



# European Union / Council of Europe CYBERCRIME PROJECT

Amendments of Georgian  
Criminal Law

Prof. Dr. Henrik W.K. Kaspersen

Tbilisi, March 2, 2010

A person in a wheelchair is seen from behind, moving down a ramp in a hallway. The hallway has yellow walls, a white ceiling with hanging plants, and a wooden railing. The person is wearing a red jacket and is positioned in the center of the ramp. The background shows a doorway at the end of the hallway.

# Introduction-1

- Documents
  - Draft Amendments
  - Criminal Code
  - Criminal Procedural Law
  - Law on Administrative Offences
  - Law on Operative- Activities
  - Law on Electronic Communications
  - Abstract Georgian Law
- Analysis of Report July 2009
- Today Main Issues
- Order: draft

Tbilisi, March 2, 2010

The background of the slide features a faded, orange-tinted photograph of a person in a wheelchair moving up a ramp. The person is wearing a red jacket and is positioned in the lower-left quadrant of the image. The ramp has wooden handrails and a light-colored floor. In the upper-left corner, there is a small potted plant hanging from the ceiling. The overall tone of the background is warm and slightly desaturated.

# Implementation of Substantive Law

- Categories

- Cia-offences
- Computer-related
- Content-related
- IPR

- Method

- Stay as close to the text as possible. If necessary, enact parallel provisions
- Assimilation clauses. Review **all** forgery and fraud provisions. If possible enact joint *technology-independent* provisions. Criminalise also preparatory acts.
- On line conduct should not be differently criminalised than on-line conduct. Review and look for common elements.
- IPR-specific

Tbilisi, March 2, 2010



The background of the slide is a faded, orange-tinted photograph of a person in a wheelchair moving down a hallway. The person is wearing a light-colored shirt and dark pants. The hallway has a wooden floor and a white wall with a small plant hanging from the ceiling. The overall tone is professional and academic.

# Substantive Law: article 107<sup>2</sup>

## Report July 2009

- Recommendations
  - Central Provision on Liability Legal Persons

## Solutions Draft 2010

- See art. 107<sup>1</sup>
- Cyber crimes of 284-286, and 189 not included
- Aiding and abetting to cybercrimes?
- Group in 284, ss 2 etc does not amount to a legal person

Tbilisi, March 2, 2010

# Substantive Law: article 189<sup>3</sup>

## Report July 2009

- Unclear relation between articles 189, para 1, 2, 3...

## Solutions Draft 2010

- Article 189, para 3:
  - new notions/definitions?
  - Reproduction (para 3) vs misappropriation in para 1 and 2: copyright object vs specification



# Substantive Law: article 284

## Report July 2009

- Definitions
- Mere access or additional elements
- Aggravating Circumstances
- Serious Harm

## Draft 2010

- Explanatory text. Note difference CCP!
- Cumulative conditions! Either mere hacking or inclusive elements like security measures
- Enabling access
- Not applied
- Proof? Specification
- Large amount/substantial damage
- Meaning without right in Georgian law (unauthorised?)
- Ss 2 lit. b: abusing power??

# Substantive Law: article 285, ss 1.

## Report July 2009

- Scope and Elements
- Elements of article 159?

## Draft 2010

- Now Text of the Convention:
  - Alien elements like without right?
  - Explanatory note (non-public)
- No combination
- Relation with article 159.



A person in a wheelchair is seen from behind, moving up a ramp with wooden railings. The background is a bright, slightly hazy indoor space with a potted plant hanging from the ceiling. The entire image is overlaid with a semi-transparent orange grid pattern.

# Substantive Law: article 285 ss 2

## Report July 2009

- Scope and elements

## Draft 2010

- Now text CCC
- Different nature conduct ss 1 and ss 2 (but different than art. 286)

Tbilisi, March 2, 2010



The background of the slide is a faded, orange-tinted photograph. It shows a person in a wheelchair moving up a ramp. The person is wearing a light-colored shirt and dark pants. The ramp has wooden railings on both sides. In the background, there are some plants and a wall with a small red sign.

# Substantive Law: article 286

## Report July 2009

- Specification type and importance of computer systems

## Draft 2010

- Text of the CCC
- Damage? Special Interest systems?

Tbilisi, March 2, 2010

A person in a wheelchair is seen from behind, moving up a ramp with wooden railings. The background is a bright, slightly hazy indoor space with a potted plant hanging from the ceiling. The entire image has an orange overlay.

# Substantive Law: article 286<sup>1</sup>

## Report July 2009

- To be drafted

## Draft 2010

- 'this Chapter' : seems broader than cybercrimes
- Such device: meaning?
- Dual use exception
- Protected information: meaning?
- Possession may be included in para 1 and 2

Tbilisi, March 2, 2010



# Substantive Law: article 286<sup>2</sup>

## Report July 2009

- Review existing forgery provisions in the light of article 7 CCC

## Draft 2010

- ??? Only 286<sup>2</sup> Other?
- Text CCC: relation with other provisions?
- Standard notions or wordings of Georgian Law
- Place in art. 286: completely different legal interests

# Substantive Law: article 286<sup>3</sup>

## Report July 2009

- Review existing fraud provisions in the light of article 8 CCC

## Draft 2010

- ??? Only 286<sup>3</sup> Other?
- Text CCC: relation with other provisions?
- Standard notions or wordings of Georgian Law
- Place in art. 286: completely different legal interests



# Substantive Law: article 255

## Report July 2009

- Coming Draft expected to be in accordance with art. 9 CCC
- Relation between article 255 and 255<sup>1</sup>

## Draft 2010

No comment

???

Virtual child porn not criminalised  
or through “appearing”?

Second note ;article 107 attaches  
criminal liability: function?  
Should it not be part of the  
law?.

# Substantive Law: article 142<sup>1</sup>

## Report July 2009

- Wide gap between 1st Add. Protocol CCC and Georgian Draft

## Draft 2010

Present Status???

Tbilisi, March 2, 2010



The background of the slide is a faded, orange-tinted photograph. It depicts a person in a wheelchair moving up a ramp. The ramp has wooden handrails on both sides. The person is wearing a dark jacket and is positioned in the lower-left portion of the frame. The overall scene is brightly lit, and the image has a soft, grid-like texture overlay.

# Procedural Law

- Scope: ***any crime***, see article 14
- Stored data vs data flows
- Apply similar conditions and safeguards as in present domestic law, see article 15

Tbilisi, March 2, 2010

The background of the slide is a faded, orange-tinted photograph of a person in a wheelchair moving up a ramp. The person is wearing a dark jacket and is positioned on the left side of the frame, facing away from the camera. The ramp has wooden railings on both sides. The overall tone is warm and slightly desaturated.

# Substantive Law: article 5 (jurisdiction)

## Report July 2009

- No comment, except
  - Dedere aut iudicare
  - Consultation mechanism

## Draft 2010

???

Tbilisi, March 2, 2010



A person in a wheelchair is seen from behind, moving up a ramp with wooden railings. The background is a bright, slightly hazy indoor space with a potted plant hanging from the ceiling. The entire image is overlaid with a semi-transparent orange grid pattern.

# Procedural Law: article 44 (definitions)

## Report July 2009

- Law or Explanatory text

## Draft 2010

- Substantive law: expl. Text
- Procedural Law: art. 1
- 63: internet traffic data too restrictive

Tbilisi, March 2, 2010

# Procedural Law: art. 110 electronic evidence

## Report July 2009

- Admissibility
- Conditions

## Draft 2010

- See art. 110
- See art. 126<sup>1</sup>
  - Why again definition computer data in ss 1?
  - Data *may be used as* (not is) evidence
  - There are no *original* computer data
- Need of ss 3?
- Phrasing art. 130 ss 2<sup>1</sup>





# Criminal Procedural Law: Article 315

## Report July 2009

- Article 315 has preference over article 389<sup>1</sup> for regulation of search of computer systems

## Draft 2010

- Nested and therefore complex provision.
  - Purpose of search may be seizure.
  - Purpose of seizure is finding of the truth, e.g. by safeguarding evidence (objects, traces) of the crime, circumstantial facts confiscation etc.
  - Search of a computer system vs similarly seizing of computer data

Tbilisi, March 2, 2010

# Procedural Law: article 323, para 4

## Report July 2009

- Separate warrant for search of a computer system undesirable
- Seizure of computer data: please clarify!

## Draft 2010

- Would article 323, para 1 allow search of a computer system?
- Para 4:  
Interact=communicate?
- Finalisation= during?
- Clarification of 2<sup>nd</sup> sentence of para 4
  - Seizure of computer data?
  - Accessible system?



A person in a wheelchair is seen from behind, moving up a ramp. The ramp has wooden handrails and a light-colored floor. The background is slightly blurred, showing an indoor setting with a potted plant hanging from the ceiling.

# Procedural Law: article 323, para 6

## Report July 2009

- No comment given

## Draft 2010

- 'Propose to deliver' is not the same as 'ordering' in art. 19 CCC
- 'Responsible for' is more restrictive than 'having knowledge'
- Criticism: if the person is allowed to provide a copy, will he provide all the information, knowingly or not?

A person in a wheelchair is seen from behind, moving up a ramp with wooden railings. The background is a bright, slightly blurred indoor setting with a potted plant hanging from the ceiling.

# Procedural Law: article 323, para 7

## Report July 2009

- No comment

## Draft 2010

- Second sentence:
  - Investigator is authorised?
  - Not the reason of seizure is to be recorded but the reason of extension of the search
  - Expl. Text: explain what means legally accessible

Tbilisi, March 2, 2010



A person in a wheelchair is seen from behind, moving up a ramp. The ramp has wooden handrails and a metal railing. The background is a bright, slightly hazy indoor space with a potted plant hanging from the ceiling.

# Procedural Law: article 323, para 9<sup>1</sup>

## Report July 2009

- Recommendations on para 4.

## Draft 2010

- Relation with para 6?
- Inviting is not ordering
- Functioning of computer data?
- Position of the defendant?
- Restrictions further OK.

Tbilisi, March 2, 2010

The background of the slide is a faded, orange-tinted photograph. It shows a person in a wheelchair moving up a ramp or staircase. The person is wearing a red jacket and is seen from behind. The ramp has wooden railings. The overall image is semi-transparent, allowing the text to be clearly visible.

# Procedural Law: other

## Report July 2009

- No comment

## Draft 2010

- No amendment of article 326 (on computer data)?
- Article 360, para 7: maintaining integrity?

Tbilisi, March 2, 2010



# Procedural Law: article 389<sup>1,2,3,4</sup>

## Report July 2009

- Tuning in of CPC and Operational-Search
- Relation to type of crime
- Reglementation of collection traffic data and interception of content
- Reglementation of co-operation of service provider
- Procedures on preservation and use

## Draft 2010

- Done
- Done, but now: “criminal act through using a computer system” = too restrictive. Computer may not be an element of the criminal conduct (see 389<sup>1,2, 3,4</sup> ). Seriouness?
- Substantiated ground : discussion (see 389<sup>1,2, 3,4</sup> )
- Time required?

# Procedural Law: article 389<sup>1</sup>

## Report July 2009

- Fine-tuning

## Draft 2010

- Para 1: request?
- Para 1: important? Relevant!
- Para 1: specificity
- Para 1: suggestion: required format
- Para 2 jo para 3: any information=rather broad. Why not subscriber information?
- Para 4 reference article 290/2 concerns in particular urgent cases!

Tbilisi, March 2, 2010



A person in a wheelchair is seen from behind, moving up a ramp with wooden railings. The background is a bright, slightly blurred indoor space with a potted plant hanging from the ceiling.

# Procedural Law: article 389<sup>2</sup>

## Report July 2009

- Fine-tuning

## Draft 2010

- Para 1: internet traffic data is too restrictive
  - service provider includes TO
  - order to whom to do what?
  - requirement Georgian territory redundant
  - passed?
  - specificity
  - duration?: maximum term
  - what means 'co-operation and support'?

Tbilisi, March 2, 2010

A background image showing a person in a wheelchair on a ramp, viewed from behind. The person is wearing a red jacket and is moving up the ramp. The ramp has wooden railings. The background is a light orange color with a grid pattern.

# Procedural Law: article 389<sup>2</sup> , cont'd

## Report July 2009

- --

## Draft 2010

- Para 2: technical capabilities: discussion!
- Para 3: article 292/2: previous permission of a court with a public hearing?
- Duty of Confidentiality



A background image showing a person in a wheelchair on a ramp, viewed from behind. The person is wearing a red jacket and is moving up the ramp. The ramp has wooden railings. The background is a light orange color with a grid pattern.

# Procedural Law: article 389<sup>3</sup>

## Report July 2009

- --

## Draft 2010

- Para 1: strike 'using a computer system'
- See observations on para 1,2,3 under article 389<sup>2</sup>

Tbilisi, March 2, 2010

# Procedural Law: article 389<sup>4</sup>

## Report July 2009

- Implement

## Draft 2010

- Para 1: 'protection' read 'preservation'?
- Para 3: does person matter?
- Para 6: intent of the provision is immediate action, possibly with judicial testing ex post
- Para 3: 90 days in order, not as legal obligation for person concerned
- Para 4: no 90 days?

Tbilisi, March 2, 2010



A background image showing a person in a wheelchair moving up a ramp. The person is wearing a red jacket and is seen from behind. The ramp has wooden handrails and is set against a light-colored wall. There is a potted plant hanging from the ceiling in the upper left corner.

# Procedural Law: article 389<sup>6</sup>

## Report July 2009

- --

## Draft 2010

- No 389<sup>5</sup> ?
- Para 1: what is the status of a court order?
- Para 3: relation with general rules on refusal or non-obeydience?
- Para 2: meaning? Discussion.
- Para 3: Adequate sanctions?

Tbilisi, March 2, 2010

# Concluding Observations

- International Co-operation: how and what?
- Collection of Traffic Data and Interception of Telephone Communications
  - Integrated approach
  - Level of technical co-operation
  - Pre-paid
- More Structural Approach
  - Notions
  - Grouping provisions
- Time schedule?

Tbilisi, March 2, 2010