation of the object received through the illicit income legalization) of the Criminal Code of Georgia knowingly use, acquisition, possession or realisation of the object received through the illicit income legalization, -is punished by fine or by socially useful labour from 180 to 200 hours or by corrective labour for up to 1 year or by deprivation of liberty for up to 2 years.

See law texts above

(b) Observations on the implementation of the article

Non-mandatory provision. The State party under review appears to be in full compliance with the article.

In 2010 and 2011, (11 months) 291 persons were convicted for the commission of crime envisaged by Article 186 (Acquisition or Sale knowingly of an Object Obtained by Criminal Means) of the Criminal Code of Georgia.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Criminal Code of Georgia criminalizes influence on witnesses, victims, experts or interpreters to induce false testimony. In particular, under the Article 372 of the Criminal Code of Georgia addressing or persuading witness, victim, expert or interpreter to give false testimony, false conclusion or incorrect interpretation, to change given testimony or conclusion, or to refuse testifying is punishable by fine or by community labour from 180 to 240 hours, by corrective labour up to 2 years and/or by imprisonment from 1 to 3 years. According to the Paragraph 2 of this Article bribe or coercion of witness, victim, expert or interpreter to give false testimony, false conclusion or incorrect interpretation, to change given testimony or conclusion or to refuse testifying accompanied by offer of material benefit to him/her or his/her close relative or threat to kill or use violence against him/her or his/her close relative or to damage or destroy his/her or close relative's property shall be punished by fine or by imprisonment from 3 to 6 years term.

Pursuant to the paragraph 3 of the same Article, bribing or coercion of witness, victim, expert or interpreter into giving false evidence, false conclusion or incorrect interpretation, or changing of given evidence or conclusion committed through violence entails imprisonment from 5 to 8 years term.

Finally, in accordance with the paragraph 4 of the Article 372, if coercion of mentioned persons to give false evidence, false conclusion or incorrect interpretation, change given evidence or refuse testifying constitutes threat to life or health is punished by imprisonment from 6 to 9 years term.

In addition, legal persons can also be held responsible for abovementioned offence. Sanction provided for them is fine, deprivation of the right to pursue its activity or liquidation and fine. Criminal Code of Georgia - Article 372. Compulsion of Witness, Victim, Expert or Interpreter.

Article 372. Compulsion of Witness, Victim, Expert or Interpreter

1. Addressing or persuading witness, victim, expert or interpreter to give false testimony, false conclusion or incorrect interpretation, to change given testimony or conclusion, or to refuse testifying,- shall be punishable by fine or by community labour from 180 to 240 hours, by corrective labour up to 2 years and/or by imprisonment from 1 to 3 years.
2. Bribe or coercion of witness, victim, expert or interpreter to give false testimony, false conclusion or incorrect interpretation, to change given testimony or conclusion or to refuse testifying accompanied by offer of material benefit to him/her or his/her close relative or threat to kill or use violence against him/her or his/her close relative or to damage or destroy his/her or close relative's property,- shall be punished by fine or by imprisonment from 3 to 6 years term.
3. Bribing or coercion of witness, victim, expert or interpreter into giving false evidence, false conclusion or incorrect interpretation, or changing of given evidence or conclusion committed through violence, shall be punishable by imprisonment from 5 to 8 years term.
4. If coercion of witness, victim, expert or interpreter to give false evidence, false conclusion or incorrect interpretation, change given evidence or refuse testifying constitutes threat to life or health,- shall be punishable by imprisonment from 6 to 9 years term.

Note:

For the acts prescribed by this article a legal person legal persons shall be punishable by fine, deprivation of the right to pursue its activity or liquidation and fine.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the subparagraph. Georgia reported that “bribe” and “bribing” has the same definition as in the bribery section. Only threat of violence or damage to property are covered in this section.

Article 372 prohibits conduct to influence witnesses, victims, experts or interpreters to induce false testimony. Legal persons may be held criminally responsible, with penalties including suspension of licenses, fines or liquidation.

Articles 364 and 365 prohibit the use of physical force, threats or intimidation to interfere with the exercise of the official duties by a judicial officer or law enforcement official. Such protections are expressly extended to jurors and defense attorneys. Such offences committed by a public official are subject to enhanced penalties.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences prescribed by Criminal Code of Georgia is outlawed. In particular, Articles 364 and 365 deal with these issues. Article 364 deals with obstruction of justice or investigation. Under paragraph 1 any kind of illegal interference in the activity of prosecutor or investigator for the purpose to obstruct thorough, complete and objective investigation of case is punished by fine or community labour from 180 to 240 hours and/or imprisonment up to 1 year term.

Paragraph 2 of the same Article prescribes that any kind of rough interference in judicial activity in order to obstruct administration of legal proceedings shall be punished by fine or imprisonment for up to 2 years term.

Under the paragraph 2¹ any kind of illegal interference in activity of jurors in order to obstruct administration of legal proceedings is punished by fine or imprisonment for up to 2 years term.

Pursuant to the paragraph 3 of the present Article, the act referred to in paragraph 2 committed by public official shall be punished by fine or imprisonment from 1 to 3 years term or deprivation of the right to pursue its activity for up to 3 years term or without it.

The act referred to in Paragraph 2 or 2¹ of this Article, committed by using one's official position shall entail punishment by fine or imprisonment from two to four years term, by deprivation of the right to occupy a position or pursue a particular activity for the term not in exceeding 3 years or without it.

Apart from this, Article 365 concerns threat or violence in relation to investigation or justice administration. Pursuant to the paragraph 1 of this Article, threat to kill or injure member of the Constitutional Court, judge, jury or a close relative thereof or to destroy or damage his/her property in relation to the court hearing or review of materials shall be punishable by the fine or by imprisonment for up to 3 years term. According to the paragraph 2, the same act committed against the prosecutor, investigator, defence attorney, expert, bailiff, any other participant of legal proceedings or a close relative thereof, with respect to the investigation, court hearing or review of materials or enforcement of the sentence or any other court decision is punished by fine or imprisonment for up to 2 years term.

Moreover, the act referred to in Paragraph 1 or 2 of this Article committed under violence not endangering life or health of abovementioned persons shall be punishable by imprisonment from 2 to 5 years term, while the same act committed under violence endangering life or health shall entail imprisonment from 4 to 7 years term.

As for the aggravating circumstances, commission of the act stipulated by paragraphs 1 and 2 by a group or repeatedly aggravates criminal responsibility and is punishable by imprisonment from 7 to 10 years term.

Furthermore, according to the Note for commission of the acts stipulated in the Articles 364 and 365, a legal person is punished by fine, deprivation of the right to pursue its activity or by liquidation and fine.

Criminal Code of Georgia – Article 354, 365

Article 364. Obstruction of justice or investigation

1. Any kind of illegal interference in the activity of prosecutor or investigator for the purpose to obstruct thorough, complete and objective investigation of case, - shall be punishable by fine or community labour from 180 to 240 hours and/or imprisonment up to 1 year term.
2. Any kind of rough interference in judicial activity in order to obstruct administration of legal proceedings,- shall be punished by fine or imprisonment for up to 2 years term.
- 2¹. Any kind of illegal interference in activity of jurors in order to obstruct administration of legal proceedings,- shall be punishable by fine or imprisonment for up to 2 years term.
3. The act referred to in paragraph 2 committed by public official, - shall be punishable by fine or imprisonment from 1 to 3 years term or deprivation of the right to pursue its activity for up to 3 years term or without it.
4. The act referred to in Paragraph 2 or 2¹ of this Article, committed by using one's official position,- shall be punishable by fine or imprisonment from two to four years term, by deprivation of the right to occupy a position or pursue a particular activity for the term not in exceeding 3 years or without it.

Note:

For the act prescribed by this article a legal person is punishable by fine, deprivation of the right to pursue its activity or by liquidation and fine.

Article 365. Threat or violence in relation to investigation or justice administration

1. Threat to kill or injure member of the Constitutional Court, judge, jury or a close relative thereof or to destroy or damage his/her property in relation to the court hearing or review of materials,- shall be punishable by the fine or by imprisonment for up to 3 years term.
2. The same act committed against the prosecutor, investigator, defense attorney, expert, bailiff, any other participant of legal proceedings or a close relative thereof, with respect to the investigation, court hearing or review of materials or enforcement of the sentence or any other court decision, - Shall be punishable by fine or imprisonment for up to 2 years term.
3. The act referred to in Paragraph 1 or 2 of this Article committed under violence not endangering life or health of prosecutor, investigator, defense attorney, expert, bailiff, any other participant of legal proceedings or a close relative thereof, - shall be punishable by imprisonment from 2 to 5 years term.
4. The act referred to in Paragraph 1 or 2 of this Article committed under violence endangering life or health, - shall be punishable by imprisonment from 4 to 7 years term.
5. The act referred to in Paragraph 1 or 2 of this Article committed:
 - a) by a group;
 - b) repeatedly, -shall be punishable by imprisonment from 7 to 10 years term.

Note.:

For the act prescribed by this article a legal person is punishable by fine, deprivation of the right to pursue its activity or by liquidation and fine.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the subparagraph. It was noted that this provision extends protections expressly to jurors and defense attorneys. In addition, there are enhanced penalties if the offence is committed by a public official in the exercise of official duties.

Article 26 Liability of legal persons

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter XVIII¹ (Criminal Liability of Legal Persons, Types of Penalty, Terms and Conditions for Application thereof) of the Criminal Code of Georgia establishes responsibility of legal persons.

Article 107² (Cases of Liability of Legal Entities) of the Criminal Code of Georgia foresees crimes which entail criminal responsibility of a legal persons. These crimes comprise corruption offences as well. In particular, Article 194 (legalization of illegal incomes), Article 194¹ (Purchase, Possess and Sell the object for the Purpose to Legalize the Illegal Income), 221 (commercial bribery), 338 (passive bribery), 339 (active bribery), 339¹ (trading in influence).

According to Article 107³ (Types of Penalty) of the Criminal Code of Georgia the types of penalty are:

a) Liquidation; b) Deprivation of business license; c) Fine; d) Forfeiture of property.

Liquidation and deprivation of business license shall be applied only as a main penalty. Fine can be applied as main as well as additional penalty and forfeiture of property shall be applied only as an additional penalty.

Criminal Code of Georgia – Articles 107¹, 107², 107³

Article 107¹ Criminal Liability of Legal Persons

1. Articles foreseen by the present Code apply to a legal person. For the purposes of the present Code, legal person means a profit (commercial) or non-profit (noncommercial) legal person (its successor).

2. Legal person shall be subject to the criminal responsibility for the acts prescribed by the present Code committed by a responsible person on behalf of or through a legal person and/or for the benefit of it.

3. A responsible person referred to in Section 2 of this Article is the person authorized to manage, represent a legal person, take a decision on behalf of a legal person and/or member of supervisory, control and revision body of the legal person.

4. Legal person shall be subject to the criminal responsibility also if a crime is committed on behalf of or through it and/or for the benefit of it despite the perpetrator is identified or not.

4¹. Legal person shall be subject to the criminal responsibility also if due to insufficient supervision or control by the responsible person referred to in Section 3 of this Article it became possible to commit a crime for the benefit of the legal person by subordinated person of a legal person.

5. Release from the criminal responsibility of the responsible person shall not be the basis for the relieve from the criminal responsibility of the legal person.

6. The criminal responsibility of the legal person does not exclude criminal responsibility of the individual for the same crime.

7. Criminal responsibility of the legal person does not relieve it from the obligation to compensate the damage caused as a as result of a crime, as well as from imposing upon it other forms of responsibility provided by the legislation.

8. Legal person shall be relieved from the criminal responsibility if the circumstances excluding the guilt of wrongfulness of the act of an individual were found.

Article 107². Cases of the responsibility of legal person

Legal person will be subject to the criminal responsibility for the perpetration of the crimes foreseen by the Articles 143¹, 143², 158, 186, 189, 192, 192¹, 194, 194¹, 195¹, 200³, 221, 224¹, 227¹, 227², 231¹, 255, 255¹, 260–271, 284, 285, 286, 322², 323–330, 330¹, 330², 331¹, 339, 339¹, 344¹, 362, 364, 365, 372 and 406 of the present Code.

Article 107³. Types of Penalty

1. Types of penalty are for legal person are:
 - a) Liquidation;
 - b) Deprivation of business license;
 - c) Fine;
 - d) Forfeiture of property.
2. Liquidation and deprivation of business license shall be applied only as a main penalty.
3. Fine can be applied as main as well as additional penalty.
4. Forfeiture of property shall be applied only as an additional penalty.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the paragraph. It was observed that embezzlement in the private sector (article 22) is not covered by this provision.

The scope of such liability, defined in Article 107², comprises money laundering, commercial bribery, passive and active bribery and trading in influence. Penalties include liquidation, deprivation of business license, fine and/or forfeiture of property. Criminal liability of legal persons does not extend to misappropriation or embezzlement.

The release from criminal responsibility of the natural person who committed the act shall not be a basis to relieve the legal person from criminal responsibility. In addition, the criminal liability of legal persons is without prejudice to the criminal liability of the natural person who committed the offence.

GRECO in its Second Evaluation Report recommended (Recommendation XII)

- (i) to amend the provisions on corporate liability in the Criminal Code to ensure that legal persons can be held liable in cases where lack of supervision or control by a natural person has made possible the commission of active bribery, money laundering or trading in influence and
- (j) (ii) to provide appropriate training on criminal liability of legal persons to all officials concerned with a view to ensuring that full use of these provisions is made in cases of active bribery, trading in influence and money laundering.

In addition, the Organisation for Economic Co-operation and Development (the OECD) issued a recommendation with regard to the criminalization of legal persons' liability as well.

The national law of Georgia has been brought in compliance with the recommendations stated above.

Addendum to the Compliance Report of the GRECO concluded that recommendation xii has been implemented satisfactorily.

For what concerns the implementation of the OECD Recommendation, during the Second Round of Monitoring the OECD in its Report concluded that Georgia is fully compliant with the recommendation.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to the legislation of Georgia the criminal liability of legal persons is without prejudice to the criminal liability of the natural persons who have committed the offences.

According to paragraph 5 of Article 107¹ (Grounds for Criminal Liability of Legal Entity) of the Criminal Code of Georgia, releasing the natural person from criminal liability does not serve as a ground for releasing the legal person from criminal liability. In addition, based on the paragraph 6 of the same Article, criminal liability of legal person does not exclude criminal liability of natural person for the same crime.

Law text – see above

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the paragraph. The reviewing experts took note of Paragraph 4 of Article 107¹ as well.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to the legislation of Georgia the legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

In particular, according to Article 194 (legalization of illegal incomes) of the Criminal Code of Georgia for the action stipulated in this Article a legal person shall be punished by liquidation or by deprivation of the right to pursue a particular activity and fine.

Pursuant to Article 194¹ (Purchase, Possess and Sell the object for the Purpose to Legalize the Illegal Income) of the Criminal Code of Georgia a legal person shall be punishable by liquidation or by deprivation of the right to a particular activity and fine.

For the commercial bribery ensured by Article 221 (Commercial Bribery) of the Criminal Code of Georgia a Legal person shall be punishable by liquidation or by deprivation of the right to pursue a particular activity or by liquidation and fine.

For the active bribery stipulated by Article 339 (Active Bribery) of the Criminal Code of Georgia a legal person shall be punished by fine.

According to Article 339¹ (Trading in influence) for commission of act envisaged by this article a legal person shall be punishable by fine.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the paragraph. A legal entity is subject to a range of sanctions, including fines, which are determined by the court in a manner proportionate with the crime. The minimum fine for a legal person is 100,000 lari (Article 107(6)). The maximum fine for legal persons is not defined.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(b) Summary of information relevant to reviewing the implementation of the article

Chapter VII (Perpetration and Complicity) of the Criminal Code of Georgia regulates the issues related to the complicity (Participatory Acts). The issue of Perpetration is regulated by Article 22 (Perpetration), which states that a perpetrator is the one who 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 a person, which is released from criminal liability under the Criminal Code of Georgia due to age, diminished responsibility or any other circumstance.

For what concerns the issue of Complicity, pursuant to Article 23 (Complicity), complicity in the crime means joint participation of two or more persons in the perpetration of the crime. Article 24 foresees types of complicity: organizer -the one who staged the crime or supervised its perpetration as well as the one who established the organized group or supervised it; instigator -the one who persuaded the other person into committing the offense and the accomplice the one who aided the perpetration of crime.

In addition, Article 25 of the Criminal Code of Georgia foresees the liability of perpetrator and accomplice and states as follows:

1. Criminal liability shall be imposed upon the perpetrator and accomplice only for their own fault on the basis of joint illegal act, in consideration of the character and quality of the part that each of them played in the wrongdoing.
2. Criminal liability of the co-perpetrator shall be determined in compliance with the relevant article of this Code, without giving reference to this article.
3. Criminal liability of the organizer, instigator and accomplice shall be determined under the relevant article of this Code, by giving reference to this article except for the case when they were concurrently the co-perpetrators of the crime.
4. If the act of the perpetrator or accomplice involves the element typical for illegal act, this sign shall give rise to the liability of the other perpetrator or accomplice whose act did not bear this sign if the latter perpetrator or accomplice was aware of this sign.
5. The personal sign, which is typical for the wrongdoing and/or the personality of one of the perpetrator or accomplice, shall be charged against the perpetrator or accomplice whom this sign is typical for.
6. The person shall be subject to criminal liability as an organizer, instigator or accomplice for participation in the crime the perpetrator whereof may be a special subject of the relevant crime prescribed by this Code.
7. If the perpetrator has not completed the crime, the accomplice shall be subject to criminal liability for the preparation of or complicity in the attempted crime. Criminal liability for the preparation of the crime shall likewise be imposed upon the one who failed, due to circumstances beyond his control, to persuade other person into wrongdoing.

Criminal Code of Georgia – Article 22, 23, 24, 25

Article 22 (Perpetration)

A perpetrator is the one who committed the offence or participated along with the other (co-perpetrator) in the wrongdoing, as well as the one who perpetrated the crime through such a person, which is released from criminal liability under the Criminal Code of Georgia due to age, diminished responsibility or any other circumstance.

Article 23. Complicity

Complicity in the crime shall be an intentional joint participation of two or more persons in the perpetration of the crime.

Article 24. Types of Complicity

1. The organizer shall be the one who organized or supervised the perpetration of a crime, as well as the one who established or supervised an organized group.
2. The instigator shall be the one who persuaded the other person into perpetration of a crime.
3. The accomplice shall be the one who aided the perpetration of a crime.

Article 25. Liability of Perpetrator and Accomplice

1. Criminal liability shall be imposed upon the perpetrator and accomplice only for their own guilt on the basis of joint illegal act, in consideration of the character and quality of the part that each of them took in the perpetration of a crime.
2. Criminal liability of co-perpetrator shall be determined in compliance with the relevant article of this Code, without giving reference to this article.
3. Criminal liability of the organizer, instigator and accomplice shall be determined under the relevant article of this Code, by giving reference to this article, except those cases when they at the same time were the co-perpetrators of the crime.
4. If the act of the perpetrator or accomplice involves the sign characteristic for an illegal act, then this sign will be attributable to another perpetrator or accomplice whose act did not involve this sign, if he/she was aware of this sign.
5. The personal sign, which is characteristic for the guilt and/or the personality of one of the perpetrators or accomplices, shall be attributable to the perpetrator or accomplice whom this sign is characteristic for.

6. For the complicity in a crime, perpetrator of which is a special subject foreseen by the present Code, a person will be subject to the criminal responsibility as the organizer, instigator or accomplice.
7. If the perpetrator has not completed the crime, the accomplice shall be subject to criminal responsibility for the preparation of or complicity in the attempted crime. Criminal responsibility for the preparation of the crime will be imposed upon the one who failed, due to circumstances beyond his control, to persuade other person into perpetration of the crime.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the paragraph.

The CC criminalizes aiding and abetting, attempt and preparation for both perpetrators and co-perpetrators. The joint participation of two or more persons in the commission of a crime is covered by Articles 23 to 25, which divides participants into “organizers”, “instigators” and “accomplices”.

Attempt to commit a crime, including corruption offences, is covered by Article 19. In addition, Georgia has criminalized the preparation to commit a crime under Article 18.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Article 19 (Attempted Crime) of the Criminal Code of Georgia regulates the issue of attempt to commit a crime. According to this Article attempted crime shall be a deliberate action that was designed to perpetrate a crime but the crime was not completed.

In addition, Criminal liability for attempted crime shall be determined under the relevant article of the Criminal Code of Georgia which provides for liability for completed crimes, by giving reference to this article. Therefore, corruption related crimes are covered under this provision as well.

Criminal Code of Georgia – Article 19

Article 19.

1. Attempted crime shall be a deliberate action that was designed to perpetrate a crime but the crime was not completed.
2. Criminal liability for attempted crime shall be determined under the relevant article of the Criminal Code of Georgia which provides for liability for completed crimes, by giving reference to this article.

(b) Observations on the implementation of the article

Non-mandatory provision. The State party under review appears to be in full compliance with the paragraph. Maximum penalties are the same for attempt as well as the underlying offence, except that there is no life sentence possible for attempt. The court determines the appropriate sanction and takes into account, among other things, the circumstances of the crime.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to Article 18 (Preparation of Crime) of the Criminal Code of Georgia, a preparation of crime shall be intentional creation of conditions for the perpetration of a crime.

Criminal liability is prescribed for the preparation of serious and especially serious crimes only; also for the crimes envisaged under Article 221 (commercial bribery), 332 (abuse of official authority), 338 (passive bribery), 339 (active bribery), 339¹ (trading in influence). In addition, criminal liability for the preparation of a crime shall be determined under the relevant Article of the Criminal Code of Georgia which provides for liability for completed crimes, by giving reference to this article.

Criminal Code of Georgia – Article 18

Article 18. Preparation of Crime

1. Preparation of the crime is intentional creation of conditions for the perpetration of the crime.
2. Criminal liability shall be prescribed for the preparation of only serious or especially serious crimes, as well as preparation of the crimes prescribed by the Section 1 of the Article 182; the Section 1 and 2 of the Article 186; the Sections 1-3 of the Article 221; the Sections 1 and 2 of the Article 332; the Section 1 of the Article 339; the Sections 1 and 2 of the Article 339¹; the Sections 1-3 of the Article 365 and Section 1 of the Article 372.
3. Criminal liability for the preparation of the crime shall be determined by the relevant Article of this Code which envisages liability for completed crimes, by giving reference to this article.

(b) Observations on the implementation of the article

Non-mandatory provision. The State party under review appears to be in full compliance with the paragraph. Whether a crime counts as “serious” or “especially serious” is determined by the level of the possible sanctions to be imposed, the amount of loss involved, and other relevant factors.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

Under Georgian legislation it is sufficient for the knowledge, intent and purpose to be inferred from objective factual circumstances and the direct evidence for the proof of intention is not required.

Under the Article 9 of the Criminal Code of Georgia, crime is committed intentionally when it is committed with direct or indirect intention:

- a) The act shall be committed with direct intention if the person was aware of the wrongfulness of his/her act, foresaw the possibility for the illegal consequence and wished to have this consequence, or foresaw the inevitability of the realization of such consequence;
- b) The act shall be committed with indirect intention if the person was aware of the wrongfulness of his/her act, foresaw the possibility for illegal consequence, did not wish to have this consequence but deliberately allowed for or was negligent to deal with such consequence.

In addition, Article 10 of the Criminal Code of Georgia foresees definition of negligence and states that crime is committed with negligence if it was committed through presumption or without due caution:

- a) The action shall be perpetrated through presumption if the person was aware of the action forbidden under the norms of foreseeing, foresaw the possibility for the illegal consequence but had unfounded hope that he/she would avoid this consequence.
- b) The action is committed without due caution if the person was aware of the action forbidden under the norms of foreseeing, did not foresee the possibility for the illegal consequence though he/she was obliged to and could foresee it.

Criminal Code of Georgia – Article 9, 10

Article 9 Crime of intention

1. Crime is committed intentionally when it is committed with direct or indirect intention
2. The act shall be committed with direct intention if the person was aware of the wrongfulness of his/her act, foresaw the possibility for the illegal consequence and wished to have this consequence, or foresaw the inevitability of the realization of such consequence.
3. The act shall be committed with indirect intention if the person was aware of the wrongfulness of his/her act, foresaw the possibility for illegal consequence, did not wish to have this consequence but deliberately allowed for or was negligent to deal with such consequence.

Article 10. Crime of Negligence

1. Crime is committed with negligence if it was committed through presumption or without due caution.
2. The action shall be perpetrated through presumption if the person was aware of the action forbidden under the norms of foreseeing, foresaw the possibility for the illegal consequence but had unfounded hope that he/she would avoid this consequence.
3. The action is committed without due caution if the person was aware of the action forbidden under the norms of foreseeing, did not foresee the possibility for the illegal consequence though he/she was obliged to and could foresee it.
4. The act committed without due caution and circumspection shall be deemed to be crime only in case it is referred to in the relevant article of this Code.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in full compliance with the paragraph. The reviewing experts noted that it is possible in Georgia to infer mental state from the facts and the evidence presented. There is nothing codified or in the Criminal Procedure Code in that regard, but the principle is commonly explained to the jury and fact finder.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

Article 71 (Release from Criminal Responsibility Due to Expiration of the Statute of Limitation) of the Criminal Code foresees the statute of limitations period for all offences, except for cases provided by international treaties of Georgia.

Since corruption offences are not grouped in a separate chapter of the Criminal Code, various offences attract various statutes of limitation according to gravity (six years for less serious offences, ten years for serious offences and twenty-five for especially serious offences). However, some of the most common corruption offences committed by public officials (excess and abuse of duty, active and passive bribery, trading in influence and illegal gifts) have an extended statute of limitation, if the crime is of serious nature (fifteen years instead of ten); if the crime is particularly serious, a general limitation of 25 years applies (Article 71 of the Criminal Code).

Statute of limitations is computed from the day of the commission of a crime until the day of bringing of a person to justice. If a new crime is committed the statute of limitations shall be computed for each of the crimes separately.

In addition, under the paragraph 3 of the Article 71 of the Criminal Code of Georgia, the statute of limitations shall be suspended if the criminal absconds from justice. In such a case the flow of the statute of limitations will be resumed from the moment of arrest of the criminal or his appearance with the guilty plea. The statute of limitations shall be suspended for the term throughout which a person is under protection of immunity.

Criminal Code of Georgia – Article 71.

Article 71 Release from criminal responsibility due to expiration of statute of limitation

1. The person shall be released from criminal liability if:

- a) 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;
- b) six years have passed since the perpetration of any misdemeanor;
- c) ten years have passed since the perpetration of any grave offense;
- c¹) fifteen years have passed since the perpetration of crimes under Article 332-342 of this Code, if these do not fall under the category of especially grave offences;
- d) twenty five years have passed since the perpetration of especially grave offense.

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

3. The flow of the limitation shall be suspended if the criminal absconds from justice. In such a case the flow of the statute of limitations will be resumed from the moment of arrest of the criminal or his appearance with the guilty plea.
4. The issue 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 replaced to imprisonment for the specific term.
5. The limitation shall not be applied in cases provided by international treaty of Georgia.
6. The flow of the limitation shall be suspended as long as the person is protected by immunity.
7. The flow of limitation shall also be suspended as long as it is impossible to apply relevant procedural activities to an extradited person in accordance with Paragraph 2 of Article 16 of the Law of Georgia on “International Cooperation in Criminal Justice”, except cases provided by Paragraph 3 and 6 of the present Article.
8. According to the Article 42 of the Law of Georgia on “International Cooperation in Criminal Justice”, while sending the case materials and certified copies thereof for the purpose of conducting legal proceeding in Georgia, law-enforcement agency of Georgia shall take into consideration the basis for suspension of the flow of limitation provided by legislation of foreign State only in case the basis for suspension of the flow of limitation provided by the present article are similar to foreign one.

(b) Observations on the implementation of the article

Mandatory provision. The State party under review appears to be in compliance with the paragraph.

Article 71 sets forth limitations periods based on the gravity of the offence: less serious (6 years), serious (10 years) and especially serious (25 years). For certain corruption offences (abuse of authority, bribery and trading in influence), the limitations period is enhanced to 15 years or, if particularly serious, 25 years. The time begins to run from when the offence is committed, and is suspended if the criminal suspect absconds from justice, and resumes from the moment of arrest. The statute is also suspended for the term during which a criminal suspect is under protection of immunity.

Generally, the regulation on the statute of limitations is almost completely in line with the provisions of the Convention. The reviewing experts recognize that according to the provided law text, the statute of limitations is computed from the time of the offence was committed. Although Paragraph 373. of the Legislative Guide states that implementation of this article may be solved by reviewing the timelength of existing statute of limitations or by reviewing the calculating method, in order to achieve a result that goes even beyond the minimum requirements, the reviewing experts discussed with Georgia whether it would be helpful to consider starting the limitations clock from the time the offence is discovered. After discussion of this issue, the reviewing experts were satisfied with the answers provided, and Georgia reported no challenges in corruption prosecutions based on the existing limitations structure.

In addition, the OECD recommended to ensure that the statute of limitations allow for sufficient time to investigate and prosecute corruption related cases. The national law of Georgia has been brought into line with this recommendation.

(c) Successes and good practices

During the Second Round of Monitoring the OECD in its Report concluded that Georgia is fully compliant with the recommendation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

Under the legislation of Georgia the commission of an offence established in accordance with the UNCAC foresees the sanctions that take into account the gravity of that offence.

The following types of sanctions are provided for corruption offences under Criminal Code of Georgia: restriction of liberty, imprisonment, deprivation of right to hold a position, deprivation of business license, correctional labour and community service.

Pursuant to Article 53 (General Principles of Sentencing) of the Criminal Code of Georgia, on a case-by-case basis, when applying a sanction, the court shall take into consideration the extenuating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, illegal will demonstrated in the act, character and extent of breach of obligations, manner of implementing the act, method employed and illegal consequence, past life of the criminal, his/her personal and economic conditions, behaviour after the act, especially willingness to effect restitution, reconcile with the victim.

Criminal Code of Georgia – Article 53

Article 53. General Principles of Sentencing

1. The court shall award a fair sentence against a criminal within the bounds prescribed under the relevant article of the Special Part of this Code and in consideration of the provisions of the General Part of the same Code. A more severe type of sentence may be awarded only in case the less severe type of sentence fails to insure the fulfilment of the purpose of the sentence.
2. A more severe sentence than the one prescribed under the relevant article of the Special Part of this Code may be awarded in accordance with the accumulated crimes and accumulated sentences as provided by Article 59 and 60 of the same Code. The basis for awarding a more lenient sentence than the one provided under the relevant article of the Special Part is determined by Article 55 of this Code.
3. When awarding a sentence, the court shall take into consideration the extenuating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, illegal will demonstrated in the act, character and extent of breach of obligations, manner of implementing the act, method employed and illegal consequence, past life of the criminal, his/her personal and economic conditions, behaviour after the act, especially willingness to effect restitution, reconcile with the victim.
4. If the article or part of the article of the Special Part of this Code provides for the extenuating and aggravating circumstances as Corpus Delicti, the same circumstance shall not be taken into consideration when awarding a sentence.

(b) Observations on the implementation of the article

The types of sanctions applicable to those persons who have committed corruption related offences appear to be in compliance with the paragraph. The legal background of sentencing (adjudication) is detailed and appears to be in compliance with the Convention as well.

In respect of the issue of sanctions, the OECD issued a recommendation to consider increasing the punishments for active bribery.

The national law of Georgia has been brought into line with this recommendation.

(c) Successes and good practices

During the Second Round of Monitoring the OECD in its Report concluded that Georgia is compliant with the recommendation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Article 173 (Immunity from Arrest) of the Criminal Procedure Code of Georgia limits the number of persons who enjoy immunity, in particular, a person enjoying diplomatic immunity and his/her family member(s), the President of Georgia, a member of the Parliament of Georgia, the Chairman of the Chamber of Control of Georgia, the Public Defender of Georgia, and a judge. Thus an appropriate balance between any immunities or jurisdictional privileges accorded to public officials for the performance of their functions is ensured.

Pursuant to Article 167 (Initiation or Suspension of Criminal Prosecution and/or court proceeding) of the Criminal Procedure Code of Georgia the special rule of prosecution, arrest and application of other measures of constraint over the President of Georgia, The member of the Parliament of Georgia, the member of the Constitutional Court of Georgia, the member of the Supreme Court of Georgia and judges of other common courts, the chairman of the Chamber of Control, the Public Defender of Georgia, the person enjoying diplomatic immunity, the representative of International Criminal Court who enjoys immunities under the Charter of the International Criminal Court, is determined by the Constitution of Georgia, the international treaties and agreements of Georgia, the Criminal Procedure Code and other laws of Georgia.

The Criminal Procedure Code grants immunity from prosecution, but not investigation. Criminal investigation is a separate concept of investigation in Georgian criminal law and differs from the concept of prosecution, i.e. investigation is performed on the objective fact of crime, while prosecution is related to specific person; investigation can continue without prosecution, but there is no prosecution without investigation.

In that regard, as mentioned above, in pursuant to Article 173 of the Criminal Procedure Code of Georgia the following persons cannot be arrested: a person enjoying diplomatic immunity and his/her family member(s), the President of Georgia, a member of the Parliament of Georgia, the Chairman of the Chamber of Control of Georgia, the Public Defender of Georgia,

and a judge. Except for the President of Georgia and a person enjoying diplomatic immunity and his/her family member(s), this restriction shall not apply in case the person is caught while committing a crime (in flagrante delicto), or immediately thereafter. However, it should be noted that the Criminal Code of Georgia stipulates the statute of limitations for the criminal responsibility according to the type of the crime committed. According to the paragraph 6 of Article 71 of Criminal Code of Georgia, the flow of limitation shall be suspended as long as person enjoys the immunity; nevertheless after the immunity is waived the offender shall bear responsibility according to the legislation of Georgia.

Criminal Code of Georgia – Article 167, 173

Article 167. Initiation or Suspension of Criminal Prosecution

1. Prosecution shall commence from the moment of the arrest of a person, or his/her indictment (if s/he has not been arrested).
2. Criminal prosecution and/or court hearing shall not be commenced and the ongoing one shall be suspended:
 - a) If the Georgian Parliament, Constitutional Court of Georgia, and/or the Chairman of the Supreme Court of Georgia have not approved the prosecution of Public Defender of Georgia, Chairman of the Chamber of Control of Georgia, or the judge, for the term, during which these individuals are protected with immunity.
 - b) In case the issue of removal of immunity from a foreign national is raised – from the day the issue is raised until its official resolution.
 - c) During the deliberation term - given to the victim of crimes described in Article 143¹ and/or 143² of the Criminal Code of Georgia.
 - d) Court sent a referral to the Constitutional Court of Georgia to decide on constitutionality of the law - from the date of referral until Constitutional Court issues its opinion.
3. When any of the circumstances listed in Paragraph 2 of this Article exist, prosecutor-during investigation, and the court-during trial, shall issue a decision on suspending criminal prosecution and/or court hearing proceedings upon the motion of the party.
4. When grounds for suspension, listed in Paragraph 2 of this Article no longer exist, trial/prosecution shall be continued/renewed.
5. The special rule of prosecution, arrest or application of other measures of constraint over the President of Georgia, The member of the Parliament of Georgia, the member of the Constitutional Court of Georgia, the member of the Supreme Court of Georgia and judges of other courts, the chairman of the Chamber of Control, the Public Defender of Georgia, the person enjoying diplomatic immunity, the representative of International Criminal Court who enjoys immunities under the Charter of the International Criminal Court, is determined by the Constitution of Georgia, the international treaties and agreements of Georgia, this Code and other laws of Georgia.

Article 173. Immunity from Arrest

The following persons cannot be arrested: a person enjoying diplomatic immunity and his/her family member(s), the President of Georgia, a member of the Parliament of Georgia, the Chairman of the Chamber of Control of Georgia, the Public Defender of Georgia, and a judge. Except for the President of Georgia and a person enjoying diplomatic immunity and his/her family member(s), this restriction shall not apply in the case referred to in sub-paragraph A of Paragraph 2, Article 171 of this Code.

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention (Art. 30 Paragraph 2). The immunity from prosecution has a detailed legislation in the Criminal Procedure Code of Georgia. According to the cited regulation it grants immunity only from prosecution, not investigation. There have been cases, reported by Georgia, where the Parliament has lifted immunity of Members of Parliament so that cases could proceed. For the

judiciary, this is possible as well, and lower courts address the Supreme Court to decide questions of immunity.

Article 173 of the CC defines the scope of immunity from arrest. Except with regard to the President or a person with diplomatic status, immunity from arrest does not apply in cases where the person is caught during the commission of a crime. The CPC allows for immunity from prosecution, but not criminal investigation. In addition, immunity can be lifted by Parliament.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

According to Articles 16 (Discretionary Criminal Prosecution) and 166 (Criminal Prosecution) of the Criminal Procedure Code of Georgia, the initiation and conduct of criminal prosecution is the discretionary power of the prosecutor only. While deciding upon initiation or termination of a criminal prosecution, the discretionary powers of the prosecutor shall be governed by the public interests.

In addition, Criminal Justice Policy Guidelines, adopted by the Decree #181 issued by the Minister of Justice of Georgia (October 8, 2010), refer to discretionary criminal prosecution.

Pursuant to these Guidelines, a prosecutor acting within his/her discretionary power, while deciding upon initiation or termination of a criminal prosecution, shall be governed by the public interests, i.e. shall take into consideration the mitigating and aggravating circumstances of the crime, in particular, the nature and purpose of the crime, illegal will demonstrated in the act, character and extent of breach of obligations, manner of implementing the act, method employed and illegal consequence, past life of the criminal, his/her personal conditions, behaviour after the act, especially willingness to cooperate with the investigative organs and the Prosecutor's Office.

The discretionary power of the prosecutor also extends to the corruption offences provided for by the UNCAC and prescribed by the Criminal Code of Georgia.

Criminal Procedure Code of Georgia – Article 16, 166

Article 16. Discretionary Criminal Prosecution

While deciding upon initiation or termination of a criminal prosecution, a prosecutor shall enjoy discretionary powers which shall be governed by the public interests.

Article 166. Criminal Prosecution

The initiation and conduct of criminal prosecution is the discretionary authority of the prosecutor only

(b) Observations on the implementation of the article

It was noted that there are guidelines governing prosecution initiative, including specific standards. The Chief Prosecutor and the Ministry of Justice are responsible for monitoring and following the guidelines. The existence of an electronic document management system makes it easier to monitor prosecutions. The Inspector General's office in the Ministry of Justice also conducts monitoring. Failure to follow these guidelines could be grounds for a breach of the professional code of conduct or even, in some cases, the crime of abuse of power.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 198 (Purpose and Grounds for Applying Preventive Measures) of the Criminal Procedure Code of Georgia preventive measures are applied to ensure that the defendant does not avoid appearing in court, to prevent him/her from committing further criminal activities and to ensure enforcement of judgments. Types of preventive measures provided for by the Criminal procedure Code of Georgia are bail, placement of a juvenile defendant under supervision, personal guarantee, agreement of residence and due conduct, supervision of conduct of a military serviceman by commanders-in-chief, and pre-trial detention. Pre-trial detention or other preventive measures shall not be applied if a less restrictive preventive measure meets the objectives provided above.

Ground for application of preventive measure is established probable cause that the person will flee or fail to appear in court, will destroy information relevant to the case or commit a new crime.

When deciding on the application of a preventive measure and its specific type, the court takes into consideration the defendant's character, scope of activities, age, health condition, family and financial status, compensation of damages, whether the defendant has violated a preventive measure previously applied, and other circumstances.

Under the Criminal procedure Code of Georgia, detention as a preventive measure is applied if the purposes provided above cannot possibly be accomplished by applying less restrictive preventive measures.

Criminal Procedure Code of Georgia – Article 198.

Article 198. Purpose and Grounds for Applying Preventive Measures

1. Preventive measures are applied to ensure that the defendant does not avoid appearing in court, to prevent him/her from committing further criminal activities, and to ensure enforcement of judgments. Detention or other preventive measures shall not be applied against the defendant if a less restrictive preventive measure meets the objectives provided for in this Paragraph.

2. Established probable cause that the person will flee or fail to appear in court, will destroy information relevant to the case, or commit a new crime shall be the ground for applying a preventive measure.

3. When filing a motion to apply a preventive measure, the prosecutor must justify the reason behind his/her choice of preventive measure and the inappropriateness of a less restrictive preventive measure.

4. The court shall apply detention as a preventive measure only when the goals referred to in Paragraph 1 of this Article cannot possibly be accomplished by applying less restrictive preventive measures.

5. When deciding on the application of a preventive measure and its specific type, the court shall take into consideration the defendant's character, scope of activities, age, health condition, family and financial status, restitution made by the defendant for damaged property, whether the defendant has violated a preventive measure previously applied, and other circumstances.

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention (Article 30, Paragraph 4). Regarding bail, it was introduced in 1999. A person to whom bail has been granted is obliged not to commit any other laws. The Criminal Procedure Code has a reference to the bail mechanism, which is governed by various procedures. There are also measures to require persons to check in to court on release regularly to ensure appearance. Surrender passport or other documents.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to Article 12 (Crime Categories) of the Criminal Code of Georgia, in accordance with the maximum term of imprisonment provided as punishment by the article or part of the article of this Code, there shall be three categories of crime:

- a) less serious crime;
- b) serious crime;
- c) especially serious crime.

In that respect, less serious shall be the crime of intent or crime of negligence for practice whereof the sentence provided by the Criminal Code of Georgia is not in excess of five years of imprisonment.

Serious shall be the crime of intent for practice whereof the sentence provided by this Code is not in excess of ten years of imprisonment as well as the crime of negligence the perpetration of which shall be punishable by imprisonment term of over five years under the Criminal Code of Georgia.

Especially serious shall be the crime of intent for practice whereof the sentence provided by the Criminal Code of Georgia exceeds ten years of imprisonment or is a life-time imprisonment.

The issue of early release or parole of persons is regulated by Article 72 (Parole) of the Criminal Code of Georgia. Based on this Article the person serving a sentence of corrective labour, restriction of the service of a military or restriction of freedom, may be conditionally released before the expiration of the term if the Court holds that completion of the sentence is

no longer necessary for the correction of such person. When the person is serving a sentence of imprisonment, he/she may be conditionally released before the expiration of the term if the Local Council of the Ministry of Corrections and Legal Assistance of Georgia holds that completion of the sentence is no longer necessary for the correction of such person. Furthermore, the person may be fully or partly released from the additional sentence.

Under the same Article, a Parole shall be granted only in case the convicted person has actually served: a) no less than half of the sentence awarded for a less serious offence; b) no less than two thirds of the sentence awarded for any serious offense; c) no less than three fourths of the sentence awarded for any especially serious offense.

For what concerns the Local Council stated above, Local Councils for Early Conditional Release established in the Ministry of Corrections and Legal Assistance of Georgia by newly enacted Code on Imprisonment represent the body, which reviews issues in relation to early conditional release, commutation of the remaining term of a sentence into a less grave punishment and substitution of the remaining term of a sentence into a Community Service. Newly implemented mechanism gives opportunity to effectively and objectively review applications of each convict and make decisions after personal interviews with them.

Criminal Procedure Code of Georgia – Article 72

Article 72. Parole

1. The person serving a sentence of corrective labour, restriction of the service of a military, restriction of freedom, placement into a disciplinary military unit, jailing or imprisonment, may be conditionally released before the expiration of the term if the court holds that completion of the sentence is no longer necessary for the correction of such person, whereas if the person serves the sentence of imprisonment he/she may be conditionally released before the expiration of the term if the local council of the Ministry of Correction and Legal Aid holds that completion of the sentence is no longer necessary. Furthermore, the person may be fully or partly released from the additional sentence.
2. In case of parole, the court may assign the convict the obligations prescribed under Article 65 of this Code that the person must fulfill throughout the incomplete term of the sentence.
3. Parole shall be granted only in case the convict has actually served:
 - a) no less than half of the sentence awarded for a misdemeanor;
 - b) no less than two thirds of the sentence awarded for any grave offense;
 - c) no less than three fourths of the sentence awarded for any especially grave offense;
 - d) three fourths of the sentence awarded to the person previously released on parole but the parole was quashed under Paragraph 6 of this article.
4. The actual term of imprisonment served by the convict shall not fall short of six months.
5. The control over the behaviour of the person released on parole shall be exercised by the probation service or relevant authority and over the behaviour of a military serviceman - by the commanding authority of the military unit.
6. If, during the incomplete term, the convict:
 - a) maliciously avoided the fulfilment of the obligations assigned thereto for the release on parole, the court may, at the petition of the bodies referred to in Paragraph 5 of this article, rule that parole be quashed and the incomplete term of the sentence be served;
 - b) committed a Crime without Due Caution and Circumspection, the question on parole or leaving the sentence in force shall be settled by the court;
 - c) committed a crime of aforethought, the court may award a sentence in accordance with the rule prescribed under Article 61 of this Code. The same rule shall be applied to sentencing for the perpetration of the Crime without Due Caution and Circumspection if the court rescinds the parole.
7. The convict may be released from life imprisonment if he/she actually served twenty-five years of imprisonment and if the local council of the Ministry of Correction and Legal Aid holds that completion of the sentence is no longer necessary for the convict to continue serving the sentence.

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention (Article 30, Paragraph 5). The review team was satisfied with the answered provided.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

The legislation (The Criminal Procedure Code of Georgia, the Law on Civil Service) of Georgia sets out certain procedures, through which a public official accused of the corruption offences may, if necessary, be removed, suspended or reassigned by the appropriate authority, at the same time not violating the principle of the presumption of innocence.

The concept of presumption of innocence is enshrined in Article 5 (Presumption of Innocence and Liberty) of the Criminal Procedure Code of Georgia, which states that a person shall be presumed innocent until his/her guilt is proven by a final court judgment entered into legal force. No one shall be obliged to prove his/her innocence. The burden of proof for the charges shall rest with the prosecutor. The prosecutor has a right to dismiss charges.

Furthermore, any doubt arising while evaluating evidence that cannot be resolved under the procedure established by law shall be settled in favour of the defendant (convict).

Criminal Procedure Code of Georgia – Article 5

Article 5. Presumption of Innocence and Liberty

1. A person shall be presumed innocent until his/her guilt is proven by a final court judgment entered into legal force.
2. No one shall be obliged to prove his/her innocence. The burden of proof for the charges shall rest with the prosecutor. The prosecutor has a right to dismiss charges.
3. Any doubt arising while evaluating evidence that cannot be resolved under the procedure established by law shall be settled in favour of the defendant (convict).
4. A person shall remain free unless necessity for his/her detention is proven.

(b) Observations on the implementation of the article

The Code of Criminal Procedure has a specific article in which during the investigation of a public official, the prosecutor's office asks court to suspend the person pending the case. During the investigation stage, a person cannot be suspended from their office. Regarding mechanisms for preserving evidence from possible destruction during investigation, the prosecutor or investigator can conduct searches if necessary to seize appropriate evidence. During investigation, it is possible that the Minister could suspend or reassign an employee who is under investigation, if the Minister is notified by the prosecutor's office. If that

happens, it would be very rare. Usually the prosecutor's office does not notify other ministries of an ongoing investigation.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

The legislation of Georgia provides the procedures/sanctions for the persons convicted of corruption offences established in accordance with the Criminal Code of Georgia. Based on these sanctions such persons shall be punishable by deprivation of the right to occupy a position or pursue a particular activity ranging for a period of time determined by respective Article of the Criminal Code of Georgia.

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention (Art. 30 Subparagraph 7 (a)).

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

Deprivation of the right to occupy a 'position' covers public office as well as an office in an enterprise owned in whole or in part by the State.

See the information provided with regard to Paragraph 7 (a) of Article 30 (question 115).

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention (Art. 30 Subparagraph 7 (b)). The relating law text has not been enclosed.

[CITATION WILL BE PROVIDED]

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

The sanctions provided by the legislation of Georgia for corruption offences (See question 109) are without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(b) Observations on the implementation of the article

Disciplinary measures are contained in the Georgian Law on Public Service, specifically with reference to Articles 73(5), 78 and 79.

Article 73(5). General rules of behavior to avoid corruption delinquency (12.06.2009 N 1183)

1. A civil servant shall not receive any present or service, which may affect performance of his/her duties.
2. If it is not clear, whether the civil servant can receive a present or any gain or take the offer, he/she shall declare about such a situation.
3. If a civil servant is offered inadequate profit, he/she must:
 - a) refuse to take the inadequate profit;
 - b) try to identify the person making such an offer;
 - c) limit contact with such a person and try to determine a basis for making such an offer;
 - d) handle the present within three days to a relevant state service- Legal Entity of Public Law – Service Agency of the Ministry of Finance, if it is not possible to refuse to take or return the present.
 - e) rely on witness testimonies (in case they exist);
 - f) notify his/her direct supervisor about the attempt of the offer within 3 business days.
4. A civil servant must:
 - a) report to the supervising official of another civil servant about any illegal or criminal act committed by him/her in case there is evidence or a well-founded doubt;
 - b) report to law-enforcement agencies in case there is no supervising official;
5. A supervising official must:
 - a) take necessary measures, and in case of necessity notify the law –enforcement agencies within three business days after receiving a report prescribed by Subparagraph “a” 1 of the Paragraph 4 of this article;
 - b) not disclose identity (identification data) of the reporter and a related person;
 - c) not allow damaging of the reputation of the reporter and the related person;
 - d) protect the reporter, in order not to deteriorate his/her duties or limit his/her authority.

Article 78. Disciplinary misconduct

1. Disciplinary misconduct is:
 - a) non-performance or inadequate performance of professional duties (if found guilty);
 - b) causing damage to the property of the agency or actions threatening to cause

damage to the property (if found guilty);

c) An action (guilty behavior) violating general moral norms or discrediting the civil servant or the agency, no matter whether it is committed at work or outside.

Article 79. Disciplinary sanctions

1. An official or an agency, authorized to appoint a civil servant to a position, shall impose the following disciplinary sanctions in case of a disciplinary misconduct:

a) Reprimand;

b) Warning;

c) Reduction of the pay by a sum amounting to no more than 10 working days of the remuneration;

d) Suspension from the office for no more than 10 working days. During that period the civil servant shall not receive any remuneration;

e) Reduction of the remuneration grade – for a period not to exceed one year;

f) Dismissal from the Civil Service pursuant to this law.

2. Only one sanction at a time can be applied for one disciplinary misconduct.

Article 30 Prosecution, adjudication and sanctions

Paragraph 9

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

(a) Summary of information relevant to reviewing the implementation of the article

See the information mentioned above.

(b) Observations on the implementation of the article

See the information mentioned above.

(c) Successes and good practices

See the information mentioned above.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The reintegration into society of persons convicted of offences established under the legislation of Georgia constitutes one of the priorities of the Criminal Justice Policy of Georgia. The practical steps are being taken in order to ensure the reintegration into society of persons convicted of offences established in accordance with the UNCAC. In that regard, the

Ministry of Corrections and Legal Assistance has implemented different educational and rehabilitation programs.

In particular, in 2011 the following educational, rehabilitation and vocational courses were implemented:

- Psycho-Rehabilitation Center “Atlantis” for drug-addicted and alcohol-addicted prisoners -Penitentiary Establishments No. 6 in Rustavi and No. 5 for Women;
- Psycho-social rehabilitation program -Penitentiary Establishment No. 3 in Batumi;
- Sawing and knitting courses; Georgian Professional Psychologists Association “Women Inmates and their Right to Contact with the Outside World” and psycho-social assistance program for convicts.

Penitentiary Establishment No. 5 for Women;

- Methadone program (for drug-addicts) -Penitentiary Establishment No. 8 in Tbilisi;
- Enamel works, movie-making, animation, web-design and hairdresser services; Rugby team; Rehabilitation Program -Equip -Penitentiary Establishment No. 11 for Juveniles;
- “Preparation for release” programs -Penitentiary Establishments No. 12 in Tbilisi, No. 15 in Ksani and No. 16 in Rustavi;
- Bakeries -Penitentiary Establishments No. 3 in Batumi, No. 6 in Rustavi, No. 10 in Tbilisi, No. 12 in Tbilisi, No. 14 in Geguti, No. 15 in Ksani No. 16 and No. 17 in Rustavi.

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention (Article 30, Paragraph 10). The Ministry of Justice works on this in connection with the Ministry of Probation and Legal Aid.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

„5The criminal confiscation mechanism is provided by Article 52 (Forfeiture of property) of the Criminal Code of Georgia.

According to the paragraph 1 of the above-mentioned article confiscation of property means forfeiture without compensation in favour of the state of the object or/and instrumentalities of the crime, item intended for commission of crime or/and property acquired through criminal means.

Paragraph 2 of article 52 defines forfeiture of the object or/and instrumentalities of crime or item intended for commission of crime as forfeiture of the item owned by or in lawful possession of the accused or convicted person, used for commission of deliberate crime or fully or partly intended for this purpose, without compensation in favour of the state. Forfeiture of the object or/and instrumentalities of crime or item intended for commission of crime shall be awarded by the court for all deliberate crimes considered under this code if the object or/and instrumentalities of crime or item intended for commission of crime and forfeiture thereof are necessary for state and public interests, as well as protection of rights and freedoms of certain persons or avoiding commission of a new crime.

According to the paragraph 3 of the same article forfeiture of the property acquired through criminal means implies forfeiture of the property of the convicted person acquired by criminal means (all items and immaterial property, also legal acts and documents, which grant right over the property), as well as any proceeds derived from such property or the property of equivalent value, without compensation in favour of the state. Forfeiture of the property acquired by criminal means shall be awarded by the court for all deliberate crimes considered under this Code if it is proved that the property has been obtained through criminal means. Article 52 of the Criminal Code of Georgia equally applies to property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime. The above-mentioned is clearly provided by paragraph 3 of the present article, which stipulates that forfeiture of the property acquired through criminal means implies forfeiture of the property of the convicted person acquired by criminal means (all items and immaterial property, also legal acts and documents, which grant right over the property), as well as any proceeds derived from such property or the property of equivalent value, without compensation in favour of the state.

The same paragraph also indicates that forfeiture of the property acquired by criminal means shall be awarded by the court for all deliberate crimes considered under this Code, which respectively include money laundering and terrorism financing.

Paragraph 2 of Article 52 provides that instrumentalities owned by or in lawful possession of the accused person are subject to confiscation. The term “in lawful possession of the accused person” refers to cases when instrumentalities are owned by third parties but they were in lawful possession of accused person at the moment of commission of crime. In the light of the above-mentioned property owned by third party is subject to confiscation notwithstanding the ownership, if it has been in lawful possession of offender during the commission of any premeditated crime.

The rights of bona fide third parties are protected by Articles 88, 59, 70, 217, 243, 249, 250, 264, 364, 369, 372, 386, 391, 397 and 399 of the Civil Code of Georgia.

Criminal Code of Georgia – Article 52. (Forfeiture of property).

The rights of bona fide third parties are protected by Articles 88, 59, 70, 217, 243, 249, 250, 264, 364, 369, 372, 386, 391, 397 and 399 of the Civil Code of Georgia.

Article 52. Forfeiture of property

1. Forfeiture of property shall mean forfeiture of crime object and/or tool, object intended for the commission of crime and/or criminally obtained property in favour of the state, without compensation.
2. Forfeiture of object and/or tool of crime or object intended for the commission of crime shall mean forfeiture of property from suspect's, accused person's or convicts ownership or lawful possession, in favour of the state, without compensation. Forfeiture of object and/or tool of crime or object intended

for the commission of crime shall be made by the court, for all intentional crimes provided by this Code, in cases where object and/or tool of crime or object intended for the commission of crime is evident and its forfeiture is necessary for state or public need, protection of individual's rights or freedoms, or for the prevention of crime.

3. Forfeiture of criminally obtained property means forfeiture of property obtained by criminal means (any object or immaterial good, as well as legal documents giving title to property), including any proceeds from such property or its equivalent, in favour of the state, without compensation. Forfeiture of criminally obtained property shall be decided by court, for all intentional crimes provided by this Code, in cases where property is proven to be obtained as a result of crime.

Article 59. Transaction Made Without Observance of the Form

1. A transaction is void when it is made without observance of the form provided for by law or in the contract, and, likewise, a transaction is void when made without permission, if permission is required for the transaction.
2. If a voidable transaction is rescinded, then it is void from the moment of its execution. Rescission is declared to the other party to the contract.
3. An interested person holds the right of rescission.

Article 70. Entrusting Signature to Another Person

A person who, as a result of illiteracy, physical defect or illness, cannot sign a transaction in his own signature, may entrust the signature on the transaction to another. The signature of the latter shall be officially authenticated. In addition, the reason shall be indicated for which the person making the transaction was unable to affix his own signature.

Article 88. Duress by Lawful Means

Actions exercised neither for illegal purposes nor by using illegal means shall not be deemed to be duress under Articles 85-87, except in those cases when the means [of influencing the person] and the purpose [of the influence] do not coincide.

Article 217. Claim for Dissolution of Apartment Owners' Association Disallowed

An owner may not demand dissolution of the apartment owners' association. Such a demand is allowed only if the building is partially or entirely collapsing.

Article 243. Legal Regulation of Creation of a Usufruct

The same rules that govern the acquisition of immovable things shall apply to the creation of a usufruct.

Article 249. Obligation of Maintenance of Construction

If the proper exercise of the servitude involves the usage of a construction situated on the encumbered tract of land, then the entitled person shall be bound to maintain this construction. At the same time, the parties may agree that the obligation of maintenance of the construction be imposed on the owner of the encumbered tract of land, if this is required in the interests of the entitled person.

Article 250. Effect of Division of a Tract of Land

If the tract of land of the entitled person is divided, then the servitude remains for the benefit of each portion separately. In such case the exercise of the servitude is allowed only if it does not worsen the situation of the owner of the encumbered tract of land.

Article 264. Making a Transaction with the Collateral

The prior consent of the secured creditor shall be required for making a transaction with the collateral.

Article 364. Earlier Performance

The obligor is entitled to perform the obligation earlier than the time period fixed, unless the creditor rejects the [early] performance on legitimate grounds.

Article 369. Refusal to Perform the Obligation

The person who is obligated [to perform] under a bilateral contract may refuse to perform the obligation until the counter-performance is rendered, except when he has been obligated to perform his obligation [before such counter-performance is rendered].

Article 372. Satisfaction of the Creditor by the Third Person [Subrogation]

If the creditor forcibly executes against a thing belonging to the obligor, then any person at risk of losing his right in the thing by the forced execution shall be entitled to satisfy the creditor. When the third person satisfies the creditor, the right to demand [against the debtor-obligor] shall be passed to this person.

Article 386. Place of Performance of Monetary Obligation

1. When the place of performance is in doubt, a monetary obligation must be performed at the creditor's domicile (place of residence or legal address). 2. If the creditor has a banking account intended for [receiving] transfers of funds in that place in that country where the payment is to be effected, then the debtor may perform his monetary obligation by transfer to this account, except when the creditor is against this.

Article 391. Obligation of the Obligee to Compensate Damage

The obligee must compensate the damage sustained by the obligor because of the obligee's fault in not accepting performed obligation when it was due.

Article 399. Repudiation of a Long-term Relationship of Obligation

1. Any party to the contract may, on legitimate grounds, repudiate a long-term relationship of obligation without observing the time period fixed for termination of the contract. The grounds are legitimate when, taking into account the specific situation, including force majeure and the mutual interests of the parties, the party [seeking to terminate] the contract cannot be required [expected] to continue the contractual relationship until lapse of the agreed period of time, or until expiration of the period of time fixed for termination of the contract.
2. If the grounds also constitute a breach of the contractual obligations, then repudiation of the contract is allowed only after expiration of the period of time fixed for elimination of the deficiencies or after an unsuccessful warning [to cure the breach]. Paragraph (2) of Article 405 shall apply accordingly.
3. The entitled person may repudiate the contract within a reasonable period of time after the grounds for termination of the contract have become known to him.
4. If, as a result of termination of the contract, the already given performance is no longer of any interest to the entitled person, then the termination of the contract may be extended to this already given performance as well. In order to secure the return of the already given performance, articles 352-354 shall apply accordingly.
5. Article 407 shall apply accordingly to the claim for damages [arising out of this article].

Please see below the statistics on confiscated property in money laundering cases:

Statistics on Confiscated Property in ML cases		
Years	cas es	Total Amount (Approximately)
11 months 2011	11	2 417 638 EUR
2010	6	700 000 EUR
2009	1	<i>Note: In 2009 on one criminal case 400 000 EUR was removed from the possession of criminal by means of imposing fine instead of confiscation.</i>
2008	2	2 023 248 EUR
2007	1	1 015 213 EUR
2007-2011		Total confiscated property: 6 156 099 EUR Including money: 2 440 886 EUR
2006		572 000 EUR (on 1 case)

2005	3 214 000 EUR (on 1 case)
2005-2006	Total confiscated property: 3 786 000 EUR
2005-2011	Total confiscated property: 9 942 099 EUR

(b) Observations on the implementation of the article

The Georgian legislation on implementing Article 31 of the Convention appears to be in line with the Convention. It was noted that substitute property is allowed to function as the “equivalent” under Criminal Code Article 52, paragraph 3. In addition, this provision covers all criminal offences, including corruption and Convention offences. After conviction, forfeiture is ordered as part of the sentence. Non-conviction based forfeiture is provided for in the civil forfeiture provisions, noted below.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Please see the information provided with regard to Paragraph 1 (a) of Article 31.

Please see the statistics of confiscation in money laundering cases above.

(b) Observations on the implementation of the article

In relation of Subparagraph 1 (b) according to CC Art 52, paragraph 1 the terms “object and/or tool of crime” cover terms “property, equipment or other instrumentalities” of the Convention. Term “object intended for the commission” equals term “destined for use” of the Convention. The Georgian legislation appears to be in line with the Convention.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

Provisional measures are envisaged in the Criminal Procedure Code of Georgia. Namely the freezing measures are provided by Articles 151 -158 of the Criminal Procedure Code of Georgia and seizing mechanism is provided by Articles 112, 119-124 of the Criminal Procedure Code of Georgia.

Freezing Procedures:

According to the paragraph 1 of article 151 of the Criminal Procedure Code of Georgia the purpose and grounds for property arrest (Seizure) are as follows:

For the purpose of providing for use of criminal procedure coercion measures, possible property forfeiture, the court, based on the party's motion may arrest the property of the defendant, the person financially liable for the defendant's actions, or/and his associate, including bank accounts, when there exists a suspicion that the property will be hidden or spent and/or the property derives from crime. In case of information that the property has criminal origin, but it is impossible to find (locate) such property, the court shall be authorized to seize something of value that is equivalent to the property in question. In case of existence of conditions described herein, if the defendant is an official, the prosecutor must initiate a motion before the court on seizure of the defendant's property, including bank accounts, as well as request suspension of execution of commitments deriving from agreements signed by the defendant on behalf of the state or take other actions to secure the claim.

The actions on arrest of property described under this Criminal Procedure Code, shall also apply in case of preparation of one of the crimes stipulated by Articles 323-330 (terrorism related crimes) and 331¹ (terrorism financing) of the Criminal Code or other especially serious crime, as well as to ensure their prevention, if there is sufficient information that this property will be used to commit such crimes.

The court may also arrest the property, if there is sufficient information that this property is obtained via corruption or racketeering activity or belongs to the member of the criminal group or belongs to a defendant under Article 194 part 3 subparagraph "c" (money laundering in especially large quantities) of the Criminal Code of Georgia or/and crime was committed against this property, or/and property is obtained through crime.

Pursuant to Article 152 of the Criminal Procedure Code of Georgia the freezing of property prohibits the disposal of this property, and in cases of necessity, also its use, by persons who have ownership or possession over this property.

There are two mechanisms of the application of freezing order. According to the first mechanism freezing measure can be applied based on the court order which is issued upon the prosecutor's motion. Pursuant to Article 154 of the Criminal Code of Georgia prosecutors shall prepare and send to the court, according to the place of investigation, the substantiated motion on property arrest and necessary information for deciding on the issue. Within 48 hours after filing the motion and the supporting information, the judge shall arrive at the decision without an oral hearing. The judge may also review the motion with participation of the party which filed the motion.

The second mechanism provides for the initial application of freezing mechanism based on the prosecutor's ruling without court order. Namely, according to Article 155 of the Criminal Code of Georgia in case of emergency, if there is a probable cause that the property will be

hidden or destroyed; the prosecutor may issue a substantiated ruling to freeze (arrest) the property. In the above-mentioned circumstances, within 12 hours from the execution of order on property arrest (and if the expiration of this term falls after close of business hours, then within 1 hour after business hours resume) the prosecutor, according to the place of investigation, shall inform the court having jurisdiction on territory where procedural action was conducted, on the property arrest and shall submit the motion on verification of the legality of arrest of property and transfer the criminal case materials (or their copies), certifying the necessity (urgency) or the property arrest. The court shall decide on the motion without oral hearing, within 24 hours after filing of the motion.

The court may review the motion with participation of the prosecutor and the person against whom the investigative action was conducted.

In practice freezing is always conducted ex parte. Theoretically according to the first mechanism of freezing it is possible to arrange oral hearing, however the above described second mechanism ensures that freezing is always conducted ex parte and without prior notification of party.

According to Article 158 of the Criminal Procedure Code of Georgia property shall be frozen until the court judgment is forwarded for execution or until criminal prosecution and/or investigation is terminated.

The procedures for appealing freezing order by prosecutor and defendant are provided by articles 156 and 207 of the CPCG and appealing procedures for third parties are provided by the Civil Procedure Code of Georgia.

Extracts of the relevant articles concerning seizure are provided below.

Procedures for seizure:

As it was already mentioned above Articles 112, 119-124 of the Criminal Procedure Code of Georgia provide mechanism for the application of seizure.

According to Article 119 of the Criminal Procedure Code of Georgia seizure shall aim at uncovering and seizure of any object, document, substance, or other item that contains information related to the case. Same article also provides application of search measures for the similar aim.

Pursuant to the paragraph 3 of the above-mentioned article an object, document, or other item including information relevant to the case may be seized if a there is a probable cause that the object, document, or other item is kept in a certain place, with a certain person, and if it is not necessary to search for it.

The procedures for application of seizure are almost the same as it was described in respect to the freezing mechanism. Namely there are two kinds of procedures as well. According to the first one, which is provided in the paragraph 1 of Article 112 of the Criminal Procedure Code of Georgia, seizure shall be carried out on the basis of a court order issued upon the motion of prosecutor. A judge shall without the oral hearing decide on the motion within 24 hours from the moment of receiving a motion and other necessary information for reviewing the motion. A judge shall be authorized to consider the motion with participation of the party filing the

motion. Consent of co-owner or one party to communication is sufficient to conduct seizure without the court order.

The second procedure of seizure, which is the application seizure mechanism based on the investigators ruling, is provided by paragraph 5 of article 112 of the Criminal Procedure Code of Georgia. The above-mentioned provision stipulates, that seizure may be conducted without a court order, upon an investigator's ruling, in case of urgency, where delay may cause the destruction of factual data essential for the case or will make it impossible to obtain such data, or when an object, document, substance or any other object containing information is discovered during another investigative action (plain view concept), or when a real threat to a person's health or life exists. In this case a prosecutor shall notify a judge, having jurisdiction over the territory where the investigative action has been carried out, or a judge having jurisdiction over the place of investigation, within 24 hours from the moment of starting an investigative activity and shall transfer a file or a criminal case (or copies thereof) that justify the necessity of taking urgent investigative actions. A judge shall make a decision on a motion without an oral hearing within 24 hours from receiving the materials. The judge shall be authorized to consider a motion with participation of the parties (if the criminal prosecution has begun), as well as with participation of the person, against whom the investigative action has been conducted. While considering a motion a judge shall probe the legitimacy of the investigative action carried out without a court decision. A judge shall be authorized to summon a person who conducted the investigative action without a court order for obtaining explanations from the person.

The provisions of the Criminal Procedure Code of Georgia for identification and tracing of property are the provisions related to search, seizure, freezing, inspection and interrogation (Articles: 119,120, 121, 123, 125, 126, 127, 151-158).

For identification and tracing of property that is suspected of being proceeds the special investigative techniques provided by the Law on Operative-Searching Activities are also frequently and proactively used. The available special investigative techniques are as follows:

Questioning of citizens;
gathering notes(information) and the visual control;
controlling purchase,
controlled delivery;
examination of subjects and documents;
identification of a person;

g. censorship of correspondence of detained, imprisoned or accused person;

h. secret listening and taping of phone conversations by court decision, gaining information from the channel of communication (by connecting to the means of communication, computer networks, linear communications and station apparatus), control of post-telegraph staff (except the diplomatic post);

i. secretive audio-video taping according to the court decision, making of films and photos; electronic control by technical means, the use of which will not cause any danger to persons life, health and environment;

j. involvement of a secret representative or operative officer in the criminal group according to the established rule.

- Monitoring of Internet Relations;
- gaining information from the channel of communication;
- creation of conspirative organization in accordance with stated rule;
- Monitoring of Internet Relations;
- gaining information from the channel of communication

There could also be any other possible sources, including anonymous statements, which could lead to the identification of proceeds of crime.

The wide range of investigative powers to identify and trace property is available early in an investigation and based only upon a suspicion of money laundering. On the bases of freezing orders or rulings investigators and prosecutors are able adequately to determine the existence of accounts in a particular name at financial institutions and regularly seek and receive such information from banks. This is accomplished through an order directed to the banks in Georgia which further advice of any accounts or customer relationship with the identified individuals/entities.

In addition, neither commercial nor professional secrecy are barriers to tracing and identification as commercial secrecy is lifted for purposes of the provisions on search and seizure and other provisions relevant to identifying and tracing.

Criminal Procedure Code of Georgia

Article 151. Purpose and Grounds for Property Arrest (Seizure)

1. For the purpose of providing for use of criminal procedure coercion measures, possible property forfeiture, the court, based on the party's motion may arrest the property of the defendant, the person financially liable for the defendant's actions, or/and his associate, including bank accounts, when there exists a suspicion that the property will be hidden or spent and/or the property derives from crime. In case of information that the property has criminal origin, but it is impossible to find (locate) such property, the court shall be authorized to seize something of value that is equivalent to the property in question. In case of existence of conditions described herein, if the defendant is an official, the prosecutor must initiate a motion before the court on seizure of the defendant's property, including bank accounts, as well as request suspension of execution of commitments deriving from agreements signed by the defendant on behalf of the state or take other actions to secure the claim.

2. The actions on arrest of property described under this Code, shall also apply in case of preparation of one of the crimes stipulated by Articles 323-330 and 331¹ of the Criminal Code or other especially grave crime, as well as to ensure their prevention, if there is sufficient information that this property will be used to commit such crimes.

3. The court may also arrest the property, if there is sufficient information that this property is obtained via corruption or racketeering activity or belongs to the member of the criminal group or is a property of a convicted person for the commission of the act prescribed by paragraph 3 (c) of the Article 194 of the Criminal Code of Georgia or/and crime was committed against this property, or/and property is obtained through crime.

4. When deciding property arrest issues, provisions of the Civil Procedures Code may be applied, if they do not contradict this Code.

Article 152. Restriction of Rights during Property Arrest

The property arrest prohibits the disposal of this property, and in cases of necessity, also its use, by persons who have ownership or possession over this property.

Article 153. Property that is not Subject to Arrest

Necessary food products, heating devices, inventory for professional activities and other items that ensure normal living conditions of a person shall not be subject to seizure.

Article 154. Motion on Property Arrest and Rules for its Review

1. The party shall prepare and send to the court, according to the place of investigation, the substantiated motion on property arrest and necessary information for deciding on the issue.

2. Within 48 hours after filing the motion and the supporting information, the judge shall arrive at the decision without an oral hearing. The judge may review the motion with participation of the party which filed the motion. In such a case procedure provided by Paragraph 3 of Article 144 of this Code shall be used.

Article 155. Ruling on Property Arrest in Case of Emergency

1. In case of emergency, if there is a probable cause that the property will be hidden or destroyed, the prosecutor may issue a substantiated ruling to arrest the property.

2. Within 12 hours from the execution of order (and if the expiration of this term falls after close of business hours, then within 1 hour after business hours resume) the prosecutor, according to the place of investigation, shall inform the court having jurisdiction on territory where procedural action was conducted, on the property arrest and shall submit the motion on verification of the legality of arrest and transfer the criminal case materials (or their copies), certifying the necessity (urgency) or the property arrest. The court shall decide on the motion without oral hearing, within 24 hours after filing of the motion. The court may review the motion with participation of the prosecutor and the person against whom the investigative action was conducted.

Article 156. Appealing Court Order on Arrest of Property

The court order on arrest may be appealed in accordance with provisions of Article 207 of this Code. The term of appeal shall commence from the time of filing the motion or from the moment of its execution.

Article 157. Rules for Execution of the Court Order (Ruling) on Property Arrest

1. A party shall submit the court order, and in case of emergency prosecutor's ruling on property arrest, to the person, holding the property, and request transfer of property. If the request is denied, or if according reliable information the entire property is not transferred, the search shall be conducted in accordance with the rules provided under this Code.

2. During arrest of the property it shall be determined what items and valuables shall be arrested within the limits indicated in the court order (ruling).

3. An expert shall participate in the property arrest who shall define the value of the property.

4. Amount of damage caused by the crime as well as the value of the property subject to arrest, shall be determined by average market prices.

5. During arrest of a monetary account, transactions shall be stopped on this account. If property is obtained or grown through criminal activity, the seizure may be applied to the entire property or large portion of it. If sufficient evidence exists that the property or its part derives from racketeering activity, arrest may be used against property of a defendant, his/her family member, close relative, related person (associate) and/or property of the racketeering group (including the legal entity and its branches) despite the defendant's share in such property.

6. Property arrest protocol shall be drawn up in cases of property arrest.

7. Arrested property, except for immovable and big-size objects, shall be seized.

Article 158. Validity of the Court Order on Property Arrest

Property shall be arrested until the court judgment is forwarded for execution or until criminal prosecution and/or investigation is terminated.

Article 112. Investigative Action Conducted on the Basis of a Court Order

1. An investigative action related to the restriction of one's private property, ownership or right to privacy of a dwelling, shall be carried out on the basis of a court order issued on the motion of the parties. A judge shall without the oral hearing decide on the motion within 24 hours from the moment of receiving a motion and other necessary information for reviewing the motion. A judge shall be authorized to consider the motion with participation of the party filing the motion. In this case rules for considering motions set forth in Article 206 of this Code shall apply. Consent of co-owner or one party to communication is sufficient to conduct investigative actions without the court order determined under this paragraph.

2. The court order shall contain the date and the place of its drafting, the last name of the judge, the person filing a motion, the order to carry out an investigative action, indicating its purpose and addressee, the term of the order's validity, a person or a body required to fulfill the order, and the judge's signature verified with the court seal.

3. The court order concerning search or seizure shall also indicate: the movable and immovable property, where the investigative action shall be permitted and person who owns it (if such person is identified),

a natural person to be searched; an item, thing, substance, or any other object likely to be uncovered and seized during the search and seizure and its general characteristics; the right to apply an appropriate compulsory measure in case of resistance. A court order on search or seizure shall be invalid if it has not been commenced within 30 days.

4. The order concerning arrest and seizure of a postal-telegraphic message made through the technical means of communication shall also include: the name and surname of the recipient of a message; the name, surname, and address of a person sending a message (if such information is available); a type of postal-telegraphic message to be arrested; the term of arrest; a title of a postal-telegraphic institution required to arrest a postal-telegraphic message; and the right of an investigator to examine and seize the postal-telegraphic message.

5. The investigative action referred to in Paragraph 1 of this article may be conducted without a court order, on the investigator's ruling, in case of urgency, where delay may cause the destruction of factual data essential for the case or will make it impossible to obtain such data, or when an object, document, substance or any other object containing information is discovered during another investigative action (plain view concept), or when a real threat to a person's health or life exists. In this case a judge, having jurisdiction over the territory where the investigative action has been carried out, shall be addressed with the motion for checking legality of the investigative action within 12 hours from the moment of starting the investigative action (if the time for notification expires during off-work hours, a judge shall be notified within the first work hour) and shall be provided with the criminal case materials (or copies thereof) that justify the necessity of taking urgent investigative actions. A judge shall make a decision on the motion without an oral hearing within 24 hours from receiving the materials. The court shall be authorized to consider a motion with participation of the parties (if the criminal prosecution has begun), as well as with participation of the person, against who the investigative action has been conducted. While considering a motion a judge shall probe the legitimacy of the investigative action carried out without the court decision. A judge shall be authorized to summon a person who conducted the investigative action without the court order and request a relevant explanation from that person. In this case rules for considering motions set forth in Article 206 of this Code shall apply.

6. After examining the case materials a court shall render an order on:

- a) finding the investigative action legitimate;
- b) finding the investigative action illegitimate and the collected information to be inadmissible evidence.

7. The judge has the right to consider the matters under this Article without an oral hearing.

8. The order issued pursuant to this article may be appealed in accordance with the rules set forth in the article 207 of this Code. The term for appeal shall be calculated from the enforcement of an order.

Article 119. The Purpose and Grounds for Search and Seizure

1. If there is a probable cause, a search and seizure shall aim at uncovering and seizure of any object, document, substance, or other item that contains information related to the case.

2. It is also permissible to conduct a search for a fugitive and/or for recovery of a corpse.

3. An object, document, or other item including information relevant to the case may be seized if there is a probable cause that the object, document, or other item is kept in a certain place, with a certain person, and if it is not necessary to search for them.

4. It shall be possible to conduct a search for a seizure of an object, document, or other item including information relevant to a certain case, if there is a probable cause, that it is kept in a certain place, with a certain person, and if search is necessary for discovering it.

Article 120. The Rule for Search and Seizure

1. On the basis of a court order or in case of urgency – on the basis of ruling – authorizing search or seizure, an investigator shall have the right to enter storage, dwelling, or other ownership for the discovery and seizure of an object, document, or other item containing relevant information for the case.

2. Prior to a search or a seizure the investigator shall be obliged to present the court order or in case of urgency – ruling, to a person subject to search and seizure. This should be confirmed by the signature of the concerned person on the document.

3. While the search/seizure is being conducted, an investigator shall have the right to restrict the person(s) at the place of search/seizure from leaving and from communicating with one another or with other persons. This shall be reflected in the relevant record.

4. Upon presenting a court order, in case of urgency – ruling, the investigator shall offer the person subject to search or seizure to voluntarily turn over the object, document, or other item containing relevant information. If the item to be seized is voluntarily turned over, it shall be noted in the record; in case of refusal to turn over the requested items voluntarily or in case of partial disclosure the seizure by coercion shall take place.

5. During the search the object, document, substance, or other item containing information, which is indicated in the court order or ruling shall be searched for and seized. Any other object containing information that might have an evidentiary value on the concerned case or that might clearly indicate on other crime, as well as the objects, substances and/or other items removed from the circulation may also be seized.

6. All items containing information, all objects, documents, substances, or other relevant items discovered during the search or seizure shall be presented to the persons participating in the investigative action if possible prior to the seizure. Upon the presentation, they shall be seized, described in detail, sealed, and packaged, if possible. Apart from the seal, the packaged items shall reflect the date and signatures of the persons participating in the investigative action.

7. During the search and seizure the investigator shall have the right to open a closed storage or premise if the person to be searched refuses to do so voluntarily.

8. If there is a probable cause that the persons present at the place of search or seizure have hidden the object, document, substance, or other item to be seized, personal search of such person shall be allowed. Such case shall be regarded as urgent necessity and, shall be conducted without a court order or a investigator's ruling. The legitimacy of search and/or seizure shall be reviewed by the court in accordance with the rules established by this Code.

9. Search or seizure in the building of a legal entity or an administrative body shall take place in the presence of the head or a representative of that entity or the body.

Article 121. Personal Search

1. If there is a probable cause, the prosecutor, investigator or persons with authority to carry out detention, shall be authorized to seize an object, document, substance, or other item containing relevant information for the case, discovered on a person's clothes, among his/her belongings, in his/her vehicle, or on or in his/her body, by conducting a personal search in accordance with the Article 120 of this Code.

2. If there is a probable cause, that the detained person possesses a weapon or intends to get rid off the evidence, indicating his/her involvement in the criminal conduct, the authorized person carrying out detention, shall be authorized to conduct search without a court order or investigator's ruling in accordance with rules set forth by this Code. If this is the case, it shall be duly recorded in a detention record. In such case, the record on personal search shall not be made. Legitimacy of search and/or seizure shall be assessed by the court in accordance with rules established by this Code.

3. The person carrying out detention shall be authorized to disarm the detainee.

4. If a personal search implies undressing of a person, the search shall be conducted by a person of the same sex. Only the persons of the same sex shall participate in such search.

Article 122. Search and Seizure at the Premises of a Diplomatic Mission and of a Diplomat

1. It shall only be permitted to carry out search or seizure on the territory of a diplomatic mission, of a person enjoying diplomatic immunity, as well as in any means of transport, or premises occupied by a diplomat or his/her family member(s) with the consent or requirement of the Head of the Diplomatic Mission of a foreign state.

2. The permission of the Head of Diplomatic Mission to conduct search or seizure shall be sought through the Ministry of Foreign Affairs of Georgia.

3. In the case(s) referred to in Paragraph 1 of this article, it shall be obligatory to have a representative of the Ministry of Foreign Affairs of Georgia attend search or seizure.

Article 123. Procedure for Search and Seizure at the Offices of Mass-Media, or at the Premises of Publishing Houses, Scientific, Educational, Religious, Public Organizations and Political Parties

1. Objects, documents, or other items may not be searched, seized or arrested from the offices of mass-media, or from the premises of publishing houses, scientific, educational religious, public organizations or political parties, toward which reasonable expectation of public release exists;

2. The restriction referred to in Paragraph 1 of this Article shall not apply if there is a probable cause that the object, document, or other item to be seized represents the subject or tool of a crime.

3. A court is authorized to adopt ruling regarding the search, seizure and/or arrest only in a case, when there is obvious and reasonable ground that the conduct of an investigative action would not violate right to freedom of speech, expression, belief, religion, conscience or right to union guaranteed under the constitution. The investigative actions shall be conducted in an effective form that minimally restricts these rights.

Article 124. Recovery of a Seized Object

1. If the seized object, document, substance, or other item containing information is not presented as evidence by a party at the court, it shall be returned to the person from whom it was seized.

2. If a third person claims an object, document, substance, or other item containing information that has been returned in accordance with this Article, the dispute shall be resolved through a civil procedure.

Article 207. Procedure for Appealing an Order on Applying, Replacing or Revoking a Preventive Measure

1. The order on applying replacing, or revoking a preventive measure may be appealed once by the prosecutor and the defendant within 48 hours from the moment it was issued, to the investigative panel of an appellate court. The defense counsel may file the appeal only if the defendant is a juvenile or has a physical or psychological defect which excludes the possibility to obtain his/her consent. An appeal shall be filed with the court whose order is appealed. Appeal and case materials shall be immediately forwarded to the court of relevant jurisdiction. The appeal shall not suspend enforcement of the order.

2. The appeal should specify what requirements were violated when the appealed order was issued and outline the errors of the appealed order. Appeal may also include what substantial issues and evidence was not examined by the first instance court which could have had impact on applying a legitimate preventive measure against the defendant. Appeal shall be supported by the evidence (material) attesting to the claim of the appellant, regarding such new circumstances which were not known to the first instance court.

3. The parties shall be notified on the date and time for the hearing of the appeal within a reasonable time.

4. The judge of an investigative panel of the appellate court shall examine an appeal individually within 72 hours from the moment it is filed. in accordance with the Article 206, Paragraph 3, of this Code. The judge of an investigative panel shall independently examine the appeal. The judge, shall, without oral hearing examine the admissibility of the appeal, namely if the appeal meets the requirements of Paragraph 1 and 2 of this Article. If this new circumstances were already examined by the first instance court, or what substantial issues and evidence were not examined by the first instance court which could have had impact on applying a legitimate preventive measure against the defendant. The judge shall issue the order on admissibility of appeal.

5. If the appeal is found to be admissible, the judge shall conduct the oral hearing in timeframes and in accordance with rules, established by this Code. The judge shall be authorized to review the appeal without an oral hearing, if the appeal does not concern the preventive measure, or represents appeal of the court ruling on inadmissibility of the motion, issued based on Article 206, Paragraph 8.

6. Copy of the decision rendered after the judge has examined the appeal shall be issued to the parties, to the court whose order was examined by the appeal, and a state body, which should execute the court order.

7. The order rendered in accordance with the procedure established by this Article shall be final and shall not be subject to appeal.

8. In case of the oral hearing, the judge announces only the conclusive part of the decision.

Please see the following statistics on seized and frozen proceeds in money laundering cases:

2011 (Six months)				
	Proceeds frozen		Proceeds seized	
	cases	amount (in EUR)	cases	amount (in EUR)
ML	7	2 789 468 <i>The approximate value of 13 units of real estate has not been ascertained and therefore their price is not included in the above-mentioned figure.</i>	3	228 077
2010				
	Proceeds frozen		Proceeds seized	
	cases		cases	

ML	2	108 726	3	101 565 EUR
2009				
	Proceeds frozen		Proceeds seized	
	cases		cases	
ML	5	1 738 200 EUR	-	-
2008				
	Proceeds frozen		Proceeds seized	
	cases		cases	
ML	2	8 751 609 EUR	2	543 486 EUR
2007				
	Proceeds frozen		Proceeds seized	
	cases		cases	
ML	2	1 949 000 EUR	-	-
2006				
	Proceeds frozen		Proceeds seized	
	cases		cases	
ML	2	4 548 000	-	-
2005				
	Proceeds frozen		Proceeds seized	
	cases		cases	
ML	1	572 000	-	-

(b) Observations on the implementation of the article

The State party under review appears to have fully implemented the provision in Art 31 Paragraph 2 with its detailed procedural legislation even goes beyond the minimum requirements. Seizure is provided through court permission and an instant (emergency) procedure is ensured which is followed by a post-order motion sent by the prosecutor. To secure access to bank records, a seizure order for documents signed by the court is required.

(c) Successes and good practices

The reviewing State party encourages the usage of special investigative techniques in identification and tracing of property suspected being proceeds of crime.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Frozen and seized property is administered by the investigative body which conducted the freezing and seizure of the property. All confiscated assets in Georgia are managed by the Service Agency of the Ministry of Finance of Georgia. The Service Agency is vested the power to use the confiscated assets for law enforcement, health, education or other appropriate purposes.

(b) Observations on the implementation of the article

With regard to regulations and practices governing the work of the Service Agency, various measures are implemented. For cars and large tangible objects, the investigator can assign responsibility to a “responsible person” (seized property). A neighbor, for example, might be the person to take care of real property. Such a person signs to bear criminal responsibility to take care of the property. If property can be taken by the national authorities, then it is taken. If not, the person responsible takes care of it. For things taken, after confiscation, procedures are followed for law enforcement to sell, auction, etc., the property. The Service Agency handles those matters via the eAuction or other system.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

The measures are completely implemented. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property is liable to the freezing, seizure and confiscation measures referred above.

(b) Observations on the implementation of the article

Georgia reported that Article 52 describes the property, proceeds or new property purchased with regard to derivative property.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to Article 52 of the Criminal Code of Georgia proceeds of crime that have been intermingled with property acquired from legitimate sources, such property, without prejudice to any powers relating to freezing or seizure, is subject to confiscation up to the assessed value of the intermingled proceeds.

Criminal Code of Georgia - Article 52.

Article 52. Forfeiture of property

1. Forfeiture of property shall mean forfeiture of crime object and/or tool, object intended for the commission of crime and/or criminally obtained property in favour of the state, without compensation.
2. Forfeiture of object and/or tool of crime or object intended for the commission of crime shall mean forfeiture of property from suspect's, accused person's or convicts ownership or lawful possession, in favour of the state, without compensation. Forfeiture of object and/or tool of crime or object intended for the commission of crime shall be made by the court, for all intentional crimes provided by this Code, in cases where object and/or tool of crime or object intended for the commission of crime is evident and its forfeiture is necessary for state or public need, protection of individual's rights or freedoms, or for the prevention of crime.
3. Forfeiture of criminally obtained property means forfeiture of property obtained by criminal means (any object or immaterial good, as well as legal documents giving title to property), including any proceeds from such property or its equivalent, in favour of the state, without compensation. Forfeiture of criminally obtained property shall be decided by court, for all intentional crimes provided by this Code, in cases where property is proven to be obtained as a result of crime.

(b) Observations on the implementation of the article

It was noted that Article 52(3) covers intermingled property. The reviewing experts were satisfied with the answers provided.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 52 of the Criminal Code of Georgia income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been

intermingled is liable to the freezing, seizing and confiscating measures referred to above, in the same manner and to the same extent as proceeds of crime.

(b) Observations on the implementation of the article

It was noted that Section 52(3) addresses this paragraph. The reviewing experts were satisfied with the answers provided.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

Neither commercial nor professional secrecy are barriers to tracing and identification as commercial secrecy is lifted for purposes of the provisions on search and seizure and other provisions relevant to identifying and tracing.

Please see the detailed information on powers of search and seizure provided in the previous questions.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided. Please see above regarding procedures to obtain bank and financial records.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

There are two mechanisms of the forfeiture of property in Georgia: criminal procedures (article 52 of the Criminal Code of Georgia) and civil procedures (Chapter XLIV¹ of the Civil Procedure Code).

Criminal procedures provide for the confiscation of instrumentalities and proceeds of crime (please see the section 3 for the detailed information). Civil procedures of forfeiture allow the confiscation of illicit and undocumented property which is not related to crime. The information on civil forfeiture system is provided below.

Correspondingly property of organizations that are found to be primarily criminal in nature is subject to forfeiture in Georgia if it falls in either of the above-mentioned two forfeiture mechanisms.

Since July 2007 Georgian legislation envisages a civil forfeiture of illicit and undocumented property, including incomes received from such property and shares. The civil forfeiture procedures are provided for by the Civil Procedure Code of Georgia (Chapter XLIV¹ of the Civil Procedure Code).

Pursuant to the Criminal and Civil Procedure Code of Georgia the civil forfeiture is applicable in the following circumstances:

a. When property is obtained from racketeering or person convicted for the membership to thieves' brotherhood, for trafficking in human beings, for facilitation of the spread of narcotic substances or for money laundering, which resulted with incomes in especially large amount (above 50 000 GEL) owns illicit or undocumented property;

When illicit or undocumented property is owned by public official convicted for the commission of, while being in office, malfeasance or crime in prejudice of interests of enterprise or other organization, money laundering, extortion, misappropriation or embezzlement, tax evasion, breach of customs procedures, torture or threat of torture and/or for degrading and inhuman treatment, notwithstanding whether that person was dismissed or not from the official position.

For the purpose of civil forfeiture system of Georgia the term owns also includes the ownership of the respective illicit or undocumented property by family member, close relative or associated person of the person convicted for the commission of the above-described crime/crimes.

Correspondingly, if prosecutor has grounded suspicion that at least one of the above-mentioned circumstances exists he/she is obliged to file the civil lawsuit before the Court to confiscate (forfeit) the racketeering property or illicit or undocumented property respectively from that convicted person, his/her family member, close relative or associated person.

According to the abovementioned, elements of the civil forfeiture envisaged by Georgian system are as follows:

There is no criminal conviction against the particular person who holds the illicit or undocumented property. The only prerequisite for civil confiscation of property in this case is that the above-mentioned person is a family member, close relative or associate of the person who is convicted for the commission of any of the determined crimes (see the list of these crimes above).

The illicit or undocumented property personally owned by the person who is convicted for the commission of any of the determined crimes (see the list of these crimes above) is subject to civil confiscation, notwithstanding the fact that the property in question is not related to that particular crime.

The final decision on the confiscation of property is made by the Court with the participation of all dispute parties. The relevant decision of the Court (first instance Court) is the subject of

appeal. The parties to a dispute have the right to appeal the Court's decision in the Court of Appeal and later in the Supreme Court of Georgia.

After the final decision is made by the Court the abovementioned decision is forwarded for its execution to the National Bureau of Enforcement of the Ministry of Justice.

According to the Civil Procedure Code of Georgia and the Law of Georgia on Organized Crime and Racketeering the terms: racketeering property, illicit property and undocumented property are defined as follows:

Racketeering property -assets obtained through a racketeering activity, profit received from that assets, property acquired from the income received from the racketeering activity or profit, property or income derived from such property belonged to racketeering group, racketeer, his/her family member, close relative or associated person, when there is no document or any other evidence proving their reception through lawful means;

Illicit property -property, also the income derived from that property, stocks (shares) that is gained by racketeering group, public official, racketeer, member of thieves' brotherhood, trafficker with human beings, facilitator of the spread of narcotic substances or by person convicted for money laundering, which resulted with incomes in especially large amount, their family members, close relatives or associated persons through the infringement of the law requirements;

Undocumented property -property, also income derived from that property, stocks (shares) if racketeering group, public official, racketeer, member of thieves' brotherhood, trafficker with human beings, facilitator of the spread of narcotic substances, person convicted for money laundering, which resulted with incomes in especially large amount, their family members, close relatives or associated persons are unable to present document certifying that the property was obtained legally, or the property was obtained by monetary funds received from the realization of an illegal property.

The Prosecution Service of Georgia (Office of the Chief Prosecutor) is the only competent authority who has the right to initiate the civil procedure of property's confiscation. In this respect, the mentioned procedure is carried out in compliance with the Civil Procedure Code of Georgia.

The Court is the only competent body who has authority to issue order (decision) on the civil forfeiture.

(b) Observations on the implementation of the article

The reviewing experts noted that the State party under review goes beyond the minimum requirement with detailed legislation on civil forfeiture, and that Georgia has reported that this mechanism covers corruption crimes and Convention offences. It may be helpful, however, for Georgia to consider the utility of listing the corruption-related crimes (or Convention offences) either by individual reference or by incorporation of the group of such crimes for clarification of the scope of the mechanism. The reviewing experts note that this provision of the Convention is not mandatory, and therefore the suggestion above should be taken as an idea for how to ensure that the effective civil forfeiture mechanism applies to the broadest possible criminal activity.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Article 156 Criminal Procedure Code of Georgia provides for an appeal of the seizure of property, by reference to Article 207 this is available only to the prosecutor or defendant. If a third party believes property that has been restrained or seized is his or that he has an interest in it and that it has been unfairly seized, the provisions available for an appeal are those set forth in Georgia's Civil Procedure Code. Bona fide party third party interests are protected by these provisions by providing access to the courts for a remedy. See, Civil Procedure Code Articles 88, 59, 70, 217, 243, 249, 250, 264, 364, 369, 372, 386, 391, 397 and 399.

The Civil Code procedures envision a legal action by the third party in the civil courts against the Prosecution Service for its actions is securing the freezing or seizure of the third party's property. The decision of the civil court regarding this property takes precedence over, and ultimately will modify the order of the criminal court with respect to the property.

Criminal Procedure Code of Georgia – Article 156.

Article 156. Appealing Court Order on Arrest of Property

The court order on arrest may be appealed in accordance with provisions of Article 207 of this Code. The term of appeal shall commence from the time of filing the motion or from the moment of its execution.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answer provided.

Article 31 Freezing, seizure and confiscation

Paragraph 10

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Please see above.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answer provided.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

In Georgia witness protection measures are being implemented since 2006. In 2010 a new program of protection for criminal case participants (including witnesses, victims and etc.) was elaborated with the participation of UNODC experts and with the support of US Department of Justice in compliance with the provisions of new Criminal Procedural Code of Georgia.

In addition, Social Service Coordinator Program was enacted in the Prosecutor's Office of Georgia in August 2011. This program constitutes an innovation and its purpose is to establish a fair and respectful treatment of witnesses and victims in the course of Criminal Proceedings. Furthermore, the aim of this program is to provide the witnesses and victims with the detailed information with regard to the Criminal Proceedings, which as a result will ensure more efficient relationship between the witnesses and victims on the one hand, and the law enforcement bodies on the other.

The program was initially enacted in Tbilisi, Rustavi, Kutaisi and Batumi. Furthermore, it is planned to implement this program throughout Georgia as well.

Witness and victim coordinator provides relevant information and ensures first psychological aid. Apart from this, his/her duties include arrangement of organizational issues, which facilitates criminal proceedings for witnesses and victims.

The coordinator's duty is to work on all types of crimes, inter alia, domestic violence, sexual violence and murder. One of the functions of the Coordinator constitutes communication with juvenile witnesses and victims.

For what concerns the legislative basis for the protection of witnesses, experts and victims, according to Chapter IX of the Criminal Procedure Code of Georgia regulates the issue of Special Protective Measures for the Participants in a Criminal Proceeding.

This Chapter provides effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning corruption and, as appropriate, for their relatives and other persons close to them.

In addition, in pursuant to Article 67 (The Grounds for Application of Special Protective Measures for the Participants in a Criminal Proceeding) of the Criminal Procedure Code of Georgia special protective measures for the participants in a criminal proceeding shall be used, if:

a) a case under review is related to the commission of such an act the public hearing of which would significantly damage the personal life of the participant in a criminal proceeding;

- b) by the publicity of the name of participant in a criminal proceeding and his/her participation in a case his/her or the relative's life, health or property will be under significant threat;
- c) participant in a criminal proceeding depends on a defendant; d) life or health of a participant in a criminal proceeding is under real threat.

Criminal Procedure Code of Georgia – Article 67.

Article 67. The Grounds for Application of Special Protective Measures for the Participants in a Criminal Proceeding

Special protective measures for the participants in a criminal proceeding shall be used, if:

- a) a case under review is related to the commission of such an act the public hearing of which would significantly damage the personal life of the participant in a criminal proceeding;
- b) by the publicity of the name of participant in a criminal proceeding and his/her participation in a case his/her or the relative's life, health or property will be under significant threat;
- c) participant in a criminal proceeding depends on a defendant;
- d) life or health of a participant in a criminal proceeding is under real threat.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided. Georgia reported that a new witness protection programme was adopted in June 2012 and that draft bilateral agreements were planned to be concluded with other countries to address witness protection issues.

(c) Successes and good practices

The reviewing experts took note that the program of protection for criminal case participants is a very progressive initiation, and that Georgia is committed to the issue.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 68 (The Special Protective Measures) of the Criminal Procedure Code of Georgia the types of Special Protective Measures for the Participants in a Criminal Proceeding are the following:

- a) Changing or removing from a public registry or other registry of public character the data that makes it possible to recognize and identify a victim or a witness, namely, the first name, last name, address, place of work, profession, or other relevant information;

- b) Classifying as secret the procedural document or the document referred to in Sub-paragraph “a” of this paragraph, which makes it possible to recognize and identify a victim, a witness and jury;
- c) Using a pseudonym; d) Applying special security measures; e) Changing appearance; f) Temporary or permanent change of the place of residence.

Criminal Procedure Code of Georgia – Article 68.

Article 68. The Special Protective Measures

Special Protective Measures for the Participants in a Criminal Proceeding are the following:

- a) Changing or removing from a public registry or other registry of public character the data that makes it possible to recognize and identify a victim or a witness, namely, the first name, last name, address, place of work, profession, or other relevant information;
- b) Classifying as secret the procedural document or the document referred to in Sub-paragraph “a” of this paragraph, which makes it possible to recognize and identify a victim, a witness and jury;
- c) Using a pseudonym;
- d) Applying special security measures;
- e) Changing appearance;
- f) Temporary or permanent change of the place of residence

(b) Observations on the implementation of the article

The State party under review appears to be in compliance with the Convention. It was noted that witness relocation is possible, including for foreign witnesses.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

The measures described in the paragraph 2 (b) of Article 32 of the UNCAC are covered by the paragraph “d” of Article 68 (The Special Protective Measures) of the Criminal Procedure Code of Georgia, according to which the types of Special Protective Measures for the Participants in a Criminal Proceeding can be 'special security measures'.

See the information provided with regard to paragraph 2 (a) of Article 32.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

In 2010 a new program of protection for criminal case participants (including witnesses, victims and etc.) was elaborated with the participation of UNODC experts and with the support of US Department of Justice in compliance with the provisions of new Criminal Procedural Code of Georgia. Experience of partner countries greatly contributed to the elaboration of this program, adoption of which is pending for 2012. The program itself will be classified.

As regards conclusion of agreements with other states on the issues of witness protection, Georgia has not entered into any such agreement yet as the program itself is not adopted. Nonetheless, Ministry of Internal Affairs of Georgia effectively works on the drafting of the agreement for the purpose of initiation of the negotiation with partner countries.

In addition, it is noteworthy that entering into such an agreement is a bilateral process and depends upon the will of both States. Georgia is willing to continue an effective work in that direction.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided. Please see above information regarding the witness protection programme.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter IX (The Special Protective Measures for the Participants in a Criminal Proceeding) of the Criminal Procedure Code of Georgia regulates the issue of participation in general.

Therefore, insofar as the victims are the witnesses at the same time, the provisions of this Chapter cover all participants in a criminal proceeding, including witnesses as well as victims.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

According to the legislation of Georgia the views and concerns of victims are presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

In that respect, according to Article 57 (Rights of a Victim) of the Criminal Procedure Code of Georgia a victim shall have the right:

- a) to know the essence of the charge brought against the defendant;
- b) to testify regarding the damages incurred during the substantial hearing of a case and at the sentencing hearing;
- c) to obtain copies of the court order or any other final court decision on termination of criminal prosecution and/or investigation, decision or other concluding decisions of court free of charge;
- d) to receive compensation for the costs incurred by him/her for participation in the proceedings; e) to recover his/her property temporarily confiscated for the purposes of investigation and a trial;
- f) to request from the prosecutor the application of special measures of protection if his/her life, health and/or property, as well as the life, health and/or property of his/her close relative or member of his/her family are in danger;
- g) to receive explanation of his/her rights and duties; h) to enjoy other rights set forth by the Criminal Procedure Code of Georgia.

Criminal Procedure Code of Georgia – Article 57.

Article 57. Rights of a victim

A victim shall have the right:

- a) to know the essence of the charge brought against the defendant;
- b) to testify regarding the damages incurred during the substantial hearing of a case and at the sentencing hearing;
- c) to obtain copies of the court order or any other final court decision on termination of criminal prosecution and/or investigation, decision or other concluding decisions of court free of charge;
- d) to receive compensation for the costs incurred by him/her for participation in the proceedings;
- e) to recover his/her property temporarily confiscated for the purposes of investigation and a trial;
- f) to request from the prosecutor the application of special measures of protection if his/her life, health and/or property, as well as the life, health and/or property of his/her close relative or member of his/her family are in danger;
- g) to receive explanation of his/her rights and duties;
- h) to enjoy other rights set forth by the Criminal Procedure Code of Georgia.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided. It was notable that the Criminal Procedure Code specifically enumerated the list of victims' rights.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The legislation of Georgia provides appropriate measures in order to ensure protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences, including corruption offences.

In 2009, the amendments were introduced to the Law on Conflicts of Interests and Corruption in Public Service in that regard. The Chapter V¹ (Protection of Whistle-blowers) introduces provisions on protection of whistle-blowers, prohibiting, inter alia, discriminating, intimidating or exerting pressure on whistle-blowers, initiating any criminal, civil, administrative or disciplinary proceeding against whistle-blowers; or dismissing or temporarily discharging whistle-blowers from their official position.

(b) Observations on the implementation of the article

The State party under review appears to be in full compliance with the Convention. In terms of practice, the IG is the body to which reports should be directed. The IG will carry out the investigation of allegations of corruption. Also, it provides for protection of the whistleblower. The IG also handles complaints for retaliation, etc. Confidentiality is ensured. Undercover techniques are also used. The IG addresses both internal and external complaints of corruption.

IG Offices are only in the MoJ and MIA. Other ministries have Audit Departments to cover the same type of conduct, but do not investigate. They refer possible criminal cases to prosecution service.

It was not that, at this time, there is no legislative whistleblower protection for reports of corruption in the private sector.

The text of the existing whistleblower protection is set forth below:

LAW OF GEORGIA ON THE CONFLICT OF INTEREST AND CORRUPTION IN PUBLIC SERVICE

Chapter V¹
(27.03.2009 N1157 shall enter into force from 1 June 2009)

Protection of Whistleblowers

Article 20¹

The terms used in this chapter shall have the following meanings:

a) Whistle blowing- To inform the public institution which examines the complaints against the public official (exposed) about the infractions of the law or the rules of due conduct of the public employees, which caused harm to public interests or reputation of public institution.

b) Institution which examines the complaints- Structural subdivision of the corresponding public institution, which performs the control, audit and work inspection.

Article 20²

1. This law shall afford the protection of whistle blowing, which:

a) in essence comes to conformity with reality and is confirmed by the shown evidence;

b) is done honestly and with believing that the whistle blowing will contribute to the and suppression of the infractions of law and the rules of due conduct of public officials, protect public and private interests and the protected value overweighs the harm caused by the whistle blowing.

2. Whistle blowing is not protected under this law, if:

a) The information received from a whistleblower is wrong in essence, which was known or should have been known by the whistleblower;

b) A whistle blower acts for his personal profit unless there exist the case where granting special reward is established by the law.

Article 20³

1. It is prohibited to intimidate, oppress or threat a whistle blower in discriminatory ways.

2. The whistleblower may not be subject to disciplinary or administrative procedures, civil action or prosecution or hold responsible otherwise for the circumstances related to the acts of the whistle blowing, until the end of the investigation. It is also forbidden to worsen the conditions of the agreements, license and grant and to release or temporarily release from the job, derangement of legal relationships, until proving the untruthfulness of the information provided by whistle blowing.

3. The disciplinary, civil, administrative and criminal procedures shall be suspended if such takes place unless there exist one of the following circumstances:

a) Disciplinary, civil, administrative and criminal procedures are not related to the conditions of whistle blowing of the exposed person.

b) It is necessary in the democratic society for the interests of justice, protection of the state, commercial and personal information.

c) The purpose of enjoying the protection guaranteed by this article is aimed to infringe the state sovereignty and public order, coup d'état, to kindle ethnical and religious discord.

4. During disciplinary, civil, administrative and criminal procedures against a whistleblower, public institution must prove, that:

a) The fact of whistle blowing is not a reason for disciplinary, civil, administrative and criminal procedures.

b) There are bases foreseen in the legislation to impose disciplinary responsibility and the initiation of the procedures under the same conditions would be fair for a third individual.

Article 20⁴

In the extraordinary circumstances, during any stage of the proceedings, when the plaintiff's or witness' or their close relative's life or health is under danger because of their participation in the case, the plaintiff or the witness may address to the Criminal Court according to the special measures of the protection, which are set forth in the Georgian Code of Criminal Procedures.

Article 20⁵

The complaint about whistle-blowing should not be examined by the person, who has been exposed or who personally, directly or indirectly is interested in the outcome of the case, or if there exists substantial objective circumstances which question the impartiality of this person.

Article 20⁶

1. Exposed person

(a) Should be given information about the complaint against him and the evidences of the case.

(b) Should be able to respond to the complaint concerning his exposé before the final judgment is rendered.

(c) His position should be reflected in the judgment of the organ, which examines the case.

2. An exposed person may not be given information about the identity of the whistleblower and the witnesses thereto, for the purpose of the protection of the rights and legal interests of these persons.

Article 20⁷

1. The organ competent thereto should examine the case within the shortest reasonable terms, as established under the legislation and its statute. In case of absence of such rules the case should be examined according to formal administrative procedure provided in Georgian General Administrative Code.

2. If the organ, which examined the case, decides that the violation committed by the exposed person can serve as the basis for the imposition of civil, administrative or criminal responsibility, it should refer the case to the competent authorities.

Article 20⁸

1. If the complaint concerns the exposure of the official of structural sub-division responsible for the internal control, audit or inspection in the state institution, the whistleblower may take the complaint directly to the head of this public institution.

2. If the complaint is addressed against the head of the state institution, the whistleblower may present the complaint before the superiors of the head of this state institution.

Article 20⁹

1. The organ, which examines the complaint, shall issue judgment in the written form. The judgment should contain the following:

(a) The description of factual evidences of the complaint;

(b) The list and description of explored evidences;

(c) The substantiation of the judgment.

2. The judgment about the complaint is an administrative act. The entry into force of the administrative act, as well as the execution and its appeal is regulated under Georgian Administrative Legislation.

3. The judgment shall not be based on the circumstances, facts, evidence and arguments, which were not judged substantially during the examination of the complaint.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

Pursuant to Article 54 (Unlawful and Immoral Transactions) of the Civil Code of Georgia a transaction, that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void. Therefore, under this formulation, corruption is considered as a relevant factor in legal proceedings to annul or rescind a contract.

In that regard Article 163 (Duty of Non-entitled Possessor in Good Faith) of the Civil Code of Georgia foresees that a possessor in good faith who did not have the right to the possession initially or who lost this right is obligated to return the thing to the entitled person. Until the entitled person exercises this right, the fruit of the thing or of the right shall belong to the possessor.

In addition, the possessor in good faith may claim from the entitled person reimbursement for those improvements and expenses which the possessor incurred during possession of the thing in good faith, and which have not been compensated by the use of the thing or by the fruit derived from it. The value of fruit not derived due to the possessor's fault shall be deducted [from the amount that he may claim from the entitled person for compensation]. The same rule [i.e., the possessor's right to compensation] applies to such improvements that enhanced the value of the thing, provided the enhanced value still exists at the moment of the return of the thing. Under the same Article the possessor in good faith may refuse to return the thing until his claims are satisfied.

Civil Code of Georgia – Article 54, 163.

Civil Code of Georgia

Article 54. Unlawful and Immoral Transactions

A transaction, that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void.

Article 163. Duty of Non-entitled Possessor in Good Faith

1. A possessor in good faith who did not have the right to the possession initially or who lost this right is obligated to return the thing to the entitled person. Until the entitled person exercises this right, the fruit of the thing or of the right shall belong to the possessor. 2. The possessor in good faith may claim from the entitled person reimbursement for those improvements and expenses which the possessor incurred during possession of the thing in good faith, and which have not been compensated by the use of the thing or by the fruit derived from it. The value of fruit not derived due to the possessor's fault shall be deducted [from the amount that he may claim from the entitled person for compensation]. The same rule [i.e., the possessor's right to compensation] applies to such improvements that enhanced the value of the thing, provided the enhanced value still exists at the moment of the return of the thing. 3. The possessor in good faith may refuse to return the thing until his claims are satisfied

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided. Georgia reported that it was a general principle of civil law that unlawful grounds were sufficient to rescind a contract, which would include acts of corruption.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

The issue compensation for damages is regulated by the Civil Code and Civil Procedure Code of Georgia.

Under Article 992 (Compensation of Damages) of the Civil Code of Georgia a person who causes harm to another person by unlawful, intentional or negligent action shall be bound to compensate the latter for his harm.

Furthermore, in pursuant to Article 309¹⁶ of the Civil Procedure Code of Georgia a person or an entity who has suffered damages as a result of any crime (including corruption offences as well) or administrative violation, has a right to initiate the legal proceedings against those responsible for that damage in order to obtain compensation.

Civil Procedure Code of Georgia – Article 309¹⁶, Civil Code of Georgia - Article 992

Civil Procedure Code of Georgia - Article 309¹⁶

Complaint concerning recovery of damages as a result of any crime or administrative violation may be considered in accordance with the rules prescribed by the Chapter.

Civil Code of Georgia - Article 992. Concept

A person who causes harm to another person by unlawful, intentional or negligent action shall be bound to compensate the latter for his harm.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided. Georgia reported that general civil law covers compensation for unlawful acts. Lawsuits can be filed. Plea agreements in criminal case can include compensation to the victim.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such

body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

There are specialized investigative divisions for corruption cases within the Chief Prosecutor's Office of Georgia, Ministry of Internal Affairs of Georgia and Ministry of Finance of Georgia. These investigative divisions are:

Anticorruption Department of the Chief Prosecutor's Office of Georgia;
Department of Constitutional Security of the Ministry of Internal Affairs of Georgia;
Investigative Division of the Revenue Service of the Ministry of Finance of Georgia.

The mandate of the respective law-enforcement bodies include, but are not limited to:

receiving information on alleged corruption offences;
investigating corruption offences;
carrying out investigative measures in compliance with the Criminal Procedure Code of Georgia (access to financial information that depending on type of evidence may require the court order).

The Anticorruption Department of the Prosecutor's Office of Georgia supervises investigations of all corruption cases. Even if a corruption crime falls within the investigative jurisdiction of other Ministry, the Anticorruption Department will overall supervise the investigation and conduct prosecution. The Department has an exclusive jurisdiction to investigate corruption offences committed by public officials.

In addition to the aforementioned, anti-corruption and good governance institutions are:
Department of Constitutional Security of the Ministry of Internal Affairs of Georgia ; and Investigative Division of the Revenue Service of the Ministry of Finance of Georgia.

The Constitutional Security Department is a structural sub-unit of the Ministry of Internal Affairs of Georgia, whose one of the main functions is detection, prevention, suppression and investigation of corruption-related crimes committed within the whole territory of Georgia.

The Investigative Division of the Revenue Service is a structural sub-unit of the Ministry of Finance and its key function constitutes investigation of corruption cases.

Furthermore, Inspectorates General (IGs) of the Ministry of Justice and Ministry of Interior of Georgia and Internal Audit Departments of other Ministries -are internal control bodies of the above institutions. These institutions mainly carry out ex post inspection to verify legal compliance, detect fraud and corruption as well as unethical behaviour as described in Codes of Conducts. IGs of the ministries conduct inspections and administrative/disciplinary inquiries with detected allegations of criminal misconduct being referred to the law enforcement bodies. IGs of the Ministry of Justice and Ministry of Interior of Georgia additionally have the power of conducting criminal investigation. Administratively, IGs and Internal Audit Departments are subordinated directly to the relevant minister who appoints/dismisses the head of the unit and is also entitled to order termination of any inquiry/inspection carried out by the IG. IGs and Internal Audit Departments play vital role in ensuring compliance with legislation and uncovering corrupt acts.

The Investigative Organs stated above cooperate intensively, through exchange of information. Along with the overall coordination, there is a practice of creating ad hoc joint investigative teams of different law enforcement agencies based on respective provisions of criminal procedural legislation. In addition, several agencies developed a good practice of adopting cooperation memoranda between each other.

The Code of Criminal Procedure of Georgia strictly delineates the competences of law -enforcement agencies in relation to investigation of cases. Jurisdiction is separated in terms of types of offences; Though, Chief Prosecutor can reallocate a case if the interest of investigation so requires.

The investigative organs are the part of relevant Ministries and thus, belong to the executive branch of the government. Under Article 81 of Constitution of Georgia Ministries are created on the basis of legislation in order to ensure the state governance and state policy in particular field of state and public life. The similar provision is provided under Article 14 of the Law of Georgia on Structure, Authority and Activity of the Government. Paragraph 2 of the above article provides the list of all Ministries of Georgia created under this law.

The investigative organs are obliged to report to the authorities in respective Ministries in the process of investigation. At the same time it should be noted that under Georgian criminal procedural legislation the Prosecution Service of Georgia is the only institution in charge of all prosecutions. Thus, all investigations conducted by above-listed bodies are supervised by Prosecution Service.

Lastly, it is noteworthy to mention that the aforementioned bodies are independent in performing their functions and they are able to carry out their functions effectively and without any undue influence. The persons or staff of these bodies has the appropriate training and resources to carry out their tasks.

Criminal Procedure Code of Georgia – Article 218, Constitution of Georgia - Article 81

Criminal Procedure Code of Georgia

Article 218. Discharge of a defendant from liability or from punishment and review of a punishment of an imprisoned convict

1. In special cases, when as a result of cooperation of a defendant/convict with investigative agencies an identity of an official having committed a criminal offence or/and of a person having committed a grave or a particularly grave offence or if due to his/her direct support substantial conditions are created for detecting the crime, the main Prosecutor of Georgia has a right to file a motion before a Court about a discharge of a defendant from liability or punishment or about a review of the punishment of a convict.
2. The basis for a motion referred to in the first paragraph of this article shall be a plea bargain about special cooperation agreed between a defendant/convict and the Main Prosecutor of Georgia.
3. The Main Prosecutor of Georgia, while making a bargain about special cooperation, shall take into account public interest, the gravity of an offence committed by a defendant/convict and the degree of guilt, in case of a convict an unserved part of the sentence shall also be taken into consideration. Plea bargain shall be made only in case if the detection of a crime is directly conditioned by the above-mentioned cooperation and the public interest in detecting this crime is higher than the interest of bringing a person before the Court or imposing a punishment upon him/her.
4. A plea bargain about a special cooperation shall indicate that if a defendant/convict fails to cooperate with investigative agencies, the agreement shall be void, in accordance with its provisions.

5. A plea bargain about a special cooperation shall be signed by a defendant/convict, his/her defence counsel and the Main Prosecutor of Georgia.
6. In case of granting a motion about a full discharge of a defendant from a punishment the defendant shall be considered as previously convicted.
7. In case of granting a motion about a review of punishment of a convict, the Court shall take a relevant decision - about reducing a term of punishment of a convict or replacing a type of punishment or about a full discharge of a convict from punishment.
8. Striking an agreement as stipulated by this article with a defendant/convict shall be inadmissible in cases of criminal offences provided by the articles 144/1, 144/2, 144/3 of the Criminal Code of Georgia.

Constitution of Georgia

Article 81

1. The Parliament shall be entitled to declare non-confidence to the Government by the majority of the total number. Not less than one third of the total number of the members of the Parliament shall be entitled to raise a question of declaration of non-confidence. After the declaration of non-confidence to the Government the President of Georgia shall dismiss the Government or not approve the decision of the Parliament. In case the Parliament declares non-confidence to the Government again not earlier than 90 days and not later than 100 days, the President of Georgia shall dismiss the Government or dissolve the Parliament and schedule extraordinary elections. In case of circumstances provided for by subparagraphs "a"- "d" of Article 51¹ re-voting of non-confidence shall be held within 15 days from the end of these circumstances.
2. The Parliament shall be entitled to raise the question of declaration of unconditional non-confidence to the Government by a resolution. In case the Parliament declares non-confidence to the Government by the majority of three-fifth of the total number of the members of the Parliament not earlier than 15 days and not later than 20 days from the adoption of the resolution, the President shall dismiss the Government. In case the Parliament does not declare non-confidence to the Government, it shall be impermissible to put the question of non-confidence to the Government within next 6 months.
3. In case of dismissal of the Government in accordance with a procedure provided for by paragraph 2 of this Article the President of Georgia shall not be entitled to appoint the same person as a Prime Minister in the next composition of the Government or nominate the same candidate of the Prime Minister.
4. The Prime Minister shall be entitled to put the question of confidence of the Government on the draft laws on the State Budget, Tax Code and a procedure of the structure, authority and activity of the Government considering at the Parliament. The Parliament shall declare the confidence to the Government by the majority of the total number. In case the Parliament does not declare the confidence to the Government, the President of Georgia shall dismiss the Government or dissolve the Parliament within a week and schedule extraordinary elections.
5. Voting the declaration of confidence shall be held within 15 days from the putting of the question. Failure of voting during this term shall mean the declaration of confidence.
6. A relevant draft law shall be deemed adopted upon the declaration of confidence to the Government by the Parliament.
7. It shall be impermissible to put the question of dismissal of the President of Georgia in accordance with impeachment procedure during the procedures provided for by this Article. (6.02.2004.N3272)

(b) Observations on the implementation of the article

The regarding experts were satisfied with the answers provided. Regarding independence, the participation of NGOs is very important. In addition, monitoring mechanisms and checks on the various anti-corruption institutions are in place to ensure effective and fair operation. In general, training is requested by the various offices and assistance is made available, as needed. This is discussed through

the various coordination committees and the Council. Trainings are also conducted in furtherance of the anti-corruption action plan and the criminal justice reform action plan.

Georgia provided the following example of a cooperation memorandum:

model draft agreement

**AGREEMENT
BETWEEN THE GOVERNMENT OF GEORGIA AND THE GOVERNMENT OF _____
ON COOPERATION IN THE FIGHT AGAINST CRIME**

The Government of Georgia and the Government of _____, hereinafter referred to as the “Contracting Parties”,

Desiring to develop and strengthen the existing friendship and partnership relations between the two countries and particularly to take into consideration common will to strengthen the police cooperation between them,

Concerned by the increasing scale and trends of the crime, especially the forms of organized crime,

Being aware, that any form of crime endangers international peace, law and order, rule of law, security, stability and territorial integrity of their countries, impedes development of economy, establishment of investment environment, democratic values and justice,

Stemming from the desire to provide reliable protection from criminal offences against life, health, human rights and freedoms, interests of the society and the state,

Recognizing the importance of the international cooperation in the fight against crime,

Considering the basic principles of international law and the international legal instruments to which both countries are parties and which concern the scope of this Agreement,

Have agreed as follows:

**Article 1
Areas of cooperation**

(1) The Contracting Parties shall, in compliance with the national legislation in force in their States, cooperate through their competent authorities in the prevention, detection, investigation and suppression of criminal acts.

(2) The cooperation shall cover in particular the following areas:

a) crimes against life, health, human rights and freedoms,

- b) terrorism-related crimes,
- c) Illicit trafficking in and manufacture of narcotic drugs, psychotropic substances and precursors,
- d) Illicit trafficking and trading of firearms, ammunition, explosives, radioactive substances, biological and nuclear material,
- e) crimes committed in the field of protection of the cultural objects and heritage,
- f) trafficking in human beings,
- g) sexual crimes, including sexual abuse and exploitation of children,
- h) illegal trafficking in human organs and tissues,
- i) cybercrime,
- j) forgery, falsification or illicit production of money, securities, means of non-cash payment and official documents and their distribution,
- k) forging identity documents and distribution thereof,
- l) economic crimes and money laundering,
- m) corruption,
- n) crimes against property,
- o) crimes against intellectual property rights,
- p) smuggling of migrants and facilitation of their illegal stay,
- q) crimes against the environment.

(3) The Contracting Parties shall cooperate also in other areas related to fight against crime and maintenance of public order and security, if that agrees with their common interest.

(4) The co-operation pursuant to this Agreement shall not affect the legal assistance which lies within the competence of the judicial authorities.

Article 2

Forms of cooperation

(1) The competent authorities of the Contracting Parties shall cooperate in compliance with the national legislation in force in their States, including but not limited to:

- a) exchange of data and information related to the prevention, detection, investigation and suppression of crimes in the areas according to Article 1,
- b) mutual exchange of criminal intelligence information, in particular on the persons and groups participating in the commission of crimes according to this Agreement or on the persons suspected to participate therein; the offenders' connections, organisations and structures of organized groups; typical methods of individual offenders and groups; facts related to the time, location and modus operandi of crimes; the objects constituting

targets of crime; specific circumstances; the acts violated; on the measures taken to prevent and obstruct the commission of such crime,

- c) exchange of data and information on any fact regarding acquisition and registration of firearms by the citizens of the State of the other Contracting Party or by the stateless persons who have permanent residence on the territory of the State of the other Contracting Party in order to prevent the criminal offences referred to in the Article 1 (2) d) of this Agreement,
- d) cooperation in search for persons suspected of committing crimes or for persons evading criminal liability or service of sentence and missing persons,
- e) cooperation in search for stolen things and other objects related to crime, including the motor vehicles,
- f) mutual assistance in providing protection to a witness whose or his/her close person's life and health are in connection with his/her testimony or submission of evidence, exposed to a threat,
- g) assistance in investigations and in conducting operational-search activities with the application of special investigative techniques, including controlled delivery,
- h) exchange of experience regarding the application of the national legislation, the prevention of crime, special and new forms of committing crimes, as well as on the use of forensic methods, tools and special investigative techniques;
- i) upon request, the exchange of information or samples of the objects used to commit the crimes, or resulting from the criminal activity,
- j) exchange of experience in certain areas of fight against crime and the organization of joint meetings, workshops and seminars,
- k) cooperation in the field of training and improving the qualification of personnel and exchange of experts,
- l) exchange of analytical information regarding the causes, the state and the trends of crime, exchange of publications and research results, as well as exchange of legislation in areas of common interest enumerated in this Agreement,
- m) provision of police equipment.

(2) The Contracting Parties may cooperate also in other forms which correspond to the objectives of this Agreement.

(3) The information provided in accordance with this Article may not be made available to a third party without the consent of the Contracting Party which provided the information.

Article 3 **Competent Authorities**

(1) The competent authorities for the implementation of this Agreement shall be:

a) For Georgia:

- The Ministry of Internal Affairs of Georgia,
- The Prosecutor's Office of Georgia – Subordinate State Agency within the system of the Ministry of Justice of Georgia,
- The Ministry of Finance of Georgia.

b) For _____:

(2) With the objective of the implementation of this Agreement the competent authorities of the Contracting Parties shall establish direct contacts and may conclude additional implementing protocols on cooperation in specific areas of their activities.

(3) The Contracting Parties shall without delay after the entry into force of this Agreement notify each other of the telephone and fax numbers and contact addresses of the competent authorities and of any changes in them.

Article 4 **Fulfilment of requests**

(1) Information or assistance under this Agreement shall be provided upon a request.

(2) In urgent cases, the competent authorities of the Contracting Parties may communicate with each other verbally. Such communication shall be confirmed in writing without delay.

(3) The competent authorities of the Contracting Parties may provide each other the relevant information even spontaneously without a request, if such information might be useful for the competent authority of the other Contracting Party.

(4) The request for information shall include:

- a) name of the requesting competent authority,
- b) name of the requested competent authority,
- c) subject of the request,
- d) purpose of the request,
- e) any other information which may contribute to the fulfilment of the request.

(5) Requests for information or assistance shall be carried out by the competent authority of the requested Contracting Party in the shortest possible time. The requested competent authority may request additional information if necessary for performing the request.

(6) If the request may not be fulfilled in the given time, the requested competent authority shall inform the requesting competent authority thereof stating the reasons for the delay.

(7) If the request is not in the jurisdiction of the requested competent authority, it shall immediately submit the request to the relevant competent authority of its State and inform the requesting competent authority thereof.

Article 5

Liaison Officers

(1) The Contracting Party may second the liaison officer to the police authorities or other authorities responsible for prevention and fight against crime or to the diplomatic mission on the territory of the State of the other Contracting Party.

(2) The purpose of secondment of the liaison officer shall be the enhancement of the police co-operation between the Contracting Parties pursuant to this Agreement as well as the assistance at:

- a) exchange of information concerning prevention, detection, investigation and suppression of crime,
- b) processing of the requests of the criminal nature,
- c) providing of information necessary for the fulfilment of other tasks of competent authorities.

(3) The liaison officer shall perform the supporting and advisory task in relation to the competent authorities and he/she shall not be entitled to perform individually the actions in order to prevent and suppress the crime.

(4) Liaison officer shall perform his/her activities pursuant to the rules of the sending Contracting Party.

Article 6

Use and protection of personal data

The mutual protection of personal data exchanged between the competent authorities of the Contracting Parties shall be performed in compliance with the conditions defined by the competent authority of the sending Contracting Party, in compliance with the national legislation of the States of the Contracting Parties and their international obligations and on the basis of the following principles:

- a) the receiving Contracting Party may use personal data solely for the purpose and under the conditions as stipulated by the sending Contracting Party,
- b) the receiving Contracting Party shall, at the request of the sending Contracting Party, provide information on the use of the personal data transmitted, as well as on the results thus achieved,
- c) personal data may be transmitted only to the competent authorities; no data shall be made available to other authorities without previous written consent of the sending Contracting Party,

- d) the sending Contracting Party shall be responsible for accuracy of the personal data transmitted and shall also identify whether such transmission is necessary and by its volume and scope adequate to the purpose of their transmission; should inaccurate, incorrect, incomplete or outdated personal data transmission or transmission of data not related to the purpose of their processing that should not have been transmitted be subsequently ascertained, the receiving Contracting Party shall be immediately notified thereof; the receiving Contracting Party shall either correct the errors or destroy the data that should not have been transmitted,
- e) any person, whose personal data are to be or have been transmitted, shall be entitled to request provision of overall information on the data transmitted, on the purpose of their use envisaged and any third parties to which their personal data should be further disclosed, provided that this is admissible under the national legislation of the State of the sending Contracting Party, such information shall be provided without undue delay,
- f) any person, whose personal data are to be or have been transmitted, shall be entitled to request correction or deletion of the incorrect, incomplete and inaccurate personal data related to him/her which must be performed without undue delay; new facts must be demonstrated to sending Contracting Party from the side of the data subject,
- g) upon delivery of data, the sending Contracting Party shall notify the receiving Contracting Party of the timeframe for the destruction of the data in accordance with its national legislation; notwithstanding such time limit, any data relating to the data subject shall be destroyed if their retention becomes for the completion of original purpose of their processing unnecessary; the sending Contracting Party shall be notified of the destruction of the data transmitted and the reasons therefore; upon termination of this Agreement, all the data received under it shall be destroyed,
- h) either Contracting Party shall keep records of delivery, receipt and destruction of personal data,
- i) either Contracting Party shall protect the transmitted personal data against accidental or illegitimate destruction, loss, unauthorized access and handling, accidental or illegitimate alteration and publication.

Article 7

Refusal to fulfil requests

(1) The requested Contracting Party may totally or partly reject the fulfilment of request, if such fulfilment is likely to infringe the sovereignty, security, public order and national interests of its country, or if it is contrary to the national legislation of its State.

(2) If the fulfilment of request is totally or partly rejected, the requested Contracting Party shall timely communicate in writing the reasons of refusal to the requesting Contracting Party.

Article 8

Relation to other international agreements

This Agreement shall not affect the rights and obligations of the Contracting Parties, arising from other international agreements binding their States.

Article 9 Expenses

Each Contracting Party shall bear all of its own expenses related to the implementation of this Agreement, unless the Contracting Parties agree otherwise on a case-by-case basis.

Article 10 Languages

For the implementation of this Agreement, the Contracting Parties shall use English language. In case of using other languages the Contracting Parties shall provide translation into English language.

Article 11 Disputes Settlement

(1) Disputes concerning the interpretation and the implementation of this Agreement shall be settled through consultations between the competent authorities of the Contracting Parties.

(2) If in the course of the consultations according to paragraph 1 of this Article no agreement is reached, the matter shall be decided through negotiations via diplomatic channels.

Article 12 Amendments and supplements

This Agreement may be amended and supplemented in written form by mutual consent of the Contracting Parties. The amendments or supplements shall be carried out in the form of a separate document, which shall constitute the integral part of this Agreement. Such document shall enter into force in conformity with the procedure established by Paragraph 1 of the Article 13 of this Agreement.

Article 13 Final provisions

(1) This Agreement shall enter into force on the first day of the month following the date of receiving the last written notification by which the Contracting Parties mutually inform each other on accomplishing the internal legal procedures required for its entry into force.

(2) This Agreement shall be concluded for an indefinite period of time. Either Contracting Party may terminate this Agreement by a written notification to the other Contracting Party, through diplomatic channels. The Agreement shall cease to apply after 6 (six) months from the date of the receipt of the notification of the termination.

Done at _____ on _____ 2012, in two originals, each in Georgian,
_____ and English languages, all texts being equally authentic. In case of any divergence in
interpretation, the English text shall prevail.

**For the Government of
Georgia**

**For the Government of
_____**

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

The persons who participate or who have participated in the commission of an offence (including corruption offences) established in accordance with the Criminal Code of Georgia are encouraged to provide useful information and factual, specific assistance to competent authorities for investigative and evidentiary purposes that may as a result contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

See the information provided with regard to Paragraph 2 of Article 37 (question 147).

(b) Observations on the implementation of the article

Please see Paragraph 2.

(c) Successes and good practices

Since the Rose Revolution, one of the top priorities of police reform, along with legislative, structural and systematic reforms, was public diplomacy and access to public information.

Therefore, the Ministry of Internal Affairs of Georgia pays utmost attention to public awareness raising in the prevention and suppression of crimes, including corruption-related activities. Among the measures conducted in this regard, noteworthy to mention are:

- Declassification and easy accessibility of public information;
- Public accountability and cooperation with civil society.

With the aim of increasing MoIA public accountability and transparency, the MoIA official new web-site has been launched. Regularly updated information and hotline numbers, as well as photos of wanted persons with the indication of prize money and the guarantees of anonymity, are available on the new web site: www.police.ge (also in English version). Furthermore, broad public awareness campaigns (media campaign, round tables, internet forums, outdoor advertisement) are regularly conducted.

All these measures, as well as successfully implemented police reform, raised public trust towards police up to 84%. On a question: have you paid bribe for particular service/decision during last 12 months, 98% of interviewed persons answered that they have not given bribes.

These numbers can be deemed as indicators of the willingness of public to cooperate with law-enforcement authorities in the prevention and suppression of crimes, including corruption-related activities.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The issue of substantial cooperation in the investigation or prosecution of an offence (including corruption offences) is regulated by the Criminal Procedure Code of Georgia.

In particular, according to Article 218 (Discharge of a defendant from liability or from punishment and review of a punishment of an imprisoned convict) of the Criminal Procedure Code of Georgia in special cases, when as a result of cooperation of a defendant/convicted with investigative agencies, an identity of an official having committed a criminal offence or/and of a person having committed a serious or a especially serious offence is revealed; or if due to his/her direct support substantial conditions are created for detecting the crime, the Chief Prosecutor of Georgia has a right to file a motion before a Court about a discharge of a defendant from liability or punishment or about a review of the punishment of a convict.

Furthermore, the Chief Prosecutor of Georgia shall take into consideration the public interest, the gravity of act committed by the defendant/convicted and the quality of charges when approving the agreement on special cooperation. In case of an accused, not served term of punishment is also taken into the consideration. The agreement is approved only in case when the case is solved only based on above mentioned cooperation and the public interest of solving this crime prevails over the interest to punish, to apply restrictive measure to a defendant.

In addition, based on the Notes of Articles 221 (Commercial Bribery), 339 (Active Bribery) and Article 339¹ (Trading in influence) of the Criminal Code of Georgia, the perpetrator of the actions referred to in these Articles might be released from criminal liability if he/she voluntarily informed a government authority thereon.

Criminal Procedure Code of Georgia – Article 218

Criminal Procedure Code of Georgia - Article 218.

Discharge of a defendant from liability or from punishment and review of a punishment of an imprisoned convict

1. In special cases, when as a result of cooperation of a defendant/convict with investigative agencies an identity of an official having committed a criminal offence or/and of a person having committed a grave or a particularly grave offence or if due to his/her direct support substantial conditions are created for detecting the crime, the main Prosecutor of Georgia has a right to file a motion before a Court about a discharge of a defendant from liability or punishment or about a review of the punishment of a convict.

2. The basis for a motion referred to in the first paragraph of this article shall be a plea bargain about special cooperation agreed between a defendant/convict and the Main Prosecutor of Georgia.

3. The Main Prosecutor of Georgia, while making a bargain about special cooperation, shall take into account public interest, the gravity of an offence committed by a defendant/convict and the degree of guilt, in case of a convict an unserved part of the sentence shall also be taken into consideration. Plea bargain shall be made only in case if the detection of a crime is directly conditioned by the above-mentioned cooperation and the public interest in detecting this crime is higher than the interest of bringing a person before the Court or imposing a punishment upon him/her.

4. A plea bargain about a special cooperation shall indicate that if a defendant/convict fails to cooperate with investigative agencies, the agreement shall be void, in accordance with its provisions.

5. A plea bargain about a special cooperation shall be signed by a defendant/convict, his/her defence counsel and the Main Prosecutor of Georgia.

6. In case of granting a motion about a full discharge of a defendant from a punishment the defendant shall be considered as previously convicted.

7. In case of granting a motion about a review of punishment of a convict, the Court shall take a relevant decision - about reducing a term of punishment of a convict or replacing a type of punishment or about a full discharge of a convict from punishment.

8. Striking an agreement as stipulated by this article with a defendant/convict shall be inadmissible in cases of criminal offences provided by the articles 144/1, 144/2, 144/3 of the Criminal Code of Georgia.

(b) Observations on the implementation of the article

The regulation appears to be in full compliance with the paragraph. It was noted that for this process, the person cannot be released from liability simply for reporting. The allegations are investigated further to ensure that they can corroborate the action alleged. In addition, the person must testify in court before being released from liability.

Persons who participate in criminal activity are encouraged to provide useful information and assistance to law enforcement for investigative and evidentiary purposes. Georgia permits release from criminal liability in cases where active bribery of public officials, trading in influence or commercial bribery has been reported. This applies to the bribe-giver, but not to the bribe-taker.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

See the information provided with regard to Paragraph 2 of Article 37 (question 147).

(b) Observations on the implementation of the article

Please see comment on Paragraph 2.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

In Georgia witness protection measures are being implemented since 2006. In 2011 a new program of protection for criminal case participants (including witnesses, victims and etc.) was elaborated with the participation of UNODC experts and with the support of US Department of Justice in compliance with the provisions of new Criminal Procedural Code of Georgia. In the same year, National Anti-Corruption Strategy of Georgia and its action plan were elaborated and approved by decree of the President of Georgia, which envisage the necessity of improving witness protection system through analysis of international experience and conduction of trainings for respective law enforcement officers.

According to new Criminal Procedural Code of Georgia, rendering protection for participants of criminal proceeding is necessary in specific cases. The decision on placing a participant of criminal proceeding in witness protection program is rendered by prosecutor upon consent of the Chief Prosecutor of Georgia.

In the years of 2010 and 2011 a number of trainings, workshops and seminars on witness protection issues were organized and conducted with the aid of international organizations and partner countries.

In 23-26 August 2010 a workshop was held between the representatives of Special Operative Department, Legal Unit of the Ministry of Internal Affairs, the Ministry of Justice, the Prosecutor's Office and American expert in witness protection issues with the aid the US embassy to Georgia, Department of Justice Project. During four-day workshop American expert gave to the participants the detailed information on legislation, international experience and best practice in the field of witness protection, and provided respective materials. A future plan (preparation of witness protection program, study visits and relevant trainings) was elaborated together with the representative from the USA.

In November 2010, on the basis of received materials and recommendations, initial draft of witness protection program was elaborated by the Ministry of Internal Affairs, which was communicated to the Ministry of Justice for review. In November-December 2010 several workshops were held between the authorities in order to revise the draft.

In 21-27 November 2010 a study visit was conducted in the Republic of Poland. One of the issues of this study visit was sharing experience on witness protection system.

In January 24-28 2011 with the aim of sharing experience and best practice, the representatives of the Ministry of Internal Affairs, the Ministry of Justice and the Chief Prosecutor's Office paid their official visit to Rome. The members of the delegation got acquainted with the best methods of witness protection and fight against organized crime. The mentioned visit was organized with the support of the US embassy to Georgia, Department of Justice Project.

Trainings in theory of witness protection issues for officers of Special Operative Department of the Ministry of Internal Affairs of Georgia started from May 2011. Tactical trainings were conducted in August 2011 within the project of US Department of Justice.

(b) Observations on the implementation of the article

The reviewing experts noted that the State party under review is committed to suit those requirements of witness protection.

Cooperating offenders are considered to be witnesses for protection purposes. After meeting with investigators, and providing and signing an official statement, then protection measures begin.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

In case of necessity Georgia will consider entering into agreements or arrangements in accordance with its legislation, concerning the potential provision by other State Party of the treatment set forth in paragraphs 2 and 3 of Article 37 of the UNCAC.

(b) Observations on the implementation of the article

The State party under review expressed the willingness to entering into agreements or arrangements referred to in the paragraph.

Article 38 Cooperation between national authorities

Subparagraph (a) and (b)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

The Ministry of Internal Affairs has concluded memorandum of understanding with other state agencies among which worth mentioning is the memorandum of understanding between the Ministry and Financial Monitoring Service of Georgia (signed on 30 June, 2008) on the issues of money laundering which among others includes the cooperation in fight against corruption related crimes.

In 2008 Interagency Coordination Council on the Fight against Corruption was established by decree of the President of Georgia. The Council consists of the representatives of those governmental agencies, which realize fight against corruption.

The basic functions of the Council are:

- to determine a general policy of the fight against corruption;
- to elaborate and update the National Anti-Corruption Strategy Action Plan and exercise monitoring on its implementation;
- to consider recommendations of relevant international organizations in the process of elaboration and implementation of the National Anti-Corruption Strategy Action Plan;
- to coordinate interagency activities in the implementation of the National Anti-Corruption Strategy and its action plan;
- to ensure the implementation of the recommendations made by international organizations. The Council is authorized:
- to request the relevant information from state agencies and institutions;
- to make proposals and recommendations in order to update and improve the National Anti-Corruption Strategy and its action plan;
- to request the information from state agencies and institutions on the implementation of the National Anti-Corruption Strategy Action Plan and recommendations of international organizations.

(b) Observations on the implementation of the article

The initiations and mechanisms introduced by the State party under review appear to be in compliance with the provisions formulated in the Convention.

The investigative bodies cooperate through a regular exchange of information, including through the Anti-Corruption Interagency Coordination Council described in section 1.2 and the creation of ad hoc joint investigative teams. In addition, several agencies have adopted memoranda of cooperation between them. Law enforcement cooperation was significantly enhanced by the launch, in 2011, of the Integrated Criminal Case Management System, which is an electronic platform maintained by, and shared among, law enforcement agencies and prosecutors.

Georgia reported that training is provided for public servants on an annual basis in public agencies. In addition, significant legislative amendments are followed up by additional specialized training.

It is a crime not to report a crime, in general, if the person has reason to believe that the crimes listed in the Convention have been committed or attempted. This obligation covers serious or very serious crimes, all of which cover corruption cases.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Government of Georgia encourages cooperation between national investigating and prosecuting authorities and entities of the private sector.

It is noteworthy, that in order to maintain, strengthen and enhance successful results as well as to create a mechanism based on best international practices, new National Anti-corruption Strategy (in 2005 was adopted the first Strategy) policy document outlining priority areas in fight against corruption was adopted in 2010. Adoption of strategy was soon followed by new Anti-Corruption Action Plan. The comprehensive Action Plan of the Government of Georgia tackles every aspect of prevention of corruption by identifying corruption sensitive areas and proposing specific targeted activities within the framework of the different objectives.

In that regard, the entities of private sector are encouraged to participate in the drafting as well as implementation of the aforementioned Strategy and Action Plan.

In respect of the cooperation on the issues of reporting, there are a number of cases where the representatives of the private sector reported to the Prosecutor's Office of Georgia concerning the commission of corruption offences.

(b) Observations on the implementation of the article

Georgia reported that there are no legal or financial incentives for the private sector to detect and report cases of corruption. In general, Georgia's approach focuses more on allowing the private sector space to encourage investment and development, and at the same time not discouraging the private sector from reporting cases of corruption when they occur.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The nationals as well as other persons with a habitual residence in the territory of Georgia are encouraged to report to Georgian investigating and prosecuting authorities the commission of corruption offences. See the information provided with regard Article 37 (questions 146 - 150).

(b) Observations on the implementation of the article

The State party under review has taken adequate legislative measures in order to implement the article. Georgia reported that statistics on complaints made through hotlines are not available due to the confidentiality of the information. There are examples of MOUs among the various audit agencies, public sector and the prosecutor's service.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

The legislation of Georgia provides mechanisms for the purpose of to overcome obstacles that may arise out of the application of bank secrecy laws in the case of domestic criminal investigations of corruption offences.

Such a mechanism is determined by the Criminal Procedure Code of Georgia, which as an Investigative Action foresees Search and Seizure.

According to Article 119 (the Purpose and Grounds for Search and Seizure) of the Criminal Procedure Code of Georgia if there is a probable cause, a search and seizure shall aim at uncovering and seizure of any object, document, substance, or other item that contains information related to the case.

Thus, neither commercial nor professional secrecy are barriers to tracing and identification as commercial secrecy is lifted for purposes of the provisions on search and seizure and other provisions relevant to identifying and tracing.

Criminal Procedure Code of Georgia – Article 19

Criminal Procedure Code of Georgia - Article 119. The Purpose and Grounds for Search and Seizure

1. If there is a probable cause, a search and seizure shall aim at uncovering and seizure of any object, document, substance, or other item that contains information related to the case.

2. It is also permissible to conduct a search for a fugitive and/or for recovery of a corpse.

3. An object, document, or other item including information relevant to the case may be seized if there is a probable cause that the object, document, or other item is kept in a certain place, with a certain person, and if it is not necessary to search for them.

4. It shall be possible to conduct a search for a seizure of an object, document, or other item including information relevant to a certain case, if there is a probable cause, that it is kept in a certain place, with a certain person, and if search is necessary for discovering it.

(b) Observations on the implementation of the article

Georgia reported that the prosecutor can address a bank for records at any time during the investigation, through the court. In the case of urgency, the prosecutor can proceed on their own, in line with the proceeds described in previous sections. In either case, the bank is not permitted to claim bank secrecy to refuse a court order or a prosecutor's request. Professional

secrecy in Georgian legislation refers only to banks, and not to doctors, attorneys or religious figures.

In addition, Georgia provided the following supplemental information on this article:

The basis for seizing the financial information and documents or any other information held or maintained by financial institutions is provided by article 120 of the Criminal Procedure Code of Georgia. Please see the extract of the above-mentioned article below:

Article 120. The Rule for Search and Seizure

1. On the basis of a court order or in case of urgency – on the basis of ruling – authorizing search or seizure, an investigator shall have the right to enter storage, dwelling, or other ownership for the discovery and seizure of an object, document, or other item containing relevant information for the case.

2. Prior to a search or a seizure the investigator shall be obliged to present a court order or in case of urgency – a ruling, to a person subject to search and seizure. The presentation of the order (ruling) shall be confirmed by the signature of the person.

3. While the search/seizure is being conducted, an investigator shall have the right to restrict the person(s) at the place of search/seizure from leaving and from communicating with one another or with other persons. This shall be reflected in the relevant record.

4. Upon presenting a court order, in case of urgency – ruling, the investigator shall offer the person subject to search or seizure to voluntarily turn over the object, document, or other item containing relevant information. If the item to be seized is voluntarily turned over, it shall be noted in the record; in case of refusal to turn over the requested item voluntarily or in case of its partial disclosure the seizure by coercion shall take place.

5. During the search the object, document, substance, or other item containing information, which is indicated in the court order or ruling shall be searched for and seized. Any other object containing information that might have an evidentiary value on the concerned case or that might clearly indicate on other crime, as well as the object, document, substance and/or other item removed from the circulation may also be seized.

6. Items containing information, objects, documents, substances, or other relevant items discovered during the search or seizure shall be presented to the persons participating in the investigative action if possible prior to the seizure. Upon the presentation, they shall be seized, described in detail, sealed, and packaged, if possible. Apart from the seal, the packaged items shall reflect the date and signatures of the persons participating in the investigative action.

7. During the search and seizure the investigator shall have the right to open a closed storage or premise if the person to be searched refuses to do so voluntarily.

8. If there is a probable cause that the person present at the place of search or seizure has hidden the object, document, substance, or other item to be seized, personal search of such person shall be allowed. Such case shall be regarded as urgent necessity and, shall be conducted without a court order or a investigator's ruling. The legitimacy of search and/or seizure shall be reviewed by the court in accordance with the rules established by this Code.

9. Search or seizure in the building of a legal entity or an administrative body shall take place in the presence of the head or a representative of that entity or the body.

As it is visible from the above-mentioned extract, the scope of Article 120 of the CPCG is broad. Namely, it extends to any ownership, natural and legal person, which respectively include banks.

Non-compliance with the court order on search and seizure entails criminal responsibility under Article 381 of the Criminal Code of Georgia (Non-compliance with a Court's sentence or other decision or interference in its execution).

In case of refusal to produce documents based on the investigators' ruling or court order on search and seizure, these documents shall be seized forcibly pursuant to the paragraph 4 of Article 120 of the CPCG.

In practice the law enforcement bodies of Georgia frequently request and seize financial information and documents from banks using the above-mentioned mechanism of seizure.

Please see below statistics on seizure of documents from 10 Georgian banks in 2011.

2011				
N N	Banks	Number of Court Orders and investigator's rulings on seizure of documents and information submitted to banks	Number of legal persons concerning which seizure of documents and information were requested from banks	Number of natural persons concerning which seizure of documents and information were requested from banks
1	<u>JSC "Bank of Georgia"</u>	133	351	400
2	<u>JSC "TBC Bank"</u>	229	446	706
3	<u>JSC Bank "Republic"</u>	262	223	654
4	<u>JSC "VTB Bank – (Georgia)"</u>	134	435	673
5	<u>JSC "Procredit Bank"</u>	188	214	595
6	<u>JSC "Basisbank"</u>	Above 100	Above 800–legal and natural persons	–
7	<u>JSC "BTA Bank"</u>	118	–	–
8	<u>JSC "Liberty Bank" "R.G.B"</u>	218	152	319
9	<u>JSC "PrivatBank"</u>	208	346	493
10	<u>JSC "KOR Standard Bank"</u>	147	68	560

Note: all the above-mentioned court orders and investigator's rulings have been executed.

In the light of the foregoing, as it is evident from the provisions of the law and well established practice on this matter, financial secrecy is lifted based on the investigators ruling or court order on search and seizure.

Extract from the criminal code of Georgia

Article 381. Non-compliance with a Court's sentence or other decision or interference in its execution (22.06.2007 N5035)

1. Non-compliance with a Court's sentence or other decision entered into force or interference in its execution, - shall be punished by a fine or socially useful work for a term from one hundred and eighty to two hundred and forty hours or imprisonment for a term of up to two years.

2. The same offence committed by a representative of state authorities or a civil servant of central or local government,

- shall be punished by a fine or socially useful work for a term from two hundred and forty to three hundred and sixty hours or imprisonment for a term from two to four years, with deprivation of the right to hold office or pursue an activity for a term of up to three years.

Note: A crime against judicial authority provided by this section of the Code shall also mean crimes against the International Criminal Court.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Article 53 (General Principles of Sentencing) of the Criminal Code of Georgia envisages that when awarding a sentence, the court shall take into consideration the mitigating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, illegal will demonstrated in the act, character and extent of breach of obligations, manner of implementing the act, method employed and illegal consequence, past life of the offender, his/her personal and economic conditions, behaviour after the act, especially willingness to compensate damages, reconcile with the victim.

Thus, while awarding a sentence, any previous conviction in another State of an alleged offender will be taken into consideration.

Criminal Code of Georgia - Article 53 (General Principles of Sentencing)

Criminal Code of Georgia - Article 53. General Principles of Sentencing

1. The court shall award a fair sentence against a criminal within the bounds prescribed under the relevant article of the Special Part of this Code and in consideration of the provisions of the General Part of the same Code. A more severe type of sentence may be awarded only in case the less severe type of sentence fails to insure the fulfilment of the purpose of the sentence.

2. A more severe sentence than the one prescribed under the relevant article of the Special Part of this Code may be awarded in accordance with the accumulated crimes and accumulated sentences as provided by Article 59 and

60 of the same Code. The basis for awarding a more lenient sentence than the one provided under the relevant article of the Special Part is determined by Article 55 of this Code.

3. When awarding a sentence, the court shall take into consideration the extenuating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, illegal will demonstrated in the act, character and extent of breach of obligations, manner of implementing the act, method employed and illegal consequence, past life of the criminal, his/her personal and economic conditions, behaviour after the act, especially willingness to effect restitution, reconcile with the victim.

4. If the article or part of the article of the Special Part of this Code provides for the extenuating and aggravating circumstances as *Corpus Delicti*, the same circumstance shall not be taken into consideration when awarding a sentence.

(b) Observations on the implementation of the article

The article is non-mandatory provision. International criminal convictions can be considered in sentencing. From a practical standpoint, the prosecutor's office will endeavor to obtain this information using mechanisms to contact international law enforcement and obtain information about criminal history. Such convictions can be considered so long as the crimes committed in other countries would be crimes in Georgia.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

The legislation of Georgia establishes jurisdiction over all offences prescribed by the Criminal Code of Georgia. Article 4 (Applicability of Criminal Law toward Crime Committed on the Territory of Georgia) of the Criminal Code of Georgia foresees the application of criminal legislation towards crimes committed within the territory of Georgia and states (territoriality principle):

The person who has committed a crime on the territory of Georgia shall bear criminal liability as provided by the Criminal Code of Georgia.

Furthermore, the crime shall be deemed committed 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.

Criminal Code of Georgia. Article 4 (Applicability of Criminal Law toward Crime Committed on the Territory of Georgia)

Article 4. Applicability of Criminal Code towards crime committed on the territory of Georgia

1. The one who has committed a crime on the territory of Georgia shall be subject to the criminal responsibility as provided by the present Code.

2. The crime shall be considered as committed 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 crime committed on the continental shelf of Georgia and in the Exclusive Economic Zone of Georgia.
3. The one who has committed a crime on or against the vessel authorized to use the national flag or identification mark of Georgia, shall be subject to the criminal responsibility under this Code unless otherwise provided by the international treaty of Georgia.
4. If the diplomatic representative of a foreign State, as well as the person enjoying diplomatic immunity has committed a crime on the territory of Georgia, the issue of their criminal responsibility will be determined in accordance with rules of international law.

(b) Observations on the implementation of the article

The State party under review has met the requirements postulated in the subparagraph.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 4 (Applicability of Criminal Law toward Crime Committed on the Territory of Georgia) of the Criminal Code of Georgia the person who has committed a crime on or against the vessel authorized to use the national flag or identification mark of Georgia, shall bear criminal liability under this Code unless otherwise prescribed by international treaty of Georgia.

(b) Observations on the implementation of the article

The provision in the subparagraph is mandatory. The State party under review appear to be in full compliance with the subparagraph. The term “vessel” in Georgian legislation is used to cover ships and planes as well as other types of vessel.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

Despite the fact that the Criminal Code of Georgia explicitly does not establish its jurisdiction over the crime committed against its national, Article 5 of the Criminal Code of Georgia (Criminal Liability for Crime Perpetrated Abroad) covers the circumstances when a crime is committed against the interests of Georgia (this issue will be discussed in more details in the next questions).

In that regard, pursuant to Article 13 of the Constitution of Georgia, Georgia shall protect its citizen regardless of his/her location. Therefore, to protect its citizens constitutes a legal obligation and the interest of a State and accordingly, any crime committed against the citizens of Georgia will be considered as a crime committed against the interests of Georgia.

Criminal Code of Georgia – Article 5 (Criminal Liability for Crime Perpetrated Abroad) Constitution of Georgia - Article 13

Article 5. Criminal liability for crime committed abroad

1. The citizen of Georgia, as well as the stateless person permanently residing in Georgia who has committed the act prescribed by this Code, which is regarded as a crime under the legislation of State in which it was committed, shall be subject to the criminal responsibility under this Code.
2. The citizen of Georgia, as well as the stateless person permanently residing in Georgia who on the territory of a foreign State has committed the act prescribed by this Code which is not considered as a crime under the legislation of State in which it was committed, shall be subject to the criminal responsibility under this Code, if it constitutes a serious or especially serious crime directed against the interests of Georgia and/or if the criminal responsibility for this crime is provided by the international treaty of Georgia.
3. The citizen of foreign State, as well as the stateless person not permanently residing in Georgia who on the territory of a foreign State has committed the act provided by this Code shall be subject to the criminal responsibility under this Code, if it constitutes a serious or especially serious crime directed against the interests of Georgia and/or if the criminal liability for this crime is provided by the international treaty of Georgia.
4. The citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed the act foreseen by Articles 221 (Commercial Bribery), 338 (Passive Bribery), 339 (Active Bribery) or 339¹ (Trading in influence) of the Criminal Code of Georgia in another State, and such an act is not regarded as crime under the legislation of the State in which it was committed, shall bear criminal liability under the Criminal Code of Georgia.
5. The citizen of a foreign State as well as the stateless person not permanently residing in Georgia who exercises public authority on behalf of Georgia has committed the crime foreseen by Articles 221 (Commercial Bribery), 338 (Passive Bribery), 339 (Active Bribery) or 339¹ (Trading in influence) of the Criminal Code of Georgia in another State, shall bear criminal liability under the Criminal Code of Georgia.

Constitution of Georgia - Article 13

1. Georgia shall protect its citizen regardless of his/her whereabouts.
2. No one shall be deprived of his/her citizenship.
3. The expulsion of a citizen of Georgia from Georgia shall be impermissible.
4. The extradition/transfer of a citizen of Georgia to the foreign state shall be impermissible, except for the cases prescribed by international treaty. A decision on extradition/transfer may be appealed in a court.

(b) Observations on the implementation of the article

According to the explanation provided in the submission by the State party under review, the Georgian legislation appears to be in compliance with the provision formulated in the subparagraph.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

Article 5 of the Criminal Code of Georgia (Criminal Liability for Crime Perpetrated Abroad) foresees the nationality principle of jurisdiction and establishes criminal liability for crimes committed abroad by the nationals of Georgia and states:

The citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed the act under this Code which is regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under the Criminal Code of Georgia.

In addition, the citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed the act under the Criminal Code of Georgia which is not regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under the Criminal Code of Georgia if it is a serious or especially serious offense directed against the interests of Georgia and/or if the criminal liability for this offense is provided by the international treaty of Georgia.

However, as regards the corruption offences, in particular, with regard to Articles 221 (Commercial Bribery), 338 (Passive Bribery), 339 (Active Bribery) or 339¹ (Trading in influence) of the Criminal Code of Georgia, different (special) jurisdictional regime is established.

Please see the information provided with regard to Paragraph 6 of Article 42.

(b) Observations on the implementation of the article

The reviewing experts had no additional comments to this article. Georgia reported to illustrative cases for this provision exist at this time.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

Please see the answers provide with regard to Subparagraph 1 (a) to 2 (b) of article 42.

(b) Observations on the implementation of the article

Georgia reported that the jurisdictional elements in the money laundering statute are contained in Articles 4 and 5 of the Criminal Code.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Article 5 of the Criminal Code of Georgia (Criminal Liability for Crime Perpetrated Abroad) covers the circumstances when a crime is committed against the interests of Georgia.

According to the paragraph 2 of the stated Article, the citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed the act under the Criminal Code of Georgia which is not regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under the Criminal Code of Georgia if it is a serious or especially serious offense directed against the interests of Georgia and/or if the criminal liability for this offense is provided by the international treaty of Georgia.

In addition, pursuant to the paragraph 3 of the same Article, the citizen of a foreign state as well as the stateless person not permanently residing in Georgia who has committed the act under the Criminal Code of Georgia shall bear criminal liability under the Criminal Code of Georgia if it is a serious or especially serious offense directed against the interests of Georgia and/or if the criminal liability for this offense is provided by the international treaty of Georgia.

However, as regards the corruption offences, in particular, with regard to Articles 221 (Commercial Bribery), 338 (Passive Bribery), 339 (Active Bribery) or 339¹ (Trading in influence) of the Criminal Code of Georgia, different (special) jurisdictional regime is established.

Please see the information provided with regard to Paragraph 6 of Article 42.

(b) Observations on the implementation of the article

According to the explanation provided in the submission by the State party under review, the Georgian legislation appears to be in compliance with the provision formulated in the subparagraph.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

Despite the fact that the legislation of Georgia prohibits the extradition of Georgian nationals to foreign states, it provides possibility of conducting criminal proceedings against the mentioned persons in Georgia if the relevant requests are submitted by the respective foreign states to the Ministry of Justice of Georgia. Namely, according to Article 42 of the law on International Cooperation in Criminal Matters, at the request of foreign states, the Ministry of Justice of Georgia submits the transferred case files or their certified copies to the competent local authorities for the proposes of conducting investigation or prosecution against Georgian nationals under the domestic legislation. In the given case, Georgia is able to exercise jurisdiction over the offences indicated in the relevant request of a foreign state, including corruption crimes committed abroad by Georgian nationals, whose extradition is denied on the ground of nationality.

Law on International Cooperation in Criminal Matters - Article 42.

Excerpts from the law on International Cooperation in Criminal Matters:

Article 42: Proceedings in Georgia with regard to the criminal case files or their certified copies submitted by the competent authorities of a foreign state

1. In accordance with the rule established by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the Ministry of Justice of Georgia shall be authorized to submit the criminal case files or their certified copies transmitted by a foreign state to the competent body of Georgia for the purpose of conducting further criminal proceedings on them.

2. The evidences, obtained by a foreign state regarding the transmitted criminal case, have the equal legal force as those obtained in the territory of Georgia.

3. The criminal proceedings with regard to the transmitted criminal case files shall be continued according to the legislation of Georgia and the competent authority of a foreign state shall be notified about the final decision through the Ministry of Justice of Georgia.

(b) Observations on the implementation of the article

Georgia reported that there is no longer a question of dual criminality for corruption-related offenses due to legislative amendments adopted in November 2011.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

Georgia can exercise its jurisdiction over corruption offences in case the alleged perpetrator is a citizen of Georgia and his/her extradition is denied on the basis of nationality. In case of existence of other grounds for refusal of extradition, the competent Georgian authorities are unable to establish jurisdiction over the crimes committed by the person being present in the territory of Georgia.

(b) Observations on the implementation of the article

Georgia reported that if the crime under investigation was not committed by a Georgian national and not committed, at least in part, on the territory of Georgia, there would be no prosecution possible in Georgia.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

The domestic legislation of Georgia does not prohibit the competent Georgian authorities from consulting with the respective foreign officials with a view to coordinating actions. Therefore, in case the respective Georgian authorities are notified that any other states are conducting an investigation, prosecution or judicial proceedings in respect of the same conducts, they can cooperate with their foreign counterparts for the purposes defined under Paragraph 5 of Article 42 of the UN Convention against Corruption.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

According to paragraph 4 of Article 5 of the Criminal Code of Georgia the citizen of Georgia as well as the stateless person permanently residing in Georgia who has committed the act foreseen by Articles 221 (Commercial Bribery), 338 (Passive Bribery), 339 (Active Bribery) or 339¹ (Trading in influence) of the Criminal Code of Georgia in another State, and such an act is not regarded as crime under the legislation of the State in which it was committed, shall bear criminal liability under the Criminal Code of Georgia.

In addition, pursuant to paragraph 5 of Article 5 of the Criminal Code of Georgia the citizen of a foreign State as well as the stateless person not permanently residing in Georgia who exercises public authority on behalf of Georgia has committed the crime foreseen by Articles 221 (Commercial Bribery), 338 (Passive Bribery), 339 (Active Bribery) or 339¹ (Trading in influence) of the Criminal Code of Georgia in another State, shall bear criminal liability under the Criminal Code of Georgia.

(b) Observations on the implementation of the article

The State party under review appears to be in full compliance with the Convention.

Annex to Chapter III – Statistics

Statistics in Criminal Cases - 2011

Articles in the Criminal Code	Crime	Investigation was Launched	Conviction	Crime committed by a foreign national	Crimes committed by the public servant
182	Embezzlement	276	96	2	27
194	Legalization of Illegal Income	58	123		5
332	Abuse of Authority	77	15		57
333		127	2		16
338	Passive Bribery	63	29		74
339	Active Bribery	28	31	2	
339 ¹	Trading in Influence	10	4	3	3
372	Influencing a Witness, Victim, Expert or Interpreter	12	1		1

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

In 2010, Georgia adopted the law on International Cooperation in Criminal Matters (hereinafter the ICCM), which entered into force together with the new Criminal Procedure Code of Georgia on 1 October of the same year. The new law covers all the issues of international cooperation, including extradition. According to Article 2, paragraph 1, of the ICCM, extradition procedures are generally carried out on the basis of bilateral or multilateral treaties binding for Georgia. However, in case of non-existence of an extradition treaty with a relevant state, the Ministry of Justice of Georgia is authorized according to article 2, paragraph 2, to conclude an ad hoc agreement for a specific case with the appropriate foreign authorities and thereby to carry out extradition procedures.

The Convention against Corruption is a multilateral treaty which covers extradition aspects. Georgia made a reservation to article 44, paragraph 6, subparagraph „a”, according to which the UNCAC can be used as a legal basis of collaboration on extradition issues with other state parties based on the principle of reciprocity⁴ (meaning if the other States party also considers the Convention as legal basis). In such cases Georgia relies on Article 2 §1 of the law on International Cooperation in Criminal Matters, since the UNCAC is an international treaty of Georgia. If the other State does not use UNCAC as the legal basis, the collaboration on extradition issues needs to be based on another bi- or multilateral treaty or on an ad hoc agreement according to article 2, paragraph 2.

According to Article 7 of the law on Normative Acts of Georgia, international treaties binding for Georgia are part of the Georgian legislation and prevail over domestic laws other than the Constitution, Constitutional Law and Constitutional Agreement. Therefore, all binding international treaties, including the UN Convention against Corruption, may be applied directly.

The existence of dual criminality is a precondition for granting extradition requests, according to the Georgian domestic legislation. Pursuant to Article 18 of the ICCM which regulates the preconditions of extraditable offences, a person may be extradited to a foreign state if he/she is charged with a crime which is punishable by the laws of both Georgia and the respective

⁴ <http://treaties.un.org/doc/Publication/CN/2008/CN.839.2008-Eng.pdf>

The reciprocity principle in this case is connected to the mutual use of the Convention against Corruption as legal basis for extradition and therefore does not fall under Article 2, paragraph 3 of the ICCM. Reciprocity principle under Article 2 §3 is applied only in cases when there is no binding bilateral or multilateral international treaties with other states containing provisions of international cooperation.

foreign state by the deprivation of liberty for one year or by a more severe penalty. In case of existence of a judgment, a person may be extradited to a foreign state if he/she has already been sentenced to at least four months of imprisonment. Article 18 of the ICCM defines that all crimes which envisage sanctions for one year or more are extraditable offences. The law text „at least one year” is examined according to a maximum penalty requirement. The minimum penalty requirement is not taken into account in such cases. Therefore, all corruption crimes including embezzlement under Article 182 of the Criminal Code of Georgia are extraditable offences.

Since all the offences covered by the Convention against Corruption are criminalized in the Georgian domestic legislation and they also comply with the requirement regarding the amount of punishment, extradition of a person from Georgia is in principle permitted for the crimes referred to the abovementioned Convention. Further aspects of the extradition process will be answered in this report under the respective paragraphs of Article 44 of the Convention. They are regulated in Chapter 3 of the ICCM, which establishes the procedures under which a person can be extradited to a foreign state, determines the authority responsible for the making the decision on extradition, and as well as defines the grounds for refusal⁵.

Between 2009 and 2011, Georgia received only one extradition request related to a corruption offence and received 12 such requests. None of these requests was based on the Convention against Corruption but on the European Convention on Extradition or bilateral treaties.

The one extradition request received by Georgia was received in January 2010, i.e. before the new law on International Cooperation in Criminal Matters entered into force. Upon the submitted materials, the Ministry of Justice of the Republic of Turkey requested the extradition of E. C. for committing embezzlement and theft there. In the course of examining the extradition request, the Georgian side determined that the above indicated crimes were also punishable under Article 182 of the Criminal Code of Georgia. Therefore, the request was fully granted and the fugitive was subsequently surrendered to the Turkish side.

Therefore, since the new law on International Cooperation in Criminal Matters entered into force in October 2010 Georgia has not received any extradition request related to the offences covered by the UN Convention against Corruption and the Ministry of Justice of Georgia has not had any case where dual criminality issues were raised concerning corruption crimes. Therefore, it is impossible to provide examples of the implementation of dual criminality issues in this regard.

Despite this, Georgia received a great number of extradition requests related to offences other than those covered by the Convention. In the given cases, the Ministry of Justice of Georgia examined the dual criminality issues broadly, based on factual circumstances and underlying conduct. Namely, the mentioned requirement was deemed fulfilled by the Georgian authorities, irrespective of whether the Criminal Code of Georgia placed the offence within the same category of offence or denominated the offence by the same terminology as the requesting state. The only precondition in the above indicated cases was that the conduct underlying the offence for which extradition was sought was also a criminal offence under the Criminal Code of Georgia.

⁵ See further explanation under paragraph 8 of article 44 of the Convention against Corruption.

During the country visit, further statistical data was provided:

Statistical data of extradition requests regarding corruption related crimes

2009	Requests sent	Requests received
Total	4	-
Granted	-	-
Refused	1	-
Pending	2	-
Postponed	1	-
Average time	7-8 months	-

2010	Requests sent	Requests received
Total	1	1
Granted	-	1
Refused	1	-
Pending	-	-
Postponed	-	-
Average time	-	5-6 months

2011	Requests sent	Requests received
Total	7	-
Granted	4	-
Refused	-	-
Pending	2	-
Postponed	1	-
Average time	7-8 months	-

Law on International Cooperation in Criminal Matters – Article 2, Article 18

Article 2: Legal basis for international cooperation in criminal matters

1. International cooperation in criminal matters, as a rule, is governed by the international treaty of Georgia.
2. In certain cases, international cooperation in criminal matters may be carried out on the basis of *ad hoc* agreement or the reciprocity principle, with those states with which Georgia does not have a relevant international treaty.
3. On the basis of the reciprocity principle international cooperation in criminal matters may be carried out with regard to the issues referred to in Paragraph 1 of Article 1 of this Law, except extradition and enforcement of judgment.
4. In case of international cooperation in criminal matters on the basis of the reciprocity principle, conditions of reciprocal cooperation shall be determined, which shall provide for the minimum guarantees defined in this Law, although, establishing higher standards is not excluded.
5. *Ad hoc* agreement shall be concluded only for a specific case of international cooperation in the field of criminal law and it shall provide for the minimum guarantees defined in this Law, although, establishing higher standards is not excluded.

Article 18: Extraditable offences

1. Unless it is otherwise provided for in the international treaty of Georgia or *ad hoc* agreement, extradition of a person to a foreign state shall be granted in respect of offences punishable under the laws of Georgia and the respective foreign state by deprivation of liberty for at least one year or by a more severe penalty. Where a conviction has occurred, the punishment awarded must have been for a period of at least four months.
2. Unless it is otherwise provided for in the international treaty of Georgia or *ad hoc* agreement, extradition of a person to a foreign state shall also be granted, if the request for extradition includes several offences each of which is punishable under the laws of Georgia and the respective foreign state and of which some do not fulfill the requirement with regard to the amount of punishment as prescribed under Paragraph 1 of this Article, but are punishable with the deprivation of liberty or pecuniary sanction.

3. The procedure prescribed under Paragraph 2 of this Article shall also be applicable in case of extradition of a person from a foreign state to Georgia.

(b) Observations on the implementation of the article

The reviewing experts noted that Georgia adopted the required measures for compliance in accordance with Article 44, paragraph 1. Although no extradition request was received based on UNCAC, the examination of dual criminality by the Ministry of Justice was broad in a number of other requests and reflected the provisions of article 43 paragraph 2 of UNCAC. It can be estimated that the same approach would be taken in UNCAC related cases.

The experts therefore recommend to continue to examine dual criminality as broadly as possible, including in cases in which an extradition request is based on the Convention against Corruption, and to consider concluding further bilateral and/or multilateral treaties to implement simplified extradition procedures. Another option, going even beyond the requirements of the Convention, would be the relaxation of the application of the double criminality requirement in extradition agreements or arrangements based on the UNCAC, in line with article 44, paragraph 2, of the Convention.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

As mentioned above, according to the law on International Cooperation in Criminal Matters, existence of dual criminality is a precondition for allowing extradition of a fugitive. Therefore, a person shall not be extradited, if a crime for which extradition is sought is not also punishable under the Criminal Code of Georgia. However, since all the offences covered by the Convention against Corruption are criminalized in the Georgian domestic legislation and they also comply with the requirement regarding the amount of punishment, the dual criminality requirement would always be met when examining extradition requests for the crimes referred to the abovementioned Convention.

(b) Observations on the implementation of the article

Article 44, paragraph 2, is an optional article regarding the extradition of a person for any of the offences covered by this Convention that are not punishable under country's domestic law. This might become important e.g. in regard to cases involving non-mandatory offences of the Convention. Georgia does not adopt or implement any measures according to Article 44, paragraph 2, noting that according to the law on International Cooperation in Criminal Matters, that Georgia adopted in 2010 the existence of dual criminality is a precondition for allowing extradition of a fugitive. Therefore, Georgia does not allow a person's extradition, if a crime for which extradition is sought is not also punishable under the Criminal Code of Georgia. It should be noted that according to Georgia's answer all the offences covered by the UN Convention against Corruption are criminalized in the Georgian domestic legislation

The reviewing experts recommended to continue to examine the dual criminality requirement broadly (see also observations in regard to Article 44, paragraph 1)

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

According to article 18, paragraph 2 of the law on ICCM, if the request for extradition includes several separate offences each of which is punishable under the laws of Georgia and the respective foreign state by the deprivation of liberty or pecuniary sanction, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, Georgia shall also have the right to grant extradition for the latter offences. However, the abovementioned law provision is not applicable with regard to the crimes covered by the UN Convention against Corruption, since all those offences meet the requirement regarding the amount of punishment established by the Georgian legislation. Due to a lack of relevant extradition requests no information on implementation is available in this regard.

Law on International Cooperation in Criminal Matters – Article 18 (see above)

(b) Observations on the implementation of the article

The reviewers noted that Article 44, paragraph 3, was an optional article and that Georgia adopted the required measures for compliance (Article 18, paragraph 2 ICCM).

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

Georgia has bilateral treaties containing provisions on extradition with 7 regional countries, and is party to several multilateral treaties. Being of general nature, they cover all types of crimes punishable under the Criminal Code (CC), including corruption offences. All the bilateral and multilateral extradition treaties binding for Georgia are of general nature provide possibility of cooperation regarding all crimes, including the ones covered by the UN Convention against Corruption (see list below). It means that the mentioned treaties cover all types of crimes punishable under the Criminal Code of Georgia, including the ones established by the UN Convention against Corruption. Besides, the domestic legislation of

Georgia is also of general nature and it is applicable to all types of crimes punishable under the Criminal Code of Georgia.

Article 19 of the ICCM defines that extradition of a person is excluded for the crimes, which are considered by the competent Georgian authorities as political offences or as offences connected with the political offences.

However, according to Article 19, paragraph 2, in connection with Article 12, paragraph 1 (c), crime is not considered to be political, if after taking into account the purposes, motives, type, methods and other circumstances, the elements of the criminal act outweigh the political aspects of the offence. Furthermore, according to Article 19, paragraph 3, the taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence. In addition, crime is not considered to be political, if Georgia has obligation to extradite a person for the mentioned offence under the relevant international treaty or ad hoc agreement. In light of the above, since Georgia uses the UN Convention against Corruption as the basis for extradition, it hereby has an obligation not to consider any of the offences established in accordance with the mentioned convention to be political offence. This regulation follows the logic of Article 6 of the Constitution of Georgia, and Article 7, paragraph 5, of the Law on Normative Acts, according to which an international treaty or agreement of Georgia, if it entered into force in observance with the requirements prescribed by the Constitution of Georgia and the law of Georgia on International Treaties of Georgia, shall prevail over domestic normative acts, provided that they are not contrary to the Constitution of Georgia, a constitutional law and a constitutional agreement of Georgia.

Up to date, there has been no case where the political crime issues were raised before the Ministry of Justice of Georgia or the relevant local courts. Therefore, it is impossible to provide the examples of implementation in this regard.

The bilateral treaties referred to above are as follows⁶:

1. Treaty between Georgia and the Republic of Turkey on Mutual Legal Assistance in Civil, Commercial and Criminal Matters (4.IV.1996);
2. Treaty between Georgia and Turkmenistan on Mutual Assistance in Civil and Criminal Matters (20.III.1996);
3. Treaty between the Republic of Georgia and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters (9.I.1995);
4. Treaty between Georgia and the Republic of Kazakhstan on Mutual Legal Assistance in Civil and Criminal matters (17.IX.1996); and the Protocol to the Treaty between Georgia and the Republic of Kazakhstan on Mutual Legal Assistance in Civil and Criminal matters (31.III.2005);
5. Treaty between Georgia and the Republic of Azerbaijan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (12.VI.1996);
6. Agreement between Georgia and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters (10.V.1999);
7. Treaty between Georgia and the Republic of Armenia on Extradition (3.V.1997);

List of multilateral treaties which cover extradition

1. European Convention on Extradition (Paris, 13.XII.1957);
2. Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975);
3. Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978);

⁶ In regard to plans to close further bilateral treaties and to sign the third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010) please refer to Art. 44 Para 18.

4. Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22.I.1993);

Besides, Georgia is a party to other UN and Council of Europe conventions also containing provisions of extradition issues.

Law on International Cooperation in Criminal Matters – Article 12 and 19

Article 12: Grounds for refusal of executing mutual legal assistance request

1. Legal assistance shall not be provided, if:
 - a) Execution of mutual legal assistance request may prejudice the sovereignty, security, public order or other essential interests of Georgia;
 - b) Execution of mutual legal assistance request contradicts the legislation of Georgia;
 - c) The crime in regard with the assistance is requested is considered by Georgia to be a political offence or an offence related to a political offence. The crime shall not be considered political if after taking into account the aims, motives, type, methods and other circumstances, the elements of criminal act outweigh the political aspects of the offence committed.
 - d) Execution of mutual legal assistance request may prejudice the universally recognized rights and fundamental freedoms of individual;
 - e) The crime in regard with the legal assistance is requested, is a military offence and it is not punishable under the criminal legislation of the requesting state, except for the cases where an international treaty of Georgia, *ad hoc* agreement or the conditions of the reciprocal cooperation provides otherwise;
 - f) Execution of mutual legal assistance request may be contrary to the principle of *Non bis in idem*;

Article 19: Political offence

1. Extradition shall not be granted if the offence in respect of which the surrender of a person is requested is regarded by Georgia as a political offence or as an offence related to a political offence.
2. When defining a political offence the rule prescribed under Article 12§ 1(c) of this Law shall be taken into consideration.
3. The taking or attempted taking of the life of a Head of State or a member of his/her family shall not be deemed to be a political offence as well as all those offences for which Georgia has made a commitment to grant extradition under the international treaties and *ad hoc* agreements.

(b) Observations on the implementation of the article

The reviewers noted that the Georgian legislation complied with provision of Article 44, paragraph 4. Article 19 in conjunction with Article 12, Paragraph 1 (c) leaves room for interpretation, if an offence would be considered a political offence or an offence related to a political offence. According to Article 12, Paragraph 1 (c) the crime shall not be considered political if after taking into account the aims, motives, type, methods and other circumstances, the elements of criminal act outweigh the political aspects of the offence committed. Extradition can also be based on the UN Convention against Corruption. Article 19, Paragraph 3, regulates that all those offences for which Georgia has made a commitment to grant extradition under the international treaties and *ad hoc* agreements shall not be deemed to be a political offence. As this is the case in regard to Article 44, paragraph 4, of the Convention, the legal framework of Georgia is in compliance with this article.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

According to the notification of the competent authorities of Georgia addressed to the Secretary-General of the United Nations, Georgia considers the Convention against Corruption as the legal basis for cooperation on extradition issues with other state parties based on the principle of reciprocity. In case the reciprocity principle is not applicable in the given case and there is no other binding extradition treaty as well, alternatively, the Ministry of Justice of Georgia is authorized to conclude an ad hoc agreement with the appropriate foreign authorities and thereby carry out extradition procedures (Article 2 of the ICCM). This is also the case with regard to the crimes covered by the UN Convention against Corruption.

Notification of Georgia addressed to the Secretary-General of the United Nations:

According to article 44, paragraph 6, subparagraph 'a', Georgia considers the Convention as the legal basis of collaboration on extradition issues with other state parties based on the principle of reciprocity.

Law on International Cooperation in Criminal Matters – Article 2 (see above)

(b) Observations on the implementation of the article

Article 44, paragraph 5, is an optional article regarding extradition requests between State Parties which have not concluded a treaty for extradition among each other. Georgia considers the Convention against Corruption as the legal basis for cooperation on extradition issues with other state parties based on the principle of reciprocity. Georgia noted that in case the reciprocity principle is not applicable in the given case and there is no other binding extradition treaty as well, alternatively, the Ministry of Justice of Georgia is authorized to conclude an ad hoc agreement with the appropriate foreign authorities and thereby carry out extradition procedures. This is also the case with regard to the crimes covered by the UN Convention against Corruption.

Article 44 Extradition

Subparagraph 6 (a) and (b)

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

See the information provided with regard to Paragraph 5 of Article 44.

Notification of Georgia addressed to the Secretary-General of the United Nations ⁷:

According to article 44, paragraph 6, subparagraph 'a', Georgia considers the Convention as the legal basis of collaboration on extradition issues with other state parties based on the principle of reciprocity.

Moreover, Georgia is planning to sign the third Additional Protocol to the European Convention on Extradition and currently the draft of the relevant amendments is being prepared to the law on International Cooperation in Criminal Matters.

(b) Observations on the implementation of the article

Article 44 Subparagraph (6) is mandatory for States parties which make extradition conditional on the existence of a treaty. Georgia made the necessary notification according to Article 44, paragraph 6, subparagraph 'a', addressed to the Secretary-General of the United Nations, stating that the country considers the Convention as the legal basis of collaboration on issues with other state parties based on the principle of reciprocity.

Article 44 Extradition**Paragraph 7**

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

See the information provided with regard to Paragraph 5 of Article 44.

Notification of Georgia addressed to the Secretary-General of the United Nations:

According to article 44, paragraph 6, subparagraph 'a', Georgia considers the Convention as the legal basis of collaboration on extradition issues with other state parties based on the principle of reciprocity.

In case of absence of a relevant treaty Georgia can conclude ad hoc agreements with foreign states and carry out extradition proceedings. The mentioned rule is also applicable to extradition requests related to corruption crimes. Up to the present date, there has been no need of concluding the above indicated agreements regarding corruption offences. However, should the necessity arise, it will be solved in accordance to the procedures referred to above.

Law on International Cooperation in Criminal Matters – Article 2 (see above)

1.

(b) Observations on the implementation of the article

Georgia makes extradition conditional on the existence of a treaty. Furthermore the reviewers referred to the explanation of Georgia, that in case the Convention against Corruption is not applicable in the given case and there is no other binding extradition treaty as well,

⁷ <http://treaties.un.org/doc/Publication/CN/2008/CN.839.2008-Eng.pdf>

alternatively, the Ministry of Justice of Georgia is authorized to agree with the appropriate authorities on the procedures.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

Chapter 3 of the ICCM regulates extradition. Namely, it establishes the procedures under which a person can be extradited to a foreign state, determines the authority responsible for the decision on extradition, and defines the grounds for refusal. According to the ICCM, the Ministry of Justice of Georgia is the central competent authority responsible for examining extradition requests. After receiving a foreign extradition request, the Ministry of Justice of Georgia examines whether there are grounds for refusal and whether the submitted request meets the requirement of the respective international treaty or ad hoc agreement. According to the ICCM, extradition shall not be granted if:

- a) the crimes for which extradition is requested are not extraditable offences, i.e. such crimes do not meet the requirement of dual criminality and the amount of punishment as described above. (Article 18);
- b) the offence in respect of which extradition is requested is regarded by the competent Georgian authorities as a political offence or as an offence connected with a political offence (Article 19);
- c) an offence in respect of which extradition is requested is regarded by the competent Georgian authorities as a military offence, provided that the relevant international treaty does not establish different procedures (Article 20);
- d) a person whose extradition is requested has the citizenship of Georgia (Article 21);
- e) crime for which extradition is requested is punishable by the death penalty in the respective requesting state (Article 22);
- f) extradition is requested of a person for carrying out a sentence imposed by the in absentia judgment of the requesting state provided that that person has not been informed about the court hearings and the proceedings leading to the judgment have not satisfied the minimum rights of defence recognized as due to everyone charged with criminal offence (Article 23);
- g) extradition is requested for an offence which is already statute-barred according to the Criminal Code of Georgia and for that reason, the person has acquired immunity from criminal prosecution or punishment (Article 24);
- h) extradition is requested of a person who has asylum status in Georgia (Article 25, paragraph 1);
- i) extradition is requested for an offence in respect of which an amnesty has been declared in Georgia or the person has already been pardoned regarding the same offence (Article 25, paragraph 2);
- j) extradition is contrary to the principle of Non bis in idem (Article 26);

- k) the competent authorities of Georgia have substantial grounds for believing that the extradition of a person is requested for the purpose of prosecuting or punishing that person on account of his race, nationality, ethnicity, religious belief, political opinion or other reasons (Article 29, paragraph 1);
- l) after taking into account the age, health condition and personality of the person sought as well as the nature of the offence and the interests of the requesting state, extradition might be contrary to the minimum standards of humanity (Article might contrary humanity (Article 29, paragraph 2)
- m) the competent authorities of Georgia have substantial grounds for believing that after extradition, a person might be subjected to torture, inhuman or degrading treatment or punishment in the requesting state (Article 29, paragraph 3);
- n) the competent authorities of Georgia have substantial grounds for believing that after extradition, a person may be tried by a special tribunal or court (Article 29, paragraph 4).

Furthermore, extradition may be rejected if the crime for which the transfer of a person is requested is wholly or partially committed in Georgia, or the competent Georgian authorities are conducting investigation with regard to the said crime (Articles 27-28).

Due to the absence of extradition requests regarding the crimes covered by the UN Convention against Corruption, it is impossible to provide information on conditions and grounds for refusal of such requests. However, when examining extradition requests regarding other crimes, the most common ground for refusal was the Georgian nationality of the fugitive. There were also a few cases, when extradition requests were rejected due to the absence of dual criminality.

Law on International Cooperation in Criminal Matters – Articles 14 – 29.

Article 14: Extradition of a person from a foreign state to Georgia

1. In observance with the rule prescribed by this Law, the Ministry of Justice of Georgia shall be authorized to address a relevant authority of a foreign state with the request for extradition of a person who is charged with such an offence, which is punishable with deprivation of liberty for more than one year, or who has been convicted for committing such an offence.
2. In course of preparing the request for extradition of a person from a foreign state to Georgia the gravity of the offence committed, its publicly dangerous nature, the amount of damage caused by committing the offence, the public interest towards extraditing the person to Georgia, and afterwards convicting and punishing the person, as well as other circumstances which determine the reasonability of extradition of a person to Georgia shall be taken into consideration.
3. Refusal to request the extradition of a person from a foreign state to Georgia shall be grounded.

Article 15: Form of the request for extradition of a person from a foreign state to Georgia and supporting documents

1. The request for extradition of a person from a foreign state to Georgia shall be made in writing and it shall contain the following:
 - a) Name, last name, date and place of birth of the accused or the convicted, and if possible, other identification data of the person;
 - b) Description of the factual circumstances of the offence committed by referring to the law which envisages responsibility for such offence.
2. The request for extradition envisaged by the 1st paragraph of this Article shall be enclosed with:
 - a) The court ruling on the application of detention as a measure of constraint against the person;
 - b) A copy of the indictment and if the person is a convict, a copy of the judgment of conviction already entered into force;
 - c) The text of the law which envisages criminal responsibility for the offence committed as well as other legislative acts necessary for examining the extradition issue;

- d) A photo, fingerprints, DNA code or other identification data of the person subject to the extradition, if available.
3. The request for extradition of a person envisaged by the 1st paragraph of this Article may be enclosed with other documents if they are provided by a relevant international treaty or *ad hoc* agreement concluded between Georgia and a foreign state.

Article 16: Effect of the extradition proceedings carried out in a foreign state on the criminal proceedings carried out in Georgia

1. If the person subject to extradition to Georgia has been detained in a foreign state, the detention term of that person in Georgia shall be calculated from the moment when he/she was actually surrendered to the relevant Georgian authorities. The term of detention of the person in a foreign state for the purpose of extradition shall be credited towards the total penalty term imposed hereinafter by the court.
2. Criminal proceedings shall not be initiated against a person or he/she shall not be convicted for any other offence committed before his/her surrender except for the offence for the commission of which he/she has been extradited to Georgia.
3. The rule prescribed by Paragraph 2 of this Article shall not apply to the following cases unless otherwise provided for in the international treaty of Georgia or *ad hoc* agreement:
 - a) The country which extradited a person to Georgia, agrees to it;
 - b) After the extradition, a person, having had the opportunity to leave the territory of Georgia, has not done so within 45 days from the date of his final release, or has returned to Georgia after leaving its territory.
4. In the case stipulated by Subparagraph A, Paragraph 3 of this Article, the request for obtaining the consent for other offences from a foreign state shall be enclosed with relevant documents and shall contain the data referred to in Article 15 of this Law.
5. Unless otherwise provided for in the international treaty of Georgia or *ad hoc* agreement, the rule prescribed under Paragraph 2 of this Article shall not be applied provided that the legal assessment (qualification) of the act committed by the person has changed in course of the proceeding carried out after the extradition, but the description of the offence and its constituent elements have not altered and a new offence is subject to extradition.

Article 17: Surrender of a person to a third state

A person extradited from a foreign state shall not be surrendered to a third state without the prior consent of the state which has surrendered him/her.

Article 18: Extraditable offences

1. Unless it is otherwise provided for in the international treaty of Georgia or *ad hoc* agreement, extradition of a person to a foreign state shall be granted in respect of offences punishable under the laws of Georgia and the respective foreign state by deprivation of liberty for at least one year or by a more severe penalty. Where a conviction has occurred, the punishment awarded must have been for a period of at least four months.
2. Unless it is otherwise provided for in the international treaty of Georgia or *ad hoc* agreement, extradition of a person to a foreign state shall also be granted, if the request for extradition includes several offences each of which is punishable under the laws of Georgia and the respective foreign state and of which some do not fulfill the requirement with regard to the amount of punishment as prescribed under Paragraph 1 of this Article, but are punishable with the deprivation of liberty or pecuniary sanction.
3. The procedure prescribed under Paragraph 2 of this Article shall also be applicable in case of extradition of a person from a foreign state to Georgia.

Article 19: Political offence

1. Extradition shall not be granted if the offence in respect of which the surrender of a person is requested is regarded by Georgia as a political offence or as an offence related to a political offence.
2. When defining a political offence the rule prescribed under Article 12§ 1(c) of this Law shall be taken into consideration.
3. The taking or attempted taking of the life of a Head of State or a member of his/her family shall not be deemed to be a political offence as well as all those offences for which Georgia has made a commitment to grant extradition under the international treaties and *ad hoc* agreements.

Article 20: Military Offence

1. Unless it is otherwise provided for in the international treaty of Georgia or *ad hoc* agreement, extradition of a person shall not be granted, if the offence in respect of which the surrender of that person is requested is a military offence.
2. When defining a military offence the rule prescribed under Article 12§ (e) of this Law shall be taken into consideration.

Article 21: Extradition of a National of Georgia

A national of Georgia shall not be extradited to a foreign state except for the cases provided for in the international treaties of Georgia.

Article 22: Capital Punishment

Extradition shall not be granted if the offence for which the extradition of a person is requested is punishable by death penalty under the law of the requesting State.

Article 23: Judgment delivered *in absentia*

1. Extradition of a person to a foreign state shall not be granted, if that person has been tried *in absentia* in the requesting state and he/she has not been duly informed about the court hearings, or the accused charged with the offence has not been provided with minimum rights of defense.
2. In the case envisaged by Paragraph 1 of this Article, extradition of a person may be granted, if the competent authorities of the requesting state provide the guarantee that the extradited person will enjoy the right to retrial and he/she will be provided with the right to defense.

Article 24: Statute of Limitation

Extradition shall not be granted for the offence which has been statute-barred according to the Criminal Code of Georgia, and for that reason, a person has acquired immunity from criminal prosecution or punishment.

Article 25: Asylum, amenity, pardon

1. Extradition shall not be granted, if the person subject to extradition has acquired political asylum or the status of refugee in Georgia except the case when the extradition of that person is requested by a third, safe state.
2. Extradition shall not be granted, if in respect of the offence for which the surrender of a person is requested amnesty has been declared under the legislation of Georgia, or that person has been pardoned regarding the same crime.

Article 26: *Non bis in idem* principle

Extradition shall not be granted if:

- a) A person has already been tried by the Georgian court in respect of the offence for which the extradition of a person is requested.
- b) The competent authorities of Georgia have made the final decision to terminate criminal proceedings in respect of the offence for which the extradition of a person is requested.

Article 27: Criminal proceedings regarding the same offence

Extradition may be refused, if the competent authorities of Georgia are conducting criminal proceeding in respect of the same offence for which the surrender of a person is requested.

Article: 28 Place of Commission

Georgia is authorized to refuse the extradition of a person to a foreign state, if the offence for which the surrender of that person is requested has been committed in whole or in part in the territory of Georgia.

Article 29: Other grounds for excluding extradition

1. Extradition shall not be granted, if there is a reasonable suspicion for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, nationality, ethnicity, religion, or political opinion, or for any of the similar circumstances.
2. Extradition shall not be granted, when stemming from the age, health condition or personal characteristics of a person, as well as taking into account the nature of the crime and the interests of the requesting state, it is considered that extradition does not manifestly correspond to the basic standards of human treatment.

3. Extradition shall not be granted, if there is a reasonable doubt that in the requesting state a person will be subject to torture, cruel, inhumane, or degrading treatment or punishment, which will be connected to torture, cruel, inhuman or degrading treatment towards this person.
4. Extradition shall not be granted, if a person may be tried or sentenced by a special court or tribunal in the requesting state.
5. Extradition shall not also be granted in case of existence of other grounds for refusal defined under the international treaty or *ad hoc* agreement between Georgia and a relevant foreign state.

(b) Observations on the implementation of the article

According to the reviewing experts, Georgia's legal framework, namely the law on International Cooperation in Criminal Matters and its Chapter 3, conforms with the provision of Article 44, paragraph 8 of the Convention. The experts referred to articles 14 to 29 of the ICCM.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

Georgia has simplified requirements with respect to the form of and channels for transmission of extradition requests, as well as evidentiary standards for extradition. Namely, according to Article 3 of the ICCM, the extradition request and supporting documents shall be communicated through the channels established by the relevant international treaty and *ad hoc* agreement. If the international treaty and *ad hoc* agreement do not establish the channels and means of communication, extradition materials are transmitted through direct channels, provided that the domestic legislation of the respective foreign state does not establish different procedures.

Besides, the above-mentioned law also permits the possibility of using INTERPOL channels or other means of communication during extradition proceedings. However, such correspondence shall also be followed by original materials.

As to the form of the extradition request, it is determined by the appropriate treaty or *ad hoc* agreement. Generally, the request does not require *prima facie* evidence.

Necessary extradition documents which are to be submitted to Georgia are envisaged by the relevant international treaty. The below indicated documents are required when extradition is requested on the basis of the European Convention on Extradition. When extradition is requested on the basis of other treaties, the corresponding provisions of those treaties are applied. However, such provisions are almost the similar to those envisaged by the European Convention on Extradition. Article 15 of the Law is applied when Georgia is a requesting state; however, sometimes when there is no international treaty containing provisions regarding the necessary extradition documents, Georgia also uses provisions of Article 15 of the Law as a requested state.

Georgia requires the following supporting documents to be attached to the foreign extradition request:

- a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting state;
- b) a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
- c) a copy of the relevant enactments or, where this is not possible, a statement of the relevant law, and
- d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

In addition, despite the fact that Georgia does not recognize simplified extradition proceedings, in case of the consent of the person sought, the final decision on extradition is made within the shortest terms, especially, when the foreign fugitive is under the provisional arrest in Georgia. According to Article 30, paragraph 4, of the ICCM, the initial term of detention of the person subjected to extradition is 3 months, which may be prolonged for 3 months, but no more than twice. Thus, the whole term of extradition detention should not exceed 9 months. In practice, almost all the extradition cases are finalized no later than 9 months after the detention of a wanted person. The only extradition request in regard to a corruption offence received in the last years was processed in 5-6 months (see table of cases presented under Article 44, paragraph 1).

Due to the absence of extradition requests based UN Convention against Corruption, it is impossible to provide examples of implementation in this regard. Detailed information about the practices of examining extradition requests regarding other crimes are described above and, in case of receiving requests concerning corruption offences in future, such requests will be dealt with similarly to those indicated above.

Law on International Cooperation in Criminal Matters – Articles 3, 30

Article 3: Channels and means of communication

1. International cooperation in criminal matters shall be carried out through the channels and means of communication established by a relevant international treaty or *ad hoc* agreement.
2. In case a relevant international treaty or *ad hoc* agreement does not define channels and means of communication, international cooperation in criminal matters shall be carried out through direct channels unless otherwise provided for in the legislation of a relevant foreign state.
3. In case of international cooperation in criminal matters on the basis of the reciprocity principle, Georgia shall apply diplomatic channels.
4. In case of international cooperation in criminal matters, Interpol or other channels of communication may also be applied unless otherwise provided for in the legislation of a relevant foreign state.
5. The materials received through the channels and means of communication provided for in paragraph 4 of this Article shall be confirmed with the original materials submitted afterwards through ordinary post.

Article 30: Application of coercive measures against the person subject to extradition to a foreign state

1. Upon arresting the person wanted by the law-enforcement bodies of a foreign state in the territory of Georgia, the prosecutor of a relevant district shall be notified about the arrest, who shall submit a motion within 48 hours to a relevant magistrate judge according to the place of arrest in order to impose a constraint measure against the person.
2. The detention for the purpose of extradition or other types of constraint measures envisaged by the Criminal Procedure Code of Georgia may be applied against the person wanted by the law-enforcement bodies of a foreign state taking into consideration the peculiarities of extradition procedures.
3. The magistrate judge shall consider the issue of imposing a constraint measure on the person wanted by the law-enforcement bodies of a foreign state according to the rule established under Article 206 of the Criminal Procedure Code of Georgia taking into consideration peculiarities of extradition procedures.

The decision issued by the magistrate judge may be appealed at the Investigative Chamber of Appellate Court within 7 days from the moment of its submitting to the person. The Investigative Chamber of Appellate Court shall examine the appeal within 5 days.

4. The term of detention of a person arrested in the territory of Georgia for the purpose of his/her extradition to a foreign state shall be 3 months, which may be prolonged by 3 months, but no more than twice, out of the necessity for carrying out extradition proceedings.
5. In the case envisaged by Paragraph 4 of this Article, on the basis of the grounded motion of the prosecutor, a relevant magistrate judge is authorized to prolong the term of detention for the purpose of extradition. The decision of the magistrate judge may be appealed at the Investigative Chamber of Appellate Court according to the rule prescribed by Article 207 of the Criminal Procedure Code of Georgia.
6. The person arrested for the purpose of extradition shall be released immediately, if it is established that the person is a national of Georgia.

(b) Observations on the implementation of the article

The experts noted that the legislative provisions in the ICCM were in line with paragraph 9 in regard to simplified requirements with respect to the form of and channels for transmission of extradition requests, as well as evidentiary standards for extradition.

Georgia does not recognize simplified extradition proceedings. Nevertheless noteworthy, that in case of the consent of the person sought, the final decision on extradition is made within the shortest terms, especially, when the foreign fugitive is under the provisional arrest in Georgia. Furthermore the initial term of detention of the person subjected to extradition is 3 months, which may be prolonged for 3 months, but no more than twice. Thus, the whole term of extradition detention should not exceed 9 months. In practice, almost all the extradition cases are finalized no later than 9 months after the detention of a wanted person. In order maintain short terms of extradition procedures, Georgia might even consider further measures to simplify and expedite extradition procedures.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

In case there is a legal basis for international cooperation regarding extradition, the Georgian legislation allows possibility of arresting a person sought by foreign authorities provided that the request for provisional arrest or extradition has already been submitted to the Ministry of Justice of Georgia. The same procedures are applied in case a person is wanted through INTERPOL Red Notice, since such Notice is regarded by Georgia as equal to the provisional arrest request.

Article 30 of the ICCM defines that after the arrest of a person (either accused or convicted) wanted by the foreign law-enforcements authorities, the relevant district prosecutor shall dully be notified in this regard. The prosecutor in charge of the case moves before the respective local court with the motion on the application of provisional arrest for the purposes of extradition against the fugitive. At the same time, the respective foreign authorities are also

informed about the detention of their fugitive. Communication may be carried out through INTERPOL or any other means. It should be mentioned that any kind of preventive measure (e.g. detention, bail) envisaged by the Criminal Procedure Code of Georgia may be applied with regard to the person subjected to extradition. The main requirement in this regard is that the availability of the person sought should be ensured during the extradition proceedings.

After receiving the formal extradition request from a foreign state, the Ministry of Justice of Georgia examines whether the request and supporting documents comply with the relevant international treaty or ad hoc agreement, and whether there are any grounds for refusal. If the submitted documents are insufficient for making the decision on extradition, the Ministry of Justice of Georgia is authorized to request additional information from the respective foreign authorities. Decision on extradition is made by the Minister of Justice of Georgia or the person duly authorized by the Minister to make the decision in this regard. The law defines that in case the extradition request is granted, the person subjected to extradition has the right to appeal the decision of the Minister before the relevant district (city) court within 7 days after its receipt. The court sets the first date of hearing no later than 7 days after receiving the appeal. Besides, the decision of the district (city) court may further be appealed before the Supreme Court of Georgia within 5 days through cassation. The latter sets the first date of hearing no later than 5 days after receiving the appeal (Article 34 ICCM). The decision of the Supreme Court of Georgia is final and after its rendering, a fugitive may be surrendered to the respective foreign authorities at the earliest convenience.

It should also be mentioned that the initial term of detention of the person subjected to extradition is 3 months, which may be prolonged for 3 months, but no more than twice. Thus, the whole term of extradition detention should not exceed 9 months.

The procedures referred to above are also applicable to persons charged with or convicted of the crimes covered by the UN Convention against Corruption.

Due to the absence of extradition requests regarding the crimes covered by the UN Convention against Corruption, it is impossible to provide information on recent court or other cases in which a person whose extradition was sought and who was present in Georgia has been taken into custody and cases in which other appropriate measures were taken to ensure his/her presence at extradition proceedings.

When examining extradition requests concerning other crimes, the most common preventive measure applied against fugitives was detention. However, there have also been a few cases, when the relevant courts applied bail instead of detention with regard to the fugitives.

Law on International Cooperation in Criminal Matters – Articles 30, 32, 34

Article 30: Application of coercive measures against the person subject to extradition to a foreign state

1. Upon arresting the person wanted by the law-enforcement bodies of a foreign state in the territory of Georgia, the prosecutor of a relevant district shall be notified about the arrest, who shall submit a motion within 48 hours to a relevant magistrate judge according to the place of arrest in order to impose a constraint measure against the person.
2. The detention for the purpose of extradition or other types of constraint measures envisaged by the Criminal Procedure Code of Georgia may be applied against the person wanted by the law-enforcement bodies of a foreign state taking into consideration the peculiarities of extradition procedures.
3. The magistrate judge shall consider the issue of imposing a constraint measure on the person wanted by the law-enforcement bodies of a foreign state according to the rule established under Article 206 of the Criminal Procedure Code of Georgia taking into consideration peculiarities of extradition procedures. The decision issued by the magistrate judge may be appealed at the Investigative Chamber of Appellate

Court within 7 days from the moment of its submitting to the person. The Investigative Chamber of Appellate Court shall examine the appeal within 5 days.

4. The term of detention of a person arrested in the territory of Georgia for the purpose of his/her extradition to a foreign state shall be 3 months, which may be prolonged by 3 months, but no more than twice, out of the necessity for carrying out extradition proceedings.
5. In the case envisaged by Paragraph 4 of this Article, on the basis of the grounded motion of the prosecutor, a relevant magistrate judge is authorized to prolong the term of detention for the purpose of extradition. The decision of the magistrate judge may be appealed at the Investigative Chamber of Appellate Court according to the rule prescribed by Article 207 of the Criminal Procedure Code of Georgia.
6. The person arrested for the purpose of extradition shall be released immediately, if it is established that the person is a national of Georgia.

Article 32: Conflicting requests

1. If extradition is requested concurrently by more than one state, the Minister of Justice of Georgia shall be authorized to make the decision on extradition to another State after taking into consideration the place of commission of the offence, the seriousness of crime, the dates of submitting requests to Georgia, the nationality of the person claimed and all other circumstances.
2. In the case envisaged by Paragraph 1 of this Article, the Minister of Justice of Georgia shall be authorized to hold consultations with the Minister of Foreign Affairs of Georgia for the purpose of solving the extradition issue.
3. In case of existence of conflicting requests for the surrender of a person from the International Criminal Court and a foreign state, the priority shall be given to the request from the International Criminal Court.

Article 34: Decision on extradition and procedure for its appeal

1. The decision on extradition or temporary surrender of a person to a foreign state shall be made by the Minister of Justice or the person authorized by the Minister.
2. The person subject to extradition shall be authorized to appeal the decision on extradition made either by the Minister of Justice or by the authorized person within 7 days after the date of receiving the decision at the District (City) Court, which shall hold the first hearing to examine the appeal within no later than 7 days after the date of receiving the appeal.
3. The parties shall be authorized to appeal the decision of the District (City) Court within 5 days after receiving it through submitting a cassation appeal to the Chamber of Criminal Cases of the Supreme Court of Georgia. The Chamber of Criminal Cases of the Supreme Court of Georgia shall hold the first hearing to examine the appeal no later than 5 days after the date of receiving the cassation appeal.
4. The person subject to extradition shall be entitled to enjoy all the rights of the accused established under the Criminal Procedure Code of Georgia taking into consideration the peculiarities of extradition proceedings.

(b) Observations on the implementation of the article

Article 44, paragraph 10, is an optional article providing that States Parties accordingly to the provisions of their domestic law and their extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

The reviewing experts were satisfied with the explanations provided by Georgia and the legal framework of the ICCM. Based on the law on International Cooperation in Criminal Matters noted that if there is a legal basis for international cooperation regarding extradition, the Georgian legislation allows possibility of arresting a person sought by foreign authorities provided that the request for provisional arrest or extradition or the INTERPOL Red Notice, has already been submitted to the Ministry of Justice of Georgia.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

Article 13, Paragraph 4, of the Constitution of Georgia prohibits the transfer of a Georgian citizen to a foreign state unless an international treaty of Georgia provides it otherwise. Georgian citizenship⁸, as a ground for refusal of extradition, is also indicated in Article 21 of the ICCM.

In the given case, at the request of the foreign state seeking extradition, the Ministry of Justice of Georgia submits the transferred case files or their certified copies to the competent local authorities for the purpose of conducting investigation or prosecution with regard to the crimes indicated in the request (Article 42 of the ICCM). The investigation and prosecution in question continue in accordance with the legislation of Georgia.

Besides, the evidences submitted by the requesting state have the equal legal force as the ones obtained in the territory of Georgia, provided that such evidences are collected in observance with the procedures and rules of the relevant foreign state (Article 42, paragraph 2 of the ICCM). Therefore, there is no impediment in the Georgian domestic legislation with regard to the admissibility of evidences obtained in the foreign state. In case the evidences are insufficient for the prosecution or punishment of the person in question, the Ministry of Justice of Georgia is authorized to obtain additional materials from the relevant foreign state on the basis of the mutual legal assistance request.

After making the final decision concerning the transferred case files, the competent authorities of the requesting state are fully notified in this regard.

The procedures and rules described above are also applicable with regard to the crimes covered by the UN Convention against Corruption.

Due to the absence of incoming requests for the transfer of proceedings against Georgian nationals for committing the crimes covered by the UN Convention against Corruption it is impossible to provide statistics in this regard. However, during the recent years, Georgia has received case files for other crimes on the ground that the alleged perpetrators were Georgian nationals and their extradition was denied. Between 2007 and 2010, 46 cases were transferred to the relevant authorities; 23 of them,

⁸ Citizenship and nationality do not have a different meaning in this regard but are used interchangeably.

including 3 cases from 2007, are still pending. Please, find below the statistical data of the case files submitted to Georgia by foreign states from 2007 to August 2011:

In 2007, the Ministry of Justice of Georgia received 3 foreign requests for the transfer of proceedings together with the attached case files, which were transmitted to the relevant local authorities for conducting criminal proceedings against Georgian citizens, whose extradition had been denied before on the basis of their Georgian nationality (hereinafter foreign requests). At the present moment, criminal proceedings regarding one case has been terminated due to the amnesty and the other 2 cases are still pending.

In 2008, the Ministry of Justice of Georgia received 13 foreign requests. At the present moment, final decisions have been made on 9 cases and the proceedings are still pending on 4 cases. Out of the above-mentioned 9 cases, 4 cases were finalized with convictions, 4 cases were terminated due to the absence of the signs of crime and one case was terminated for the reason of the death of the alleged offender.

In 2009, the Ministry of Justice of Georgia received 10 foreign requests. Final decisions were made on 7 cases and the proceedings are still pending on 3 cases. Out of the above-mentioned 7 cases, 4 cases were finalized with convictions, 2 cases were terminated due to the absence of the signs of crime and one case was terminated for the reason of the death of the alleged offender.

In 2010, the Ministry of Justice of Georgia received 14 foreign requests. Final decisions were made on 10 cases and the proceedings are still pending on 4 cases. Out of the above-mentioned 10 cases, 4 cases were finalized with convictions, 2 cases were terminated due to the absence of the signs of crime, 2 cases were terminated due to the amnesty and the other 2 cases were terminated due to the fact that the initiators of the requests withdrew their requests.

From January to August 2011, the Ministry of Justice of Georgia received 6 foreign requests. Final decisions were made on 2 cases and the proceedings are still pending on 4 cases. 2 cases referred to above were terminated due to the absence of the signs of crime.

Constitution of Georgia – Article 13, and
Law on International Cooperation in Criminal Matters – Article 21, 42

Article 13 of the Constitution of Georgia:

1. Georgia shall protect its citizen regardless of his/her whereabouts.
2. No one shall be deprived of his/her citizenship.
3. The expulsion of a citizen of Georgia from Georgia shall be impermissible.
4. The extradition/transfer of a citizen of Georgia to the foreign state shall be impermissible, except for the cases prescribed by international treaty. A decision on a transfer/extradition of a citizen may be appealed in a court.

Article 21: Extradition of a National of Georgia

A national of Georgia shall not be extradited to a foreign state except for the cases provided for in the international treaty of Georgia.

Article 42: Proceedings in Georgia with regard to the criminal case files or their certified copies submitted by the competent authorities of a foreign state

1. In accordance with the rule established by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the Ministry of Justice of Georgia shall be authorized to submit the criminal case files or their certified copies transmitted by a foreign state to the competent body of Georgia for the purpose of conducting further criminal proceedings on them.
2. The evidences, obtained by a foreign state regarding the transmitted criminal case, have the equal legal force as those obtained in the territory of Georgia.
3. The criminal proceedings with regard to the transmitted criminal case files shall be continued according to the legislation of Georgia and the competent authority of a foreign state shall be notified about the final decision through the Ministry of Justice of Georgia.

(b) Observations on the implementation of the article

Article 44, paragraph 11, is a mandatory article providing that a State Party in whose territory an alleged offender is found, if it does not extradite such person in respect to an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution.

Against the backdrop of Article 13, paragraph 4, of the Constitution and Article 21 of the ICCM which prohibit extradition of a Georgian citizen unless an international treaty provides for it, the reviewing experts referred to the framework of Article 42 of the ICCM which provides for the submission of the case to the competent authorities for prosecution. Article 42 also establishes that the criminal proceedings are continued according the legislation of Georgia and that evidence obtained by a foreign state regarding the transmitted case, have the equal legal force. The aim to safeguard prosecution appears to be sufficiently fulfilled through the measures in Article 42 of the ICCM. Nevertheless, the reviewing experts raised concern during the country visit that some cases were pending since several years and asked for further clarification about this situation.

Georgia replied that in the meantime, out of the mentioned 23 cases, 10 cases had been finalized and the final decisions had been communicated to the relevant foreign authorities. With regard to 9 cases, relevant MLA requests had been sent to the respective foreign states and the executed materials either have not been received yet or submitted to the Ministry of Justice of Georgia recently. Therefore, the mentioned 9 cases are still pending due to the fact that there were not enough evidences in the files. The 4 other cases are still pending as well, since the whereabouts of the person to be charged could not be located in Georgia so far. Despite this, the relevant measures are being taken by the Georgian authorities for the establishment of their whereabouts. In light of the above, Georgia has taken decisions on pending cases within reasonable time.

The reviewing experts took note of these efforts, including MLA requests, of the State Party under review to reach decisions on pending cases as soon as possible. They recommended that all efforts should be made in this regard to avoid that cases are pending without final decision for a long time.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State

Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

Article 13, paragraph 4, of the Constitution of Georgia and Article 21 of the ICCM prohibit the extradition or otherwise transfer of a Georgian national to a foreign state unless international treaty of Georgia regulates the mentioned issue in a different manner. Since there is no extradition treaty binding for Georgia that allows the extradition of a Georgian national to a foreign state, the transfer of Georgian nationals has never occurred in practice so far.

Constitution of Georgia – Article 13, and

Law on International Cooperation in Criminal Matters – Article 21 (see above)

(b) Observations on the implementation of the article

Georgia has not approached Article 44, paragraph 12 because the Constitution of Georgia and the law on International Cooperation in Criminal Matters prohibit the extradition or otherwise transfer of a Georgian national to a foreign state unless international treaty of Georgia regulates the mentioned issue in a different manner.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

In case the extradition sought for the purposes of enforcing a sentence, is refused on the ground that the fugitive is a national of Georgia, the relevant Georgian authorities are able to consider the possibility of enforcing the sentence imposed in the requesting state provided that the additional request for the enforcement of a foreign judgment is submitted to the Ministry of Justice of Georgia. The possibility of the enforcement of the foreign judgment as described above is only possible in case the relevant international treaty so permits as well as if the relevant ad hoc agreement is concluded with the respective foreign authorities on a case-by-case basis. Due to the absence of foreign requests for the enforcement of judgment regarding the crimes covered by the UN Convention against Corruption, it is impossible to provide observations on the implementation of the Article referred to above.

Law on International Cooperation in Criminal Matters –Article 2 (see above)

(b) Observations on the implementation of the article

Georgia has approached the provisions of Article 44, paragraph 13, noting that in case the extradition sought for the purposes of enforcing a sentence, is refused on the ground that the fugitive is a national of Georgia, the relevant Georgian authorities are able to consider the possibility of enforcing the sentence imposed under the domestic law of the requesting State provided that the additional request for the enforcement of a foreign judgment is submitted to the Ministry of Justice of Georgia. This is only possible in case the relevant international treaty or ad hoc agreement so permits. In direct application of the provision in Article 44, paragraph 13, of the Convention against Corruption, this would be decided on a case-by-case basis.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

The domestic legislation of Georgia ensures fair treatment for the fugitives at all stages of extradition proceedings. Namely, according to Article 34, paragraph 4, of the law on International Cooperation in Criminal Matters, a person subjected to extradition proceedings enjoys all the rights of the accused guaranteed by the Criminal Code of Georgia, included but not limited with the right to defence counsel, right to enjoy the service of interpreter, right to appeal, right to make complaint, right to be familiarized with the charges brought against him/her in the requesting state.

Due to the absence of extradition requests regarding the crimes covered by the UN Convention against Corruption, it is impossible to provide examples of implementation in this regard. However, in other cases, when Georgia examined foreign extradition requests, all the fugitives enjoyed the rights of accused as envisaged under the Criminal Procedure Code of Georgia. In case of receiving extradition requests for corruption crimes in future, the same rules will be applied by the relevant Georgian authorities with regard to the fugitives located/detained in Georgia.

Law on International Cooperation in Criminal Matters – Article 34

Article 34: Decision on extradition and procedure for its appeal

1. The decision on extradition or temporary surrender of a person to a foreign state shall be made by the Minister of Justice or the person authorized by the Minister.
2. The person subject to extradition shall be authorized to appeal the decision on extradition made either by the Minister of Justice or by the authorized person within 7 days after the date of receiving the decision at the District (City) Court, which shall hold the first hearing to examine the appeal within no later than 7 days after the date of receiving the appeal.
3. The parties shall be authorized to appeal the decision of the District (City) Court within 5 days after receiving it through submitting a cassation appeal to the Chamber of Criminal Cases of the Supreme Court of Georgia. The Chamber of Criminal Cases of the Supreme Court of Georgia shall hold the first hearing to examine the appeal no later than 5 days after the date of receiving the cassation appeal.

4. The person subject to extradition shall be entitled to enjoy all the rights of the accused established under the Criminal Procedure Code of Georgia taking into consideration the peculiarities of extradition proceedings.

(b) Observations on the implementation of the article

The reviewers referred to Article 34, paragraph 4 of the ICCM, which guarantees that the person subjected to extradition proceedings enjoys all the rights of the accused guaranteed by the Criminal Code of Georgia, included but not limited with the right to defence counsel, right to enjoy the service of interpreter, right to appeal, right to make complaint, right to be familiarized with the charges brought against him/her in the requesting state. This is in line with paragraph 14 of the Convention.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

Article 29, paragraph 1, of the law on International Cooperation in Criminal Matters excludes extradition, if the competent authorities of Georgia have substantial grounds for believing that the extradition of a person is requested for the purpose of prosecuting or punishing that person on account of his race, nationality, ethnic origin, religious belief, political opinion or other reasons. Therefore, in case of establishing the circumstances referred to above, the competent Georgian authorities find extradition inadmissible.

Law on International Cooperation in Criminal Matters – Article 29

Article 29: Other grounds for excluding extradition

1. Extradition shall not be granted, if there is a reasonable suspicion for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, nationality, ethnicity, religion, or political opinion, or for any of the similar circumstances.
2. Extradition shall not be granted, when stemming from the age, health condition or personal characteristics of a person, as well as taking into account the nature of the crime and the interests of the requesting state, it is considered that extradition does not manifestly correspond to the basic standards of human treatment.
3. Extradition shall not be granted, if there is a reasonable doubt that in the requesting state a person will be subject to torture, cruel, inhumane, or degrading treatment or punishment, which will be connected to torture, cruel, inhuman or degrading treatment towards this person.
4. Extradition shall not be granted, if a person may be tried or sentenced by a special court or tribunal in the requesting state.
5. Extradition shall not also be granted in case of existence of other grounds for refusal defined under the international treaty or *ad hoc* agreement between Georgia and a relevant foreign state.

(b) Observations on the implementation of the article

The reviewing experts noted that Georgia's law on International Cooperation in Criminal Matters conforms with paragraph 15. It excludes extradition, if the competent authorities of Georgia have substantial grounds for believing that the extradition of a person is requested for the purpose of prosecuting or punishing that person on account of his race, nationality, ethnic origin, religious belief, political opinion or other reasons. Therefore, in case of establishing the circumstances referred to above, the competent Georgian authorities find extradition inadmissible.

However, they noted, that the refusal of extraditions based on substantial grounds for believing that the extradition of a person is requested for the purpose of prosecuting or punishing that person on account of a person's sex was not covered in the provision of Article 29 of the ICCM. As there seems sufficient possibility to use the parameter of "other reasons" for which there is a reference in the same article, this should be taken into consideration by the State Party under review.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Neither binding international treaties nor the domestic legislation prohibit the relevant Georgian authorities to comply a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. Therefore, extradition procedures may be carried out irrespective of the fact that the request involves fiscal offences.

As indicated above, fiscal offences are extraditable under the Georgian legislation. However, up to the present date, there has been no incoming extradition request involving fiscal offences. Therefore, no information is available in this regard.

(b) Observations on the implementation of the article

Article 44, paragraph 16, is a mandatory article specifying that States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. The reviewing experts noted that Georgia complies with the provision of Article 44, paragraph 16 of the Convention against Corruption. Although there is no explicit regulation, the fact that there the law does not state that extradition may be prohibited on the sole ground ground that the offence is also considered to involve fiscal matters, appears sufficient.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

The law on International Cooperation in Criminal Matters does not contain provisions regulating the issues of consulting with the requesting state party before refusing extradition. However, since there is no prohibition under the domestic legislation, the Georgian authorities are able to hold such kind of consultations with their foreign counterparts in cases they deem appropriate to do so.

Georgia has never received any extradition request for the crimes covered by the UN Convention against Corruption. Besides, up to the present date, there has been no necessity of consulting with the requesting states before refusing extradition regarding other types of crimes. However, in case of its necessity in future, the Ministry of Justice of Georgia will consult with its foreign counterparts and give them ample opportunity to present their opinions and to provide information relevant to their allegations.

(b) Observations on the implementation of the article

The reviewing experts stated that, despite the fact that the law on International Cooperation in Criminal Matters does not contain provisions regulating the issues, the Georgian authorities are able to hold such kind consultations with their foreign counterparts in cases Georgian authorities deem appropriate to do so.

Such conduct of consultation should be made a standard practice. Another possibility, in case a legal regulation would seem necessary, could be to include in the Law on International Cooperation in Criminal Matters the prerequisite that a decision on refusal of the extradition request should not be taken immediately in case the information communicated by the requesting party is found to be insufficient, but to request necessary supplementary information from this party beforehand (given that additional information could bring about a different result). In case such information can not be provided within a certain time, the decision can be taken without further consultation.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

Georgia is planning to sign the third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010). After the ratification of the mentioned treaty, the competent Georgian authorities will be able to implement simplified extradition procedures in the domestic legislation. Besides, for the purpose of enhancing the effectiveness of cooperation in extradition cases, Georgia is also planning to start negotiations for concluding bilateral extradition agreements with some states, having no treaty basis for cooperation with Georgia.

(b) Observations on the implementation of the article

The reviewing experts refer to the plans of Georgia to sign the third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010). After the ratification of the

mentioned treaty, the competent Georgian authorities will be able to implement simplified extradition procedures in the domestic legislation.

Upon request of the reviewing experts with which countries Georgia is planning to start negotiations for bilateral agreements in regard to extradition, Georgia named Canada, China, Argentina, India, Brazil, and Japan as possible candidates.

(e) Technical assistance needs

No technical assistance is required.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

Georgia is a party to the following multilateral treaties regulating the issues related to the transfer of sentenced persons:

1. European Convention on the Transfer of Sentenced Persons (Strasbourg, 21.III.1983)
2. Additional Protocol to the European Convention on the Transfer of Sentenced Persons (Strasbourg, 18.XII.1997)
3. Convention on the Transfer of Sentenced Persons for the purposes of further Enforcement of Sentence (Moscow, 06.III.1998).

Besides, Georgia has bilateral agreements with several states regarding the issues related to the transfer of sentenced persons. At the domestic level, Chapter V of the law on International Cooperation in Criminal Matters defines the relevant procedures, which enable the competent Georgian authorities to effectively cooperate with other states regarding the issues referred to above.

In addition, in cases Georgia does not have a treaty basis for cooperation with foreign states with regard to the issues related to the transfer of sentenced persons, the competent Georgian authorities are able to conclude ad hoc agreements with their foreign counterparts or cooperate with them on the basis of the reciprocity principle (Article 2 of the ICCM). Therefore, there is no legal impediment for the competent Georgian authorities to carry out procedures related to the transfer of sentenced persons.

Excerpts from the law on International Cooperation in Criminal Matters - Chapter V

Transfer of the persons sentenced to the deprivation of liberty for the purpose of serving the sentence

Article 43: General Provisions related to the transfer of the persons sentenced to the deprivation of liberty for the purpose of serving the sentence

1. In case of existence of a relevant legal ground, a citizen of Georgia and a permanent resident of Georgia, whose liberty was deprived and who were sentenced in a foreign state, are entitled to request their transfer to Georgia for the further enforcement of sentence.
2. In case of existence of a relevant legal ground, a citizen of a foreign state, whose liberty was deprived and was sentenced in Georgia, shall be entitled to request his/her transfer to the state whose citizen he/she is.

3. The Ministry of Corrections and Legal Assistance of Georgia shall ensure that foreign citizens whose liberty was deprived and who were sentenced in Georgia are notified of the right envisaged by Paragraph 2 of this Article.

4. The Minister of Justice of Georgia shall make a decision on the transfer of citizens of foreign countries who were sentenced by the Georgian courts, or make a decision on the citizens of Georgia and persons permanently residing in Georgia who were sentenced in a foreign state to be transferred to Georgia.

5. The Ministry of Justice of Georgia shall be authorized to cooperate with foreign states in regard of the issues of transferring to each other the sentenced persons, as well as it shall ensure the implementation of relevant procedures for considering the issues and making decisions on transferring each other the sentenced persons.

6. The sentenced person may be surrendered only after the final judgment of the court has entered into legal force.

7. The ground for starting consideration of the issue of the transfer of the sentenced person shall be:

- a) The request from the competent body of the state whose citizen is sentenced/the request from the competent body of the state on the basis of the court judgment of which the person was sentenced;
- b) The statement of the sentenced person, the defender of his/her interests, his/her close relative, or a legal representative.

8. The Ministry of Justice of Georgia shall obtain the following documents in course of considering the issue of transferring the sentenced person:

- a) A certified copy of the final judgment of the court that has entered into legal force;
- b) The document certifying that the final judgment of court has entered into legal force;
- c) A certified copy of the decision of the higher instance court (if any) to the court that rendered the judgment;
- d) The document containing information about the part of the sentence that has already been served by the convicted;
- e) The document containing information about the remainder of the sentence;
- f) The text of the article from the Criminal Code on the basis of which the person was sentenced;
- g) A written consent on the transfer from the sentenced person, and if the sentenced person is not able to express his/her will, a written consent of his/her close relative or a legal representative, unless otherwise provided for in the international treaty of Georgia, or *ad hoc* agreement, or the conditions of reciprocal cooperation.
- h) The certificate on the health condition of the sentenced person;
- i) The document certifying that the person is a citizen of the administrating state;
- j) The opinion of the Ministry of Interior of Georgia on the reasonability of the transfer of the sentenced person.

9. The sentenced person shall not be transferred, if:

- a) Under the law of the state whose citizen is the sentenced person and which requests the transfer of the person, the action for which the person was convicted, is not considered to be an offence or is not punishable with the deprivation of liberty;
- b) There is no consent from the sentenced person (unless otherwise provided for in the international treaty of Georgia, or *ad hoc* agreement, or reciprocity conditions), and in case the sentenced person cannot freely express his/her will due to the age, or physical or mental disability – the consent from a close relative or a legal representative;
- c) By the moment of receiving the request for the transfer the remaining period of liberty deprived to be served by the convicted is less than 6 months. In exceptional cases, Georgia and a relevant foreign state may also agree on the transfer in such a case when the remainder of the sentence is less than 6 months;
- d) The parties have failed to achieve agreement on the transfer of the sentenced person;

10. The request for the transfer of the sentenced person may not be granted, if:

- a) The transfer of the sentenced person endangers the public order in Georgia and contradicts the safety and security of the state;
- b) The penitentiary facilities in Georgia are overcrowded;
- c) The sentenced person has not served the half of the sentence unless otherwise agreed between the competent authorities of Georgia and a foreign state;
- d) The interested parties refused to cover necessary expenses for the transfer of the sentenced person;

Article 44: Transfer of the citizens of foreign states sentenced by the courts of Georgia

1. After receiving a request/application, the Ministry of Justice of Georgia shall request the documents envisaged by Paragraph 8, Article 43 of this Law and the certificate certifying that the damage incurred

due to the criminal act committed by the sentenced person was compensated, from relevant authorities of Georgia.

2. After receiving the application from the sentenced person, the Ministry of Justice of Georgia draws up the request addressed to the competent body of the state whose citizen is the convicted.

3. On the basis of the documents obtained in course of consideration of the issue on the transfer of the sentenced person, the Ministry of Justice of Georgia shall prepare the conclusion on the reasonability of the transfer of sentenced person and submit it to the authorized person designated by the Minister of Justice of Georgia.

4. In case the issue on the transfer of the sentenced person is decided positively, the sentenced person shall be transferred on the basis of the Order issued by the Minister of Justice of Georgia.

5. In case the issue on the transfer of the sentenced person is decided negatively, the Ministry of Justice of Georgia shall inform the requesting party/the applicant of the refusal to grant the request/application.

6. Within 5 days from issuing the Order on the transfer of the sentenced person, the Ministry of Justice of Georgia shall notify in writing the competent body of the state whose citizen is the sentenced person and shall also apply to the Ministry of Corrections and Legal Assistance of Georgia to carry out the procedures for the transfer of the sentenced person.

7. In case the judgment, rendered in Georgia against the person transferred, has been changed or annulled, or the amnesty or the act of pardon has been granted to the sentenced person, the Ministry of Justice of Georgia shall immediately notify the competent body of the state to which the person has been transferred.

8. If the judgment was annulled and the investigation of the case or the trial started again, in case the competent body of the foreign state issues a relevant request, the Ministry of Justice of Georgia shall send a copy of a relevant decision and other necessary documents to the competent body of the state to which the person has been transferred.

Article 45: Transfer of the citizens of Georgia and the persons having permanent residence in Georgia, who were sentenced in foreign states

1. The basis to start considering the issue on the transfer of the sentenced person shall be the application, submitted by an interested person or the request, submitted by a competent body of a foreign state.

2. The application of an interested person/the request of a foreign state shall be enclosed with:

a) Full identification data of the sentenced person (name, last name, date and place of birth, data of the personal identification document and other information);

b) The document which verifies that the sentenced person is a citizen of Georgia or the status that the person permanently resides in Georgia;

c) The document verifying the authority given by the sentenced person to the applicant, and in case the applicant is a close relative, the document verifying a relevant kinship to the applicant.

3. Upon receiving the request from the competent body of a foreign state, or the application from an interested person, the Ministry of Justice of Georgia shall be authorized to request the documents envisaged by Paragraph 8, Article 43 of this Law from relevant agencies of a foreign state.

4. If the basis for starting the procedure for the transfer of the sentenced person is an application of an interested person, the Ministry of Justice of Georgia shall prepare the primary request for starting consideration of the issue to transfer the sentenced person. The primary document shall contain the request for providing the documents necessary to consider the issue of transferring and making a decision.

5. If the procedure for the transfer of the sentenced person is carried out on the basis of the request from a foreign state, and the request does not contain all necessary documents and data or/and the materials provided are not sufficient to make a decision on the transfer of the sentenced person, the Ministry of Justice of Georgia shall be authorized to request necessary materials from a competent body of a foreign state.

6. If necessary, the Ministry of Justice of Georgia shall obtain a written consent from the interested person that he/she will cover necessary expenses for the transfer of the sentenced person, which, along with other documents, shall be send to the Ministry of Corrections and Legal Assistance of Georgia after a positive decision has been made in regard of the issue on the transfer of the sentenced person.

7. On the basis of the documents obtained, the Ministry of Justice of Georgia shall be authorized to prepare the conclusion on the reasonability of the transfer of the sentenced person, which shall be approved by the person authorized by the Minister of justice of Georgia.

8. In case of a negative conclusion, the interested person/requested party shall be informed thereof with relevant grounds being indicated within 1 week.

9. If the conclusion envisaged by Paragraph 7 of this Article is positive, within 1 month from its approval, the Ministry of Justice of Georgia shall be send the judgment to be enforced in Georgia and other documents related to the transfer of the sentenced person to a relevant court in Georgia according to the procedures envisaged by Article 289 of the Criminal Procedure Code of Georgia.

10. According to Paragraph 7 of Article 289 of the Criminal Procedure Code of Georgia, a copy of the court ruling received from the court shall be sent to a competent body of a foreign state along with the translation. The copy of the court ruling shall be enclosed with the request for the transfer.

11. If a foreign state confirms its consent to the transfer of the sentenced person, the Ministry of Justice of Georgia shall prepare an Order on the transfer of the sentenced person.

12. If the Minister of Justice of Georgia makes a positive decision, the Ministry of Justice of Georgia shall send the Order of the Minister to the Ministry of Corrections and Legal Assistance of Georgia to carry out the procedure related to the transfer.

13. In case the sentenced person who was transferred is exempted from criminal liability or/and from serving the remainder of the sentence on the basis of the amnesty or the act of pardon granted in the foreign state, or on the basis of another legal ground, upon receiving the information from a competent body of the state issuing the judgment, the Ministry of Justice of Georgia shall immediately address the Ministry of Corrections and Legal Assistance of Georgia with the request to release the sentenced person from further servicing the sentence.

Article 46: Transit of the sentenced person

1. The issues related to the transit of the sentenced person to be transferred by a foreign state to a third state through the territory of Georgia shall be considered by the Ministry of Justice of Georgia.

2. A competent body of the state which transits the sentenced person shall address the Ministry of Justice of Georgia with the request on transit of the sentenced person through the territory of Georgia.

3. The Ministry of Justice of Georgia shall address with the request on transit of the sentenced person to be transferred to Georgia through the territory of another state to a competent body of this state.

(b) Observations on the implementation of the article

The reviewing experts noted that Article 45 was an optional article. They referred to the answer of Georgia, that the country was party of 3 multilateral treaties and several bilateral treaties regulating the issues related to the transfer of sentenced persons. As the competent Georgian authorities are able to conclude ad hoc agreements with their foreign counterparts or cooperate with them on the basis of the reciprocity principle in case of the absence of such treaty, there is no legal impediment for the competent Georgian authorities to carry out procedures related to the transfer of sentenced persons.

(e) Technical assistance needs

No technical assistance is required.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

According to Article 7 of the law on Normative Acts of Georgia, international treaties binding for Georgia are part of the Georgian legislation and prevail over domestic laws other than the Constitution, Constitutional Law and Constitutional Agreement. Therefore, all binding international treaties, including the UN Convention against Corruption, may be applied directly. Georgia made no reservation similar to the one in regard to article 44, paragraph 6, subparagraph „a”. Correspondingly, the competent Georgian authorities are able to apply Paragraphs 9 to 29 of Article 46 of the abovementioned convention with the States having no extradition treaties with Georgia. In case there is a binding international treaty with a respective foreign State, Georgia is still able to use the UN Convention against Corruption as a legal basis for rendering mutual legal assistance, provided that the provisions of the Convention facilitate the cooperation.

Despite the fact that the international treaties binding for Georgia are self-executing at the national level, procedures established by Paragraphs 9 to 29 are also fully incorporated in the domestic legislation. Namely, Chapter 2 of the law on International Cooperation in Criminal Matters regulates the issues related to mutual legal assistance in the field of criminal law. It should be noted that the mentioned law does not explicitly define the specific types of procedural actions, which are executable in the territory of Georgia. It means that all kinds of assistance are available for foreign states, if the Georgian investigative authorities would not be prohibited from conducting the similar actions in the course of the investigation in domestic cases. Since the Criminal Procedure Code of Georgia provides possibility of conducting all the procedural actions defined under Article 46 of the UN Convention against Corruption during the proceedings at the domestic level, the competent Georgian authorities are also able to provide the relevant foreign states with similar assistance in investigations, prosecutions and judicial proceedings in relation to the proceedings covered by the above indicated Convention.

Also relevant in this regard is Article 2 of the ICCM, according to which MLA is also possible on the basis of ad hoc agreements or the reciprocity principle.

Georgia has never received any MLA request on the basis of the UN Convention against Corruption. However, MLA requests were received in regard to corruption related crime but based on other bi- and multilateral treaties.

When cooperating with foreign states, Georgia mostly uses the European Convention on Mutual Assistance in Criminal Matters as a legal basis for cooperation. Below is given a short summary of mutual legal assistance which was provided for the French investigative authorities:

In 2009, Georgia received a MLA request from the Republic of France. The request referred to the investigation against one of the printing enterprises of the Republic of France, which had undertaken responsibility to produce Georgian national passports and ID cards on the basis of the relevant contracts. During the investigation, the French authorities determined that several intermediary companies and persons (mostly Georgians) had obtained sums illegally as a result of implementing the above-mentioned contracts. On the basis of the letter rogatory, the French authorities requested the interrogation of some persons in Georgia, the obtaining of information regarding the bank accounts and transactions of the mentioned persons, the seizure of some documents etc. In the course of the investigation, the competent Georgian authorities took all appropriate measures, and as a result, provided the French authorities with all executed materials in due time. Moreover, on the basis of the information

indicated in the letter rogatory, the Investigative Department at the Chief Prosecutor's Office of Georgia launched its own investigation against some Georgian nationals on the alleged fact of money laundering. Later, the French investigators arrived in Georgia and they attended some procedural actions here. Finally, the coordinated actions of Georgian and French authorities led to the successful investigations both in Georgia and the Republic of France.

According to the statistical data provided by the Georgian side after the country visit, in 2009-2011, only 5 MLA requests regarding corruption crimes were rejected. The reason was that either the persons to be interrogated could not be located or the property to be seized was not found in Georgia.

Statistical data of mutual legal assistance requests regarding corruption related crimes

2009	Requests sent	Requests received
Total	19	13
Executed	14	8
Refused	1	5
Pending	4	-
Average time	4-5 months	2-3 months

2010	Requests sent	Requests received
Total	9	4
Executed	6	4
Refused	-	-
Pending	3	-
Average time	4-5 months	2-3 months

2011	Requests sent	Requests received
Total	7	3
Executed	5	3
Refused	-	-
Pending	2	-
Average time	4-5 months	2-3 months

Existing binding bilateral treaties and multilateral treaties containing provisions related to mutual legal assistance in the field of criminal law:

1. European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20.IV.1959);
2. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 17.III.1978);
3. European Convention on the International Validity of Criminal Judgments (The Hague, 28.V.1970);
4. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8.XI.1990);
5. Criminal Law Convention on Corruption (Strasbourg, 27.I.1999);
6. Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16.V.2005);
7. Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22.I.1993);
8. United Nations Convention against Corruption;
9. United Nations Convention against Transnational Organized Crime;

10. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
11. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;
12. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
13. Agreement between the Republic of Georgia and the Republic of Bulgaria on Mutual Legal Assistance in Criminal Matters (19.I.1995);
14. Treaty between Georgia and the Republic of Turkey on Mutual Legal Assistance in Civil, Commercial and Criminal Matters (4.IV.1996);
15. Treaty between Georgia and Turkmenistan on Mutual Assistance in Civil and Criminal Matters (20.III.1996);
16. Treaty between the Republic of Georgia and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters (9.I.1995);
17. Treaty between Georgia and the Republic of Kazakhstan on Mutual Legal Assistance in Civil and Criminal matters (17.IX.1996); and
Protocol to the Treaty between Georgia and the Republic of Kazakhstan on Mutual Legal Assistance in Civil and Criminal matters (31.III.2005);
18. Treaty between Georgia and the Republic of Azerbaijan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (12.VI.1996);
19. Agreement between Georgia and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters (10.V.1999);

Law on International Cooperation in Criminal Matters – Article 11

Article 11: Execution of mutual legal assistance request of a foreign state in the territory of Georgia

1. In case there is a relevant legal basis, the Ministry of Justice of Georgia shall be entitled to ensure the execution of mutual legal assistance request of a foreign state in the territory of Georgia.
2. Mutual legal assistance request submitted by a foreign state shall be executed in accordance with the legislation of Georgia.
3. Unless otherwise is provided by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the law of the requesting state may also be applied in the course of the execution of a mutual legal assistance request, provided that it is not contrary to the legislation of Georgia.
4. Procedural actions related to applying coercive measures against a person or restricting his/her constitutional rights and freedoms shall be carried out if they are authorized by the court or other competent authority of a foreign state.
5. In case there is a relevant legal basis, the representatives of a foreign state may attend the execution of their mutual legal assistance request, if there is a prior consent from the Ministry of Justice of Georgia.
6. If the information provided by a foreign state is not sufficient for the execution of a mutual legal assistance request, the Ministry of Justice of Georgia shall be authorized to request additional information from that foreign state.
7. The materials obtained in the course of the execution of a mutual legal assistance request shall be returned to a foreign state through the Ministry of Justice of Georgia.

Law on Normative Acts – Article 7

Article 7: Hierarchy of normative acts

1. The normative acts of Georgia shall be divided into the legislative acts of Georgia and the sub-legislative normative acts of Georgia, which constitute the legislation of Georgia. A constitutional agreement of Georgia and an international treaty or agreement of Georgia shall also be the normative acts of Georgia.

2. The following shall be the legislative acts of Georgia;
 - a) The Constitution of Georgia, a constitutional law of Georgia;
 - b) An organic law of Georgia;
 - c) A law of Georgia, a decree of the President of Georgia, the Resolution of the Parliament of Georgia;
3. The hierarchy among the legislative acts of Georgia, the Constitutional agreement of Georgia and the international treaty or agreement of Georgia shall be the following:
 - a) The Constitution of Georgia, a constitutional law of Georgia;
 - b) A constitutional agreement of Georgia;
 - c) An international treaty or agreement of Georgia;
 - d) An organic law of Georgia;
 - e) A law of Georgia, a decree of the President of Georgia, the Resolution of the Parliament of Georgia;
4. A constitutional agreement of Georgia shall fully be in conformity with the universally recognized principles and norms of international law, namely, in the field of human rights and fundamental freedoms. A constitutional agreement of Georgia, if it does not contradict the Constitution of Georgia and a constitutional law, shall prevail over all other normative acts of Georgia.
5. An international treaty or agreement of Georgia, if it entered into force in observance with the requirements prescribed by the Constitution of Georgia and the law of Georgia on International Treaties of Georgia, shall prevail over domestic normative acts, provided that they are not contrary to the Constitution of Georgia, a constitutional law and a constitutional agreement of Georgia.
6. A normative act shall not contradict the decision made through the referendum.
7. The legislative acts of Georgia shall prevail over the sub-legislative normative acts of Georgia.
8. In case of conflict among the normative acts of the equal legal force, the priority shall be given to the normative act issued (enacted) recently.
9. Unless this Law stipulates otherwise, a sub-legislative normative act shall be issued (enacted) by the issuing (enacting) body (official) within the competence only for the purpose of the execution of a legislative act, and in case, its explicitly prescribed by a legislative act. The sub-legislative normative act shall indicate on the ground of which and for the execution of which legislative act it has been issued (enacted).
10. An edict of the President of Georgia shall prevail over the decree of the Parliament of Georgia and the normative acts of the executive bodies (officials).
11. The legal force of the normative acts of the executive bodies (officials) shall be defined in accordance with the hierarchy of those bodies in the executive power.
12. In accordance with the principle of the separation of power:
 - a) The normative acts of Georgia shall prevail over the normative acts of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara.
 - b) The normative act of the President of Georgia shall prevail over the normative acts of the executive bodies (officials) of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara.
 - c) The normative acts of Georgia shall prevail over the normative acts of the bodies of local self-governments.

(b) Observations on the implementation of the article

The reviewing experts noted that Article 46, paragraph 1, was a mandatory article specifying that States Parties should afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. Georgia approached this provision, notifying that according to Article 7 of the Law on Normative Acts, binding international treaties, including the UN Convention against Corruption, may be applied directly. This opens the possibility to apply Paragraphs 9 to 29 of Article 46 of the abovementioned convention directly with a State which has no extradition treaty with Georgia. In case there is a binding international treaty with a respective foreign state, Georgia is still able to use the UN Convention against Corruption as a legal basis for rendering mutual legal assistance. Furthermore the reviewers noted Georgia's reference to Chapter 2 of the law on International Cooperation in Criminal Matters which regulates the issues related to mutual legal assistance in the field of criminal law and does not define specific forms of mutual legal assistance which can be carried out, but is an entry point

for any assistance –in regard to investigation, prosecution and judicial proceedings if the investigative authorities would be able to conduct similar actions in the investigation in a domestic case.. The Criminal Procedure Code of Georgia provides possibility of all the procedural actions defined under Article 46 of the UN Convention against Corruption.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Georgian legislation provides possibility of investigation, prosecution and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with Article 26 of the UN Convention on Corruption. Since the mentioned proceedings are possible to be conducted by the relevant Georgian authorities at the domestic level, such assistance is also available for foreign authorities to the fullest extent on the basis of mutual legal assistance requests.

Thus, the competent Georgian authorities are able to provide mutual legal assistance on behalf of a respective foreign State, in case a legal person may be held liable in relation to the offences covered by the UN Convention against Corruption. Georgia has never received or sent any MLA requests on the basis of the above indicated Convention. However, all other MLA requests submitted to the Ministry of Justice of Georgia concerning legal persons have been executed without any impediments. Since the legislation of Georgia establishes criminal responsibility for legal persons, there have never been any problems of execution foreign MLA requests in terms of dual criminality requirement in the relevant cases. Also, Georgia has never encountered any problems as a requesting state when seeking legal assistance from foreign authorities regarding criminal proceedings conducted against legal persons.

Law on International Cooperation in Criminal Matters – Article 11

Article 11: Execution of mutual legal assistance request of a foreign state in the territory of Georgia

1. In case there is a relevant legal basis, the Ministry of Justice of Georgia shall be entitled to ensure the execution of mutual legal assistance request of a foreign state in the territory of Georgia.
2. Mutual legal assistance request submitted by a foreign state shall be executed in accordance with the legislation of Georgia.
3. Unless otherwise is provided by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the law of the requesting state may also be applied in the course of the execution of a mutual legal assistance request, provided that it is not contrary to the legislation of Georgia.
4. Procedural actions related to applying coercive measures against a person or restricting his/her constitutional rights and freedoms shall be carried out if they are authorized by the court or other competent authority of a foreign state.
5. In case there is a relevant legal basis, the representatives of a foreign state may attend the execution of their mutual legal assistance request, if there is a prior consent from the Ministry of Justice of Georgia.

6. If the information provided by a foreign state is not sufficient for the execution of a mutual legal assistance request, the Ministry of Justice of Georgia shall be authorized to request additional information from that foreign state.
7. The materials obtained in the course of the execution of a mutual legal assistance request shall be returned to a foreign state through the Ministry of Justice of Georgia.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the given explanations in regard to the approach to Article 46, paragraph 2, which conforms with the provision. They referred to the fact that the Georgian legislation provides possibility of investigation, prosecution and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with Article 26 of the UN Convention on Corruption. Since the mentioned proceedings are possible to be conducted by the relevant Georgian authorities at the domestic level, the similar assistance is also available for foreign authorities to the fullest extent on the basis of mutual legal assistance requests.

Article 46 Mutual legal assistance

Subparagraph 3 (a) to 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

According to Chapter 2 of the law on International Cooperation in Criminal Matters, all types of procedural actions, which are possible to be conducted by the Georgian competent authorities in the course of the investigation in the domestic case, are also available for foreign states on the basis of mutual legal assistance requests. Since the Criminal Procedure Code of Georgia provides possibility of conducting all the actions listed in Paragraph 3 of Article 46 of the UN Convention against Corruption (Taking evidence or statements from persons; Effecting service of judicial documents; Executing searches and seizures, and freezing; Examining objects and sites; Providing information, evidentiary items and expert evaluations; Providing originals or certified copies of relevant documents and records, including government, bank financial, corporate or business records; Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; Facilitating the voluntary appearance of persons in the requesting states), the competent

Georgian authorities are also able to provide the relevant foreign states with similar assistance on the basis of mutual legal assistance requests.

It should be noted that according to Article 11, paragraph 2, of the ICCM, mutual legal assistance requests should be executed in accordance with the Georgian legislation; however, the law of the respective foreign state may also be applied at that time, provided that it is not contrary to the legislation of Georgia. Besides, in case the relevant foreign authorities request the conduct of the procedural actions restricting the constitutional rights and freedoms of a person (e.g. search, seizure), such kind of assistance may only be afforded if it is also authorized by the respective court or other competent authority of the requesting state. In practice, when the foreign state requests the conduct of the procedural actions indicated above, the relevant Georgian prosecutor moves before the competent local court with the motion on the authorization of the requested investigative action. The legal basis for granting the motion is the warrant of the foreign court, or in some cases, the decree of the investigator or prosecutor of the requesting state.

In addition, almost all the MLA treaties binding for Georgia provide possibility of rendering assistance referred to above. In case the relevant international treaty does not provide possibility of rendering certain types of assistance, the Ministry of Justice of Georgia is authorized to conclude ad hoc agreements in this regard, or cooperate with their foreign counterparts on the basis of the reciprocity principle.

The competent Georgian authorities are able to conduct all the above indicated procedural actions on behalf of foreign states. Georgia has never received any MLA requests on the basis of the UN Convention against Corruption.

However, at the time of cooperation with foreign states regarding corruption as well as other types of crimes, the most frequently requested procedural actions were taking statements from persons, obtaining information from public agencies and seizure of the relevant documentation from private entities. However, there have also been cases when the foreign states requested the conduct of other types of procedural actions listed above. In all cases, foreign MLA requests were executed effectively and in due time, without any impediments.

When seeking assistance from foreign states, Georgia most frequently requested the conduct of seizure and taking statements from persons. However, other types of procedural actions were also requested from foreign states. In all cases, Georgia has never encountered any significant problems at the time of cooperation as a requesting state with the relevant foreign authorities.

When executing foreign MLA requests involving the coercive measures of search and seizure, the dual criminality requirement is a precondition under the legislation of Georgia according to Article 12 ICCM as well as the necessity that the connected crime must be an extraditable offence. However, in practice the dual criminality requirement is examined broadly by the Georgian competent authorities. Namely, in case of examining foreign MLA requests, the requirement of the existence of dual criminality is deemed fulfilled, irrespective of whether the Georgian legislation places the offence within the same category of offence or denominates the offence by the same terminology as the requesting state, provided that the conduct underlying the offence for which the assistance is sought is a criminal offence under the Criminal Code of Georgia.

Law on International Cooperation in Criminal Matters – Articles 2, 11, and 12

Article 2: Legal basis for international cooperation in criminal matters

1. International cooperation in criminal matters, as a rule, is governed by the international treaty of Georgia.
2. In certain cases, international cooperation in criminal matters may be carried out on the basis of *ad hoc* agreement or the reciprocity principle, with those states with which Georgia does not have a relevant international treaty.
3. On the basis of the reciprocity principle international cooperation in criminal matters may be carried out with regard to the issues referred to in Paragraph 1 of Article 1 of this Law, except extradition and enforcement of judgment.
4. In case of international cooperation in criminal matters on the basis of the reciprocity principle, conditions of reciprocal cooperation shall be determined, which shall provide for the minimum guarantees defined in this Law, although, establishing higher standards is not excluded.
5. *Ad hoc* agreement shall be concluded only for a specific case of international cooperation in the field of criminal law and it shall provide for the minimum guarantees defined in this Law, although, establishing higher standards is not excluded.

Article 11: Execution of mutual legal assistance request of a foreign state in the territory of Georgia

1. In case there is a relevant legal basis, the Ministry of Justice of Georgia shall be entitled to ensure the execution of mutual legal assistance request of a foreign state in the territory of Georgia.
2. Mutual legal assistance request submitted by a foreign state shall be executed in accordance with the legislation of Georgia.
3. Unless otherwise is provided by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the law of the requesting state may also be applied in the course of the execution of a mutual legal assistance request, provided that it is not contrary to the legislation of Georgia.
4. Procedural actions related to applying coercive measures against a person or restricting his/her constitutional rights and freedoms shall be carried out if they are authorized by the court or other competent authority of a foreign state.
5. In case there is a relevant legal basis, the representatives of a foreign state may attend the execution of their mutual legal assistance request, if there is a prior consent from the Ministry of Justice of Georgia.
6. If the information provided by a foreign state is not sufficient for the execution of a mutual legal assistance request, the Ministry of Justice of Georgia shall be authorized to request additional information from that foreign state.
7. The materials obtained in the course of the execution of a mutual legal assistance request shall be returned to a foreign state through the Ministry of Justice of Georgia.

Article 12: Grounds for refusal of executing mutual legal assistance request

1. Legal assistance shall not be provided, if:
 - a) Execution of mutual legal assistance request may prejudice the sovereignty, security, public order or other essential interests of Georgia;
 - b) Execution of mutual legal assistance request contradicts the legislation of Georgia;
 - c) The crime in regard with the assistance is requested is considered by Georgia to be a political offence or an offence related to a political offence. The crime shall not be considered political if after taking into account the aims, motives, type, methods and other circumstances, the elements of criminal act outweigh the political aspects of the offence committed.
 - d) Execution of mutual legal assistance request may prejudice the universally recognized rights and fundamental freedoms of individual;
 - e) The crime in regard with the legal assistance is requested, is a military offence and it is not punishable under the criminal legislation of the requesting state, except for the cases where an international treaty of Georgia, *ad hoc* agreement or the conditions of the reciprocal cooperation provides otherwise;
 - f) Execution of mutual legal assistance request may be contrary to the principle of *Non bis in idem*;
2. When the conduct of search or seizure is requested by mutual legal assistance request and the relevant legal basis for cooperation does not provide otherwise, it shall only be executed, if the following requirements are met:

- a) The crime in regard with the legal assistance is requested is punishable both by the legislation of the requesting state and the legislation of Georgia;
 - b) The crime in regard with the legal assistance is requested is extraditable offence under the legislation of Georgia;
 - c) Execution of mutual legal assistance request complies with the legislation of Georgia;
3. When a foreign state requests the appearance of a person being in custody in the territory of Georgia for the purposes of conducting investigative or court proceedings in its territory, the Ministry of Justice of Georgia shall be authorized to refuse the execution of mutual legal assistance request, if:
- a) A person being in custody disagrees;
 - b) Presence of a person in custody in the territory of Georgia is necessary for conducting criminal proceedings against him/her;
 - c) Transfer of a person being in custody is liable to prolong his/her detention;
4. The Ministry of Justice of Georgia shall be authorized to postpone the execution of a mutual legal assistance request of a foreign state, if transmitting the requested evidence or other documents may prejudice the criminal proceedings pending in Georgia.
5. The Ministry of Justice of Georgia shall be authorized to refuse the providing mutual legal assistance wholly or in part in other cases prescribed by an international treaty of Georgia, *ad hoc* agreement or the conditions of reciprocal cooperation.
6. If the execution of a mutual legal assistance request is impossible, the received documents shall be returned to a foreign state through the Ministry of Justice Georgia by indicating the reasons impeding the execution of the request.

(b) Observations on the implementation of the article

The reviewing experts took note of the explanation of Georgia that according to the law on International Cooperation in Criminal Matters, all types of procedural actions, which are possible to be conducted by the Georgian competent authorities in the course of the investigation in the domestic case, are also available for foreign states mutual legal assistance requests. As the above-mentioned law does not explicitly define the specific types of procedural actions, which are executable in the territory of Georgia, the reviewers took note of the explanation of Georgia, that the Criminal Procedure Code of the country provides possibility of conducting all the actions listed in Paragraph 3 of Article 46 and therefore is in line with the provision. Additionally Georgia notifies that mutual legal assistance requests should be executed in accordance with the Georgian legislation; however, the law of the respective foreign state may also be applied at that time, provided that it is not contrary to the legislation of Georgia.

Article 46 Mutual legal assistance

Subparagraph 3 (j) to 3 (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

On the basis of the law on International Cooperation in Criminal Matters, Georgia can provide foreign states with mutual legal assistance if the relevant Georgian investigative authorities are also allowed to conduct the similar procedural actions for the purposes of investigation of

the domestic case. Since the procedural actions indicated in Article 46 (j) and (k) of the UN Convention against Corruption may be conducted for the purposes of the domestic case, the similar assistance may also be available for foreign authorities on the basis of the relevant MLA request.

In accordance with Article 52 of the law on International Cooperation in Criminal Matters, after confiscating the property on the basis of the foreign confiscation judgment, Georgia becomes the legal owner of that property. However, the Georgian court dealing with the case may also decide that the confiscated property which is of special interest of the requesting state should be remitted to that state if it so requires. Despite the above-mentioned procedures, Georgia can conclude *ad hoc* agreements with its foreign counterparts and decide the issue in a different way on a case-by-case basis.

In addition, Georgia can also recognize and enforce foreign non criminal confiscation orders in accordance with the procedures defined by the law of Georgia on Private International Law.

Georgia has never received any MLA requests on the basis of the UN Convention against Corruption. For that reason, it is impossible to provide information about the implementation of the Article referred to above. However, at the time of cooperation with foreign states regarding other types of crimes, there have been the cases, when foreign authorities requested the identification and freezing of property from Georgian counterparts. However, despite all the available measures taken by the competent Georgian authorities, no proceeds of crime have been found and subsequently frozen at the territory of Georgia. Besides, up to the present date, recovery of assets has never been requested by foreign states from Georgia.

Georgia has never sent any MLA requests on the basis of the UN Convention against Corruption. However, at the time of cooperation with foreign states regarding other types of crimes, in several cases Georgia has requested the tracing of the proceeds of crime from the relevant foreign states; however, no assets have been found abroad. Consequently, recovery of assets has never requested by Georgia from the respective foreign states. For that reason, no additional information is available in this regard.

Law on International Cooperation in Criminal Matters – Articles 2, 11, and 52

Article 2: Legal basis for international cooperation in criminal matters

1. International cooperation in criminal matters, as a rule, is governed by the international treaty of Georgia.
2. In certain cases, international cooperation in criminal matters may be carried out on the basis of *ad hoc* agreement or the reciprocity principle, with those states with which Georgia does not have a relevant international treaty.
3. On the basis of the reciprocity principle international cooperation in criminal matters may be carried out with regard to the issues referred to in Paragraph 1 of Article 1 of this Law, except extradition and enforcement of judgment.
4. In case of international cooperation in criminal matters on the basis of the reciprocity principle, conditions of reciprocal cooperation shall be determined, which shall provide for the minimum guarantees defined in this Law, although, establishing higher standards is not excluded.
5. *Ad hoc* agreement shall be concluded only for a specific case of international cooperation in the field of criminal law and it shall provide for the minimum guarantees defined in this Law, although, establishing higher standards is not excluded.

Article 11: Execution of mutual legal assistance request of a foreign state in the territory of Georgia

1. In case there is a relevant legal basis, the Ministry of Justice of Georgia shall be entitled to ensure the execution of mutual legal assistance request of a foreign state in the territory of Georgia.
2. Mutual legal assistance request submitted by a foreign state shall be executed in accordance with the legislation of Georgia.
3. Unless otherwise is provided by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the law of the requesting state may also be applied in the course of the execution of a mutual legal assistance request, provided that it is not contrary to the legislation of Georgia.
4. Procedural actions related to applying coercive measures against a person or restricting his/her constitutional rights and freedoms shall be carried out if they are authorized by the court or other competent authority of a foreign state.
5. In case there is a relevant legal basis, the representatives of a foreign state may attend the execution of their mutual legal assistance request, if there is a prior consent from the Ministry of Justice of Georgia.
6. If the information provided by a foreign state is not sufficient for the execution of a mutual legal assistance request, the Ministry of Justice of Georgia shall be authorized to request additional information from that foreign state.
7. The materials obtained in the course of the execution of a mutual legal assistance request shall be returned to a foreign state through the Ministry of Justice of Georgia.

Article 52: Procedure for the enforcement of a judgment rendered by an authorized court of a foreign state on imposing a fine or ordering a confiscation of property as a measure of punishment in the territory of Georgia

1. When making a decision on the enforcement of a judgment rendered by an authorized court of a foreign state on imposing a fine or ordering a confiscation of property as a measure of punishment in the territory of Georgia, an authorized district (city) court shall issue the ruling on the payment of fine or the confiscation of property imposed on a person as a measure of punishment.
2. When issuing the court ruling envisaged by Paragraph 1 of this Article, the relevant district (city) court shall convert the amount of the fine imposed or the property to be confiscated as defined by an authorized court of a foreign state as a measure of punishment against a person into GEL at the rate of exchange applicable at the time when the decision is made.
3. The amount of fine or the property to be confiscated as envisaged by Paragraph 2 of this Article shall be paid in accordance with the procedure established by the requesting state.
4. The amount of fine imposed by an authorized court of a foreign state as a measure of punishment against a person shall be paid into the state budget of Georgia, and the property confiscated shall be transferred to the ownership of the state.
5. In case of a request, the property confiscated in accordance with the rule defined by this Article may be remitted to the requesting state, if it has particular interest with regard to that property.
6. When carrying out of the procedures prescribed by Paragraphs 4 and 5 of this Article, the rights of a third party with regard to the property confiscated shall be observed.

(b) Observations on the implementation of the article

The reviewing experts noted that Georgia can provide foreign states with mutual legal assistance if the relevant Georgian investigative authorities are also allowed to conduct the similar procedural actions for the purposes of investigation of the domestic case. The ICCM does not explicitly define the specific types of procedural actions, which are executable in the territory of Georgia but according to Georgia since the procedural actions indicated in Article 46 (j) and (k) of the UN Convention against Corruption may be conducted for the purposes of the domestic case, (ability to perform such procedural actions) the similar assistance may also be available for foreign authorities on the basis of the relevant MLA request. Thus, the legislative provisions comply with the provision of the Convention.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

As mentioned above, according to Article 7 of the law on Normative Acts of Georgia, international treaties binding for Georgia are part of the Georgian legislation and prevail over domestic laws other than the Constitution, Constitutional Law and Constitutional Agreement. Therefore, all binding international treaties, including the UN Convention against Corruption, may be applied directly. Correspondingly, the competent Georgian authorities are able to refer to Paragraph 4 of Article 46 of the abovementioned convention in case of international cooperation with foreign states.

Alternatively, according to Article 2 of the ICCM, Georgia can conclude ad hoc agreements with relevant foreign states and thereby provide them with information or evidence it believes is important for combating the offences covered by the UN Convention against Corruption, even in cases where the other state has not made a request for assistance and may be completely unaware of the existence of the information or evidence.

Up to the present date, there have never been cases with regard to the crimes covered by the UN Convention against Corruption, where the competent Georgian authorities obtained information or evidence which would assist the foreign states for starting proceedings or initiating mutual legal assistance requests. However, with regard to other types of crime, there have been several cases when Georgia provided foreign counterparts with the information or evidence indicated above.

Besides, Georgia has never received any information/evidence regarding corruption offences from foreign states, which might lead to starting criminal proceedings in Georgia or initiating MLA request.

Law on International Cooperation in Criminal Matters – Article 2 (see above)
and Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts were of the opinion that Georgia is in line with Article 46 paragraph 4. They noted that according to the law on Normative Acts of Georgia the UN Convention against Corruption may be applied directly. They also took note of the alternative possibility to conclude ad hoc agreements with relevant foreign states and thereby provide them with information or evidence.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

Provisions of Paragraph 5 of Article 46 of the UN Convention against Corruption may be applied at the domestic level in the same manner as the ones of Paragraph 4 of Article 46 of the Convention. See the information provided regarding Paragraph 4 of Article 46 of the Convention (question No 197).

(b) Observations on the implementation of the article

Georgia approached mandatory Article 46, paragraph 5, in the same way as paragraph 4. The reviewing experts were satisfied with the explanation.

However, they noted that there was no specific reference on the way of handling the information mentioned above from the competent Georgian Authorities (confidentiality or limited use/ restrictions on use).

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of the article

Due to the self-executing power of binding international treaties, the competent Georgian authorities are able to apply paragraphs 9 to 29 of Article 46 of the UN Convention against Corruption directly in their relation with foreign states having not MLA treaty with Georgia.

(b) Observations on the implementation of the article

The reviewing experts noted the possibility according to Georgia's legislation to apply paragraphs 9 to 29 of Article 46 directly. The State Parties are nevertheless encouraged to agree to apply Articles 9 – 29 of UNCAC unless the MLA treaty includes provisions which go beyond those paragraphs.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

There is no limitation either in the binding MLA treaties or in the domestic legislation preventing the respective Georgian authorities from complying with foreign mutual legal assistance requests on the ground of bank secrecy. The only requirement is that the disclosure of the mentioned information should be authorized by the court or other competent body of the requesting state. When foreign states request the assistance indicated above at the pre-trial stage, the relevant Georgian prosecutor moves before the competent court with the motion on the authorization of the requested assistance. In case the MLA request is initiated by the foreign court at the trial stage, no further authorization by the Georgian court is required. Under the legislation of Georgia, bank secrecy is not an impediment for providing mutual legal assistance. Therefore, in practice Georgia has never refused mutual legal assistance on the ground of bank secrecy.

However, in case of necessity for obtaining information regarding bank secrecy, the Georgian legislation requires authorization of a court. Similarly to domestic cases, when requesting mutual legal assistance regarding bank secrecy by the relevant foreign authorities in the past, the Georgian prosecutor always moved before the relevant local courts and requested the issuance of the order in this regard. After receiving the authorization from the court, the information referred to above was obtained without any impediments.

Law on International Cooperation in Criminal Matters – Article 11

Article 11: Execution of mutual legal assistance request of a foreign state in the territory of Georgia

1. In case there is a relevant legal basis, the Ministry of Justice of Georgia shall be entitled to ensure the execution of mutual legal assistance request of a foreign state in the territory of Georgia.
2. Mutual legal assistance request submitted by a foreign state shall be executed in accordance with the legislation of Georgia.
3. Unless otherwise is provided by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the law of the requesting state may also be applied in the course of the execution of a mutual legal assistance request, provided that it is not contrary to the legislation of Georgia.
4. Procedural actions related to applying coercive measures against a person or restricting his/her constitutional rights and freedoms shall be carried out if they are authorized by the court or other competent authority of a foreign state.
5. In case there is a relevant legal basis, the representatives of a foreign state may attend the execution of their mutual legal assistance request, if there is a prior consent from the Ministry of Justice of Georgia.
6. If the information provided by a foreign state is not sufficient for the execution of a mutual legal assistance request, the Ministry of Justice of Georgia shall be authorized to request additional information from that foreign state.
7. The materials obtained in the course of the execution of a mutual legal assistance request shall be returned to a foreign state through the Ministry of Justice of Georgia.

(b) Observations on the implementation of the article

The reviewers stated that Georgia conforms with the provisions of Article 46, paragraph 8.

Article 46 Mutual legal assistance

Subparagraph 9 (a)

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

Georgia distinguishes between mutual legal assistance requests requiring the coercive measures of search or seizure, and others. The basic principle is that requests requiring search or seizure such as search or seizure will be granted on condition of dual criminality in regard to extraditable offences.

Besides, according to Article 55, paragraph 1 (a) of the ICCM, Georgia can comply with the requests for the enforcement of foreign criminal judgments, including confiscation judgments, if under its law the act for which the sanction was imposed in the sentencing state would be an offence if committed on the territory of Georgia and the person on whom the sanction was imposed liable to punishment if he had committed the act there.

It should be noted that the existence of dual criminality is examined broadly by the competent Georgian authorities. Namely, the requirement of dual criminality is deemed fulfilled, irrespective of whether the Georgian legislation places the offence within the same category of offence or denominates the offence by the same terminology as the requesting state, provided that the conduct underlying the offence for which assistance is sought is a criminal offence under the Criminal Code of Georgia.

According to the legislation of Georgia, the Ministry of Justice of Georgia is the authority which is empowered to examine the existence of dual criminality when such a requirement is a precondition for executing foreign MLA requests. In practice, when the Ministry of Justice of Georgia determines that the dual criminality requirement is met, it further transmits the foreign letter rogatory to local prosecution offices for execution. If the case is still under investigation (i.e. it has not reached the trial stage) in the requesting state, Georgia additionally requires foreign court order or other procedural document (e.g. decree or any decision of investigator, prosecutor or other competent body of the requesting state), authorizing the conduct of coercive measures, provided that the issuance of such a document is mandatory for foreign authorities for the purpose of conducting similar investigative measures domestically.

If the case has already reached the trial stage in the requesting state and the letter rogatory has been initiated by the respective foreign court, no additional procedural document to this effect is required from the foreign state. The reason is that in the latter case the court itself is the initiator of the letter rogatory and when requesting coercive measures from Georgian authorities, it automatically authorizes the conduct of the mentioned investigative actions.

In both cases, the relevant Georgian prosecutor moves before the local court and requests the authorization for conducting coercive measures on behalf of foreign states. In support of his/her motion, the Georgian prosecutor submits the foreign decree or other procedural

document authorizing the conduct of the mentioned investigative actions to the local Georgian court (if the case has not reached the trial stage in the requesting state), or substantiates his/her motion only on the basis of the MLA request of the respective foreign court (if the case has already reached the trial stage in the requesting state). After receiving the motion and supporting documents, the relevant local court further examines the existence of dual criminality and makes the decision on authorizing the conduct of coercive measures at the territory of Georgia. Up to the present date, the competent Georgian authorities examined the dual criminality requirement and executed all foreign letters rogatory involving coercive measures in accordance with the procedures referred to above. However, since there have never been incoming MLA requests submitted on the basis of the UN Convention against Corruption, the above described procedures were applied at the time of cooperation with foreign states regarding other cases.

It should also be noted that Georgia has never received foreign confiscation judgments from foreign states so far. Therefore, it is impossible to provide information regarding the practice of examining dual criminality requirement in such cases. However, should such requests be submitted to the Ministry of Justice of Georgia in future, they will be dealt with in the same manner as those referred to above.

Law on International Cooperation in Criminal Matters – Articles 12, 55
Law on Normative Acts – Article 7 (see above)

Article 12: Grounds for refusal of executing mutual legal assistance request

1. Legal assistance shall not be provided, if:
 - a) Execution of mutual legal assistance request may prejudice the sovereignty, security, public order or other essential interests of Georgia;
 - b) Execution of mutual legal assistance request contradicts the legislation of Georgia;
 - c) The crime in regard with the assistance is requested is considered by Georgia to be a political offence or an offence related to a political offence. The crime shall not be considered political if after taking into account the aims, motives, type, methods and other circumstances, the elements of criminal act outweigh the political aspects of the offence committed.
 - d) Execution of mutual legal assistance request may prejudice the universally recognized rights and fundamental freedoms of individual;
 - e) The crime in regard with the legal assistance is requested, is a military offence and it is not punishable under the criminal legislation of the requesting state, except for the cases where an international treaty of Georgia, *ad hoc* agreement or the conditions of the reciprocal cooperation provides otherwise;
 - f) Execution of mutual legal assistance request may be contrary to the principle of *Non bis in idem*;
2. When the conduct of search or seizure is requested by mutual legal assistance request and the relevant legal basis for cooperation does not provide otherwise, it shall only be executed, if the following requirements are met:
 - a) The crime in regard with the legal assistance is requested is punishable both by the legislation of the requesting state and the legislation of Georgia;
 - b) The crime in regard with the legal assistance is requested is extraditable offence under the legislation of Georgia;
 - c) Execution of mutual legal assistance request complies with the legislation of Georgia;
3. When a foreign state requests the appearance of a person being in custody in the territory of Georgia for the purposes of conducting investigative or court proceedings in its territory, the Ministry of Justice of Georgia shall be authorized to refuse the execution of mutual legal assistance request, if:
 - a) A person being in custody disagrees;
 - b) Presence of a person in custody in the territory of Georgia is necessary for conducting criminal proceedings against him/her;
 - c) Transfer of a person being in custody is liable to prolong his/her detention;
4. The Ministry of Justice of Georgia shall be authorized to postpone the execution of a mutual legal assistance request of a foreign state, if transmitting the requested evidence or other documents may prejudice the criminal proceedings pending in Georgia.

5. The Ministry of Justice of Georgia shall be authorized to refuse the providing mutual legal assistance wholly or in part in other cases prescribed by an international treaty of Georgia, *ad hoc* agreement or the conditions of reciprocal cooperation.

6. If the execution of a mutual legal assistance request is impossible, the received documents shall be returned to a foreign state through the Ministry of Justice Georgia by indicating the reasons impeding the execution of the request.

Article 55: Grounds for Refusal of the enforcement on the territory of Georgia of a judgment rendered by an authorized court of a foreign state

1. The judgment rendered by an authorized court of a foreign state shall not be enforced in the territory of Georgia, if:

a) The act, for committing of which the sanction was imposed on a person, is not considered to be an offence under the Georgian legislation and the person, against whom the judgment was rendered, would not be subjected to criminal prosecution or punishment if he/she had committed the act in the territory of Georgia;

b) Enforcement of the judgment rendered by an authorized court of a foreign state contradicts the fundamental principles of the legal system of Georgia;

c) The crime, in regard of which an authorized court of a foreign state rendered the judgment, is considered by Georgia to be a political or military crime;

d) There is a substantial ground for believing that the judgment was rendered by an authorized court of a foreign state or the condition of the person was aggravated on account of race, nationality, ethnicity, religious or political opinions or other similar reasons;

e) Enforcement of the judgment rendered by an authorized court of foreign state contradicts the international commitments undertaken by Georgia;

f) The relevant authorities of Georgia are conducting proceeding in respect of the offence for committing of which the enforcement of the judgment against the person is requested;

g) In respect of the offence, for committing of which the enforcement of the judgment is requested, there is a judgment rendered by the court of Georgia, or the relevant authorities of Georgia have made a final decision to terminate criminal proceedings against the person;

h) The relevant authorities of Georgia have made a final decision not to take criminal proceedings in respect of the offence for committing of which the enforcement of the judgment is requested;

i) The offence, for committing of which the enforcement of the judgment is requested, has been committed outside the territory of the requesting state;

j) Georgia is unable to enforce the judgment rendered by an authorized court of a foreign state;

k) The relevant authority of Georgia considers that a foreign state is itself able to enforce the judgment rendered by its authorized court;

l) In regard of the offence, for committing of which the enforcement of the judgment is requested, the statute of limitations has been expired under the Criminal Code of Georgia, which exempts the person from serving the sentence.

m) On the basis of the judgment rendered by an authorized court of a foreign state only deprivation of right to hold a position or to carry out activities is imposed on the person as type of punishment.

2. Apart from the grounds envisaged by Paragraph 1 of this Article, the judgment rendered by an authorized court of a foreign state shall also not be enforced on the territory of Georgia, if there are other impediments prescribed by an international treaty of Georgia or *ad hoc* agreement.

(b) Observations on the implementation of the article

The reviewing experts referred to the explanation. It was noted that Georgia requires at the domestic level the existence of dual criminality in case of requesting the conduct of coercive measures such as search or seizure (actions that may be required as a part of MLA) and that dual criminality is examined broadly. However, the reviewing experts advised that in the absence of dual criminality, a requested State Party shall take into account the purposes of this Convention, as set forth in article 1 of this Convention namely (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and (c) To promote integrity, accountability and proper management of public affairs and public property. One way to do so might be the consideration of relaxing the dual criminality requirement.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

9. (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

See the information provided regarding Subparagraph „a” Paragraph 9 of Article 46 of the Convention (question No 200). As mentioned above, Georgia does not require the existence of dual criminality when executing foreign MLA requests not involving coercive measures. In practice, Georgia has never refused the assistance on the ground of the absence of dual criminality when executing foreign MLA requests not involving coercive measures.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answer provided.

Article 46 Mutual legal assistance

Subparagraph 9 (c)

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

See the information provided regarding Subparagraph „a” Paragraph 9 of Article 46 of the Convention (question No 200). As indicated above, Georgia requires dual criminality when the foreign states request the conduct of coercive measures. In all other cases, the relevant Georgian authorities are able to provide foreign counterparts with all the procedural actions envisaged by the Criminal Procedure Code of Georgia in the absence of dual criminality. Up to the present date, the competent Georgian authorities have always followed the above mentioned approach when executing foreign letters rogatory. However, since there have never been incoming MLA requests submitted on the basis of the UN Convention against Corruption, the above described procedures were applied in practice at the time of cooperation with foreign states regarding other cases.

(b) Observations on the implementation of the article

The experts pointed out that Article 46, paragraph 9 (c), is an optional article, which may be considered by the State Party under review.

Georgia has not mentioned any measures or the information on the consideration to adopt measures in order to enable Georgia to provide a wider scope of assistance pursuant to this article in the absence of dual criminality. Nevertheless it was mentioned in case of absence of dual criminality any procedural action of non-coercive measure envisaged by the CPC of Georgia could be provided.

Article 46 Mutual legal assistance

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

Subparagraph 10 (a) and (b)

(a) Summary of information relevant to reviewing the implementation of the article

Georgia made reference to Article 7 of the law on Normative Acts of Georgia (see above) and the possibility to apply the UN Convention against Corruption directly.

In addition, the domestic Georgian legislation contains provisions regarding the transfer of a person in custody as a witness for the purposes of participation in criminal proceedings in the requesting state. Namely, according to Article 12, paragraph 3, of the ICCM, when the competent foreign authorities request the temporary transfer of a person in custody as a witness for the purposes of participation in investigative or court proceedings in the requesting state, the Ministry of Justice of Georgia has the right to comply with the relevant MLA request, except the cases, where: a) the person in custody does not consent; b) the presence of a person in custody is necessary at criminal proceedings pending in the territory of Georgia; c) transfer of a person in custody is liable to prolong his/her detention.

Georgia has never applied provisions of Paragraph 10 of Article 46 of the UN Convention against Corruption due to the absence of the necessity of its application so far. Therefore, no information about the implementation of the mentioned provisions is available.

Law on International Cooperation in Criminal Matters – Articles 12 and
Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

According to the reviewing experts Georgia conforms to Article 46, paragraph 10 (a) and (b), and provides the possibilities for the transfer as foreseen in this paragraph.

Article 46 Mutual legal assistance

Subparagraph 11 (a) to (d)

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

As indicated above, international treaties binding for Georgia are applied directly at the domestic level. Therefore, provisions of Paragraph 11 of Article 46 of the UN Convention against Corruption may be applied by the competent Georgian authorities at the time of cooperation with foreign states regarding the transfer of a person in custody.

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

Georgia approached Article 46, paragraph (11) (a) to (d) properly noting that international treaties binding for Georgia are applied directly at the domestic level. Therefore, provisions of Paragraph 11 of Article 46 of the UN Convention against Corruption may be applied by the competent Georgian authorities at the time of cooperation with foreign states regarding the transfer of a person in custody. Nevertheless there are so far no cases of implementation.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

Provisions of Paragraph 12 of Article 46 of the UN Convention against Corruption are applied at the domestic level similarly to those of Paragraph 11 of Article 46 of the mentioned Convention.

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts referred to the explanation that Paragraph 12 of Article 46 of the UN Convention against Corruption may be applied by the competent Georgian authorities at the time of cooperation with foreign states regarding the transfer of a person in custody.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

According to the law on International Cooperation in Criminal Matters, the Ministry of Justice of Georgia is the central authority responsible for sending and receiving mutual legal assistance requests. Besides, pursuant to the notification, addressed to the Secretary-General of the United Nations⁹, Georgia designated the Ministry of Justice of Georgia and the Prosecutor General's Office of Georgia¹⁰ as the central governmental bodies for receiving and executing MLA requests. Based on the structural changes made in the legislation of Georgia in 2008, the Office of the Prosecutor General was integrated in the Ministry of Justice as a subordinating structural unit and renamed as the Office of the Chief Prosecutor of Georgia. Therefore, for the purposes of the UN Convention against Corruption, the Ministry of Justice of Georgia shall be considered as a central authority responsible for receiving and sending mutual legal assistance requests.

The central authority referred to above, carries out its functions in the following manner: Initially, all foreign mutual legal assistance requests (both initiated at the pre-trial and trial stage in the requesting state) are submitted to the International Cooperation Unit of the Legal Department of the Office of the Chief Prosecutor, Ministry of Justice of Georgia (hereinafter - International Cooperation Unit). The latter examines whether the submitted requests are consistent with the relevant international agreements, ad hoc agreements or the conditions of

⁹ <http://treaties.un.org/doc/Publication/CN/2008/CN.839.2008-Eng.pdf>

¹⁰ Within the Prosecutor General's Office the responsible department is the International Cooperation Unit.

the reciprocal cooperation. In case the International Cooperation Unit determines that there are no grounds for refusal of rendering assistance, it further takes measures for the execution of the requests. Namely, letters rogatory which are initiated at the pre-trial stage in the requesting state are transmitted to local prosecution or police officers for execution. MLA requests initiated at the trial stage in the requesting state are forwarded to local courts, except the ones involving coercive measures. In the latter cases, MLA request are submitted to local prosecution offices. In all cases, executed materials are returned to the International Cooperation Unit, which, for its part, further sends them to the appropriate foreign state.

The law on International Cooperation in Criminal Matters does not explicitly establish the time frames within which foreign MLA requests are to be executed, since the time needed for providing mutual legal assistance depends on the nature and type of the requested procedural actions. However, in practice, the competent Georgian officials (investigator, prosecutor, judge) dealing with mutual legal assistance requests periodically notify the International Cooperation Unit of the Legal Department of the Chief Prosecutor's Office, Ministry of Justice of Georgia about the measures taken by them with regard to the execution of foreign letters rogatory. Such notifications are submitted to the Ministry of Justice either orally or in writing after expiring approximately 40 days from receiving the relevant letters rogatory. The average time needed for the execution of the requests is 2-3 months. Nevertheless, in case of urgency, the competent Georgian authorities take all appropriate actions for the execution of foreign requests in shorter terms. It should be noted that the domestic legislation of Georgia provides possibility of transmitting/receiving mutual legal assistance requests through any means and channels of communication, including Interpol channels.

Besides, according to Article 11, paragraph 2, of the ICCM, mutual legal assistance requests should be executed in accordance with the Georgian legislation; however, the law of the respective foreign state may also be applied at that time provided that it is not contrary to the legislation of Georgia.

In addition, Article 11, paragraph 5, of the ICCM provides possibility of permitting the competent representatives of the requesting state to attend the execution of their MLA requests. In such cases, the prior consent of the Ministry of Justice of Georgia is required.

Furthermore, in case it appears necessary to obtain legal assistance from abroad, Georgian investigators, prosecutors and judges are authorized to send the relevant MLA requests to the International Cooperation Unit, which, for its part, transfers them to the respective foreign states. After submitting the executed materials, the International Cooperation Unit forwards them to the initiator of the request.

Law on International Cooperation in Criminal Matters – Articles 3, 11

Article 3: Channels and means of communication

1. International cooperation in criminal matters shall be carried out through the channels and means of communication established by a relevant international treaty or *ad hoc* agreement.
2. In case a relevant international treaty or *ad hoc* agreement does not define channels and means of communication, international cooperation in criminal matters shall be carried out through direct channels unless otherwise provided for in the legislation of a relevant foreign state.
3. In case of international cooperation in criminal matters on the basis of the reciprocity principle, Georgia shall apply diplomatic channels.
4. In case of international cooperation in criminal matters, Interpol or other channels of communication may also be applied unless otherwise provided for in the legislation of a relevant foreign state.

5. The materials received through the channels and means of communication provided for in paragraph 4 of this Article shall be confirmed with the original materials submitted afterwards through ordinary post.

Article 11: Execution of mutual legal assistance request of a foreign state in the territory of Georgia

1. In case there is a relevant legal basis, the Ministry of Justice of Georgia shall be entitled to ensure the execution of mutual legal assistance request of a foreign state in the territory of Georgia.
2. Mutual legal assistance request submitted by a foreign state shall be executed in accordance with the legislation of Georgia.
3. Unless otherwise is provided by the international treaty of Georgia, *ad hoc* agreement, or under the conditions of reciprocal cooperation, the law of the requesting state may also be applied in the course of the execution of a mutual legal assistance request, provided that it is not contrary to the legislation of Georgia.
4. Procedural actions related to applying coercive measures against a person or restricting his/her constitutional rights and freedoms shall be carried out if they are authorized by the court or other competent authority of a foreign state.
5. In case there is a relevant legal basis, the representatives of a foreign state may attend the execution of their mutual legal assistance request, if there is a prior consent from the Ministry of Justice of Georgia.
6. If the information provided by a foreign state is not sufficient for the execution of a mutual legal assistance request, the Ministry of Justice of Georgia shall be authorized to request additional information from that foreign state.
7. The materials obtained in the course of the execution of a mutual legal assistance request shall be returned to a foreign state through the Ministry of Justice of Georgia.

Notification of Georgia addressed to the Secretary-General of the United Nations:

According to Article 46, paragraph 13, Georgia designates the Ministry of Justice of Georgia and the Prosecutor General's Office of Georgia as the central governmental bodies to receive and execute requests for mutual legal assistance.

(b) Observations on the implementation of the article

Georgia implemented Article 46, paragraph 13, noting that according to the law on International Cooperation in Criminal Matters the Ministry of Justice of Georgia is a central authority responsible for sending and receiving mutual legal assistance requests. Georgia also notified the Secretary-General of the United Nations as requested, explaining that Georgia designated the Ministry of Justice of Georgia and the Prosecutor General's Office of Georgia as the central governmental bodies for receiving and executing MLA requests and that for the purposes of the UN Convention against Corruption, the Ministry of Justice of Georgia shall be considered as a central authority responsible for receiving and sending mutual legal assistance requests. Furthermore the reviewing experts were satisfied with the detailed explanation of the process.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

According to the law on International Cooperation in Criminal Matters, mutual legal assistance requests are made in writing. The law further provides possibility of transferring/receiving letters rogatory through any means and channels of communication, including Interpol channels. Pursuant to the notification addressed to the Secretary-General of the United Nations, for the purposes of the UN Convention against Corruption, Georgia accepts mutual legal assistance requests if they are made in Georgian or English languages.

In practice, there were the cases when foreign authorities submitted the letters rogatory initially by fax, e-mail or other expedited means of communication. In all the mentioned cases, even before receiving the original requests, the Ministry of Justice of Georgia transferred the materials received through expedited means of communication to local authorities for execution. Besides, when examining the possibility of authorization of coercive measures, the relevant Georgian courts have never required original materials, as precondition for making decision in this regard. Such decisions have always been made before receiving original materials. Therefore, both Georgian legislation and practice are flexible and do not create any obstacles in cases where original materials are not still received.

In case of receiving oral MLA requests, the competent Georgian authorities are able to take only preparatory measures in order to ensure the effective execution of requests after receiving written letters rogatory. In the given cases, the relevant Georgian authorities are limited to the mentioned preparatory measures and no formal investigative actions are conducted until receiving MLA requests in the written form.

The above described procedures were applied at the time of cooperation with foreign states regarding other types of crimes. The mentioned procedures will also be applied in case of receiving request on the basis of the UN Convention against Corruption.

Law on International Cooperation in Criminal Matters – Article 3

Article 3: Channels and means of communication

1. International cooperation in criminal matters shall be carried out through the channels and means of communication established by a relevant international treaty or *ad hoc* agreement.
2. In case a relevant international treaty or *ad hoc* agreement does not define channels and means of communication, international cooperation in criminal matters shall be carried out through direct channels unless otherwise provided for in the legislation of a relevant foreign state.
3. In case of international cooperation in criminal matters on the basis of the reciprocity principle, Georgia shall apply diplomatic channels.
4. In case of international cooperation in criminal matters, Interpol or other channels of communication may also be applied unless otherwise provided for in the legislation of a relevant foreign state.
5. The materials received through the channels and means of communication provided for in paragraph 4 of this Article shall be confirmed with the original materials submitted afterwards through ordinary post.

Notification of Georgia addressed to the Secretary-General of the United Nations:

In accordance with article 46, paragraph 14, Georgia will receive the request for the mutual assistance in legal matters in Georgian and English languages.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the explanation.

However they noted that there is no reference in case of urgency whether there is a probability of acceptance of oral requests which can be accompanied at a later stage with a formal written request and if this parameter is in contrary or not with Georgian domestic legislation.

Article 46 Mutual legal assistance

Paragraph 15 and 16

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

Mutual legal assistance requests are made in conformity with the relevant international treaties. Therefore, in case of cooperation with other states on the basis of the UN Convention against Corruption, Georgia executes foreign letters rogatory if they contain the data indicated in Paragraph 15 of Article 46 of the mentioned Convention, taking into account the self-executing power of international treaties binding for Georgia.

If the content of mutual legal assistance request is not envisaged by the relevant international treaty, ad hoc agreement or under the conditions of reciprocal cooperation, the letter rogatory should contain the data as determined by Article 6 of the ICCM. Namely, mutual legal assistance request shall be made in writing, and it shall contain: a) a name of the competent authority of the requested state; b) factual circumstances of the criminal case and its legal qualification; c) extract of the Article from the relevant law on the basis of which criminal proceedings are conducted, and in case of necessity, extracts from other appropriate legal acts; d) description of the assistance sought; e) purpose and necessity for which assistance is requested; f) description of the person regarding whom the legal assistance is requested as accurate as possible; g) any other necessary data;

Besides, if the Criminal Procedure Code of Georgia requires the authorization of the court for conducting certain procedural actions, such decision of the court shall also be attached to the Georgian MLA request addressed to the foreign state.

Georgia has never received/sent any MLA request on the basis of the UN Convention against Corruption so far. Therefore, it is impossible to provide information about the implementation of the Article referred to above. When cooperating with foreign states on the basis of other

international treaties, Georgia complied with the relevant letters rogatory if they contained information which was envisaged by the applicable international treaties. Besides, when the foreign states requested the conduct of coercive measures, the respective foreign authorities were asked to submit the local procedural documents authorizing the conduct of such coercive measures, provided that the case had not reached the trial stage in the requesting state. If the mentioned procedural documents were not envisaged under the law of the requesting state, the latter was further asked to provide the mentioned information and the reasoning why the conduct of such coercive measures had been requested from the Georgian side.

Besides, in practice, when there was a necessity for submitting letters rogatory to foreign states, Georgia's MLA requests, as a rule, were made in compliance with Article 6 of the ICCM. Namely, outgoing letters rogatory were made in writing, and contained: a) a name of the competent authority of the requested state; b) factual circumstances of the criminal case and its legal qualification; c) extract of the Article from the relevant law on the basis of which criminal proceedings were conducted, and in case of necessity, extracts from other appropriate legal acts; d) description of the assistance sought; e) purpose and necessity for which assistance was requested; f) description of the person regarding whom the legal assistance was requested as accurate as possible; g) any other necessary data;

The above-mentioned rules were also applicable in case of cooperation with foreign states on the basis of ad hoc agreements or under the conditions of reciprocal cooperation.

Law on International Cooperation in Criminal Matters – Article 6
Law on Normative Acts – Article 7 (see above)

Article 6: Form of mutual legal assistance request

1. Mutual legal assistance request shall be made in writing, and as a rule, it shall contain the following:
 - a) The name of the competent authority of the state to which mutual legal assistance request is addressed;
 - b) Description of factual circumstances of the criminal case and its legal qualification;
 - c) Content of the Article of the law on the basis of which criminal proceedings are conducted on the relevant criminal case, as well as in case of necessity, extracts from other appropriate legislative acts;
 - d) Content of the legal assistance requested;
 - e) The purpose of and necessity for the legal assistance requested;
 - f) Identification data of the person regarding whom the legal assistance is requested as accurate as possible;
 - g) Any other necessary data;
2. If the Criminal Procedure Code of Georgia requires a court decision (a court ruling) for carrying out a procedural action, such a decision, signed by the judge and sealed by the court, shall be enclosed to the mutual legal assistance request.
3. The terms prescribed by Article 112 §3 and Article 138 §4 of the Criminal Procedure Code of Georgia shall not be applied in case of issuance of the court decision (court ruling) envisaged by Paragraph 2 of this Article.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answer provided. The regulation appears to be in compliance with article 46, paragraph 15 and 16.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

Despite the fact that the UN Convention against Corruption is self-executing at the national level, the law on International Cooperation in Criminal Matters also contains provisions similar to those indicated in Paragraph 17 of Article 46 of the mentioned Convention. Namely, according to Article 11, paragraph 2, of the ICCM, mutual legal assistance requests shall be executed in accordance with the Georgian legislation; however, the law of the respective foreign state may also be applied at that time provided that it is not contrary to the legislation of Georgia.

Up to the present date, Georgia has never received foreign MLA requests on the basis of the UN Convention against Corruption. Therefore, it is impossible to provide information regarding the implementation of the Article referred to above. However, in practice there have been other cases, when the foreign states requested the conduct of procedural actions in accordance with the rules indicated in the relevant letters rogatory. In most cases, the foreign authorities requested the conduct of interrogation of persons in accordance with their legislation and procedures. Since foreign procedural rules were not contrary to those envisaged by the Georgian domestic legislation in most cases, Georgia complied with such requests when executing foreign letters rogatory.

Law on Normative Acts – Article 7 (see above)

Law on International Cooperation in Criminal Matters – Article 11 (see above)

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the explanations provided by the States Party under review.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Taking statements from witnesses or experts through video conference on the basis of MLA request is not prohibited under the domestic legislation of Georgia. Therefore, due to the self-executing power of international treaties binding for Georgia, provisions defined under Paragraph 18 of the UN Convention against Corruption may be applied directly at the national level. Detailed procedures and rules regarding the hearing through video conference may be specified in the course of the consultations between the Ministry of Justice of Georgia and the respective foreign authorities, which later be defined in the relevant ad hoc agreement concluded between the Parties.

Besides, since there is no limitation in the domestic legislation, Georgia can extend the rules of the criminal legislation to the persons whose hearing is requested through video conference. Namely, the mentioned persons may be held liable for giving false statements or in case of committing other crimes during the hearing through the procedures referred to above. The person in subject may also be extradited for committing the crimes indicated above, provided that no grounds for refusal of extradition exist.

In addition, there is no provision in the domestic legislation which prohibits the use of evidence obtained through video conference. Therefore, evidences obtained through the mentioned way are admissible at the national level and have the equal evidentiary force as the ones obtained in Georgia as a result of conducting other investigative actions.

Up to the present date, Georgia has never received/sent the request for the conduct of hearing by video conference. Therefore, no information regarding the implementation of the above mentioned article is available.

Law on Normative Acts – Article 7 (see above)

Law on International Cooperation in Criminal Matters – Article 2 (see above)

(b) Observations on the implementation of the article

The reviewing experts noted that Article 46, paragraph 18, was an optional article. They stated that Georgia approached the above-mentioned article properly although there are so far no examples of implementation.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

As mentioned above, the UN Convention against Corruption is self-executing at the national level. Therefore, provisions of Paragraph 19 of Article 46 of the mentioned Convention may be allied directly in Georgia. Despite this, the ICCM also contains provisions similar to those

indicated in Paragraph 19 of Article 46 of the UN Convention against Corruption. Namely, according to Paragraphs 3 and 4 of Article 10 of the mentioned Georgian law, information and other documentation obtained in a foreign state pursuant to the legislation, shall not be used for the purposes other than those stated in the mutual legal assistance request. The materials referred to above may be used for other purposes on the basis of the prior consent of the competent authorities of the relevant foreign state. In the mentioned case, additional request for the consent shall be sent to the appropriate foreign state.

Up to the present date, there has never been the necessity of using information/documentation for the purposes other than those indicated in the previous MLA request. Therefore, the competent Georgian authorities have never addressed the relevant requested states with the additional requests for the consent in this regard. Consequently, no information regarding the implementation of the above mentioned Article is available. Besides, Georgia has never received any request from the foreign authorities for the consent of the use of previously submitted information/documentation for the purposes other than those indicated in the letter rogatory.

Law on Normative Acts – Article 7 (see above)

Law on International Cooperation in Criminal Matters – Article 10

Article 10: Rule of use of evidences obtained as a result of providing legal assistance

1. The evidence obtained in observance with the rules prescribed by the existing legislation in the territory of a foreign state shall have the equal legal force as the evidence obtained in the territory of Georgia.
2. Any property or original document obtained as a result of providing legal assistance shall be immediately returned to the appropriate authority of a foreign state since it has been no longer necessary, except for the case when the said state waives the right to its return.
3. Any information or other materials obtained in observance with the rules prescribed by the existing legislation in the territory of a foreign state shall not be used for the purposes other than those indicated in the relevant mutual legal assistance request.
4. The materials referred to in Paragraph 3 of this Article may be used for other purposes in case of a prior consent of the competent authority of the relevant foreign state, for which additional request shall be sent.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the explanation of Georgia referencing the possibility of direct application of the UN Convention against Corruption as well as Paragraphs 3 and 4 of Article 10 of the ICCM which appears to be in compliance with the paragraph.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision? (Check one answer) (Y) Yes

Due to the self-executing power of the binding international treaties, the competent Georgian authorities can comply with the requirements stipulated under Paragraph 20 of Article 46 of the UN Convention against Corruption. Georgia has never received any MLA request on the basis of the UN Convention against Corruption. However, when cooperating with foreign states on the basis of other international treaties, Georgia has always complied with the confidentiality requirement, except to the extent necessary to execute the letter rogatory.

Please cite and attach the applicable measure(s):

Please cite the text(s)

Law on Normative Acts – Article 7 (see above)

Please attach the text(s)

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts referred to the explanation of Georgia that the competent Georgian authorities can comply with the requirements stipulated under Paragraph 20 of Article 46 of the UN Convention against Corruption by direct application.

Article 46 Mutual legal assistance

Subparagraph 21 (a) to (d)

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

The UN Convention against Corruption is self-executing at the national level. Therefore, provisions of Paragraph 21 of Article 46 of the mentioned Convention may be applied directly in Georgia.

Despite this, grounds for refusal of mutual legal assistance are also envisaged under the law on International Cooperation in Criminal Matters. Namely, according to Article 12 of the above indicated law, legal assistance shall not be provided, if:

a) the execution of the MLA request may prejudice the sovereignty, security, public order or other essential interests of Georgia;

b) the execution of the MLA request contradicts the legislation of Georgia;

c) the crime regarding which the assistance is requested is considered by the competent Georgian authorities to be a political offence or related to a political offence.

- d) the execution of the MLA request may prejudice the universally recognized rights and fundamental freedoms of an individual;
- e) the crime regarding which the assistance is requested, is a military offence, unless the respective international agreement, ad hoc agreement or the conditions of the reciprocal cooperation provides otherwise;
- f) the execution of the MLA request will be contrary to the principle of Non bis in idem;

Besides, when the competent foreign authorities request Georgia to conduct search or seizure, such kind of assistance may be provided if:

- a) the crime regarding which the assistance is requested, is punishable both by the legislations of Georgia and the respective requesting state (dual criminality principle);
- b) the crime regarding which the assistance is requested, is an extraditable offence according to the legislation of Georgia;
- c) execution of the MLA request complies with the legislation of Georgia. It should be noted that the competent Georgian authorities are also able not to comply with the mentioned requirements regarding search or seizure, if the respective international agreement, ad hoc agreement and the conditions of the reciprocal cooperation provide otherwise.

In addition, when the competent foreign authorities request the temporary transfer of a person in custody as a witness for the purposes of participation in investigative and court actions, the Ministry of Justice of Georgia has the right not to comply with the relevant MLA request:

- a) if the person in custody does not consent;
- b) if the presence of a person in custody is necessary at criminal proceedings pending in the territory of Georgia;
- c) if transfer of a person in custody is liable to prolong his/her detention. Apart from the mandatory grounds for refusal, the law on International Cooperation in Criminal Matters also allows the competent Georgian authorities to temporarily postpone the execution of foreign MLA requests. This is the case when transmitting the evidence or other documents to the requesting state may prejudice the criminal proceedings conducted in Georgia (Article 12§4).

Georgia has never received/sent MLA requests on the basis of the UN Convention against Corruption. However, when cooperating with foreign states regarding other types of crimes, the most prevalent grounds for refusal used by the relevant Georgian authorities were the following: the person regarding whom the assistance was requested was not located in Georgia; the requested procedural action was not envisaged by the legislation of Georgia; the request referred to the interrogation of a person, who was in the occupied territory of the Autonomous Republic of Abkhazia, Georgia; the foreign MLA request did not contain enough data as envisaged by the relevant international treaty and despite of requesting additional information, the relevant foreign state never submitted it.

When executing Georgia's MLA requests by foreign states, the most prevalent ground for refusal was the impossibility of location persons concerned, as well as non-existence of the requested evidence at the territory of the above mentioned states.

Law on International Cooperation in Criminal Matters – Article 12 (see above)

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts referred to the possibility of direct application of the Convention as well as to the provisions of Art. 11, paragraph 3, of the ICCM. It was noted that the refusal on the grounds of “other essential interests” could be considered too wide in case no clearer specification is given.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

Neither binding international treaties nor the domestic legislation prohibit the rendering mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. Therefore, mutual legal assistance may be afforded irrespective of the fact that the MLA request involves fiscal offences.

Georgia has never received letters rogatory on the basis of the UN Convention against Corruption. However, when cooperating with foreign states on the basis of other international treaties, fiscal offences have never been the impediment for the execution of foreign MLA requests. In practice, when such requests were submitted to the Ministry of Justice of Georgia by the respective foreign states, they were always executed in the general manner.

(b) Observations on the implementation of the article

Article 46, paragraph 22, is a mandatory article. The reviewing experts noted that the Georgian legislation does not prohibit. Therefore, mutual legal assistance may be afforded irrespective of the fact that the MLA request involves fiscal offences.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

Provisions of Paragraph 23 of Article 46 of the UN Convention against Corruption are applied directly and, therefore, the competent Georgian authorities are obliged to provide relevant foreign states with the reasons for not complying with mutual legal assistance requests in case of cooperation regarding the corruption crimes covered by the mentioned Convention. Despite this, the law on International Cooperation in Criminal Matters also contains provisions under which the Ministry of Justice of Georgia has obligation to notify the competent foreign authorities about the reasons for any refusal of mutual legal assistance (Article 12, paragraph 6).

Georgia has never received any MLA request on the basis of the UN Convention against Corruption. However, when cooperating with foreign authorities on the basis of other

international treaties, the Ministry of Justice of Georgia has always provided its foreign counterparts with the reasons which made it impossible to execute their letters rogatory.

Law on International Cooperation in Criminal Matters – Article 12 (see above)

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts noted that the direct application of Article 46, paragraph 23, as well as Article 12, paragraph 6, of the ICCM provide sufficient regulations in this regard.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

Provisions of Paragraph 24 of Article 46 of the UN Convention against Corruption are applied directly at the national level. Besides, the regulations and practice of the application of the procedures indicated in Paragraph 24 of Article 46 of the mentioned Convention are as follows:

The law on International Cooperation in Criminal Matters does not explicitly establish the time frames within which foreign MLA requests are to be executed, since the time needed for providing mutual legal assistance depends on the nature and type of the requested procedural actions. However, in practice, the competent Georgian officials (investigator, prosecutor, judge) dealing with mutual legal assistance requests periodically notify the International Cooperation Unit of the Legal Department of the Chief Prosecutor's Office, Ministry of Justice of Georgia about the measures taken by them with regard to the execution of foreign letters rogatory. Such notifications are submitted to the Ministry of Justice either orally or in writing after expiring approximately 40 days from receiving the relevant letters rogatory. The average time needed for the execution of the requests is 2-3 months. Nevertheless, in case of urgency, the competent Georgian authorities are also able to comply with the deadline suggested by the requesting state. Besides, upon the request, the Ministry of Justice of Georgia is authorized to provide the appropriate foreign state with the information on the status of its letter rogatory previously submitted to the competent Georgian authorities. If the execution of a Georgian MLA request is no longer necessary on the territory of another state, the Ministry of Justice of Georgia duly notifies foreign counterparts in this regard.

Georgia has never received any MLA request from foreign states on the basis of the UN Convention against Corruption. Therefore, no information about the implementation is

available. The detailed information about the customary length of time for the execution of foreign MLA requests regarding other corruption related cases is given above.

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts noted the possibility of direct application of Article 46, paragraph 24 of the UN Convention against Corruption. They highlighted that the ICCM did not explicitly establish time frames within which foreign MLA requests are to be executed, since the time needed for providing mutual legal assistance depends on the nature and type of the requested procedural actions. The additional information of Georgia in regard to the implementation and average time needed, were considered to be sufficient.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

The competent Georgian agencies are authorized to apply provisions of Paragraph 25 of Article 46 of the UN Convention against Corruption directly in case of cooperation with foreign states regarding the corruption crimes covered by the mentioned Convention. Nevertheless, the law on International Cooperation in Criminal Matters also allows the competent Georgian authorities to temporarily postpone the execution of foreign MLA requests. This is the case when transmitting the evidence or other documents to the requesting state may prejudice the criminal proceedings being conducted in Georgia (Article 12, paragraph 4).

Georgia has never received any MLA request from foreign states on the basis of the UN Convention against Corruption. Therefore, no information is available on the cases in which Georgia postponed the provision of mutual legal assistance on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding. Even at the time of cooperation with foreign authorities regarding other cases, there were only a few, when Georgia postponed the execution of incoming letters rogatory on the ground referred to above. However, in all cases, as soon as there was no longer necessity for postponing the execution of submitted letters rogatory, Georgia immediately provided the respective foreign states with the requested assistance.

Law on International Cooperation in Criminal Matters – Article 12, paragraph 4 (see above)

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts noted the possibility of direct application of Article 46, paragraph 25 of the UN Convention against Corruption and Article 12, paragraph 4, of the ICCM which regulate the provisions sufficiently. The supplementary information of Georgia was satisfactory in regard to the implementation.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

There is no provision in the Georgian domestic legislation which explicitly provides possibility of holding consultation with the requesting state before postponing or refusing request. Despite this, since holding the mentioned consultations is not prohibited under the domestic legislation, the competent Georgian authorities are able to apply the provisions of Paragraph 26 of Article 46 of the UN Convention against Corruption directly due to the self-executing power of international treaties binding for Georgia.

As mentioned above, Georgia has never received any MLA request from foreign states on the basis of the UN Convention against Corruption. Therefore, no information is available on the cases in which Georgia postponed the provision of mutual legal assistance on the ground that it interfered with an ongoing investigation, prosecution or judicial proceeding.

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts noted that there is no provision in the Georgian domestic legislation which explicitly provides possibility of holding consultation with the requesting state before postponing or refusing request. Despite this, since holding the mentioned consultations is not prohibited under the domestic legislation, the competent Georgian authorities are able to apply the provisions of Paragraph 26 of Article 46 of the UN Convention against Corruption directly due to the self-executing power of international treaties binding for Georgia. It was recommended that such consultations should be used in practice also if the request in regard to a corruption offence was not based on UNCAC. Reference in the ICCM could be one option to safeguard such approach.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

Due to the self-executing power of binding international treaties at the national level, Georgia can apply Paragraph 27 of Article 46 of the UN Convention against Corruption directly. Despite this, procedures similar to those indicated in the abovementioned Paragraph are also defined by Article 7 of the law on International Cooperation in Criminal Matters.

As indicated above, Georgia has never received any MLA request from foreign states on the basis of the UN Convention against Corruption. However, at the time of cooperation with foreign states regarding other cases, there were some in which persons being abroad were summoned for the purposes of giving statements as witnesses or experts. Nevertheless, none of the above mentioned persons have complied with the summons. Therefore, no more information is available in this regard.

Law on Normative Acts – Article 7 (see above)

Law on International Cooperation in Criminal Matters – Article 7

Excerpts from the law on International Cooperation in Criminal Matters:

Article 7: Summon of a person being in the territory of a foreign state with regard to a criminal case pending before the competent authorities of Georgia.

1. In case of existence of a relevant legal basis for cooperation, an investigator, a prosecutor or a judge (a court) shall be authorized to request the summon of a person being in the territory of a foreign state in the capacity of accused, witness, expert or victim with regard to the pending criminal case, through the Ministry of Justice of Georgia.
2. The appearance of the person referred to in Paragraph 1 of this Article shall be made on the basis of summons and in the form of a mutual legal assistance request, which shall be sent to the competent authority of a foreign state.
3. The witness, expert and victim summoned in the territory of Georgia in accordance with the rule prescribed by this Article shall be reimbursed for all expenses related to their travel and stay in the territory of Georgia, as well as the expenses for the distraction from his/her basic job. The expert summoned shall additionally be entitled to receive all the expenses and remuneration related to carrying out of his/her work.
4. The summon of a witness, an expert or a victim referred to in Paragraph 1 of this Article or the mutual legal assistance request shall indicate the amount of the expenses refundable to the person summoned in case of his/her appearance.
5. Unless an international treaty of Georgia, *ad hoc* agreement or the conditions of reciprocal cooperation provides otherwise, on the basis of the prior request of the Ministry of Justice of Georgia, the relevant foreign state may grant the witness, expert or victim an advance, which shall subsequently be refunded by the competent authority of Georgia.
6. A witness, an expert or a victim summoned in accordance with Paragraph 1 of this Article shall not be subjected to any coercive measures envisaged by the Criminal Procedure Code of Georgia, if he/she fails to appear before the authority dealing with the proceeding.
7. The rule prescribed by Paragraph 6 of this Article shall not be applied, if the person voluntarily returns to Georgia and he/she will be summoned again in accordance with the rules established by legislation.
8. The witness, expert or victim appearing on a summons before the authority dealing with the proceeding in accordance with the Paragraph 1 of this Article shall not be subjected to administrative or criminal liability; he/she shall not be arrested, detained or punished, or subjected to any other restriction of his personal liberty in respect of any act committed anterior to his/her departure from the territory of the relevant foreign state. No restriction shall also be applied against them for the statement given and the examination made with regard to the criminal case for which they have been summoned.
9. The accused appearing on a summons before the authority dealing with the proceeding in accordance with the Paragraph 1 of this Article shall not be subjected to administrative or criminal liability; he/she shall not be arrested, detained or punished, or subjected to any other restriction of his personal liberty in respect of any act committed anterior to his/her departure from the territory of the relevant foreign state and was not indicated in the summons.

10. The rule established by Paragraphs 8 and 9 of this Article shall not be applied, if the person, having had an opportunity to leave the territory of Georgia, has not done so within 15 days from the date when his/her presence is no longer required in Georgia, or having left the territory of Georgia, has returned again, unless an international treaty of Georgia, or *ad hoc* agreement, or the conditions of reciprocal cooperation provides otherwise.

(b) Observations on the implementation of the article

Georgia approached the above-mentioned paragraph properly noting that due to the self-executing power of binding international treaties at the national level, Georgia can apply Paragraph 27 of Article 46 of the UN Convention against Corruption directly. The reviewing experts also referred to the procedures defined by Article 7, paragraph 6 to 10, of the law on International Cooperation in Criminal Matter which appear to be in compliance with the paragraph.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

The competent Georgian authorities are able to apply provisions of Paragraph 28 of Article 46 of the UN Convention against Corruption directly in case of cooperation with foreign states under the Convention referred to above.

Despite this, the law on International Cooperation in Criminal Matters also defines the conditions under which costs related to carrying out international cooperation in criminal matters are borne by Georgia and the respective foreign states. Namely, according to Article 4 of the mentioned law, all the expenses related to carrying out international cooperation in criminal matters on the territory of Georgia shall be borne by Georgia unless international treaty of Georgia or *ad hoc* agreement or the conditions of reciprocal cooperation provides otherwise. Costs may also be borne in a different way on the basis of the relevant agreement between Georgia and the respective foreign state.

As indicated above, Georgia has never received any MLA request from foreign states on the basis of the UN Convention against Corruption. Therefore, no information is available about the implementation of the Article referred to above. However, at the time of cooperation with foreign states regarding other types of crimes, the ordinary costs of executing MLA requests were always borne by the Georgian authorities. Besides, up to the present date, Georgia has never had any case connected with the expenses of a substantial or extraordinary nature. Therefore, no information is available in this regard.

Law on Normative Acts – Article 7 (see above)

Law on International Cooperation in Criminal Matters – Article 4

Article 4: Expenses

1. All the expenses related to carrying out international cooperation in criminal matters on the territory of Georgia shall be borne by Georgia unless international treaty of Georgia or *ad hoc* agreement or the conditions of reciprocal cooperation provides otherwise.
2. Expenses may also be allocated in a different way on the basis of a relevant agreement.

(b) Observations on the implementation of the article

The reviewing experts referred to the possibility of direct application of the UN Convention against Corruption as well as to Article 4 of the ICCM. They appear to be in compliance with the paragraph.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

Georgia can provide foreign states with copies of government records, documents or information that under the domestic law are available to the general public. In order to comply with the relevant foreign requests, Georgia can apply the provisions of Paragraph 29 (a) of Article 46 of the UN Convention against Corruption directly. Besides, the domestic legislation of Georgia also permits the competent Georgian authorities to provide their foreign counterparts with similar assistance as well, since the mentioned government records, documents or information are also available for Georgian investigative authorities in the course of the investigation of the domestic case.

According to Article 33, paragraph 6 (m) of the Criminal Procedure of Georgia, for the purpose of the domestic proceedings, a prosecutor is authorized to request and subsequently receive documents or other material evidences from state agencies without any impediments. The mentioned rule is also applied in case the relevant foreign state requests the above-mentioned documents or evidences. In case governmental records, documents or information are available to the general public, the prosecutor dealing with the MLA request directly addresses the relevant state agencies and obtains the copies of the above-mentioned documents/materials on the basis of the written request. After receiving the copies of the above indicated governmental records, documents or information from the relevant state agencies, they are further sent by the Ministry of Justice of Georgia to the relevant foreign authorities. Georgia has never received any request from foreign states on the basis of the UN Convention against Corruption and the above mentioned procedures were applied at the time of execution of MLA requests regarding other types of crimes. However, such procedures will also be applied in case of receiving letters rogatory under the Convention referred to above.

Law on Normative Acts – Article 7 (see above)

(b) Observations on the implementation of the article

The reviewing experts referred to the possibility of direct application of the UN Convention against Corruption as well as to Article 33, paragraph 6 (m) of the Criminal Procedure Code. They appear to be in compliance with the paragraph.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

In case of requesting copies of government records, documents or information that under the domestic law are not available to the general public, the competent Georgian authorities may, at their discretion, decide the issue on a case-by-case basis.

Georgia has never received any MLA request on the basis of the UN Convention against Corruption. However, in case of executing foreign MLA requests regarding other cases, Georgia applied two different procedures in this regard. If the MLA request referred to the copies of government records, documents or information for obtaining of which domestic court decision was necessary (e.g. information regarding the psychological state of a person), such documents/information/materials were obtained on the basis of the prior authorization of the relevant local court. In all other cases (e.g. information regarding the crossing of the state border by a person), the relevant Georgian prosecutors directly obtained the copies of government records, documents or information on the basis of the written requests addressed to the appropriate state agencies.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the answers provided by Georgia.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

The competent Georgian authorities are planning to start negotiations for concluding bilateral MLA treaties with some states having no treaty basis for cooperation with Georgia. Such treaties will be of general nature, and therefore, they will also give practical effect to the provisions of Article 46 of the UN Convention against Corruption.

See the information given above.

(b) Observations on the implementation of the article

The reviewing experts welcome the plans of the Georgian authorities to start negotiations for further bilateral MLA treaties with some states having no treaty basis for cooperation with Georgia. Such treaties will be of general nature, and therefore, they will also give practical effect to the provisions of Article 46 of the UN Convention against Corruption.

(c) Successes and good practices

The reviewing experts would like to highlight the availability of plentiful methods of assistance for foreign States, which are available throughout the course of criminal proceedings be it by direct application of the UN Convention against Corruption or through the provisions of the ICCM.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

The law on International Cooperation in Criminal Matters does not contain provisions establishing the mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. However, in case such conflict should arise, it might be solved under Article 2, paragraph 2, of the above-mentioned law. Namely, for the purposes of the proper administration of justice, Georgia and the respective foreign states may conclude the relevant ad hoc agreement and decide the issue in this way.

As mentioned above, the respective Georgian authorities are able to transfer criminal proceedings in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution. Up to the present date, due to the absence of necessity, Georgia has never transferred/received criminal proceedings for the prosecution of any offences established in accordance with the UN Convention against Corruption.

However, there have been a lot of cases regarding other types of crimes when criminal proceedings were transferred/received for the purposes of the proper administration of justice. Below is given one example of the case which was transferred by the Republic of Turkey to Georgia. The investigation regarding the mentioned case was initially started both by Georgia and Turkey due to the fact that some Georgians committed the crime of theft of gold materials in the latter state. Since Georgian law-enforcement authorities later managed to arrest the alleged offenders and seize the property obtained through criminal activities, the Turkish side made the decision on the transfer of proceedings to Georgia. Currently the investigation is completed and the case is pending before the Georgian court.

(b) Observations on the implementation of the article

The reviewing experts noted the response of Georgia, that the ICCM does not establish provisions to implement the respective paragraph. It was recommended to consider if a regulation in domestic law might be necessary to allow for such transfer in practice.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

1) Bilateral Cooperation:

a) Bilateral agreements:

Georgia has concluded a number of international agreements with foreign countries (Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Estonia, France, Italy, Latvia, Malta, Moldova, Poland, Romania, Turkey, Ukraine, UK and Uzbekistan) on cooperation in criminal matters, in the field of combating crime and police cooperation and also agreements with Austria, Azerbaijan, Bulgaria, Czech Republic, Estonia, Latvia, Lithuania and Ukraine in the exchange and mutual protection of classified information (hereinafter referred to as “international agreements of Georgia”). Almost all of these agreements provide provisions for the fight against offences (i.e. corruption-related crimes, legalization of proceeds from criminal activities/money laundering and etc.) covered by the UN Convention against Corruption. A model draft agreement was shared with the reviewing experts.

The international agreements of Georgia provide special provisions, which determine the respective competent authorities responsible for cooperation and oblige the parties to exchange the contact points of these competent authorities in order to establish direct contacts with each other for ensuring rapid and effective assistance provided by the given international agreement. Besides, in case of urgency, some of the agreements give a possibility to the competent authorities of the parties to make requests verbally, which subsequently shall be drawn-up in writing and also to cooperate spontaneously without request.

On 20 October 2011 the Ministry of Internal Affairs signed bilateral agreements with the law enforcement agencies of Armenia, Azerbaijan, Moldova and Ukraine in the sphere of operative-searching cooperation.

On February 22, 2012 the Memorandum of Understanding between the Government of Georgia and the Government of the Republic of Turkey on cooperation in combating crime was signed.

Moreover, the Ministry drafted cooperation agreements and proposed them to the European countries. Most of these draft agreements are currently in the process of negotiations and will be signed in nearest future.

Please, see below the diagram on the number of international agreements concluded by the Ministry of Internal Affairs of Georgia in the years of 2006-2011:

International Agreements Concluded by the MoIA in the years of 2006-2011

2006 – 2 Agreements

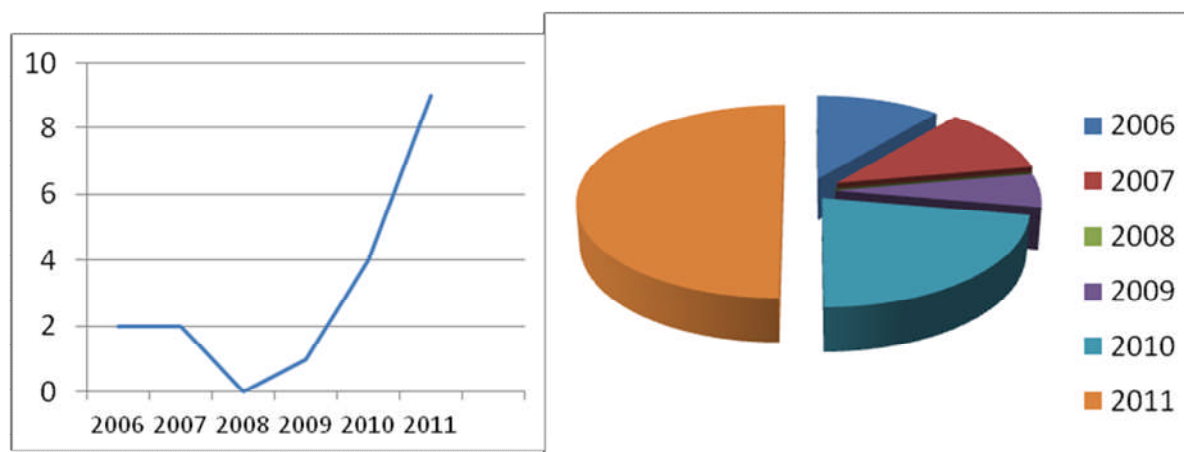
2007 – 2 Agreements

2008 – 0 Agreement

2009 – 1 Agreement

2010 – 4 Agreements

2011 – 9 Agreements (Armenia, Austria, 2 Azerbaijan, Bulgaria, Jordan, Malta, Moldova, Ukraine)



For the updated overall list of Agreements see: http://police.ge/uploads/Agreements_Eng.pdf

b) Cooperation with neighbouring countries:

Ministry of Internal Affairs of Georgia effectively cooperates with neighboring countries: Azerbaijan, Armenia and Turkey. Joint working groups meet systematically in order to establish joint action plans and exchange criminal intelligence information and contact points.

- Cooperation with Turkey within the frames of Joint Commission Meetings in accordance with the Agreement between the Government of Georgia and the Government of the Republic of Turkey on Cooperation in the Field of Security

The First Joint Commission Meeting was held in Ankara, Republic of Turkey in 2006.

The Second Joint Commission Meeting between the Representatives of the Ministries of Interior of Georgia and the Republic of Turkey was held on 29 March 2011 at the Ministry of Internal Affairs of Georgia within the frames of cooperation determined by the “Agreement between the Government of Georgia and the Government of the Republic of Turkey on Cooperation in the Field of Security” signed in 1994.

During the Meeting the Parties discussed joint issues on the fight against terrorism, illicit drug traffic, and human trafficking and signed the Minutes of Meeting, where future cooperation plans and contact information of the Parties were envisaged.

From the Ministry of Internal Affairs of Georgia the Meeting was attended by the heads of Special Operative Department, Counterterrorist Center and International Relations Main Division and other respective officers from these units.

Holding of the Third Joint Commission Meeting is scheduled on May/June 2012 in the Republic of Turkey.

c) Police Attaché Cooperation

The Ministry of Internal Affairs of Georgia actively cooperates with police attachés of the EU member States represented in Georgia (France, Germany, Austria, Poland, Hungary and Netherlands). The forms of cooperation are: exchange of relevant information, best practices, statistics, joint measures, adoption and implementation of annual assistance/cooperation plans, trainings, study visits and etc. Since February 2010, a Georgian Liaison Police Officer has been appointed to Austria, covering all EU member States for enhancing cooperation and exchange of information.

2) Regional Cooperation:

At the regional level, Georgia participates in the multilateral instruments in the fight against organized crime concluded within **GUAM** (Georgia, Ukraine, Azerbaijan, Moldova - Organization for Democracy and Economic Development) and **BSEC** (Black Sea Economic Cooperation) and enjoys an observer state status within **SELEC** (Southeast European Law Enforcement Centre).

a) Cooperation with GUAM:

GUAM (Georgia, Ukraine, Azerbaijan, Moldova -Organization for Democracy and Economic Development) -The Ministry of Internal Affairs of Georgia actively cooperates with its counterparts within the frames of the “Agreement on cooperation among the Governments of GUUAM Participating States in the field of combat against terrorism, organized crime and other dangerous types of crimes”, signed on July 20, 2002, through GUAM Law-Enforcement Centre, which is a structural sub-unit of International Relations Main Division of the Ministry of Internal Affairs of Georgia.

Under the abovementioned agreement, GUAM Working Group for Combating Against Terrorism, Organized Crime and Other Dangerous Types of Crimes was established. Since 2009 GUAM Sub-Group for Combating Against Corruption and Money Laundering is functioning within the mentioned working group. The coordinator country of this sub-group is Georgia. The sub-group is composed of the officers of the Ministry of Internal Affairs, Prosecutor’s Office and Financial Monitoring Service and of the representatives of the respective agencies of other GUAM member states. The sub-group meets twice a year.

Moreover, under the “Agreement on the establishment of GUAM virtual centre”, signed in Yalta, 2003, national virtual law-enforcement centres were established in GUAM member states. These centres are equipped with appropriate technical means, which enable the rapid exchange of information through protected channels and direct communications during joint operations and ensure holding of video conferences in online regime.

Joint operations within the frames of GUAM are conducted annually in the fields of drugs and human trafficking. The most recent operations were “Narcostop 2011” and “Arrest 2011”.

b) Cooperation with BSEC:

The Ministry of Internal Affairs of Georgia closely cooperates with the respective law-enforcement agencies of the BSEC Member States within the frames of the Agreement among the Governments of the Black Sea Economic Cooperation (BSEC) Participating States on cooperation in combating crime, in particular in its organized forms, signed on October 2, 1998 and its Additional Protocols. The requests on cooperation introduced to the Ministry from the law-enforcement agencies of other BSEC Member States are dealt with, responded and implemented in accordance with the abovementioned agreement and its protocols and in compliance with the Georgian legislation.

There is also functioning a network of liaison officers established by the Additional Protocol signed on March 15, 2002, which facilitates the communication of requests on cooperation and relevant information between the law-enforcement agencies of the BSEC Member States. Therefore, the Ministry of Internal Affairs of Georgia actively uses the mentioned communication means to receive and send requests on cooperation and the relevant information in order to facilitate their implementation in a reasonable time.

c) Cooperation with SELEC:

Currently Georgia holds an observer state status within **SELEC**, which gives it a possibility to attend various meetings, seminars and trainings organized by SELEC.

3. Cooperation with international and European institutions:

a) Cooperation within Interpol:

The National Central Bureau of INTERPOL Tbilisi conducts its activities in accordance with the Constitution of Interpol and the Regulation on Activities and Cooperation of National Central Bureau of Interpol of the Ministry of Internal Affairs of Georgia adopted by the president’s order No: 99 dated 12.02.2007.

According to the mentioned regulation the National Central Bureau of INTERPOL is the cooperation centre which links national law enforcement agencies and state authorities to the worldwide INTERPOL community.

The National Central Bureau of INTERPOL Tbilisi exchanges data via different means of communication, though the most secure, effective and fastest means of exchange of information is the Interpol’s special secure network I-24/7 used by all member states of INTERPOL. The National Central Bureau of Interpol of each member state works 24 hours a day and in case of receipt of an urgent message the duty officer taking into account the importance of the case has an opportunity to conduct effective and coordinated activities with the law enforcement agencies.

b) Cooperation with Europol:

In May 2010, the meeting was held between the representatives of Europol and the MoIA in order to further improve relations. The main topic of discussion was future partnership perspectives between Europol and Georgia and the possibility of concluding Strategic Partnership Agreement. In June 2010 MoIA has also approached EU Delegation and France to support the conclusion of the agreement with Europol. In February 2012 governing board of the Europol will consider the cooperation issue with Georgia.

c) Cooperation with CEPOL (European Police College Association)

Considering the strategic and close cooperation between Georgia and EU, MoIA requested the EU Delegation to Georgia and the Governing Board of European Police College (CEPOL) for recommendation and support of the conclusion of Cooperation Agreement between the Academy of the MoIA and CEPOL. This Agreement was signed on 12 December 2011. The cooperation under this agreement is especially important in terms of facilitating the sharing of experience and best practices, as well as building the capacity of police officers.

4. Practice:

In practice, the cooperation provided by these instruments were realized both upon requests, made to/received from respective foreign law-enforcement authorities directly or through diplomatic channels, and spontaneously, upon the initiative of either party, within the frames of joint working groups established with neighboring countries and within police attaché or liaison officer cooperation.

Furthermore, if there is no international legal basis for cooperation with the given country, the cooperation can be realized on the basis of the principle of reciprocity or under an individual agreement as provided by the Article 2 of the Law on International Cooperation in Criminal Matters which happens often in practice.

The Ministry of Internal Affairs of Georgia, on the basis and in compliance of the respective provisions of international agreements, has exchanged contact information with its foreign counterparts, which enable the parties to establish direct contacts facilitating the provision of quick and timely cooperation based on “one phone call principle”. Such form of cooperation is especially effective with neighboring countries.

GUAM law enforcement centre conducted inquiries on 11 cases of possible money laundering cases in the year 2010-2011 and 22 requests were implemented via police attaché channels from foreign counterparts.

The role of the Ministry as provider of best practices, knowledge and experience to partner countries and organizations is also very important in terms of international cooperation. Taking into consideration the successfully implemented police reform and achieved results in the fight against organized crime, which inspired other countries to recognize the necessity to modernize their own systems, Ministry of Internal Affairs of Georgia provides partner countries with knowledge and experience in the best implementation of police reform. These activities has been conducted by study visits, expert missions, seminars, workshops and working groups organized bilaterally with those countries or with the support of donors and international organizations. Ministry of Internal Affairs of Georgia has already provided

information on the police reform and the best practices to the number of countries, among them: Armenia, Azerbaijan, Belarus, Bulgaria, Egypt, Jordan, Kazakhstan, Kyrgyzstan, Mexico, Moldova, Romania, Turkey, Ukraine, Uruguay and Uzbekistan. This process is ongoing and remains the top priority for the coming years.

(b) Observations on the implementation of the article

The reviewing experts noted the high level of coordination efforts of Georgia in regard to law enforcement cooperation. This enables direct contact and facilitates the provision of timely cooperation based on the “one phone call” principles, in the framework of GUAM, amongst others.

Furthermore it was recommended that Georgian authorities continue to consider the possibility to start negotiations for further bilateral treaties with some states having no treaty basis for cooperation with Georgia for law - enforcement cooperation.

Article 48 Law enforcement cooperation

Subparagraph 1 (b) (i) – (iii)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

The international agreements of Georgia provide a wide range of areas of cooperation for Georgian law enforcement authorities with their foreign counterparts, including:

1. exchange of data and information related to the prevention, detection, investigation and suppression of crimes (including corruption-related crimes and money laundering);
2. exchange of information on the persons and groups participating in the commission of crimes or on the persons suspected to participate therein;
3. cooperation in search for persons suspected of committing crimes or for persons evading criminal liability or service of sentence and missing persons;
4. cooperation in search for stolen things and other objects related to crime;
5. assistance in conducting operational-searching activities. According to the Law of Georgia on Police (Paragraph 2 of Article 3), the police cooperates with relevant agencies of foreign countries on the basis of international treaties and agreements of Georgia and in accordance with Georgian legislation.

According to the Law of Georgia on “Operative-Searching Activities” (Article 8, Paragraph 1, Subparagraph f), one of the grounds to initiate operative-searching measures is the request of law enforcement agency of foreign country or international law enforcement organization made in accordance with the international agreement.

According to the Law of Georgia on “International Cooperation in Criminal Matters” (Article 2, Paragraphs 1 and 2), the international cooperation in criminal matters can be realized on the basis of international treaties and agreements, and, if there is no such treaty or agreement, under an individual agreement or on the basis of the principle of reciprocity for each specific case.

(b) Observations on the implementation of the article

The reviewing experts stated that the international agreements of Georgia provide a wide range of areas of cooperation for Georgian law enforcement authorities with their foreign counterparts as listed above. The Law of Georgia on “Operative-Searching Activities” (Article 8, Paragraph 1, Subparagraph f) as well as the Law of Georgia on “International Cooperation in Criminal Matters” (Article 2, Paragraphs 1 and 2), seem to provide sufficient entry points to initiate and realize international cooperation as foreseen by paragraph 48 Subparagraph 1 (b) (i) – (iii). Therefore Georgia can cooperate closely with other State - Parties on the basis of international treaties and agreements of Georgia and if there is no such treaty or agreement, under an individual agreement or on the basis of the principle of reciprocity for each specific case.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

The international agreements of Georgia provide provisions which enable the parties to exchange analytical information on the causes, the state and the trends of crime, as well as exchange information regarding the use of forensic methods, special tools and investigative techniques, exchange results of scientific researches, and assist each other by police equipment and other equipment.

According to the Law of Georgia on Police (Paragraph 2 of Article 3), the police cooperates with relevant agencies of foreign countries on the basis of international treaties and agreements of Georgia and in accordance with Georgian legislation.

According to the Law of Georgia on “Operative-Searching Activities” (Article 8, Paragraph 1, Subparagraph f), one of the grounds to initiate operative-searching measures is the request of

law enforcement agency of foreign country or international law enforcement organization made in accordance with the international agreement.

According to the Law of Georgia on “International Cooperation in Criminal Matters” (Article 2, Paragraphs 1 and 2), the international cooperation in criminal matters can be realized on the basis of international treaties and agreements, and, if there is no such treaty or agreement, under an individual agreement or on the basis of the principle of reciprocity for each specific case.

(b) Observations on the implementation of the article

The reviewing experts note that Georgia approached properly the above-mentioned subparagraph. The international agreements of Georgia provide for the implementation of subparagraph 1 (c).

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

The international agreements of Georgia provide provisions which enable the parties to exchange experience on methods and means used in tackling criminality and combating crime. The agreements determine the cooperation in the fight against such crimes as are: forging identity documents and official documents and their distribution.

(see also explanation given above)

(b) Observations on the implementation of the article

The reviewing experts stated that Georgia approached properly the mentioned subparagraph noting that the international agreements of Georgia provide provisions which enable the parties to exchange experience on methods and means used in tackling criminality and combating crime.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action

to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

The international agreements of Georgia provide provisions which determine the possibilities between the parties to exchange relevant experts, cooperate in the field of training and improving the qualification of personnel, and organize joint meetings and seminars. Some of the agreements also determine the possibility for the parties to second liaison officers to the police authorities or to the diplomatic missions on the territories of the states of the other parties.

Ministry of Internal Affairs of Georgia actively cooperates with police attaches of the EU member States represented in Georgia (France, Germany, Austria, Poland, Hungary and Netherlands). The forms of cooperation are: exchange of relevant information, best practices, statistics, joint measures, adoption and implementation of annual assistance/cooperation plans, trainings, study visits and etc. Since February, 2010 Georgian police Liaison Police Officer has been appointed to Austria, covering all EU member States for enhancing cooperation and exchange of information.

Moreover, in this respect noteworthy to mention is the cooperation between the Ministry of Internal Affairs of Georgia and the Bureau of International Narcotics and Law Enforcement Affairs of the US Department of State within the frames of the “Letter of Agreement between the Government of the United States of America and the Government of Georgia on Narcotics Control and Law Enforcement” of June 18, 2001, together with its subsequent amendments. The cooperation under this Agreement includes exchange of best practices, arrangement of joint seminars, trainings, workshops and etc.

(b) Observations on the implementation of the article

The reviewing experts stated that Georgia approached the above-mentioned subparagraph properly reflecting the explanations provided by Georgia above.

It was noted, that also in the absence of an international agreement or treaty measures to facilitate effective coordination between competent authorities, agencies and services should be considered.

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

According to the provisions of international agreements of Georgia, the law enforcement authorities of Georgia cooperate with their counterparts not only in the spheres of crime combating or crime suppression, but also in the sphere of its prevention. The parties oblige themselves to exchange data and information related to the prevention, detection, investigation and suppression of crimes (including corruption-related crimes and money laundering). The parties shall exchange information on the measures taken to prevent commission of crime and exchange experience in the prevention of crime. Some international agreements of Georgia also provide cooperation in the exchange of data and information between the parties on any fact regarding acquisition and registration of firearms by the citizens of the State of the other party or by the stateless persons who have permanent residence on the territory of the State of the other party in order to prevent commission of crimes.

One of the top priorities of the Ministry of Internal Affairs of Georgia is the continuation of strengthening international cooperation and exchange of best practices with partner countries and organizations on the issues of combating organized crime in its all forms.

In this regard, the Ministry remains committed to continue and enhance international cooperation (including police cooperation) in the sphere of fight against organized crime through concluding of bilateral agreements with EU specialized agencies, European and other partner countries and exchange of best practices, modern techniques and methods in fight against crime through seminars, conferences, trainings and joint meetings organized bilaterally with partner countries as well as with the international organizations.

Taking into consideration the successfully implemented police reform and achieved results in fights against organized crime, which inspired other countries to recognize the necessity to modernize their own systems, Ministry of Internal Affairs provides partner countries with knowledge and experience in the best implementation of police reform. These activities has been conducted by study visits, expert missions, seminars and working groups organized bilaterally with those countries or with the support of donors and international organizations.

Ministry of Internal Affairs of Georgia has already provided information on the police reform and the best practices to the number of countries, among them: Armenia, Azerbaijan, Belarus, Kazakhstan, Mexico, Moldova, Ukraine Kirgizstan and Uruguay.

(b) Observations on the implementation of the article

The reviewing experts stated that Georgia approached the above-mentioned subparagraph properly reflecting the explanations provided by Georgia above.

It was noted, that also in the absence of an international agreement or treaty measure to facilitate effective coordination between their competent authorities, agencies and services in order to exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention should be considered.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

According to the Law of Georgia on “International Cooperation in Criminal Matters” (Article 2, Paragraphs 1 and 2), the international cooperation in criminal matters can be realized on the basis of international treaties and agreements, and, if there is no such treaty or agreement, under an individual agreement or on the basis of the principle of reciprocity for each specific case. So far Georgia has concluded bilateral international agreements with Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Estonia, France, Greece, Italy, Kazakhstan, Latvia, Malta, Moldova, Poland, Romania, Turkey, Turkmenistan, Ukraine, UK and Uzbekistan on cooperation in criminal matters, in the field of combating crime and police cooperation. The Ministry of Internal Affairs of Georgia has a strong intention to conclude cooperation agreements with its counterparts of all EU and NATO Member States, first of all. To this aim, the Ministry drafted cooperation agreements and proposed them to the relevant countries. Most of these draft agreements are currently in the process of negotiations and will be signed in nearest future. A model draft agreement was shared with the reviewing experts.

GUAM (Georgia, Ukraine, Azerbaijan, Moldova -Organization for Democracy and Economic Development) -The Ministry of Internal Affairs of Georgia actively cooperates with its counterparts within the frames of the “Agreement on cooperation among the Governments of GUUAM Participating States in the field of combat against terrorism, organized crime and other dangerous types of crimes”, signed on July 20, 2002, through GUAM Law-Enforcement Centre, which is a structural sub-unit of International Relations Main Division of the Ministry of Internal Affairs of Georgia.

Under the abovementioned agreement, GUAM Working Group for Combating Against Terrorism, Organized Crime and Other Dangerous Types of Crimes was established. Since 2009 GUAM Sub-Group for Combating Against Corruption and Money Laundering is functioning within the mentioned working group. The coordinator country of this sub-group is Georgia. The sub-group is composed of the officers of the Ministry of Internal Affairs, Prosecutor’s Office and Financial Monitoring Service and of the representatives of the respective agencies of other GUAM member states. The sub-group meets twice a year.

Moreover, under the “Agreement on the establishment of GUAM virtual centre”, signed in Yalta, 2003, national virtual law-enforcement centres were established in GUAM member states. These centres are equipped with appropriate technical means, which enable the rapid exchange of information through protected channels and direct communications during joint operations and ensure holding of video conferences in online regime.

Europol -In 2010 MoIA has approached the EU to nominate Georgia as a candidate country for the conclusion of Strategic Partnership Agreement with Europol which would be a step

forward in combating the trans-national organized crime and can increase the measures taken very effectively. The signature of the Agreement is envisaged in the nearest future.

Interpol -The National Central Bureau of INTERPOL Tbilisi conducts its activities in accordance with the Constitution of Interpol and the Regulation on Activities and Cooperation of National Central Bureau of Interpol of the Ministry of Internal Affairs of Georgia adopted by the president's order No: 99 dated 12.02.2007.

According to the mentioned regulation the National Central Bureau of INTERPOL is the cooperation centre which links national law enforcement agencies and state authorities to the worldwide INTERPOL community.

The National Central Bureau of INTERPOL Tbilisi exchanges data via different means of communication, though the most secure, effective and fastest means of exchange of information is the Interpol's special secure network I-24/7 used by all member states of INTERPOL. The National Central Bureau of Interpol of each member state works 24 hours a day and in case of receipt of an urgent message the duty officer taking into account the importance of the case has an opportunity to conduct effective and coordinated activities with the law enforcement agencies.

(b) Observations on the implementation of the article

The reviewing experts stated that Georgia approached the above-mentioned paragraph properly reflecting the explanations provided by Georgia above. The initiative to conclude further cooperation agreements was welcomed.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavor to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

The Ministry of Internal Affairs of Georgia actively cooperates with international organizations (OSCE, UNODC, GUAM, CoE), partner countries and also police attaches to tackle crimes committed through the use of modern technology by exchanging the information and experience on modern investigative techniques, exchanging best practices in this field (joint seminars, conferences, study visits and specific trainings were held 2009-2011 with the assistance of the International Organizations and partner countries for this respect). Noteworthy mentioning is the elaboration of the anti-corruption police training modules, wherein other methods and technology for committing crimes covered by the convention will be included as one of the main topics.

(b) Observations on the implementation of the article

The reviewing experts were satisfied with the explanations provided by Georgia in regard to the implementation of this paragraph.

(c) Successes and good practices

Effective law enforcement cooperation, which enables direct contact and facilitates the provision of timely cooperation based on the “one phone call” principle, in the framework of GUAM, among others.

(d) Challenges, where applicable

Georgia noted as possible challenges to the initiatives and plans described in regard to this article the following two aspects:

In 2010 MoIA has approached the EU to nominate Georgia as a candidate country for the conclusion of Strategic Partnership Agreement and Operational Agreement with Europol, which will be a step forward in combating the trans-national organized crime and can increase the measures taken very effectively. The process of conclusion of these agreements is slow due to internal policies and procedures of Europol.

Furthermore, the Ministry of Internal Affairs of Georgia commits itself at enhancing bilateral police cooperation with respective law-enforcement authorities worldwide, and particularly with European and NATO member states, through conclusion of bilateral international agreements. The conclusion of these agreements is fully dependent on the will of these countries.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

Despite the fact that the law on International Cooperation in Criminal Matters does not contain relevant provisions, establishing joint investigative bodies and conducting joint investigations are not prohibited under the domestic legislation of Georgia. It means that in case of necessity, the Ministry of Justice of Georgia is authorized to conclude ad hoc agreements with its foreign counterparts and define detailed procedures and rules that are necessary for giving effect to the provisions of Article 49 of the UN Convention against Corruption.

Law on International Cooperation in Criminal Matters – Article 2 (see above)

(b) Observations on the implementation of the article

Georgia approached properly the above-mentioned article noting that despite the fact that the law on International Cooperation in Criminal Matters does not contain relevant provisions, establishing joint investigative bodies and conducting joint investigations are not prohibited under the domestic legislation of Georgia. It means that in case of necessity, the Ministry of Justice of Georgia is authorized to conclude ad hoc agreements with its foreign counterparts and define detailed procedures and rules that are necessary for giving effect to the provisions of Article 49 of the UN Convention against Corruption.

In case of need it might be recommendable to consider such bilateral or multilateral agreements or arrangements, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings or to establish any joint investigative bodies.

Article 50 Special investigative techniques

Paragraph 1

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived there from.

The procedures of the application of special investigative techniques by the law enforcement authorities of Georgia and their types are defined by the Law of Georgia on “Operative-Searching Activity”.

According to the Article 7 of this Law, the law enforcement authorities of Georgia are authorized to conduct the following operative-searching measures (the definitions of these measures are provided by the Article 1 of the same law):

Interview of an individual (personal interview conducted by an operative employee or an investigator with an individual who has the information about the event to be inquired or a person connected with this event (the interview is voluntary and the person to be interviewed is not warned about criminal responsibility for perjured testimony or for waiver to give the testimony. Operative employee or an investigator will draw up a report about the interview in due order which is submitted to the interviewed person to get familiarized with the report above));

Collection of information (formal obtaining of actual data from criminalistic, operative-searching or any other sources of information storage);

Visual control (operative surveillance that will be conducted in a secret way by the operative employee, investigator or operative-searching organ directly or by the mean of operative-technical equipment);

Controlled purchase (purchase of an item or a substance by the operative employee, investigator or operative-searching organ on the basis of an operative information or creation of situation for purchase (without purposes of distribution or use));

Controlled delivery (to move the material evidence from outside, within or through Georgia (in the cases envisaged by international treaties -also outside of Georgia) in order to expose the crime or reveal the person committing the crime or controlled movement of the item free realization of which is prohibited or limited by the law);

Examination of items and documents (examination of items and documents visually or by technical means provided that such examination is not deemed as an expert's decision);

Identification of an individual (identification of an individual to be examined or of an accused according to dactylographic record, tracks, smell or extraction left on the scene);

Censorship of the correspondence of detainee, arrestee or convicted;

By the order of judge wire-tapping, withdrawal and fixation of an information from communication channel (by connection to communication means, computer networks, line communications, station equipment), and to this aim installation of software in computer system; control over mail-telegraph messages (except diplomatic mail);

By the order of judge concealed video recording, audio recording, shooting or taking photos, electronic surveillance by technical means, application of which does not inflict damage to human health, life and environment;

Engagement of secret employee or operative employee in criminal group (Secret employee is any individual reached to the age of 18 who voluntarily, on the basis of the contract, cooperates with operative-searching organ or an investigator and fulfils the obligations envisaged by this contract);

Creation of secret organization (creation of an organization of any organizational-legal form by the operative-searching organ or an investigator with the purpose to penetrate through a criminal formation);

Monitoring of internet relations (surveillance over and participation in open and covered internet relations which run in the world-wide web (internet), as well as creation of situation for obtaining illegal computer data, which will serve for identification of the person committing a crime).

According to the Article 3 of this Law, the abovementioned operative-searching measures shall be conducted in order to:

- Detect, suppress and prevent crime or any unlawful action;
- Detect the person who prepares, commits or has committed the crime or any other unlawful action;
- Search and introduce to the governmental agency a person concealing from investigation, court, as well as avoiding to serve the sentence or other compulsory measures imposed by the court;
- Search and identify a property lost in the result of criminal or any other unlawful action;
- Search a missing person;

- Obtain factual data necessary for criminal case;
- Identify a person committing crime or any other unlawful action (first name, last name, age, citizenship).

The provisions of Criminal Procedural Code of Georgia recognize admissibility in court of the evidences obtained from operative-searching activities.

The Law of Georgia on “Operative-Searching Activity” provides a broad range of special investigative techniques, which can be applied by the law-enforcement authorities for obtaining criminal intelligence information, gathering of evidences, conducting surveillance and undercover operations. Most of the special investigative techniques listed in the Article 7 of the Law can be applied without court order. The exceptions are: wire-tapping, concealed video recording, audio recording, shooting or taking photos, electronic surveillance by technical means, which shall be applied on the basis of court order, or if there is an urgent necessity – on the basis of a prosecutor’s ruling.

According to the Article 8 (1.f) of the same law, special investigative techniques can be initiated upon the request of foreign law-enforcement authorities or international law-enforcement organization on the basis of an international agreement. Furthermore, all bilateral international agreements, concluded by the Ministry of Internal Affairs of Georgia, envisage the cooperation in the field of application of special investigative techniques.

Even, if there is no agreement, the Law of Georgia on “International Cooperation in Criminal Matters” authorizes the law-enforcement authorities to realize cooperation at its full extent with the given country under an individual agreement or on the basis of the principle of reciprocity for each specific case.

In practice, the respective units of the Ministry of Internal Affairs of Georgia applied various special investigative techniques in order to fulfill the requests received within the frames of GUAM and BSEC.

In 2010 one more important special investigative technique was added to the respective list of investigative techniques provided by the Article 7 of the Law of Georgia on “Operative-Searching Activity”, which is monitoring of internet relations, i.e. surveillance over and participation in open and covered internet relations which run in the world-wide web (internet), as well as creation of situation for obtaining illegal computer data, which will serve for identification of the person committing a crime. This investigative technique was exclusively intended to facilitate the prevention of and the fight against cybercrime, taking into consideration the worldwide tendency of increasing scale of crimes, including corruption-related activities, perpetrated through the use of internet.

(b) Observations on the implementation of the article

Georgia approached properly the above-mentioned article noting that the procedures of the application of special investigative techniques by the law enforcement authorities of Georgia and their types are defined by the Law of Georgia on “Operative-Searching Activity”.

The law enforcement authorities of Georgia are authorized to conduct the operative-searching measures listed above in order to:

- Detect, suppress and prevent crime or any unlawful action;

- Detect person who prepares, commits or has committed crime or any other unlawful action;
- Search and introduce to the governmental agency a person concealing from investigation, court, as well as avoiding to serve the sentence or other compulsory measures imposed by the court;
- Search and identify a property lost in the result of criminal or any other unlawful action;
- Search a missing person;
- Obtain factual data necessary for criminal case;
- Identify a person committing crime or any other unlawful action (first name, last name, age, citizenship).

The provisions of Criminal Procedural Code of Georgia recognize admissibility in court of the evidences obtained from operative-searching activities.

Article 50 Special investigative techniques

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements

(a) Summary of information relevant to reviewing the implementation of the article

According to the Law of Georgia on “Operative-Searching Activities” (Article 8, Paragraph 1, Subparagraph f), one of the grounds to initiate operative-searching measures is the request of law enforcement agency of foreign country or international law enforcement organization made in accordance with the international agreement.

Almost all of the international agreements of Georgia provide for the cooperation between the parties in assistance in conducting operational-search activities, which shall be carried out in compliance with the national legislations of the parties.

(b) Observations on the implementation of the article

Article 50 (2) provides that for the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements. Georgia approached the above-mentioned article noting that according to the Law of Georgia on “Operative-Searching Activities, one of the grounds to initiate operative-searching measures is the request of law enforcement agency of foreign country or international law enforcement organization made in accordance with the international agreement. Almost all of the international agreements of Georgia provide for the cooperation between the parties in assistance in

conducting operational-search activities, which shall be carried out in compliance with the national legislations of the parties.

However does Georgia planning at this time or in the nearest future to conclude bilateral or multilateral agreements or arrangements with other State – Parties, for using such special investigative techniques in the context of cooperation at the international level?

Article 50 Special investigative techniques

Paragraph 3

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

According to the Law of Georgia on “International Cooperation in Criminal Matters” (Article 2, Paragraphs 1 and 2), the international cooperation in criminal matters can be realized on the basis of international treaties and agreements, and, if there is no such treaty or agreement, under ad hoc agreement or on the basis of the principle of reciprocity for each specific case.

(b) Observations on the implementation of the article

Article 50 (3) provides that in the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned. Georgia approached properly the above-mentioned article noting that according to the Law of Georgia on “International Cooperation in Criminal Matters”, the international cooperation in criminal matters can be realized on the basis of international treaties and agreements, and, if there is no such treaty or agreement, under an individual agreement or on the basis of the principle of reciprocity for each specific case.

Article 50 Special investigative techniques

Paragraph 4

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

According to the Law of Georgia on “Operative-Searching Activities” (Article 8, Paragraph 1, Subparagraph f), one of the grounds to initiate operative-searching measures is the request of law enforcement agency of foreign country or international law enforcement organization made in accordance with the international agreement.

According to the international agreements of Georgia, the parties realize their cooperation (including the cooperation in conduction of controlled deliveries) in compliance with their national legislations. Under the Law of Georgia on “Operative-Searching Activities”, controlled delivery is defined as: “to move the material evidence from outside, within or through Georgia (in the cases envisaged by international treaties -also outside of Georgia) in order to expose the crime or reveal the person committing the crime or controlled movement of the item free realization of which is prohibited or limited by the law”.

(b) Observations on the implementation of the article

Article 50 (4) provides that decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part. According to the Law of Georgia on “Operative-Searching Activities” (Article 8, Paragraph 1, Subparagraph f), one of the grounds to initiate operative-searching measures is the request of law enforcement agency of foreign country or international law enforcement organization made in accordance with the international agreement. Georgia approached properly the above-mentioned article noting that according to the international agreements of Georgia, the parties realize their cooperation (including the cooperation in conduction of controlled deliveries) in compliance with their national legislations. Under the Law of Georgia on “Operative-Searching Activities”, controlled delivery is defined as: “to move the material evidence from outside, within or through Georgia (in the cases envisaged by international treaties -also outside of Georgia) in order to expose the crime or reveal the person committing the crime or controlled movement of the item free realization of which is prohibited or limited by the law”.

(d) Challenges, where applicable

Georgia mentioned that Corruption-related activities are social phenomena and their forms, types, means and methods of perpetration are periodically being modified/mutated, complicated or altered. Accordingly, there is a continuous challenge for law-enforcement authorities to be respectively prepared and authorized for applying adequate investigative techniques, including new ones, in order to effectively prevent, detect and suppress these crimes in future.

The Ministry of Internal Affairs of Georgia pays utmost attention to cooperation with partner countries and organizations in sharing new methods, techniques and means, which can be applied in the fight against organized crime, through arranging joint seminars, workshops, study visits or within the frames of police attaché cooperation.