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## **First Evaluation Round**

### **Compliance Report on Georgia**

Adopted by GRECO  
at its 16<sup>th</sup> Plenary Meeting  
(Strasbourg, 8-12 December 2003)

## **I. INTRODUCTION**

1. GRECO adopted the First Round Evaluation Report on Georgia at its 5<sup>th</sup> Plenary Meeting (11-15 June 2001). This Report (Greco Eval I Rep (2001) 5E) was made public by GRECO, following authorisation by the authorities of Georgia on 28 June 2001.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Georgia submitted their Situation Report (RS-report) on the measures taken to follow the recommendations on 26 June 2003, as well as additional information, upon the request of the Rapporteurs on 7 and 20 November 2003.
3. At its 13<sup>th</sup> Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Bosnia and Herzegovina and Iceland to provide Rapporteurs for the compliance procedure. At its 15<sup>th</sup> Plenary Meeting (13-17 October 2003), GRECO replaced Bosnia and Herzegovina with Norway. The Rapporteurs appointed were Ms Ragna ARNADOTTIR on behalf of Iceland and Mr Atle ROALDSOY on behalf of Norway. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 16<sup>th</sup> Plenary Meeting (8-12 December 2003).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Georgia and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

## **II. ANALYSIS**

6. It was recalled that GRECO in its Evaluation Report addressed 25 recommendations to Georgia. Compliance of measures taken by Georgia with those recommendations is dealt with below.

### **General comments**

7. On 3 September 2003, the President of the Republic adopted Provision No 1084 in order to promote implementation of GRECO First Round recommendations (Appendix I)<sup>1</sup>. Nevertheless, the Georgian authorities stated that the adoption of the necessary laws will take time due to the current severe parliamentary crisis. It should be observed that Parliamentary elections took place on 2 November 2003. Part of the results of these elections was annulled by the Supreme Court on 25 November 2003.

### **Recommendation i.**

8. *GRECO recommended the swift adoption of a comprehensive national anti-corruption strategy, defining priorities for action, associating all agencies involved and raising awareness among public officials and the general public about the danger entailed by corruption and the need to co-operate with law-enforcement authorities in the detection, investigation and gathering of evidence in corruption cases.*

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<sup>1</sup> The Appendices referred to in this report are available on request.

9. The authorities of Georgia recalled, as mentioned in the First Round Evaluation Report that the President of Georgia had established a Group of specialists for the elaboration of a National Anti-corruption Programme (NACP). This draft aiming at defining a national anti-corruption strategy was published in November 2000 and had to be adopted by Presidential Decree after the evaluation visit. The NACP has never been adopted as such. However, the Georgian authorities adopted some "Anti-corruption measures", mainly by Presidential decrees: Presidential Decree No 95 of 15 March 2001 about some first-range anti-corruption measures (Appendix II); Presidential Provision No 758 of 21<sup>st</sup> July 2001 about some anti-corruption measures (Appendix III) and Presidential Decree No 430 of 17 April 2002 on approval of the schedule of anti-corruption measures (Appendix IV). The Georgian delegation argued that this last presidential Decree amounts in fact to the NACP<sup>2</sup>
10. In the Georgian authorities' view, the implementation of the respective measures mentioned in the former draft NACP, as well as further enhancement and monitoring, required more effort, material and human resources. Thus, by virtue of Presidential Decree No 131 of 13 April 2001 (Appendix V), the Anti-corruption Policy Coordination Council (ACPCC) was established in the form of an advisory body. Moreover, by virtue of Presidential Decree No 187 of 8 May 2001, an Anti-corruption Bureau (ACB) was also set up which has been assigned to provide the ACPCC with informational and analytical support (Appendix VI).
11. GRECO took note of the information provided by the Georgian authorities and welcomed the adoption of several anti-corruption measures by virtue of presidential regulations, the creation of the ACPCC and the ACB. With regard to the ACPCC, at the time of the evaluation visit, it was considered that it would be possible to empower it with the task of conducting preliminary investigations on serious corruption offences committed by high-ranking governmental officials. So far, this has not been the case. A draft law was submitted to Parliament which provides for additional powers for the Anti-corruption Bureau, in particular, with respect to the collection of personal data, but due to a parliamentary crisis, the adoption of the necessary anti-corruption laws has been delayed.
12. On 15 March 2001, by virtue of presidential Decree No 95, the Georgian authorities had defined some urgent measures to be adopted by several ministries, central, regional and local authorities as well as other public bodies with a view to gathering information or to better detecting and combating corruption. The State Minister was invited to submit to the President a list of those High Officials who failed to implement the Decree. The Decree No 430 of 17 April 2002 establishing the schedule of anti-corruption measures obliges the ministries and other relevant bodies to implement the measures in a specified timeframe. The ACPCC was bound to present a monthly report on the progress made in their implementation. By virtue of Provision No 758 of 21 July 2001, the President adopted a new list of anti-corruption measures. The ACPCC was invited to submit to the President a list of those High Officials who failed to implement the Provision.
13. GRECO noted that the Georgian authorities have adopted a range of sectoral measures by virtue of presidential legal acts, although the country, because of this fragmented strategy still lacks a clear, effective and comprehensive national anti-corruption strategy involving all state institutions and agencies. Moreover, they should further reflect on the results expected and obtained by the

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<sup>2</sup> This consists of 80 recommendations. Their implementation was assigned, through Presidential legal acts, to approximately 30 agencies under the overall responsibility of the State Minister. As a result, approximately 20 draft laws were elaborated; the plan for the reorganisation of the Executive Power; the plan for the reduction of the number of public officials; the plan for reform of the budgetary system; and the plan for the differentiation and reduction of the powers of supervisory bodies were elaborated. The procedures for control of entrepreneurial activities were defined precisely.

bodies in charge of the implementation of anti-corruption measures and their priorities. They should continue to implement these measures and take initiatives within public administration with a view to raising awareness among public officials about the danger entailed by corruption. Moreover, they should take further measures to raise the awareness among the population about the negative effects of corruption and encourage them to co-operate with the law-enforcement authorities in the investigation and detection of these crimes. The Georgian authorities are invited to submit to GRECO additional information regarding the implementation of recommendation i.

14. GRECO concluded that recommendation i. has been partly implemented.

**Recommendation ii.**

15. *GRECO recommended that officials who regularly come into contact with the public should be readily identifiable.*
16. The authorities of Georgia reported that the heads of agencies decided to make obligatory the wearing of a uniform in several cases when performing official duties (Police, Border Defence, controllers from the Ministry of Finance etc.). When performing controls, such public officials shall present their ID card as well as a special form detailing their powers and the citizens' rights.
17. In addition, in accordance with Presidential Decree No 430 of 17 April 2002, the Public Service Bureau of the State Chancellery prepared legislative proposals regarding the improvement of selection procedures, appointment for a determined term, establishment and approval of norms for a Code of Ethics, privileges of higher authorities and issues of social security.
18. GRECO recalled paragraph 103 of the 1<sup>st</sup> Round Evaluation report: "If the public is to play an active role in preventing corruption within Government, they should be able to identify those with whom they come in contact and have recognised methods for complaints. The authorities need to ensure adequate visibility of their anti-corruption efforts and of the results obtained, by regular reports informing on corruption prosecutions". Following the additional information provided by the Georgian authorities, GRECO welcomed the measures adopted aiming at making public officials more identifiable. Though they are not relevant in several types of contacts between public officials and the public (in writing, by telephone, public officials using intermediaries, etc.), GRECO considered that wearing uniforms, presenting ID cards and presenting a special form to citizens' with the officials' powers and the citizens' rights are useful as a first step to establish a proper policy of transparency and to enhance confidence in the public sector. It is believed that the legislative proposals prepared by the Public Service Bureau of the State Chancellery, when adopted and implemented, could contribute to the establishment of this overall policy.
19. GRECO concluded that recommendation ii. has been dealt with in a satisfactory manner.

**Recommendation iii.**

20. *GRECO recommended the implementation of proper complaints procedures for submitting complaints, advising on the reaction and informing on possible compensation.*
21. The authorities of Georgia reported that:
- Each citizen has the possibility to inform a "respective agency" of a concrete violation in 24-hour through a "hotline";

- each citizen can place a complaint or an application against illegal acts of the prosecution employees and other officials, in a special box, in the entrance of the General Prosecutor's Office. Such a complaint goes directly to the General Inspection of the General Prosecutor's Office who reacts under the direct supervision of the General Prosecutor. This should be generalised in the future;
  - the implementation of proper procedures for submitting complaints, advising on the reaction and informing on possible compensation, will be considered along with the draft law providing for additional powers for the Anti-Corruption Bureau. Moreover, the new draft Code of Criminal Procedure deals with the issue of (material) reimbursement of persons having communicated a complaint (information).
22. GRECO took note of the reply made by the Georgian authorities and welcomed their intention to consider the implementation of recommendation iii. "Hotlines" and "special boxes" might be a useful complement to the implementation of recommendation iii though they are not sufficient to implement proper complaint procedures. Therefore, for the time being, the necessary measures have not yet been adopted. The consideration of proper procedures for lodging complaints, advising on the reaction and informing on possible compensation along with the adoption of the new law on the ACB and the new Code of Criminal Procedure should, in principle, contribute to the implementation of recommendation iii. The Georgian authorities are invited to submit to GRECO additional information regarding the implementation of recommendation iii.
23. GRECO concluded that recommendation iii. has not been implemented.

#### **Recommendation iv.**

24. *GRECO recommended the establishment of a co-ordination mechanism involving all agencies and departments involved in the prevention, detection, and investigation of corruption. This unit should co-ordinate anti-corruption policies and measures, control their effectiveness and follow-up the implementation of the anti-corruption strategy. It should also, as a matter of priority, establish a centralised database to capture, inter alia, all strategically relevant corruption intelligence, case progress and prosecution statistics.*
25. The authorities of Georgia informed GRECO of the establishment of the Anti-corruption Policy Coordination Council (ACPCC) on 13 April 2001 and the Anti-corruption Bureau (ACB) on 8 May 2001. The ACPCC actively cooperates with the law-enforcement bodies (Ministry of Interior, Prosecutor's Office, Ministry of Security, etc) and it drafts recommendations containing basic directives for the State's anti-corruption policy. They also reported in their additional information report, that the ACB monitors the implementation of anti-corruption measures, ensures the collection and analysis of statistical data, and assists the activities of the law-enforcement bodies. Pursuant to the Presidential Provision No 1295 of 12 October 2002, a unified base was created containing information on officials dismissed from various agencies for breach of law. Finally, by virtue of Section 7 of the Presidential Provision No 1084 of 3 September 2003, aiming at promoting implementation of GRECO First Round recommendation, "the issue of purposefulness of establishment of the specialised anti-corruption body shall be considered in participation with the Parliament of Georgia and the relevant agencies".
26. GRECO took note of the establishment of the ACPCC and the ACB, in April and May 2001. These are very positive steps towards the implementation of recommendation iv. Further legislative steps are foreseen in order to enable the ACB to increase its capacities to capture relevant corruption intelligence and consider the establishment of a specialised anti-corruption

body. Nevertheless, these measures either remain partial or are still under consideration. GRECO noted that the information provided was not sufficient to draw a final conclusion on the level of implementation of this recommendation. There is, in particular, no indication as to the measures taken to follow up the implementation of the anti-corruption strategy, to organise the coordination of the agencies and organisations involved in the fight against corruption or raise awareness among public officials and the general public about the danger entailed by corruption. They should also further reflect on the results expected, the establishment of performance indicators and the setting of priorities. Finally, GRECO, would welcome in addition clarification as to the meaning, in this context, of Section 7 of the Presidential Provision No 1084 of 3 September 2003 which states that "the issue of purposefulness of establishment of the specialised anti-corruption body (will) be considered together with the Parliament and other relevant agencies". The Georgian authorities are invited to submit to GRECO additional information regarding the implementation of this recommendation, particularly, in the light of the current process of reforms.

27. GRECO concluded that recommendation iv. has been partly implemented.

**Recommendation v.**

28. *GRECO recommended making use of the Information Agency on Property and Financial Declarations (IAPFD) as a source of information to be used in a pro-active way to detect and investigate possible corruption cases.*

29. The authorities of Georgia reported that the ACB examined cases of violations of the Law on Conflict of Interests and corruption in the Public Service. These were, in particular, cases of false or incomplete information in the property and financial declarations of higher public officials. Sometimes, summaries made by supervisory bodies in this field, considered also possible infringements but gave no follow up. The ACB prepared summaries and submitted them to the ACPCC. The ACPCC issued recommendations based on the ACB summaries. On the basis of such recommendations, the following public officials were dismissed: Presidential Attorney in Mtskheta-Mtianeti Region, Head of the Public Service Bureau of the State Chancellery, Head of Service for Regional Policy and Administration of the State Chancellery.

30. In addition, the Ministry of Justice of Georgia prepared a "Legislative Package for Anti-corruption Purposes", aiming at introducing systemic mechanisms to combat corruption. This Legislative Package has been considered at the Plenary Meeting of the Parliament at first reading. Thus, the *Information Agency for Property and Financial Declarations (IAPFD)* will be strengthened. The Agency will no longer gather only statistical data but will be transformed into an active, independent State agency with efficient means of control. It will be vested with the appropriate levers in order to reveal conflicts of interest and corruption of Public Officials. In particular, it will be vested with the power:

- to request and receive from administrative bodies any information related to the implementation of the Bureau's functions;
- to have access, during court procedures, to bank accounts and operations performed by higher officials and their family members ;
- to interview higher officials, their family members or close relatives and request that the origin and legality of the property indicated in their declarations be confirmed;
- to confirm or deny the existence of illegal property in possession or ownership of a higher official or a member of his/her family.

- to bring to the attention of the tax bodies, Prosecutor's Office and Courts any suspicion of or case of corruption.
31. GRECO took note of the reply made by the Georgian authorities. It welcomed the use of the IAPFD made by the ACB and the ACPCC and their intention to strengthen the IAPFD with additional powers of intervention and investigation (see also comments under recommendation xviii.). It noted, however, that, for the time being, this is only a project which has not yet been implemented. No commission was created within the parliament to verify declarations made to the IAPFD. Information gathered by the latter is still not used proactively by bodies other than the ACB. The ACB can carry out "studies" but still no investigation can be opened in case of an obvious discrepancy between the income declared by a public official to the IAPFD and his/her way of life. Therefore, the Georgian authorities are invited to submit to GRECO additional information.
32. GRECO concluded that recommendation v. has been partly implemented.

**Recommendation vi.**

33. *GRECO recommended to put in place procedures to support managers to identify, prevent, challenge and deal with corrupt, dishonest and unethical behaviour - such procedures should include education, training, prevention and enquiry.*
34. The authorities of Georgia reported that:
- internal Control Services already operate in all government agencies. However, a draft law has been prepared and was submitted to Parliament in September 2003, aiming at introducing unified standards and a General Inspection System for the Public Administration (see information provided under Recommendation xi);
  - the ACB supports heads of administrations on particular cases of violations of official duties;
  - annually approximately 100 heads of administrations undergo training, including on ethical and corruption issues;
  - the Public Service Bureau of the State Chancellery prepared legislative proposals regarding the establishment and approval of norms for a Code of Ethics and privileges, which have already been mentioned above in paragraph 18.
35. GRECO welcomed the measures taken in order to provide training for heads of administration. It took note of the information provided regarding the preparation of relevant legislative proposals on the General Inspection System and on the Code of Ethics. GRECO would only be in a position to judge them upon receipt. The Georgian authorities are invited to submit to GRECO additional information regarding the implementation of recommendation vi.
36. GRECO concluded that recommendation vi. has been partly implemented.

**Recommendation vii.**

37. *GRECO recommended to envisage the introduction of some form of independent audit of departments strictly related to integrity measures (for heads of departments and staff) which could take the form of a "coordinating council" comprising State officials and NGOs.*
38. The authorities of Georgia reported, in addition to their situation report, that:

- a group of experts elaborated integrity tests for the prosecution service in co-operation with non-governmental organisations;
  - similar tests should be generalised for other law-enforcement agencies as well;
  - some system of independent audit was introduced;
  - at regular intervals, non-governmental organisations undertake assessments of the effectiveness of administrative bodies. For example, the Young Lawyers' Association has performed the monitoring of the Education System; the Young Economists' Association performs periodically the independent evaluation of state and local budget fulfilment figures; NGOs are monitoring the state procurement procedures. The results are sent to the ACPC;
  - through the financial support of foreign organisations various experts performed an evaluation of the activities of the Executive Power;
  - as regards co-operation with the non-governmental sector (see also recommendations xii., xiii.), advisory and consulting bodies have been established, including the Ministries of Justice, Economy, Industry and Trade, Labour, Health and Social Security and representatives of NGOs. Nevertheless, this co-ordination has been limited due mainly to a certain opacity of the governmental bodies and some inertness of the non-governmental sector. The establishment of a non-governmental coalition within the ACB is planned for the very near future.
39. GRECO welcomed the measures taken by the Georgian authorities in order to assess the performance and effectiveness of the Public Administration. The authorities mentioned the existence of some system of independent audit, without any further explanation. At least some form of audit has been envisaged. Nevertheless, this does not constitute a comprehensive independent audit of all departments in integrity matters and integrity tests have only been launched, for the time being, for some higher officials in the prosecution service. The Georgian authorities are invited to submit to GRECO additional information regarding the implementation of this recommendation.

40. GRECO concluded that recommendation vii. has been partly implemented.

**Recommendation viii.**

41. *GRECO recommended to establish rigorous selection criteria and to conduct robust vetting checks in order to ensure integrity of all those recruited for public service, particularly those called to occupy sensitive positions. Law enforcement and judicial authorities should be subject to particularly rigorous recruitment procedures.*
42. The authorities of Georgia reported, in addition to their situation report, that:
- qualification requirements have to be approved by virtue of a normative act by the Head of a Ministry or a department;
  - selection is undertaken through public competition, ensuring the transparency of procedure;
  - there is a special examination for appointments to certain positions such as judges, employees of the Prosecutor's Office, Tax and Customs officials. The Council of Justice, Tax and Customs Bodies have organised such examinations and to date the positions of judges, prosecutors and tax officials are occupied only by persons who have succeeded in the respective qualification examinations;
  - additional recruitment criteria were introduced within the prosecution services. Selection is undertaken following the results of the tests mentioned above (*see Recommendation vi*), aiming at evaluating the knowledge and the ethical characteristics of candidates.



43. GRECO welcomed the progress made in the establishment of further qualification requirements and for the additional criteria introduced for the candidates within the prosecution services. These additional criteria, which should be rigorous and coupled with robust checks in order to ensure integrity, should also be generalised, particularly for all those called to occupy sensitive positions. Therefore the Georgian authorities are invited to submit to GRECO additional information regarding the implementation of recommendation viii.
44. GRECO concluded that recommendation viii. has been partly implemented.

**Recommendation ix.**

45. *GRECO recommended to consider the introduction of tenure policies which will reduce the potential for corruption, in particular in sensitive posts.*
46. The authorities of Georgia reported, in addition to their Situation report that the existing legislation provides for the appointment of certain public officials for a fixed term (judges, prosecutors, members of the regulatory Commission, members of National Bank Council, the Chairperson of the Chamber of Control, the Members and Secretary of the ACPCC, members and secretary of the Council of Justice, representatives of diplomatic corps, etc).
47. GRECO took note of the information provided, as well as of the information which has already been reproduced above in paragraph 17. It observed that the appointment of certain public officials for a fixed term, such as for judges, existed already at the time of the 1<sup>st</sup> evaluation report and therefore nothing new had taken place in order to implement recommendation ix, but at least this recommendation was considered.
48. GRECO concluded that recommendation ix. has been implemented satisfactorily.

**Recommendation x.**

49. *GRECO recommended the introduction of Codes of Conduct in all Government Departments and Agencies, using the Model Code drawn up by the Council of Europe and included in the Committee of Ministers Recommendation R(2000) 10 as inspiration. Furthermore, that all public officials receive training in Codes of Conduct and other applicable integrity/ethics rules and regulations relating to their employment.*
50. The authorities of Georgia reported, in addition to their Situation Report that:
- the basic regulatory and basic normative act of the rules of behaviour in the public service is the Law of Georgia on Conflict of Interests and Corruption in Public Service adopted on 17 October 1997;
  - in addition, there are other acts regulating ethics of special character for the Public Servants of the Ministry of Tax Revenues, Customs Officials, employees of the National Energy Regulatory Commission, Judges, officials from the prosecution Bodies and Employees of the Ministry of Interior;
  - the Public Service Bureau within the State Chancellery of Georgia has drawn up a draft Code of Ethics;
  - there are some “Training Centres” holding trainings in various agencies on ethical issues.

51. GRECO took note of the information provided. It welcomed the adoption of several legal acts dealing with ethics in the sectors mentioned above. Nevertheless, it noted that a draft Code of Ethics already existed during the first round evaluation visit and the Georgian authorities told the GRECO Evaluation Team that it would be adopted soon. There should be ethical norms and training for all public officials. Moreover, since this issue will be examined in detail in the 2<sup>nd</sup> Evaluation Round, GRECO invited the evaluators appointed to draft the 2<sup>nd</sup> Evaluation Round Report on Georgia to confirm this assessment.
52. GRECO concluded that recommendation x. has been partly implemented.

**Recommendation xi.**

53. *GRECO recommended that all Government Departments and Agencies introduce internal inspection units.*
54. The authorities of Georgia reported that:
- there is already a unit executing internal control in all governmental institutions, called Internal Control Services. Nevertheless, in order to determine unified standards of their activities, a new law is necessary;
  - in order to implement GRECO's recommendation, the Ministry of Justice prepared a draft law on "General Inspections", establishing a system of general inspections for all governmental agencies. The draft was considered at a Governmental Session on 21<sup>st</sup> May 2003 and submitted to Parliament in September 2003;
  - the draft law determines the legal status of General Inspections, organisational structure, functions, rights and duties, the rule of appointment and dismissal of the Head of General Inspection and its staff; requirements that are made for appointment of the Head of the General Inspection and its staff, legal and social security guarantees of General Inspection personnel, ensuring of material-technical issues of General Inspection;
  - the General Inspection will perform supervision on the protection of human rights and freedoms, purposeful management of finances, material valuables and other means of protection and their rational use. The General Inspection will perform its principal functions through job-related inquiry, supervision and audit. The draft law also defines implementation of civil monitoring over the activities of the General Inspection and the rule of accountability of the General Inspection.
55. GRECO took note of the information provided by the Georgian authorities. During the First Round Evaluation visit, the GRECO Evaluation Team could not obtain confirmation about the existence of an inspection unit within the Chamber of Control as well as details on its functioning. Again, within the compliance procedure, despite the request made by the Rapporteurs, the Georgian authorities transmitted no detailed information regarding the so-called Internal Control Services, no legal texts, no activity reports, etc. As the draft law had not been made available to GRECO, despite the request made by the Rapporteurs, it could not make any particular comment on it. Nevertheless, it wished to recall that according to recommendation xi., there should be an inspection unit for every governmental body, authority and other agency, with responsibilities also in corruption matters. Moreover, since this issue will be examined in detail in the 2<sup>nd</sup> Evaluation Round, GRECO invited the evaluators appointed to draft the 2<sup>nd</sup> Evaluation Round Report on Georgia to confirm this assessment.
56. GRECO concluded that recommendation xi. has not been implemented.

### **Recommendation xii.**

57. *GRECO recommended the introduction in all departments and agencies of external monitoring councils in line with the proposal elaborated by the Ministry of Tax Revenue.*
58. The authorities of Georgia did not report any concrete action with regard to the implementation of this recommendation in their Situation Report. However, in their additional information they reported that some ministries had introduced advisory bodies and that a coalition of NGOs had been established within the ACB. This Coalition performed an independent assessment of the course of the on-going anti-corruption measures in the country. Finally, during the consideration by GRECO of the present Report, the Georgian authorities reported that the Ministry of Tax Revenue was merged with the Ministry of Finance and that external monitoring councils were not considered necessary any longer.
59. GRECO took note of the information provided by the Georgian authorities. It noted that the ACB made particular efforts to increase co-operation with NGOs as well as with the Representative of the Council of Europe's Office in Tbilisi. It noted also that the Ministry of Tax Revenue was merged with the Ministry of Finance and that the creation of external monitoring councils was not considered necessary, regardless of the information provided to GRECO's evaluation team during the First Round Evaluation visit, according to which an external monitoring council was going to be introduced to allow for external scrutiny of the Inspectorate General in tax matters. GRECO recalled, in this connection, that according to the First Round Evaluation Report on Georgia, the combined introduction of internal and external control systems in all Government departments and agencies would lead to a constant update of recruitment, training and anti-corruption preventive measures and enable the transmission of information to the competent law-enforcement bodies in cases of suspicions of corruption. The standards would be the same across all legal and law enforcement authorities and there would be external verification. Such a system would inspire public confidence that the Government was serious in its efforts to combat corruption. In addition, while the Coalition of NGOs performed independent assessments but their results were not made available to GRECO. Therefore, the Georgian authorities are invited to submit additional information with regard to measures which have been adopted or are planned in order to introduce external monitoring councils in governmental bodies, authorities and other agencies.
60. GRECO concluded that recommendation xii. has not been implemented.

### **Recommendation xiii.**

61. *GRECO recommended to continue co-operation with NGOs in the form of a more structured dialogue.*
62. The authorities of Georgia reported that:
- several advisory and co-ordinating bodies have been established including representatives from the Ministries of Justice, Economy, Industry and Trade, Labour, Health and Social Security and NGOs. Nevertheless, this co-ordination has been limited due mainly to certain opacity of the governmental bodies and some inertness of the non-governmental sector;
  - a Council of NGOs was established within the Ministry of State and is represented in the ACPCC.

63. GRECO took note of the information provided by the Georgian authorities. The Georgian authorities are invited to submit additional information with regard to measures which have been adopted or are planned to be in order to continue co-operation with NGOs in the form of a more structured dialogue.
64. GRECO concluded that recommendation xiii. has been partly implemented.

**Recommendation xiv.**

65. *GRECO recommended to consider the formation of an independent specialised anti-corruption investigation unit. All law-enforcement and other authorities would be required to report to this unit any suspicions of corrupt behaviour. Cases of corruption, as soon as identified during a preliminary investigation would also be transmitted to the unit, which would continue and deepen the investigation to the extent necessary to bring charges. The creation of this special unit would also allow a better collection and analysis of data relating to corruption and would enable the preparation of accurate statistics to assist future strategy and policy enhancement.*
66. The authorities of Georgia reported that :
- in autumn 2001, a temporary commission composed by specialists was established within the National Security Council for Elaboration of Institutional reforms of the Security and Law Enforcement Bodies, chaired by the Chairman of the Supreme Court, to deal with institutional reforms of the security and law-enforcement bodies. The Commission left open the question on the opportunity of establishing an independent specialised anti-corruption body;
  - Section 7 of the Presidential Provision No 1084 of 3 September 2003, aiming at promoting implementation of GRECO First Round Recommendation provided that “the issue of purposefulness of establishment of the specialised anti-corruption body shall be considered in participation with the Parliament of Georgia and the relevant agencies”
  - a Special Service for Criminal Proceedings Against Legalisation of Illegal Incomes was created within the General Prosecutor’s Office on 10 October 2003 by an Act of the General Prosecutor. The functions of the Special Service include: disclosure, prevention, investigation, criminal prosecution and support of the State prosecution in court for offences committed basically by public officials, preceding the legalization of illicit incomes and the offences related thereto – bribery, acceptance of illegal gifts, appropriation and embezzlement, abuse of official powers and exceeding one’s commission, commercial bribery, money laundering and other facts. Pursuant to the existing legislation, the Prosecutor’s Office has the supervisory function, as well as the right to conduct investigation on certain category cases in instances provided for by the Code of Criminal Procedure. The newly created service is staffed with 16 persons, including 11 prosecutors.
67. GRECO took note of the reply made by the Georgian authorities. GRECO welcomed the creation of a special service within the Prosecutor’s Office. However, GRECO was of the opinion that the recent creation of this body made it impossible to assess properly at this stage its functioning and effectiveness. While welcoming the adoption of measures which seem to go in the direction recommended, GRECO invited the Georgian authorities to submit additional information on the different issues mentioned above and in particular on the operation in practice of the new Service mentioned above.
68. GRECO concluded that recommendation xiv. has been partly implemented.

#### **Recommendation xv.**

69. *GRECO recommended to select the Head and staff of the above-mentioned unit with the greatest care to ensure their highest integrity. It also recommended that the unit be open to independent scrutiny and produces an annual progress report of its activities to be made available to the general public.*
70. The authorities of Georgia reported, in addition to their Situation report, that the Head of the Special Service carrying investigations within the Prosecutor's Office was appointed and supervised by the General prosecutor. All the other persons were selected through open competition taking into account the criteria that are imposed upon a prosecutor (passing of the qualification examination and the integrity test). A lie detector was applied to each candidate to the Special Service of the Prosecutor's Office. The Head of the Service has the duty to present a special report.
71. GRECO welcomed the measures adopted regarding the Special Service within the Prosecutor's Office. Regarding this recommendation, the Georgian authorities made no reference to any sort of independent scrutiny towards the activities of the recently established unit and the other law enforcement authorities with investigative powers. However, it recalled that recommendation xv is linked to the implementation of the previous recommendation.
72. GRECO concluded that recommendation xv. has been partly implemented.

#### **Recommendation xvi.**

73. *GRECO recommended that the above-mentioned unit should be pro-active and have a legal basis for requiring information, assistance and cooperation from all Governmental Departments and bodies. The unit should also be empowered to make use of special investigative techniques available in the Georgian legal system with due respect to constitutional and legal safeguards and establish close working relations with the specialised unit which is recommended to be created within the Prosecutor's Office.*
74. The authorities of Georgia reported, in addition to their Situation Report, that the Special Service of the Prosecutor's Office has the authority to request for information and assistance from all governmental departments and address the respective foreign agencies for the legal assistance.
75. GRECO recalled that recommendation xvi. is linked to the implementation of the two previous recommendations. It noted that no information was reported concerning the proactive role of this newly established unit, because it is clearly a repressive, prosecuting body.
76. GRECO concluded that recommendation xvi. has been partly implemented.

#### **Recommendation xvii.**

77. *GRECO recommended that the equipment necessary for implementing new investigative techniques be made available to the bodies in charge of investigating corruption offences and specifically to the specialised independent unit which could be created in pursuance of the recommendation made above.*
78. The authorities of Georgia reported that:

- in autumn 2001, a temporary Commission composed by specialists was established within the National Security Council, chaired by the Chairman of the Supreme Court, to deal with institutional reforms of the security and law-enforcement bodies;
  - the Commission considered the issues of the model of investigation decentralisation, introduction of witness protection mechanisms, agreement on confession of guilt and other conceptual issues. The outcome of the Commission activities was reflected in the draft new Code of Criminal Procedure, which is at present published for public consultation;
  - the US Department of Justice assisted the Prosecutor's Office in testing and equipment of the employees.
79. GRECO recalled recommendation xvii. which is partly linked to the implementation of the previous recommendations. It also took note of Article 7 of the Law on Operational and Investigation Activities, which was submitted to it. Nevertheless, the improvements foreseen with regard to the new investigative techniques to be made available to the bodies in charge of investigating corruption offences are merely in draft form and have not been made available as such to GRECO. The Georgian authorities are invited to submit to GRECO additional information.
80. GRECO concluded that recommendation xvii. has not been implemented.

**Recommendation xviii.**

81. *GRECO recommended to establish a mechanism for testing the accuracy of income declarations made by public officials (reiterating its recommendation dealing with the Information Agency on Property and Financial declarations of Public Officials).*
82. The authorities of Georgia reported that the Ministry of Justice of Georgia has prepared a "Legislative Package for Anti-corruption Purposes", aiming at introducing systemic mechanisms to combat corruption and strengthening the Information Agency for Property and Financial Declarations (IAPFD). From the role of statistician, the Bureau will be transformed into an active, independent State agency with efficient means of control (see also comments under recommendation v). The Legislative Package for Anti-corruption Purposes has been considered at the plenary meeting of the Parliament in first reading.
83. GRECO took note of the reply made by the Georgian authorities. The Georgian authorities neither submitted to GRECO the "Legislative Package for Anti-corruption Purposes" nor did they send sufficient information in order to be able to assess the progress made towards the establishment and the effectiveness of the mechanism recommended for testing accuracy of income declarations made by public officials. The mechanism envisaged has not been established yet. The Georgian authorities are invited to submit to GRECO additional information.
84. GRECO concluded that recommendation xviii. has not been implemented.

**Recommendation xix.**

85. *GRECO recommended the creation of a unit within the Prosecutor's Office, dedicated solely to deal with corruption cases, with a more active role in the anti-corruption strategy e.g. through initiation of criminal procedures on the basis of the declarations of public officials. Special training programmes for prosecutors and investigators focused on corruption issues, as well as training on their ethical duties, should also be provided.*

86. The authorities of Georgia reported that:
- the ACB and the ACPCC addressed these issues to the executive and legislative powers. Nevertheless no response has been received;
  - the relevant position on the same issue had been explained in the explanatory note to the draft law, which was drawn up by the ACB and the ACPCC. However, due to the critical parliamentary crisis this attempt had equally failed;
  - a Special Service for Criminal Proceedings Against Legalisation of Illegal Incomes was created within the General Prosecutor's Office on 10 October 2003 by an Act of the General Prosecutor (see comments under Recommendation xiv).
87. GRECO took note of the reply made by the Georgian authorities. It was told during the plenary meeting, while considering the present report that the Special Service is not solely specialised in anti-money laundering issues but that it will also deal with anti-corruption issues. Nevertheless, GRECO lacked the information necessary to complete its assessment on this newly created Special Service. It considered in particular that it was too early to assess the functioning and effectiveness of this new Service. GRECO noted, moreover that no indications were given on other important aspects of the recommendation, such as special training programmes for prosecutors and investigators focused on corruption issues, as well as training on their ethical duties. Therefore, the Georgian authorities are invited to submit to GRECO additional information on the progress achieved to implement this recommendation.
88. GRECO concluded that recommendation xix. has been partly implemented.

**Recommendation xx.**

89. *GRECO recommended to undertake the necessary measures to ensure an adequate level of remuneration for prosecutors, to establish fair and objective disciplinary proceedings for prosecutors, to guarantee access to a satisfactory grievance procedure and to specify the conditions and the safeguards applicable to cases where the superior prosecutor overrules decisions taken by the prosecutor in charge of the case.*
90. The authorities of Georgia reported, in addition to their Situation Report, that:
- by virtue of the Presidential Decree of 13 March 2003, the salaries of the prosecution officials have been increased on average by 55% (to date, it constitutes 500 laris, whilst the average salary in the country as a whole constitutes 66 laris);
  - within the Special Service for Criminal Proceedings Against Legalisation of Illegal Incomes the salaries are even higher and the representatives of the Unit receive 800-1000 laris.
91. GRECO welcomed the implementation of the first part of recommendation xx. but invited the Georgian authorities to submit additional information with regard to the necessary improvements to be made in order to guarantee the prosecutors' functional means and independence.
92. GRECO concluded that recommendation xx. has been partly implemented.

### **Recommendation xxi.**

93. *GRECO recommended to ensure the adequate protection of witnesses and collaborators of criminal justice, who report and provide the evidence which is necessary for the conviction of perpetrators of corruption offences.*
94. The authorities of Georgia reported, in addition to their Situation report, that:
- In the existing legislation, a person is excused from criminal liability if he/she was extorted a bribe and has voluntarily reported the act to law enforcement authorities.
  - The Commission established within the Security Council, as mentioned above under recommendations xiv and xvii, suggested the inclusion of new protection mechanisms for witnesses (Articles 128-131), in the draft criminal code of procedure. In particular, a witness will be empowered to hide his place of residence, in case his life or health is under serious threat.
  - Due to financial constraints, the implementation of comprehensive witness protection in full capacity is not envisaged yet. Nevertheless, the Georgian authorities are exploring possibilities of establishing a strengthened witness programme at regional level.
95. GRECO took note of the information provided, which has already been reproduced above in the Georgian comments under recommendations xiv and xvii. It recalled its recommendation xxi which is also partly linked to the implementation of former recommendations. The improvements foreseen in the new Code of Criminal Procedure and at regional level are merely in draft form and no adequate protection of witnesses and collaborators programme has been prepared yet. The Georgian authorities are invited to submit to GRECO additional information.
96. GRECO concluded that recommendation xxi. has not been implemented.

### **Recommendation xxii.**

97. *GRECO recommended amending the provision of Article 48 of the Organic Law on the Public Prosecutor's Office to the effect that prosecutors should examine anonymous reports on corruption as a source of information, despite the fact that, in the absence of additional corroborating sources, anonymous reports could not, on their own, form a sufficient basis for the opening of a formal investigation.*
98. The authorities of Georgia reported, in addition to their Situation Report, that this recommendation is foreseen in a new draft law on the Public Prosecutor's Office prepared by an interagency commission, which does not take into consideration such limitations.
99. GRECO took note of the information provided. However it received no detailed information on the content of the draft law on the Public Prosecutor's Office and on the use of anonymous tips in criminal proceedings in accordance with the case law of the European Court of Human Rights. Article 48 of the current Law has not been amended yet. The Georgian authorities are invited to submit to GRECO additional information.
100. GRECO concluded that recommendation xxii. has not been implemented.



### **Recommendation xxiii.**

101. *GRECO recommended to amend national legislation in order to reduce the categories of persons who enjoy immunity from criminal proceedings, in particular, to abolish the immunities provided for the candidates to members of Parliament.*

102. The authorities of Georgia reported that:

- in order to implement GRECO's recommendation, the Ministry of Justice prepared a draft legislative package which provides for the introduction of amendments and additions to nine operating legislative acts. In accordance with the GRECO recommendations, the package provides for the review of the operating system of immunities and improvement of the operating procedural norms concerning the lifting of immunities. The legislative package has been considered at the Government Session and forwarded to Parliament;
- the legislative package provides for the reduction of the circle of subjects enjoying immunity from detention in case of criminal proceedings (according to the amendments, prosecutors and investigators shall not enjoy immunity from detention), as well as reduction of the circle of those subjects, who cannot be brought before the investigative and judicial bodies prescribed by procedural legislation (according to the amendments, a member of parliament of Georgia, Public Defender, Deputies of the Supreme Representative Bodies of Adjarian and Abkhazian Autonomous Republics, a judge, member of the Collegium General Prosecutor's Office shall not enjoy the given right);
- it also provides for the elimination of the mechanism of immunity for the candidates to Parliament membership. However, the draft law provides for the norm according to which before the official publication of the final election results, arrest or imprisonment of the candidate for less serious crime is inadmissible (in other words, for the category of crime which, under the Criminal Code, may be punished with deprivation of liberty for up to five years);
- a draft constitutional law has been prepared in Parliament under which the scale of immunity will be reduced. This draft will be considered along with the amendments prepared by the Ministry of Justice.

103. GRECO took note of the reply made by the Georgian authorities. It welcomed the preparation by the government and the Parliament of new draft laws in order to reduce the categories of persons who enjoy immunity. Nevertheless, these drafts have not yet been adopted. The Georgian authorities are invited to submit to GRECO additional information.

104. GRECO decided that recommendation xxiii. has been partly implemented

### **Recommendation xxiv.**

105. *GRECO recommended the drawing up of guidelines containing criteria to be applied when deciding on requests for lifting of immunities, ensuring moreover that decisions are based on the merits of the request submitted by the Public Prosecutor.*

106. The authorities of Georgia reported that:

- a draft legislative package provides for the review of the operating system of immunities and improvement of the operating procedural norms concerning the lifting of immunities;
- the legislative package regulates in detail the procedures for lifting of immunities of the relevant bodies and high-ranking officials upon proposal of the General Prosecutor, including the

compulsory terms for consideration of the proposals made by the General Prosecutor, admittance of request and acceptance of information, remedy against a General Prosecutor's proposal, procedure of decision-making by the bodies empowered to lift immunity. In accordance with the legislative package, for each investigative action (institution of criminal proceedings, arrest, detention, search of apartment, car, office or personal search), the consent of the relevant empowered body (high official) is required separately.

107. GRECO took note of the reply made by the Georgian authorities. It welcomed the preparation by the government and the Parliament of new draft laws amending the system of immunities. Nevertheless, these drafts have not yet been adopted.
108. GRECO decided that recommendation xxiv. has been partly implemented

**Recommendation xxv.**

109. *GRECO recommended to abolish the requirement of the authorisation of the body concerned where the offender is apprehended "in flagrante delicto".*
110. The authorities of Georgia reported that:
- a draft legislative package provides for the review of the operating system of immunities and improvement of the operating procedural norms concerning the lifting of immunities;
  - amendments suggested in the draft legislative package provide for the elimination of compulsory consent of Chairpersons of the Parliament and Supreme Court of Georgia for the cases when the Public Defender, Chairman of Chamber of Commerce, particular officials of the Prosecutor's Office (General Prosecutor, Deputy General Prosecutor, Prosecutors of Adjarian and Abkhazian Autonomous Republics) are caught in *flagrante delicto*. Moreover, the legislative package provides for elimination of immunities of the high-officials of the prosecution system (Head of the Investigation Department of General Prosecutor's Office, Tbilisi Prosecutor and other members of the Collegium General Prosecutor's Office);
  - a special seminar was held in Tbilisi on 6-7 May 2003 dedicated to immunities. Council of Europe experts, the Representative of the Council of Europe's Office in Tbilisi and representatives of Georgian political parties, senior officials of the Ministry of Justice and law-enforcement bodies attended this seminar. The participants discussed the drafts prepared for the purpose of implementation of GRECO recommendations. The experts of the Council of Europe evaluated positively the drafts submitted and hoped that the given drafts would become laws in the very near future. The drafts were also considered and approved at the Government Session in September 2003.
111. GRECO took note of the reply made by the Georgian authorities. It welcomed the preparation by the government and the Parliament of new draft laws amending the system of immunities, including the elimination of the requirement of the authorisation of the body concerned where the offender is apprehended *in flagrante delicto*. It also welcomed the co-operation between the Georgian authorities and the Council of Europe, including the Council of Europe Office in Tbilisi and in particular the submission of all relevant information with regard to these drafts. Nevertheless, these drafts have not yet been adopted.
112. GRECO decided that recommendation xxv. has been partly implemented.

### III. CONCLUSIONS

113. The situation prevailing in Georgia led to serious difficulties, including the obtaining of information. However, on the basis of the information available, GRECO reached the overall conclusion that, although Georgia has made considerable efforts towards the goal of achieving their purposes, it is not in compliance with the recommendations of the First Round Evaluation Report.
114. Recommendation ii and ix have been implemented or at least dealt with in a satisfactory manner. Recommendations i., iv., v., vi., vii., viii., x., xiii., xiv., xv; xvi; xix, xx., xxiii., xxiv. and xxv. have been partly implemented. Recommendations iii., xi., xii., xvii., xviii., xxi. and xxii. have not been implemented.
115. In view of the aforesaid, GRECO decided to apply Rule 32 of its Rules of Procedure and, in conformity with its paragraph 2, invited the Head of the Georgian Delegation to submit, as from 30 April 2004, regular additional reports on the progress made towards the adoption of the measures required to comply with the recommendations of the First Round Evaluation Report, (Step 1 of the non-compliance procedure). Overall assessment of the measures adopted will be made in July 2005.
116. In the light of the above, GRECO agreed to examine the reports referred to in paragraph 115 above at each of its plenary meetings after April 2004 with a view to assessing the progress achieved by Georgia, and to applying, if necessary, the subsequent steps of the procedure described in the above-mentioned Rule 32 of the Rules of Procedure.