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**Eastern Partnership-Council of Europe Facility Project on
“Good Governance and Fight against Corruption”**

Activity 1.4: “Risk Assessment: Typologies of underlying causes of corruption”

Technical Paper

Country risk assessment – Georgia

“Prosecution Services”

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December 2013

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This paper has been prepared with the funding provided by the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union and/or of the Council of Europe.

1 SUMMARY

This Study is the result of a desk review of reports and legislation and a four-day field mission to Tbilisi (23-26 September 2013) interviewing different stakeholders.

Given previous and planned future assessments on the prosecution services, in particular the upcoming 4th Round Evaluation by GRECO on – among other – the status of prosecutors, and given the very little relevance of bribery in Georgia and its Prosecution Services, this risk assessment focuses mainly on prosecutorial discretion and prosecutorial misconduct (“abuse of power”). Based on the interviews and on the data available, the following observations can be made:

Several mechanisms are in place for countering cases of abuse of power in the Prosecution Services. Particular strong points seem to be a functioning and dedicated General Inspection system as well as intensive trainings on legal topics.

The most outstanding fields where serious cases of abuse of office apparently occurred at least in the recent past, and where substantial risks for such abuses still exist and have not been countered yet, are plea bargaining and the adversarial system newly transplanted into Georgian criminal procedure (entailing a weakened position of judges, victims, and lawyers). In addition, a lack of any performance appraisal system combined with discretionary bonus payments, and a lack of ethics trainings are points to be noted.

In particular, the Prosecution Services would benefit from the following further improvements with regard to:

1. Plea bargaining
 - a. Ensuring a more far reaching written documentation of the whole plea bargaining procedure, the reasoning of the judge why he/she would consider the content of the plea deal “corroborated” and “just” (Article 213 par. 3 CPC), and, in particular, how he/she has verified any confession by the defendant and what additional evidence contradicts and supports the confession. In other words, the plea bargain should rather resemble a “mini-trial” of three equal stakeholders (judge, prosecutor, defence) on the merits of the case, than a contract agreement on the guilt and sentence accompanied only by instructions on the rights.
 - b. Establish an incentive for ensuring exact and wide implementation of requirements for proper plea bargaining such as adding violation of all procedural relevant rules of plea bargains as an absolute ground for appeal (if not dutifully counteracted already by the judge of 1st instance); this would include violations of essential procedural safeguards such as violation of proper documentation of the plea and procedure, lack of verification of confession, lack of instructing the defendant properly on the procedure, lack of documented replicable calculation of the agreed fine, etc.
 - c. Providing judges with the power to raise or decrease plea sentences.
 - d. Review possibilities for formulating agreements with defendants on future cooperation in a clear wording making it an enforceable contract leaving no discretion; ensure that the courts and not the prosecution services has the last decision on whether the defendant was sufficiently cooperating; make unclear wording of agreements with defendants on future cooperation grounds for appeal.

- e. Make it compulsory to calculate agreed and proportional fines based on objective criteria and on the principle of compensation of victims, and to document the reasoning behind the calculation.
 - f. Ensure the availability of statistical data and case material for research and analysis of plea bargaining cases including support of work by NGOs, academics, and other interested parties from society at large.
 - g. Consider interim measures including immediate suspension of plea bargaining until further reform of the system and until defendants have a real choice of alternatives (this includes but is not limited to cases of less minor crimes).
 - h. Consider permanently limiting plea bargaining in cases of less minor crimes (such as cases where a prison sanction would be expected), inter alia by extending the inquisitorial role of the judge into a summary evidence procedure, and by having the judge reviewing the substance of the confession.
2. Ensure that all prosecutorial decisions – as basically any other state measure – are subject to judicial review (whenever they affect essential interests of a victim), balancing the need for prosecutorial discretion with the need of oversight and accountability, and with the gravity of the crime; this would require to consider including measures such as non-opening of procedures, plea bargaining, dropping charges, investigative measures, opening investigations.
 3. Make interactive ethical trainings part of the regular trainings of prosecutors, using case scenarios on ethical dilemmas based on real life cases in Georgia. Among the objectives of the trainings should be to counteract a culture of “scoring high numbers of convictions at any prize”. Trainings should also include joint trainings involving judges and members of the bar in order to establish a common mentality of values in the criminal procedure system in Georgia.
 4. Complement the legislative transplantation of the adversarial system into (continental based) Georgian Criminal Procedure by awareness raising and research on risks and real life cases of prosecutorial misconduct typical for countries with a long standing tradition of adversarial systems.
 5. Introduce a system of performance appraisal for prosecutors based to a substantial extent on qualitative criteria; the system should ensure that it would counteract adverse incentives of the past (“scoring high numbers of convictions”) and would reward prosecutors who in appropriate cases safeguard essential procedural rights of defendants or counteract procedural violations. Similarly, bonus payments, if admissible in law-enforcement at all, must continue to represent a small percentage of the salary and must be based on objective and transparent criteria and decisions.
 6. Revise high minimum sentences foreseen in the Criminal Code that would seem to exert problematic pressure upon any suspect to submit to a plea proposal, or would reduce a judge’s discretion and role in the process disproportionately.
 7. Transparency
 - a. Review the possibility of improvements with regards to making key indicators and statistical data public and to engage in a more active reporting to the public.
 - b. Publication of complaints and disciplinary statistics might provide food for a negative image in the public and for sensational reporting in the media. On the other hand, showing disciplinary action to the public and presenting it in the right way could counteract a perception of impunity and inertia.

- c. Ensure the availability of statistical data and case material for research and analysis of cases of prosecutorial misconduct including support of work by NGOs, academics, and other stakeholders.
 - d. With regard to above Recommendation 2, as an intermediary measure, create full transparency on all decisions concerning the non-prosecution of especially debated cases, such as case of abuse by the police, the prosecution services, or complaints on events such as law enforcement against religious minorities or the Tbilisi gay parade 2013.
- 8. Disciplinary sentences should include also reasoning on sentences handed down, as only this would allow de facto for the necessary appeal option in all cases.
- 9. Adversarial system
 - a. Monitor and evaluate whether there are benefits of transplanting the adversarial system into Georgian Criminal Procedure and whether they outweigh the additional risks and disadvantages with regards to risks of abuse of power. It would probably seem too far reaching for an assessment of this size and means to suggest reversing the whole criminal law reform introducing the adversarial system into Georgia, and reversing everything back to an inquisitorial system would put the legal sector again through a costly transformation process. However, continuing to transplant this alien concept into Georgian justice and society as a whole will entail risks of abuse for years to come; it is thus recommended to at least carefully review the shortcomings of this reform, the potentials for abuse, and to make use of the findings for ensuring the availability of sufficiently empowered defence for citizens of all “classes” and regions, for vocational training, educational curricula, and for awareness measures towards society.
 - b. Foster a culture where even during trials prosecutors will not stick to the “accusatory direction” should there be a certain degree of reasonable doubts about the guilt of the defendant.
- 10. Active outreach to vulnerable minorities (such as for religious reasons or because of sexual orientation), for example by designating a contact officer or commissioner, seems worth considering. Such an officer could also counteract biases within the services and protect the rights of victims in cases where a legal remedy would not be available or feasible.
- 11. Given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it seems worth considering a form of participatory control for the prosecution services; such a measure might also improve the perception and understanding of the work of prosecutors by other sectors and the public at large.

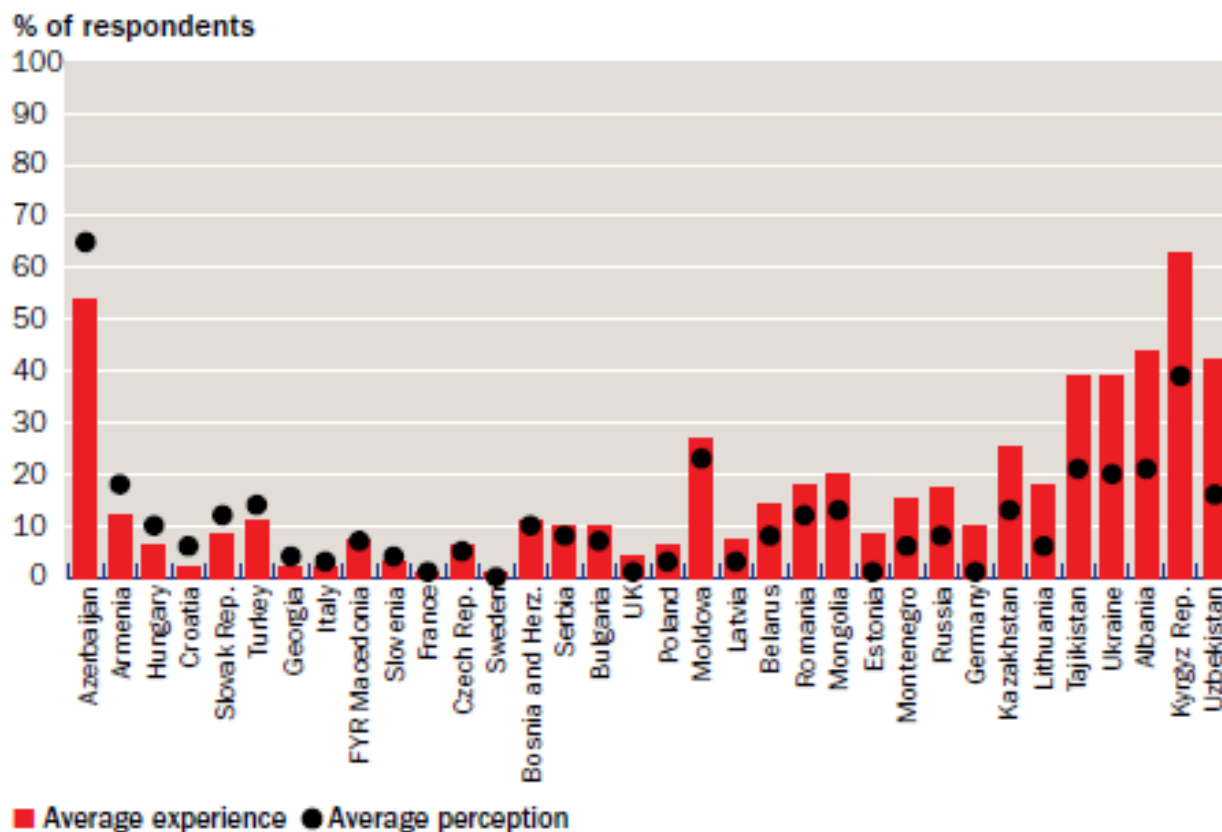
2 RELEVANCE OF THE TOPIC

2.1 Corruption and corruption perception

2.1.1 Georgia

Georgia's anti-corruption reforms have shown success that is well known and documented,¹ as for example by the following survey on perceived and experienced administrative bribery:

Perception versus experience of corruption



Source: LITS II (2010).

Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payments or a gift in the past 12 months averaged across all public services covered by the survey.

The statistics conducted by the European show that Georgia ranks better than several European Union countries. This risk assessment hence focuses less on bribery in the prosecution services, than on abuse of power.

¹ See for example The World Bank, Fighting Corruption in Public Services Chronicling Georgia's Reforms, 2012, 104 pages, <https://openknowledge.worldbank.org/handle/10986/2234>.

2.1.2 Region

There is little data available specifically on prosecution services in the EaP region. However, data on perception of corruption ranks the judiciary and police among the most corrupt sectors in post soviet countries.² In addition, surveys in EaP countries confirm that the prosecution sectors are viewed as the most corrupt.³

2.2 Recent and future assessments on Georgia

There have been several assessments conducted recently, which either focused or touched upon critical operational aspects of the prosecution services in Georgia:

- International Bar Association's Human Rights Institute (IBAHRI), Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012⁴
- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012⁵
- Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010⁶
- Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011⁷
- Transparency International, National Integrity System Report – Georgia, 2012⁸
- Georgian Young Lawyers' Association (GYLA), Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive, 2012⁹
- OECD, ACN 3rd Round of Monitoring, Georgia, September 2013¹⁰
- EU, Joint Staff Working Document, Implementation of the European Neighbourhood Policy in Georgia, Progress in 2012 and recommendations for action, March 2013¹¹

All above reports more or less criticise the plea bargaining system and the prosecution service's lack of independence, excessive discretionary power, and insufficient judicial control over its activities.

² Transparency International's Global Corruption Barometer (GCB), 2013, page 35, http://www.transparency.org/policy_research/surveys_indices/gcb.

³ See for example for Armenia: 2010 Armenia Corruption Survey of Households (USAID), page 4, http://old.crrc.am/store/files/corruption/2010_Corruption_Household_Survey_Report_English.pdf; Moldova, Evolution of the Perception regarding Corruption Phenomenon in the Republic of Moldova 2005 – 2009 (Council of Europe), page 11, www.coe.int/t/dghl/cooperation/economiccrime/MoneyLaundering/Projects/MOLICO/912_MOLICO_surveyreport2009.pdf.

⁴ <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c5afab14-f29d-4fe5-af88-42d46a478515>.

⁵ Not yet available online.

⁶ <http://transparency.ge/en/node/1061>.

⁷ https://wcd.coe.int/ViewDoc.jsp?id=1809789#P297_63271.

⁸ At page 61, http://transparency.ge/sites/transparency.ge.nis/files/TIGeorgia_NISReport_en.pdf.

⁹ http://gyla.ge/uploads/publications/2012/legal_analysis_of_cases_of_criminal_and_administrative_offences_with_alleged_political_motive.pdf.

¹⁰ Not yet available online.

¹¹ SWD(2013) 90 final, pages 5 f.

http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_georgia_en.pdf.

This report does not intend to double above efforts and will rely on previous analysis and findings insofar they apply to this risk assessment. However, this risk assessment will deepen the analysis of abuse of discretionary power and intends to add additional value.

In addition, there is the Council of Europe Project report on Enhancing Judicial Reform in the Eastern Partnership Countries, Working Group on “Efficient Judicial Systems”, March 2013¹²; however, it only focuses on the status, budget and salary of prosecutors, but does not cover operational aspects.

In its 4th Evaluation Round, GRECO will focus on prevention of corruption in respect of inter alia prosecutors with regards to: ethical principles and rules of conduct; conflict of interest; prohibition or restriction of certain activities; declaration of assets, income, liabilities and interests; enforcement of the rules regarding conflicts of interest; and awareness.¹³ The Evaluation is scheduled to take place not before 2015. This risk assessment will try to avoid anticipating the GRECO evaluation. It will give, however, basic information on integrity and prevention of corruption in the prosecution services as well, in order to provide a full picture. There will be no recommendations in such fields, though.

2.3 Limited international research and standards

Given the outstanding rank of the prosecution sector as one of the sectors as perceived to be most corrupt not only in the EaP region, it is astonishing that there is internationally almost no study or risk assessment on prosecution services available. In fact, a working paper in “Justice&Development” seems to be the only overview available on corruption risks in the prosecution sector published so far.¹⁴ This risk assessment intends to enlarge the documentation available on corruption risks in the prosecution sector.

The scarcity of research is mirrored by a scarcity of international standards; however, the Council of Europe seems to have taken a leading role in setting the few standards available:

- Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.¹⁵
- The Consultative Council of European Prosecutors (CCPE): The Council has not yet rendered any opinion related to ethics or corruption risks. This stands in contrast with at least one opinion by the Consultative Council of European Judges (CCJE), which touches on ethical and corruption related issues.¹⁶

¹² http://www.coe.int/t/DGHL/COOPERATION/CAPACITYBUILDING/projects/aep_en.asp.

¹³ http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp; the Questionnaire is available at: [http://www.coe.int/t/dghl/monitoring/greco/source/Greco%20\(2012\)%2022E%20Questionnaire%20Eval%20IV%20RE%20VISED.doc](http://www.coe.int/t/dghl/monitoring/greco/source/Greco%20(2012)%2022E%20Questionnaire%20Eval%20IV%20RE%20VISED.doc).

¹⁴ The World Bank, Heike Gramckow, Preventing Corruption in Prosecution Offices: Understanding and Managing for Integrity, Working Paper Series, No. 15/2011, page 11, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/11/09/000333038_20111109024044/Rendered/PDF/655100WP0J0D0150110Box361565B00PUBLIC0.pdf.

¹⁵ Adopted by the Committee of Ministers on 6 October 2000, <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM>.

¹⁶ http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp: Opinion N° 3 (2002) on ethics and liability of judges; see also Opinion N° 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges.

- Venice Commission, Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service, January 2011.¹⁷

Apart from that, only Article 11 “Measures relating to the judiciary and prosecution services” of the United Nations Convention against Corruption (UNCAC) is relevant:

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Neither the Council of Europe Criminal Law Convention on Corruption nor the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions specifically addresses corruption prevention at the prosecution sector. Some national guidelines on ethics of prosecutors are available, though, such as the American Bar Association’s Model Rules of Professional Conduct, Rule 3.8 Special Responsibilities of a Prosecutor.¹⁸

3 SCOPE OF THE ASSIGNMENT

This Paper is part of the Project’s regional Activity 1.4 “Risk Assessment: Typologies of underlying causes of corruption”. The aim of this activity is to analyse causes and risks of corruption, and identify weaknesses in countermeasures and need for action in integrity systems of the Eastern Partnership countries, by addressing a specific sector in each country. For Georgia, the “Prosecution Services” have been chosen as a topic.

Given previous and planned future assessments on the prosecution services, in particular the 4th Round Evaluation by GRECO, and given the little relevance of bribery in Georgia, this risk assessment focuses mainly on prosecutorial discretion. Illegitimate use of discretion will generally constitute the corruption offence of “Abuse of power” (Article 332 Criminal Code Georgia) or “Abuse of official authority” (Article 333 Criminal Code Georgia), or will be a disciplinary infraction.

The prosecution services are intrinsically intertwined with the other stakeholders of criminal procedure (judges, lawyers, defendants, victims). Therefore, it would be theoretically necessary to assess their role and system in detail. However, the means allocated for this exercise would not allow for such a broad “criminal procedure” assessment, and, furthermore, this assessment was only confirmed by the Georgian authorities on rather short notice towards the end of this Project. This assessment will thus include other stakeholders to the extent necessary and by making use of existing assessments without being able to provide a full assessment.

¹⁷ www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf.

¹⁸

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_8_special_responsibilities_of_a_prosecutor.html.

4 BACKGROUND

4.1 Legal framework

The status and work of the prosecution services is based in particular on the following laws:

- Constitution.
- Law on prosecution services.
- Criminal procedure code.
- Law on Public Service.
- Law on Conflict of Interest and Corruption in Public Service.
- Prosecutorial Code of Conduct.

4.2 Functions

The two main functions of the Prosecution Service are:

- Prosecutions;
- Conducting and supervising pretrial investigations.

Supervising pretrial investigation means that decisions on investigative steps are taken by the prosecutor, whereas oversight on disciplinary responsibility remains fully with the Ministry of Interior as the main investigative unit.

In addition, the Prosecution Services supervise the work of the operative-intelligence agencies and procedures of deprivation of liberty (pre-trial detention etc.).

4.3 Staff and organisation

The Prosecution Service currently employs about 430 prosecutors. About 65% are men, about 35% are women.

Year	Prosecutors and investigators	Other staff
2011	387	279
2012	481	223
2013	522	320

(Chart based on information provided by the Prosecution Service)

The Office of the Chief Prosecutor is divided in the following departments:¹⁹

- Administration of the Office of the Chief Prosecutor;
- Investigative Division;
- Department of Human Recourse Management and Development Department of Legal Affairs;
- Department of Procedural Administration of Investigation in the General Inspection of the Ministry of Internal Affairs of Georgia, the Criminal and Patrol Police Departments and at

¹⁹ <http://pog.gov.ge/eng/about/departments>.

the Unit for Fighting against Illegal Drugs Circulation of the Special Operative Department;

- Department of Supervision over Prosecutorial Activities in Regional Territorial Authorities of the Ministry of Internal Affairs of Georgia;
- Department of Procedural Guidance of Investigation and Operational Investigative Activities Supervision in Public Security Service, Special State Security Service and Intelligence Service of the Ministry of Internal Affairs
- Department of Procedural Supervision of Investigation in the Ministry of Finance and the Ministry of Environment and Natural Resources of Georgia and for Prosecution of the legalization of Illegal Incomes;
- Department of the Procedural Guidance of Investigation in the Ministry of Finance;
- Department of the Procedural Guidance of Investigation in the Ministry of Defense and Ministry of Corrections and Legal Assistance;
- Division of Human Rights Protection;
- General Inspection;
- Public and Media Relations Department;
- Economic Department.

4.4 Main reforms

The main reforms affecting the Prosecution Service are:

- Independence: amendments to the Law on Prosecution Services of May 2013 (see below 5.1);
- Reform of the Criminal Procedure Code introducing plea bargaining in 2006 following largely the American model (see below 8.4.1);
- Reform of the Criminal Procedure Code introducing the adversarial system following largely the American model (see below 8.3.2).

5 INDEPENDENCE

5.1 External

Previous monitoring reports on Georgia criticised the fact that under Georgian legislation the Minister of Justice had the power to intervene in prosecution of individual cases under Article 8 of the Law on Prosecution Service.²⁰ It included the following power:

“c) In case of commitment of a crime, according to the rules prescribed by law conducts criminal prosecution of the President of Georgia, member of the Parliament of Georgia, Chairman of the Supreme Court of Georgia, Judges of the Common Courts of Georgia, Chairman and member of the Constitutional Court of Georgia, Member of the Government, Public Defender of Georgia, the Auditor General, Chairman and the Member of the Board of the National Bank of Georgia, Ambassador of Georgia and envoy, high ranking military official or an official with a special rank or a person with an equal status; [...]

²⁰ See OECD ACN 3rd Round of Monitoring, Draft Report on Georgia 2013, page 35 – final version not yet published.

k) abolishes unlawful orders, instructions and directives issued by the subordinate prosecutors”.

In 2013, the government initiated amendments to the Law on Prosecution Service abolishing inter alia the power of the Minister to interfere in individual cases. The amendments entered into force on 24 June 2013 and transferred prosecutorial powers of the Minister of Justice to the Chief Prosecutor of Georgia. As a result, the Minister of Justice will only have the authority to define general criminal justice policy and issue respective guidelines.²¹

The amendments also exclude the Minister of Justice from the definition of “prosecutor”, thus excluding him from the prosecutorial hierarchy. As a consequence, the Minister of Justice is not a superior prosecutor anymore who may overrule decisions of subordinate prosecutors.

Appointment and dismissal of the Chief Prosecutor are done by the President upon proposal of the Ministry of Justice. No grounds for dismissal of the Chief Prosecutor are provided in the law. In 2009, the Venice Commission in its 2009 Opinion on four constitutional laws criticized the procedure for appointment and dismissal of the Chief Prosecutor.²²

The OECD, ACN 3rd Round of Monitoring Draft Report on Georgia also points to the following:

“The Minister of Justice also retains extensive powers with regard to internal structure, budgeting and remuneration of the prosecutor’s office and prosecutors. While most of relevant powers are to be executed in co-ordination with the Chief Prosecutor, they still indirectly provide for significant influence of the Minister on the prosecution service. Overall, it can be recommended that most of these issues should be decided not by a politically appointed member of the Government, but by a body of prosecutor’s self-governance, similar to the one for judges.”²³

The idea of a Council of the Prosecution Service was raised earlier in 2010, but was dropped later on: “In order to ensure the effectiveness of the prosecution service system management and to increase the level of monitoring over the prosecution service by the society an independent body – Council of the Prosecution Service – will be established within the same system. The Council will be staffed with the representatives of bodies of the executive and the legislative powers, the prosecution service representatives and members of the academy and non-governmental organisations. The basic function of the Council of the Prosecution Service will be organising competitions for the candidates for prosecutors, further assisting the Chief Prosecutor of Georgia in effective management of the prosecution service system.”²⁴ Given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it is regrettable that this form of control and participation was dropped.

As for the subordinates of the Chief Prosecutor, Article 35 of the Law on elaborates on “the Legal Protection of the Employee of the Prosecution Service”:

- 1. In his/her activities the employee of the Prosecution Service shall be independent. She/he cannot be resigned or dismissed from the position apart from the cases envisaged by this law and established rules.*

²¹ See OECD ACN 3rd Round of Monitoring, Draft Report on Georgia, page 35 – final version not yet published.

²² Available at [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)017rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)017rev-e)

²³ See OECD ACN 3rd Round of Monitoring, Draft Report on Georgia, page 36 – final version not yet published.

²⁴ http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=371#sthash.2xDaroMw.dpuf.

2. *The encroachment on the employee of the Prosecution Service during the performance of office duties, humiliation of his/her dignity, threat against him/her, resistance, violence, infringement of life, health and property of the employee of the Prosecution Service results in the responsibility envisaged by law. In case of receiving announcement or information on the encroachment of health or property of the employee of the Prosecution Office or his/her family member the State bodies are obliged to take measures envisaged by law in order to protect their personal and estate security.*

5.2 Internal

Internal independence in this context would describe the degree to which prosecutors can base the exercise of their discretion on the individualities of the case and on their legal and ethical obligations. As for the legal level of independence, basically above mentioned Article 35 of the Law on Prosecution Service applies. As for implementation of this internal independence, several interview partners from the state and non-state side have asserted that it is hard for prosecutors if not impossible to divert from the questionable practice of plea bargaining and from the practice of obtaining a high conviction rate (see below at 8.4.2). Related to internal independence, the distribution of bonus payments should also be noted (see below at 6.2).

6 CAREER

6.1 Appointment

The Prosecution Office announces vacancies through the website www.hr.gov.ge, which is managed by the Civil Service Bureau. Candidates sit for two written tests regarding general intelligence and regarding professional skills, and they have to attend a personal interview. From about 1,000 candidates, about 20-25 are chosen to serve as temporary interns for one year in order to test their performance in practice. Almost all of the interns will be acceded to permanent appointment after the internship.

The relevant provision of the Law on Prosecution Services reads as follows:

“Article 31 the Requirements to be met by the candidate to hold the position of Prosecutor and Investigator of the Prosecution Service

1) The citizen of Georgia may be assigned as a prosecutor or an investigator in the Prosecution Service, who has the high legal education, possesses the language of the legal proceedings, has passed internship in the Prosecution Service for the period from 6 (six) month up to 1(one) year, has passed the qualifying examination to the Qualifying Examination Commission in the following subjects: constitutional law, international human rights law, criminal law, criminal procedure law, penitentiary law and the basics of the operative-investigation activity, has taken the prosecution service employee oath and by his/her working and moral qualities, state of her/his health is capable to perform the duties of the prosecutor, or the investigator of the Prosecution Service. [...]”

6.2 Status and salary

Prosecutors are (lifetime) civil servants enjoying all benefits granted under the Public Service Law. Additionally, social care is explicitly guaranteed by Article 40 of the Law on Prosecution Services. The salary of a deputy head prosecutor averages about 2,450 GEL/month (before

taxes), equalling about 1,020 €. ²⁵ Article 41 of the Law on Prosecution Services regulates the “Salary of the Employee of the Prosecution Service” as follows:

1. *The salary of the employee of the Prosecution Service is contained of official salary, premium and other bonuses envisaged by the legislation of Georgia.*
2. *The official salary of the prosecutor and investigator of the Chief Prosecution Service shall be no less than 500 GEL. The prosecutors and investigators of the Prosecution Services of the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecution Service, District Prosecution Services, Regional Prosecution Services and Specialized Prosecution Services envisaged by Article 1 §3 of this law shall have no less than 400 GEL as a salary.*

The bonus payments are allocated more or less quarterly on a case-by-case basis and in practice in one year for example roughly amounted to about 2-5% of the monthly salary. There is neither criteria available for attribution of the premiums, nor a general practice of written assessments for basing on the premiums. Bonus payments are thus based on the “impression” of the subordinate by the superior.

6.3 Appraisal and promotion

There is no appraisal system in place yet, but is currently prepared to be introduced until end of 2013. It will be based on quantitative and qualitative criteria. In this context it should be noted that a high conviction rate was reportedly regarded as a feature of good performance, and a lost trial as a feature of bad performance. Such an assumption conflicts with the impartiality of the prosecutor (Article 4 lit. d Law on Prosecution services), which is reflected in several provisions of the Criminal Procedure Code, such as Article 22 par. 2 “Initiation of Criminal Proceeding”: “The investigation of a criminal matter shall not be carried out one-sidedly, in the accusatory direction only.” A critical media report on wrongful convictions caused by prosecutorial misconduct in the United States noted in this context: “Federal prosecutors are supposed to seek justice, not merely score convictions.”²⁶

6.4 Dismissal

According to Article 34 of the Law on Prosecution Services, a prosecutor may be discharged from office related to the following ethical incidents:

- [...]
- d) *Non-fulfillment or improper performance of office duties;*
 - e) *Non-fulfillment or improper performance of the requirements envisaged by the contract;*
 - f) *Office incompatibility;*
 - g) *Violation of office discipline roughly or systematically;*
 - i) *In case of election or appointment at legislative, executive, judicial branches of authority or local self-government and in other cases of office incompatibility;*
 - j) *In case of breaking the oath, revealing professional secret or committing a behaviour improper to the employee of the Prosecution Service;*
 - k) *On the basis of the conviction being in force;”*

²⁵ http://pog.gov.ge/eng/news?info_id=339.

²⁶ http://usatoday30.usatoday.com/news/washington/judicial/2010-09-22-federal-prosecutors-reform_N.htm.

In a few sporadic cases, prosecutors have been dismissed in the past, either due to repeatedly failing vocational trainings and exams, because of ethical violations (violating conflicts of interest rules), or for committing crimes (acceptance of bribery).

7 INTEGRITY

7.1 General legal framework

The integrity framework in the Prosecution is mainly determined by the following laws:

- Constitution.
- Law on Prosecution Services.
- Law on Public Service.
- Law on Conflict of Interest and Corruption in Public Service.
- Prosecutorial Code of Conduct.

7.2 Conflicts of interest

Conflict of interest is comprehensively regulated in Article 13 of the Law on Conflict of Interest and Corruption in Public Service:

“2. An official has no right to implement any kind of paid work except scientific, pedagogical or creative or to hold any position in any other treasury establishment or treasury enterprise or to implement any kind of paid work or to hold a position in the agency or institution of a foreign country.

3. An official, or a member of his/her family has no right to hold a position or implement any kind of work in an enterprise registered in Georgia, the control of which is conducted by an official or falls under his/her capacity.

4. An official has no right to hold any position in an enterprise.

5. An official, or a member of his/her family has no right to own shares or part of a stock in an enterprise where the control of which is implemented by an official or falls under his/her capacity.

6. An official has no right to be a representative of a natural or legal person or commissary or represent or defend in criminal, civil or administrative offences cases against the Treasury establishment except in a case when she/he is a trustee of the natural person.

7. A close relative of an official cannot be appointed to the position of a public servant except by the competition, which is under the supervision of an official.

8. An official, or a member of his/her family is obliged to retire from a incompatible position or to terminate incompatible work within 10 days after the appointment on the position if the Constitution of Georgia or the present Law does not prescribe anything else.

9. An official shall present documents certifying the eradication of his/her or a member of his/her family's incompatibility to his/her direct superior official (agency), also to the corresponding staff agency.”

In addition, Article 26 par. 5 of the Constitution requires that “a person who is [...] designated as a judge or a prosecutor shall cease his/her membership of any political association.” This incompatibility is reflected in Article 31 par. 9 and 10 of the Law on Prosecution Services:

“9) The position of the employee of the Prosecution Service shall not be compatible with any position of state and local self-government, also with entrepreneur or paid job except for the scientific and pedagogical activities. The employee of the Prosecution Service shall have the right to perform other paid job or/and hold other position simultaneously at the Prosecution Service.

10) The employee of the Prosecution Service cannot be a member of political union or involved in the political activities.”

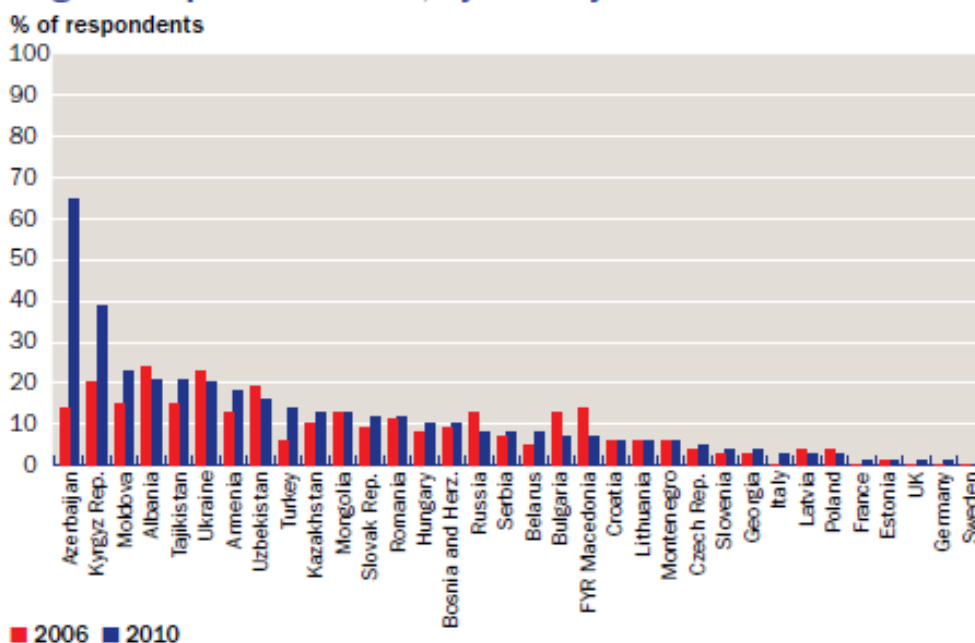
None of the interviews conducted during this risk assessment has led to information that there was a substantial implementation gap with regards to conflicts of interest legislation.

7.3 Gifts

Gifts are regulated in the Law on Conflict of Interest and Corruption in Public Service. Not only gifts given during the performance of duties, but gifts given to public officials at any moment are covered. The overall limit of gifts given to an official or a member of his/her family is 1,000 GEL (about 500 €) per year. Gifts going above this limit have to be declared.

Gift giving would normally not be a practice to be expected and common in the law enforcement services and probably even more so in the prosecution sector. The level of gift giving in Georgia is vanishingly low anyhow in the public sector according to international surveys.²⁷

Average level of perceived necessity of unofficial payments or gifts for public services, by country



Source: LITS I (2006), LITS II (2010).

Note: "Perception of unofficial payments" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey.

²⁷ European Bank for Reconstruction and Development, "Life in Transition Survey" (2010), p. 39, www.ebrd.com/downloads/research/surveys/LITS2e_web.pdf.

7.4 Asset declarations

Under Chapter IV of the Law on Conflict of Interest and Corruption in Public Service, all senior public officials have to submit asset declarations to the Civil Service Bureau upon entry and annually thereafter. The submission is done electronically. Declarations of public officials of higher levels are published online: <http://csb.gov.ge/en/asset-declarations>. Declarations of mid and lower level officials are available under freedom of information legislation. Until today, the Civil Service Bureau has relied on public scrutiny for verifying the content of the declarations. There are plans underway and steps ongoing for establishing a verification mechanism until end of 2014 as is in place in many other countries.²⁸ As Georgia does not have a systemic bribery or embezzlement problem, a central question in establishing this system will probably be to either target the right risk group or the right sample with the verification procedures.

7.5 Code of Conduct

The Prosecutorial Code of Conduct was adopted in 2006. It is contained in Annex 13.3. It seems to address all major ethical issues. However, it is striking to note that trainings on prosecutorial ethics and ethical dilemmas in daily work are not part of the intensive training programme implemented within the prosecution service (see below at Chapter 11).

8 OPERATIONAL DISCRETION: RISKS OF ABUSE

Prosecutors in Georgia enjoy discretion in their operations as do probably all prosecution services of this World. The discretion is necessary to adapt investigative and trial measures and manoeuvres to the particularities of each case. However, discretion without sufficient checks and balances is a corruption risk by itself. The following are the main possible entry points for abuse of prosecutorial discretion.

8.1 Opening of proceedings

According to Article 22 of the Criminal Procedure Code, Prosecutors have to initiate a criminal proceeding “upon existence of the elements of a crime”. Article 28 allows to “refuse to initiate criminal proceedings” or suspend them, if, among other, “the criminal event or act provided by criminal law is missing”. Whereas victims used to have the right to appeal to a court for reviewing the decision by the prosecutor to not open an investigation or to not prosecute a case, this option has been abolished in 2006 with the introduction of the adversarial system.

Several state and non-state stakeholders have pointed in the interviews to cases of abusive criminal investigations based on little evidence, aimed from the beginning at obtaining a plea bargain (or conviction) that would allow the prosecution to forfeit the defendant’s wealth to the state budget. The main protection against such abusive investigations should lie with a safe plea bargaining and trial system. In addition, investigations might be abusive just by discrediting and harassing a suspect. In most legal systems, there is no specific opportunity for a citizen to appeal against the opening of a criminal investigation. However, citizens should always have the possibility to challenge any executive decision in court, including the (abusive) opening of a criminal investigation. It is recommended to review whether the Georgian Criminal Procedure Code provides for such comprehensive judicial review of prosecutorial decisions. For example,

²⁸ See for example Council of Europe EaP Project Technical Papers on asset declarations in Armenia and Ukraine, http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_TP_default_en.asp.

in Germany, in addition to several legal remedies foreseen against specific investigative measures, the procedural law foresees a backup remedy for all cases not covered by other legal remedies.²⁹ Thus, for example, a general provision providing court protection against measures for achieving comprehensive protection of citizens would prevent and facilitate rectification of any possible abuse.

8.2 Investigative measures

Discretion and the risk of abuse also exist with regards to investigative measures (searches, wiretapping, abusive questioning of witnesses, etc.). However, approval by a judge is necessary in several cases, such as house search (Article 112 CPC). This risk assessment did not conduct a full analysis of legal protection provided to subjects of investigative measures. However, there are certain safeguards in place for ensuring the rights of persons concerned by investigative measures, such as right to damages in case of unlawful search (Article 38(11) 92 CPC).

8.3 Trial

Whereas in many legal systems in continental Europe, prosecutors have to also safeguard the interests of the defendant, prosecutors in Georgia during the trial stage only follow the adversarial interest of obtaining a conviction of the defendant. Only during the investigative stage they are bound to look for evidence in favour of the defendant, Article 37 par. 2 Criminal Procedure Code:

“The investigator shall be obliged to conduct investigation thoroughly, completely and impartially”.

Yet, even in an adversarial system, manifold possibilities of illegal abuse exist during the trial. In addition, it should be clear from the procedural law that even during trials prosecutors have to abandon the “accusatory direction” should there be a certain degree of reasonable doubts about the guilt of the defendant.

8.3.1 Weak role and independence of judges

Almost all interview partners pointed to the problem that judges at least in the past would follow the requests of prosecutors while motions by defense lawyers were often refused. Already in 2011, the Commissioner for Human Rights of the Council of Europe noted “perceptions that judges are prone to influence by prosecutors aimed at ensuring convictions in all cases brought to court.”³⁰ In addition, judges would be not feel comfortable to resist the “directions” of prosecutors; in one case it was reported, a judge resisted a plea bargain proposed by the prosecution services, and was retaliated against by being transferred against his will to unfavourable court locations. Most interview partners described the collaboration of prosecutors and judges in the past as being so strong that many prosecutors were actually not used anymore being challenged by a judge and are now in need of building up their “adversarial” capacity.

²⁹ Article 23a Einführungsgesetz zum Gerichtsverfassungsgesetz (EGGVG): In case of absence of any other special remedy, courts decide upon application over the legality of any decision by the judicial authorities, <http://www.gesetze-im-internet.de/gvgeg/BJNR000770877.html>.

³⁰ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, at par. 28, https://wcd.coe.int/ViewDoc.jsp?id=1809789#P297_63271.

The strong position of the prosecution in criminal trials could be also deducted from a conviction rate of 99.99% between 2007 and 2010.³¹ In 2011, the acquittal rate is reported to be (less than) 2.5 %.³² By contrast, the international average of conviction rates ranges rather between 50-60%.³³ Reportedly, the conviction rate has recently dropped slightly, opening de facto a small but possible window of actually obtaining an acquittal in a criminal trial.

Several interviewees from state and non-state sectors attribute the slight increase in the number of acquittals to the fact that most judges had been appointed by the previous government. In most cases, these judges, including senior key figures of the judiciary, would be loyal to the previous government and would be eager to dismiss cases concerning political affiliates of the previous government, thus providing also a setback to prosecution efforts by the new government. Whereas the increase in the number of acquittals is to be welcomed, it would not be a sign of an independent judiciary if those perceptions are true.

Another aspect of weakening the role of judges is the minimum imprisonment terms prescribed in the Criminal Code for several crimes. For example, passive bribery and money laundering carry a minimum punishment of “6 years” of imprisonment. Given the outstandingly low bribery rates in Georgia, such minimum sanctions would seem excessive and thus reduce the discretion of a judge while also “forcing” a high number of cases onto the plea agreement track, where sentences below the minimum threshold are possible (see also below at Chapter 8.4.2).

8.3.2 Adversarial system

None of the interview partners could explain for what policy reason the adversarial system was introduced into Georgian criminal procedure. This finding already raises a red flag. In fact, one interview partner recalled that even American partners of technical assistance would question the feasibility and reasonableness of such a transplant into Georgian criminal procedure. One of the reasons for introducing the adversarial system seems to be the option of doing “quick justice” through far-reaching plea bargaining. However, the introduction of the adversarial system into a system with a continental tradition entails in particular the following risks for abuse:

- In the United States or the United Kingdom the adversarial system is a legal tradition grown over centuries supported by a rich body of case law, legal teaching, and absorption into society at large. In Georgia, the adversarial system has no tradition at all. The legal uncertainty and absence of professionalism and grown structures surrounding the adversarial system carry the risk of abuse during such procedures.
- Several interview partners questioned whether lawyers in Georgia were already sufficiently prepared for providing a strong counterbalance to prosecutors in adversarial procedures. In addition, there are serious doubts about the independence and readiness of judges to ensure a proper “equality of arms”.

³¹ Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010, page 12 (see above Chapter 2.2).

³² GIZ, The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012, page 16 (see above Chapter 2.2).

³³ European Institute for Crime Prevention and Control, Affiliated With the United Nations, International Statistics on Crime and Justice, 2010, p. 92, <https://www.ncjrs.gov/app/publications/Abstract.aspx?id=252824>, www.unodc.org/documents/data-and-analysis/Crime-statistics/International_Statistics_on_Crime_and_Justice.pdf; for Canada (66%), see <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11293-eng.htm>.

- Whereas information from the interviews showed that impartiality did not always seem to be a key quality of prosecutors in the past, the adversarial system by nature would only strengthen this tendency.
- In comparison to the inquisitorial system, the adversarial system takes two stakeholders out of the system of checks and balances: the judge and the prosecutor. The role of the judge is confined to arbitrating procedural questions, whereas the establishment of facts is left to the remaining two stakeholders, the prosecution and the defense. As for prosecutors, they would often during the trial also have an obligation to safeguard the rights of a defendant in an inquisitorial proceeding. It is probably fair to say that this reduction of stakeholders in the trial procedure can be seen as a risk factor in itself by reducing safeguards against abuses in essence to one stakeholder, the defense lawyer.
- In addition, during the interviews, it was conspicuous how little if at all any awareness existed about the typical forms and risks of misconduct encountered in the United States related to the adversarial system. Whereas in the United States the media, NGOs and the society at large monitor risks related to the adversarial system,³⁴ it seems unclear to what extent this capacity is already available in Georgia.

Given its limited means, this risk assessment could not produce enough data to establish a representative overview of prosecutorial misconduct in Georgia. Typical risks, as known from the adversarial system in the United States would be:

- Withholding evidence and facts (Knowingly using perjured testimony, not disclosing immunity to witnesses or co-defendants, not disclosing deals with witnesses, not disclosing witnesses having criminal records, etc.);
- Misstating the law or evidence (Knowingly misstating the law, knowingly presenting false evidence);
- Abusive motions.

Based on information from the interviews, above risks have practical relevance in Georgia. They are the “conflict of interest” trap prosecutors might fall into, in particular if scoring a high conviction rate is part of a success mentality, if this is induced by bonus payments, and if there is a lack of an ethical awareness, training, and culture.

8.3.3 Balance of powers: lawyers

The interviews produced at least a mixed, if not negative picture of the capacity of lawyers to provide in all cases a sufficient “adversarial counterbalance” to the prosecution. International assessments point in a similar direction.³⁵ In addition, past reports pointed to allegations

“that lawyers have encountered difficulties in exercising their profession freely, and that there have been instances of harassment, abusive prosecutions and other forms of pressure on them. Such pressure seriously impairs defence rights and prevents lawyers from effectively serving the cause of justice. In this regard,

³⁴ See for example: California Innocence Project (CIP), “Prosecutorial Misconduct”, <http://californiainnocenceproject.org/issues-we-face/prosecutorial-misconduct>; USA Today, 23 September 2010, “Prosecutors’ conduct can tip justice scales”, http://usatoday30.usatoday.com/news/washington/judicial/2010-09-22-federal-prosecutors-reform_N.htm; USA Today, 27 December 2010, “Statement from the Justice Department”, http://usatoday30.usatoday.com/news/washington/judicial/2010-12-27-prosdoj_N.htm.

³⁵ GIZ, The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012, page 16; IBAHRI, Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012, page 28 (for both reports, see above Chapter 2.2).

*the Commissioner stressed that defence lawyers must be allowed to operate without impediments and in full confidentiality when providing legal assistance to their clients.*³⁶

8.3.4 Jury trials

Jury trials have been introduced in Georgia in 2006. However, there have been only five trials altogether ever since. It is obviously questionable how a criminal justice system and the society at large will build up enough capacity for conducting jury trials in a professional manner, based on such a tiny case record. Whereas in the United States jury trials are a legal tradition grown over centuries (and are still questioned by many in their effectiveness of delivering justice), jury trials have no tradition in Georgia at all. The legal uncertainty and absence of professionalism surrounding jury trials, especially on the defence side, carries the risk of abuse during such procedures. Georgia successfully reformed its tax code about 10 years ago in order to reduce corruption risks from the lack of legal clarity of the former tax code. One could ask, whether the introduction of jury trials would not be a step in the opposite direction in the field of criminal law. In addition, the regular absence of a jury in Georgia questions whether the adversarial system is functional at all. Whereas many civil and criminal trials in the United States would be conducted without a jury (and still in an adversarial manner so), the percentage of jury trials (and thus the society control of the adversarial play) in the United States and in Georgia is without comparison.³⁷

8.4 Plea bargaining

Improper plea deals raise questions of criminal procedure standards. The following observations consider also criminal procedure standards, but mainly take the perspective of corruption prevention, in this case, preventing the abuse of (prosecutorial) power.

- International Bar Association's Human Rights Institute (IBAHRI), Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012³⁸
- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012³⁹
- Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010⁴⁰

8.4.1 Overview

Plea bargaining was introduced to the Georgian criminal procedure in 2004. A report by Transparency International of 2010 describes the system in detail.⁴¹ The key features of the plea bargaining system are:

³⁶ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, par. III; see also IBAHRI, Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012, page 51 (for both reports, see above Chapter 2.2).

³⁷ 66 percent of all criminal trials are jury trials (47 percent felony crimes plus 19 percent misdemeanor crimes), whereas this percentage in Georgia would be well below 0.1 percent. See eJournal USA, July 2009, "Anatomy of a Jury Trial",

<http://iipdigital.usembassy.gov/st/english/publication/2009/07/20090706162635ebvessedo5.389911e-02.html>.

³⁸ <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c5afab14-f29d-4fe5-af88-42d46a478515>.

³⁹ Not yet available online.

⁴⁰ <http://transparency.ge/en/node/1061>.

- The judge is not allowed to lessen the severity of the sentence.
- The judge is only allowed to introduce changes if all parties agree.
- The victim has no right to appeal the agreement or resist it, but only has the right to file a civil suit.
- In cases, where cooperation with the investigation is required by the defendant, it is only the prosecutor's decision whether the defendant is sufficiently cooperating.
- There is no legal guideline on how the punishment is calculated for the plea bargain.
- The requirements of verifying a confession and the key facts of the case, as well as documenting this verification are rather vague.
- The defendant has no right to an appeal for the same/similar reasons he/she could appeal a judgement of first instance (see Article 215 Criminal Procedure Code).

The two key provisions in the Criminal Procedure Code are the following:

“Article 679-2. Form of Petition for Rendering Sentence by Court without Hearing Case on Merits

1. A petition for rendering a sentence by the court without hearing a case on the merits shall indicate:

a) the full name, the day, month and year of birth of the accused;

b) the wording of a sentence, that is a description of the alleged wrongful action with the indication of the place, time, means or tool of its committal, as well as the outcome thereof;

c) the evidence that are sufficient for a reasoned assumption that the person has committed the given offence;

d) the article, section and subsection of article of the Criminal Code providing for the offence;

e) the measure of punishment which the procuracy requests; in case of a fine – its amount.

2. A written statement of the accused to be signed by the accused or his legal representative and advocate shall indicate that the accused has voluntarily consented to the rendering by the court of a sentence without hearing the case on the merits following the receipt of legal aid from his advocate. At the same time, the accused shall comprehensively understand the petition's content and legal consequences of the expected sentence.

3. If the procurator and the accused's advocate have agreed on collaboration, the procurator shall draw up a petition indicating the content of the arrangement. The procurator, the accused's advocate and the accused shall sign the petition.

4. The content of a petition prescribed by section 3 of this article is confidential and only the signatories and the court shall have the right to consult it.

Article 679-3. Considering Procurator's Petition for Rendering Sentence by Court without Hearing Case on Merits

⁴¹ See above at Chapter 2.2.

1. A procedural arrangement shall be made in writing and approved in an open court session, except for the cases when essential grounds exist for holding a closed court session. The procedural arrangement shall be reflected in the court-rendered sentence.

2. Prior to the approval of a procedural arrangement, the court shall make sure that:

a) the accused is fully conscious of the nature of offence of which he is being charged;

b) the accused is fully conscious of the penalty envisaged for the offence which committal he pleads;

c) The accused is aware of all the requirements with regard to the plea of guilt envisaged by law in connection with the procedural arrangement;

d) the accused is fully conscious that the court is authorized to disregard the procurator's petition for the commutation of a penalty or mitigation of a sentence submitted on the basis of a procedural arrangement;

e) the accused is conscious that he has the following constitutional rights:

ea.) of defense;

eb) of waiving the arrangement for pleading guilty;

ec) the right to the hearing of a case on the merits by the court;

f) the procedural arrangement is not as result of the accused person's duress, intimidation or such a promise which goes beyond the limits of the procedural arrangement;

g) the accused consents to the factual basis of the procedural arrangement concerning the plea of guilty.

3. The judge decides on a procedural arrangement on the basis of inner conviction and is not obliged to take account of the arrangement conditions achieved between the procurator and the accused."

Statistics on criminal proceedings versus plea agreements:

2011		Cases	%	Persons	%
Judgments of the Court of First Instance		14,353	100.0	17,680	100.0
Plea agreements		12,693	88.4	15,516	87.8
Regular proceedings		1,660	11.6	2,164	12.2
out of which	Convictions	1,612	97.1	2,104	97.2
	Acquittals	43	2.6	52	2.4
	Partial acquittals	5	0.3	8	0.4
Judgments of the Court of Appeal		1,178	100.0	1,522	100.0
Regular proceedings		787	66.8	1,012	66.5
Plea agreements		391	33.2	510	33.5
Fines imposed by the plea agreements (First Instance/Appeal)		108 283 495 GEL (46,430,000 €)			

2012		Cases	%	Persons	%
Judgments of the Court of First Instance		8,992	100.0	11,043	100.0
Plea agreements		7,897	87.8	9,711	87.9
Regular proceedings		1,095	12.2	1,332	12.1
<i>out of which</i>	<i>Convictions</i>	991	90.5	1,198	89.9
	Acquittals	90	8.2	117	8.8
	<i>Partial acquittals</i>	14	1.3	17	1.3
Fines imposed by the plea agreements (first 6 months)		20,898,600 GEL (8,960,000 €)			
Projected onto 12 months		41,797,200 GEL (17,920,000 €)			
2013 (first 8 months)		Cases	%	Persons	%
Judgments of the Court of First Instance		7,559	100.0	8,850	100.0
Plea agreements		6,878	91.0	8,016	90.6
Regular proceedings		681	9.0	834	9.4
<i>out of which</i>	<i>Convictions</i>	638	93.7	770	92.3
	Acquittals	24	3.5	41	4.9
	<i>Partial acquittals</i>	19	2.8	23	2.8
Fines imposed by the plea agreement (first 6 months)		9,353,750 GEL (4,000,000 €)			
Projected onto 12 months		18,707,500 GEL (8,000,000 €)			

Data provided by the Prosecution Services based for the years 2012-2013 mainly on data provided by the Supreme Court (www.supremecourt.ge).

8.4.2 Freedom of choice

Abuse of power by prosecutors in plea bargaining can be only excluded if defendants have a real choice between the plea, and a fair criminal trial. A conviction rate of 99.99% or anywhere in that neighbourhood de facto gives the suspect the only choice between a conviction or a plea bargain. One might even argue that a conviction rate of 99.99% is an abuse of power per se. As mentioned earlier,⁴² the international average of conviction rates ranges rather between 50-60%.

This obviously does not mean that Georgian courts would have to meet this average as a target; one cannot use any such numbers as benchmarks because all countries are different. There are countries such as Finland with a very high conviction rate, but which do not receive any comparable criticism by international observers as did Georgia in the recent past. The above chart shows to what extent there is currently a change of trend. In any case, if only the perception of an unfair conviction rate remained in Georgia, it would raise the question as to whether defendants are in the position of choosing freely between the plea bargain and other viable alternatives. In the words of a recent decision by the German Constitutional Court on plea bargaining: “[T]he defendant has to be in a position to decide under no constraints and independently whether and if so, to which degree he or she participates in the criminal trial.”⁴³ In addition, “resort to pre-trial detention is virtually systematic, and decisions to impose this

⁴² See above footnote 33.

⁴³ Federal Constitutional Court - Press office -, Press release no. 17/2013 of 19 March 2013, Judgment of 19 March 2013, 2 BvR 2628/10, <http://www.bundesverfassungsgericht.de/en/press/bvg13-017en.html>.

measure tend to lack individualised reasoning based on each case”,⁴⁴ causing additional pressure on the defendant to “succumb” to the plea offer.

Even though the conviction rate has dropped slightly, serious doubts remain, whether under international constitutional standards, the current practice plea bargaining would not have had already to be suspended immediately until further reform and until, in reality, innocent defendants in general have a realistic chance of acquittal.

The above mentioned (Chapter 8.3.1) high minimum sentences for several crimes would also seem to exert problematic pressure upon any suspect. For example, passive bribery and money laundering carry a minimum punishment of “6 years” of imprisonment. Given the outstandingly low bribery rates in Georgia, such minimum sanctions would seem excessive and thus put unfair pressure on the defendant to submit to a plea proposal as the only way out of such minimum sentences.

8.4.3 Separation of powers: the judiciary

Several state and non-state stakeholders have confirmed what has been documented already in previous international reports: judges have at least in the past mainly taken a role of “rubber stamp”-approval in many if not most cases of approving plea deals. This would seem to be mainly a problem of proper implementation of the legislation. The relevant provision of the Criminal Procedure Code reads as follows:

Article 679-4. Court Decision on Rendering Sentence without Hearing Case on Merits

- 1. In the cases provided for in this chapter the court is authorised to render a decision on the rendering of a sentence without hearing the case on the merits or referral of the matter back to the procurator for settling the indictment.*
- 2. A respective court according to criminal procedure jurisdiction shall hear a matter on the rendering of a sentence without hearing the case on the merits.*
- 3. Based on the case materials, the court shall examine whether the charge is corroborated and whether the petition-indicated penalty is just, also – how voluntarily the plea of guilty has been effected.*
- 4. If the court considers factual and legal assessment of the procuracy to be correct and the requested penalty to be just, its hall render an indictment within one month from filing of the procurator’s petition. The judge hearing the case (the court panel) shall sign the indictment.*
- 5. If the court decides on the lack of sufficient proof of the charge or establishes that a petition for rendering by the court of a sentence without hearing the case on the merits has been submitted in violation of the requirements of Article 679 of this Code, it shall return the case to the procuracy for settling the issue of indictment.*
- 6. If the court considers the procurator-requested penalty to be strict, it shall be authorised to mitigate it.*
- 7. The accused has the right at any time prior to adjudication to waive the arrangement concerning the admission of his guilt. The announcement of a*

⁴⁴ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, at par. 10 https://wcd.coe.int/ViewDoc.jsp?id=1809789#P76_14021.

waiver does not require the advocate's consent. A waiver of the arrangement after the adjudication is inadmissible".

There is probably still room for improving the legislation, especially with regards to the documentation of the plea bargaining procedure, the documented reasoning of the judge why he/she would consider the content of the plea deal "correct and just", and, in particular, how he/she has verified any confession by the defendant. In this context one might mention that the German Constitutional Court recently overturned a conviction "because the Regional Court sentenced the complainant [defendant] largely on the basis of a formal confession that had not been verified."⁴⁵ Other constitutional court decisions in Europe support this perspective.⁴⁶

Each and every step and aspect of the plea procedure would actually need to be recorded in writing in order to enable the defendant to potentially appeal against any procedural violation. An effective incentive for ensuring exact and broad implementation of requirements for proper plea bargaining would be to make any violation of procedural rules of plea bargains an absolute ground for appeal.

In addition, it is noteworthy that in Georgia the judge currently has no power to reduce or raise a plea sentence (for the other rights of a judge in this context see Article 213 CPC); this deprives the criminal justice system of one possibility to check and limit abuse of powers in favour of certain defendants, for example in case of political affiliation. In the past, though, judges did not necessarily make much use of that option either. Out of several thousands of plea proposals in 2010-2012 each, in less than 20 cases judges refused to accept the proposal. This would be problematic in light of complaints by many interview partners that plea bargaining was abused for siphoning off money from defendants by calculating fines based on their overall wealth, or by forcing defendants into debts.

The European Court of Human Rights has recently rendered a decision to declare admissible a case concerning a plea bargain deal in Georgia for possible violations of Article 6 (fair trial) of the Convention.⁴⁷

8.4.4 Checks and balance: the defendant and his/her lawyer

The presence of independent and competent attorneys could reduce the risk of abuse of power to some extent, but would obviously depend also on independent judges backing up justified motions by attorneys. There are two factors substantially weakening the position of lawyers:

⁴⁵ Federal Constitutional Court - Press office -, Press release no. 17/2013 of 19 March 2013, Judgment of 19 March 2013, 2 BvR 2628/10, <http://www.bundesverfassungsgericht.de/en/press/bvg13-017en.html>.

⁴⁶ See for example France, Conseil constitutionnel on February 2, 1995, punishment decided by prosecution confuses the roles of prosecutors and judges ("Considérant qu'en vertu de l'article 9 de la Déclaration des droits de l'homme et du citoyen, tout homme est présumé innocent jusqu'à ce qu'il ait été déclaré coupable ; qu'en vertu de l'article 66 de la Constitution, l'autorité judiciaire est gardienne de la liberté individuelle ; que le principe du respect des droits de la défense constitue un des principes fondamentaux reconnus par les lois de la République réaffirmés par le Préambule de la Constitution du 27 octobre 1946, auquel se réfère le Préambule de la Constitution de 1958 ; qu'il implique, notamment en matière pénale, l'existence d'une procédure juste et équitable garantissant l'équilibre des droits des parties ; qu'en matière de délits et de crimes, la séparation des autorités chargées de l'action publique et des autorités de jugement concourt à la sauvegarde de la liberté individuelle"), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1995/95-360-dc/decision-n-95-360-dc-du-02-fevrier-1995.10620.html>.

⁴⁷ Decision of 25 June 2013, Application no. 9043/05, Amiran NATSVLISHVILI and Rusudan TOGONIDZE against Georgia, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122692>.

First, it was questioned whether a sufficient number of adequately competent lawyers was available in Georgia. Secondly, both state and non-state interview partners confirmed that attorneys who really tried to protect client's interests would tend to be shut out of the process. To that end, prosecutors would "recommend" certain attorneys to suspects and would often offer more attractive deals to defendants represented by "cooperative" attorneys. In some cases, it is claimed, that the removal of a particular attorney's from the case was part of the plea bargaining agreement itself.⁴⁸

8.4.5 Accountability to the victims

A further way of reducing abuse of plea bargains, in particular by releasing the defendant from criminal liability to easily or by agreeing on too lenient sentences, is to strengthen the role of the victim in the procedure. This could be for example proper documentation of the victim's position in the plea bargain agreement and inclusion of the victim not only in cases against human life (see Article 697-1 par. 1 lit. h Criminal Procedure Code). In that sense, the plea bargain system could become less of a tool for "funding the state budget", but also a tool for ensuring compensation and redress of the victim (by including compensation into the deal whenever appropriate).

8.4.6 Transparency: sanctions

Whereas a judgement would, or at least should show the reasoning behind a sentence, such a reasoning is absent in plea agreements. Guidelines on calculating fines are not available. In addition, in certain cases cooperation of the defendant with the investigation is required. On the one hand, it is necessary that such cooperation agreements are formulated in a clear wording making it an enforceable contract. On the other hand it should be ensured that a judge and not the prosecution services decide whether the defendant was sufficiently cooperating. Transparency International noted in this context:

"However, in practice, the prosecutor gets to determine what constitutes cooperation. With personal gain in mind, the prosecutor can subjectively decide whether to conclude a plea bargaining agreement and what type of cooperation to request in return. Consequently, to limit subjectivity and better control prosecutors, the legislation must offer a more specific definition of cooperation."⁴⁹

8.4.7 Appeal options

The options for appealing a plea agreement are worded in an outstandingly narrow manner:

Article 679-6. Appealing against Court Ruling for Invalidating Procedural Arrangement

A court ruling for invalidating a procedural arrangement may be appealed against with a higher court if:

- a) the procedural arrangement has been made by fraud;*
- b) the accused person's right to receive qualified legal aid has been restricted;*
- c) the procedural arrangement has been made under duress.*

⁴⁸ TI on plea bargain

⁴⁹ See above footnote 40, at page 17.

It would be necessary to include violation of essential procedural safeguards into the (absolute) grounds for appeal, such as violation of proper documentation of the plea and procedure, lack of verification of confession, lack of instructing the defendant properly on the procedure, lack of documented replicable calculation of the agreed fine, etc. This would not only provide an incentive against for fully implementing what is written in the law, but seems to be taken not serious in practice; it would also simply ensure that violation of human rights (fair trial etc.) could be remedied and would not be dispatched through a contractual deal.

8.5 Release from criminal liability

According to Article 22 Criminal Procedure Code, Prosecutors have to initiate a criminal proceeding “upon existence of the elements of a crime”. Article 28 allows to “refuse to initiate criminal proceedings” or suspend them, if, among other, “the criminal event or act provided by criminal law is missing”. Whereas victims used to have the right to appeal to a court for reviewing the decision by the prosecutor to not open an investigation or to not prosecute a case, this option has been abolished in 2006 with the introduction of the adversarial system. Several interview partners argued that the right to an appeal by the victim would contradict the adversarial system and the possibility of plea bargaining. There are however two substantial objections to this position:

- In a state of law, any executive measure has to be subject to judicial control if it aggrieves a citizen (see in this context Council of Europe Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, adopted by the Committee of Ministers on 6 October 2000, par. 34: “Interested parties of recognised or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorising parties to engage private prosecution.”;⁵⁰ Article 6 European Convention on Human Rights, Article 47 European Union Charter of Fundamental Rights; see also for example jurisprudence by the German Constitutional Court: option for victim for proceedings to compel public charges fulfils the obligation of the State to protect human dignity.⁵¹
- Appeals by citizens would not necessarily need to limit the necessary discretion of prosecutors in initiating proceedings or striking a deal, but would only need to aim at abuse of such discretion (as for example in cases of pure inertia of prosecutors).

Some interview partners, as an example, have referred to the prosecution of violence connected to the 2013 gay parade in Tbilisi. As recorded by national and international media,⁵² clerical representatives and non-clerical offenders were involved in the violent breach of public peace. Given the stark resentment in overall society against gays and the strong position of the church, prima facie, victims of the violence would expect the prosecution “having” to treat priests and non-clerical offenders rather favourably. The mere presence of a legal remedy allowing victims to challenge in court any possible or perceived inertia or abusive leniency by the prosecution service would have the following effects:

- Preventing possible abuses in the prosecution service;

⁵⁰ <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM>.

⁵¹ Decision of 28 March 2002, 2 BvR 2104/01, par. 23, http://www.bverfg.de/entscheidungen/rk20020328_2bvr210401.html (in German), with regards to Article 172 German Criminal Procedure Code, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1420 (English).

⁵² See for example <http://www.bbc.co.uk/news/world-europe-22571216>.

- Lowering the perception of corruption by taking away a feeling of powerlessness towards the prosecution services.

9 SUPERVISION OF OTHER AGENCIES

This risk assessment did not examine in detail how the Prosecution Services carry out their obligation of supervising the investigations carried out by intelligence agencies and of detention issues. However, it is obvious that the same risk factors concerning control of prosecutorial power by the judiciary and to some lesser extent by attorneys seem to apply to both areas. In particular, it would not be explicable how “resort to pre-trial detention” could be “virtually systematic”, and how decisions to impose this measure would “tend to lack individualised reasoning based on each case”.⁵³ In addition, some interview partners have pointed to cases of police torture in the past. Only by investigating such accusations in a proper and transparent way could the perception of possible co-accountability of prosecution services be clarified.

10 OVERSIGHT

Internal oversight would include questions such as document management system and supervision of the work by superiors.

10.1 Complaints management

Complaints are submitted directly to the General Inspection, to the General Prosecutor, or to other state structures receiving complaints and forwarding them to the General Prosecutor. Complaints can be made anonymous and are followed up by the General Inspection in the same way as open complaints. Complaints come mainly from citizens, in addition from media reports. There are some occasions where judges or prosecutors would also lodge a complaint; this would be a rather rare case though: judges have other means of rectifying prosecutorial misconduct during a trial, whereas prosecutors normally would keep a corps spirit where complaining about each other would be perceived as “ratting”. As for lawyers, state and non-state stakeholders reported that complaints were not common during the last years, as “uncooperative” lawyers would be retaliated against by being for example excluded from the “list” of preferred plea bargaining lawyers.

Information on complaints is not published regularly or systematically. There was no data made available to the experts of this risk assessment.

10.2 Inspection

The General Inspection of the Prosecution Services is directly accountable to the Chief Prosecutor. It becomes active upon individual complaints from within the Prosecution Services or from without.

In addition, the Inspection conducts also systematic inspections on different topics such as discipline or murder cases, and conducts trial monitoring. Findings of the inspections are documented and subsequently reported to the Chief Prosecutor including a recommendation on further action. In case of mere procedural violations, normally the relevant head of division will be informed. In case of disciplinary violations, the General Inspection will recommend that the Chief Prosecutor will hand down a disciplinary sanction.

⁵³ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, at par. 10 https://wcd.coe.int/ViewDoc.jsp?id=1809789#P76_14021.

With the further separation of the Prosecution Services from the Ministry of Justice, financial audits are not anymore carried out by the Ministry of Justice, but by the General Inspection of the Prosecution Services. The General Inspection is in the process of establishing procedures for this new task.

There was no data made available to the experts of this risk assessment.

10.3 Disciplinary enforcement

In most cases, the Chief Prosecutor follows the recommendation of the General Inspection of handing down a disciplinary sanction. The recommendation by the General Inspection does not include the type and gravity of the sanction, which is chosen by the Chief Prosecutor. It is interesting to note that there is no reasoning provided for the choice of sanction.

There was no data made available to the experts of this risk assessment.

10.4 Whistleblowers

Amendments to the Public Service Law of 2009 (Article 73-5 par. 4) oblige all public servants to report to their superior evidence or grounded suspicions of illegal activities of another public servant (or to a law enforcement authority, in case there is no superior). These amendments also provide that the superior in question will not reveal the entity of the whistleblower, will not damage his/her reputation and will protect him/her. In addition, amendments to the Law on Conflict of Interest and Corruption in Public Service (Chapter V¹) entered into force on 1 June 2009, which stipulate that whistleblowers reporting illegal activities (or conduct contrary to that which is required of public employees) in good faith are not to be discriminated against, intimidated, threatened and may not be dismissed or temporarily discharged of their duties for the duration of the investigation. Furthermore, no disciplinary, civil, administrative or criminal proceedings may be instigated against whistleblowers (unless the public institution can prove that there is no relation to the act of whistle blowing). In 2011, GRECO has assessed these amendments as satisfactory.⁵⁴ The Ministry of Justice has prepared a draft law in order to broaden the scope of the whistleblower protection. The draft law is subject to a separate Technical Paper prepared within this Project.⁵⁵

10.5 Prosecutorial Council

A Prosecutorial Council including representatives from diverse sectors of the State might be an option to increase oversight of the Prosecution Services in Georgia. However, this would be only one out of several other options of doing so. The Venice Commission has stated in 2010 on this subject matter:

⁵⁴ Second Evaluation Round, Addendum to the Compliance Report on Georgia, 27 May 2011, Greco RC-II (2008) 9E, par. 23 f., [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)9_Add_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)9_Add_Georgia_EN.pdf).

⁵⁵ Of September 2013, to be published at: http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_TP_default_en.asp.

“A Prosecutorial Council is becoming increasingly widespread in the political systems of individual states. A number of countries have established prosecutorial councils⁶ but there is no standard to do so.”⁵⁶

Similarly, the Consultative Council of European Prosecutors (CCPE)⁵⁷ has not formulated any standard on this topic. However, its President has recently stated:

“[A]ll the national systems within the Council of Europe enjoy full legitimacy: no single public prosecution model can be defined, even as a preference or guideline.”⁵⁸

As mentioned earlier (see above 5.1), given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it seems worth considering a form of participatory control for the prosecution services.

10.6 Transparency and public awareness

Until today, there is no case statistics available on the website of the Chief Prosecutor, including the number plea-bargains, a conviction rate (broken down to plea bargain agreement and trial procedures). Some statistical data is provided to the Statistical Agency to be included in the yearly report of Georgia. Given the widespread public perception of abusive conviction rates and plea agreements, it would seem recommendable for the Prosecution Services to engage in a more active reporting to the public. It would show an attitude of public accountability and openness and would allow interested parties such as NGOs to monitor how key indicators develop over time.

Similar observations can be made about complaints and disciplinary statistics. As for disciplinary sanctions, some interview partners from within the Prosecution Services raised concern that their publication would provide food for a negative image in the public and for sensational reporting in the media. On the other hand, showing disciplinary action to the public and presenting it in the right way could counteract a perception of impunity and inertia.

NGOs have faced difficulties in the past, in particular with certain courts, in reviewing cases of plea bargaining. The courts reportedly had difficulties in identifying cases settled through plea bargaining. If this was true it would raise serious doubts about whether courts maintain a sufficient system of case management, statistics, and oversight. Transparency International concluded in 2010:

“No comprehensive research has yet been conducted on the functioning of the plea bargaining in Georgia and general information is not readily accessible to the public. Taking this into consideration, we believe the courts should facilitate the implementation of such initiatives. Transparency of the courts is a necessary

⁵⁶ Venice Commission, Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service, January 2011, par. 42,

www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf.

⁵⁷ http://www.coe.int/t/dghl/cooperation/ccpe/opinions/default_en.asp.

⁵⁸ 18th IAP Conference - Plenary 4: “Essential ethical standards for prosecutors – How to assure integrity”, Antonio Mura, President of the Consultative Council of European Prosecutors (CCPE), Deputy Prosecutor General at the Italian Supreme Court, Council of Europe Standards on Public Prosecutors, Moscow (Russia), 12th September 2013, <http://www.coe.int/t/dghl/cooperation/ccpe/conferences/2013/Mura%20-%20Moscow%20130903.pdf>.

condition for the study of legal practices and for public oversight of the judicial system.”⁵⁹

The Public Defender (Ombudsman) of Georgia has also complained about a lack of data with regards to the Prosecution Services:

“The requested information neither on the number of plea-bargains nor on the number of preliminary investigations terminated (indicating the reasons of termination), had been provided by the Chief Prosecutor’s Office.”⁶⁰

Given the apparent public perception of an abusive plea bargaining in Georgia it would seem indispensable to support efforts by NGOs, academia, and other interested stakeholders in researching and analysing cases; thus, further risk factors could be identified and eliminated for the future.

11 TRAININGS, ASSESSMENTS, AND AWARENESS

Prosecutors undergo 60-64 hours of training per year. The trainings focus in particular on new legal developments such as law amendments. All trainings finish with an exam, which can be retaken in case of failure. However, should a prosecutor fail the same exam two times, he/she would normally be dismissed for lack of professional qualification. As stated earlier, ethics and ethical dilemmas in daily work are not part of the training curricula at all. This is a quite striking finding as prosecutors walk a particularly fine line in ethics in their daily work, which is arguably among the most challenging professional situations: should they act too strict trying to “score a conviction” they risk violating the human rights of the suspects, defendants or witnesses; should they act too lenient they risk letting a guilty murderer walk free.

The General Inspection reported that it was regularly informing the Chief Prosecutor about possible risk areas by using data from trial monitoring, investigations, and pre-planned inspections.

The Prosecution Service is currently finishing a new web-presence. A victim coordinator explains proceedings to victims. In addition, prosecutors reportedly have been trained on how to communicate to the public.

Research on and awareness of risks and real life cases of prosecutorial misconduct seems to be in the early stages of development and far from a critical review, public understanding, and cross-cutting control as would be the case in countries with a long standing tradition of adversarial systems. As stated earlier, it was conspicuous how little if at all any awareness existed during the interviews about the typical forms and risks of misconduct encountered in the United States related to the adversarial system.⁶¹

In addition, active outreach to vulnerable minorities (for religious reasons or because of sexual orientation), for example by designating a contact officer or commissioner, seems worth considering. Such an officer could also counteract biases within the services and protect the

⁵⁹ Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010, page 14, <http://transparency.ge/en/node/1061>.

⁶⁰ Public Defender of Georgia, Annual Report 2011, page 232, www.ombudsman.ge/files/downloads/en/hcqkqyhb1wldxcayqiwg.pdf.

⁶¹ See above at Chapter 8.3.2, note 34.

rights of victims in cases where a legal remedy would not be available or feasible.⁶² An example of such a case would be the following as reported by Transparency International:

“[T]he Prosecutor’s Office released a statement, alleging that a former high-level official of the Ministry of Defence’s Military Police department secretly filmed gay men, some of them figures of public life, while having sex. The Prosecutor’s office alleged that the videos were then used by the official to blackmail prominent individuals into publicly supporting the previous government led by the United National Movement party and to coerce payments from the victims. The authorities released some of the secretly recording videos of men having intercourse to media outlets without altering the sound, only pixeling the faces and bodies of the persons depicted. A number of television and online outlets aired the videos and posted them on Youtube, which, in the opinion of various civil society groups, disregarded the privacy rights and dignity of the individuals in these videos, whose voices might be identified by their friends and relatives. LGBT Georgia, an organisation fighting against homophobia, has expressed its deep concern over the release of the videos. Questions remain about with what reason the Prosecutor’s Office released the videos to the public, as the authorities appeared to have sufficient evidence to fully investigate the case. In our opinion, there is no public interest in seeing these secretly recorded videos, while there is a strong interest of the people affected by this case to have their privacy protected.”⁶³

⁶² See for example the New York County District Attorney’s Office’s “Liaison to the Gay and Lesbian Community”: “The liaison serves as an advocate for Gay-Lesbian-Bisexual-Transgender crime victims and as a point of contact for individuals or organizations seeking information about specific criminal cases or broader issues related to the criminal justice system”, <http://manhattanda.org/contact-us>.

⁶³ <http://transparency.ge/en/post/general-announcement/ti-georgia-calls-prosecutor-s-office-and-media-outlets-to-respect-privacy>.

12 RECOMMENDATIONS

Several mechanisms are in place for countering cases of abuse of power in the Prosecution Services. Particular strong points seem to be a functioning and dedicated General Inspection system as well as intensive trainings on legal topics. The Prosecution Services would probably benefit from considering the following points:

1. Plea bargaining
 - a. Ensuring a more far reaching written documentation of the whole plea bargaining procedure, the reasoning of the judge why he/she would consider the content of the plea deal “corroborated” and “just” (Article 213 par. 3 CPC), and, in particular, how he/she has verified any confession by the defendant and what additional evidence contradicts and supports the confession. In other words, the plea bargain should rather resemble a “mini-trial” of three equal stakeholders (judge, prosecutor, defence) on the merits of the case, than a contract agreement on the guilt and sentence accompanied only by instructions on the rights.
 - b. Establish an incentive for ensuring exact and wide implementation of requirements for proper plea bargaining such as adding violation of all procedural relevant rules of plea bargains as an absolute ground for appeal (if not dutifully counteracted already by the judge of 1st instance); this would include violations of essential procedural safeguards such as violation of proper documentation of the plea and procedure, lack of verification of confession, lack of instructing the defendant properly on the procedure, lack of documented replicable calculation of the agreed fine, etc.
 - c. Providing judges with the power to raise or decrease plea sentences.
 - d. Review possibilities for formulating agreements with defendants on future cooperation in a clear wording making it an enforceable contract leaving no discretion; ensure that the courts and not the prosecution services has the last decision on whether the defendant was sufficiently cooperating; make unclear wording of agreements with defendants on future cooperation grounds for appeal.
 - e. Make it compulsory to calculate agreed and proportional fines based on objective criteria and on the principle of compensation of victims, and to document the reasoning behind the calculation.
 - f. Ensure the availability of statistical data and case material for research and analysis of plea bargaining cases including support of work by NGOs, academics, and other interested parties from society at large.
 - g. Consider interim measures including immediate suspension of plea bargaining until further reform of the system and until defendants have a real choice of alternatives (this includes but is not limited to cases of less minor crimes).
 - h. Consider permanently limiting plea bargaining in cases of less minor crimes (such as cases where a prison sanction would be expected), inter alia by extending the inquisitorial role of the judge into a summary evidence procedure, and by having the judge reviewing the substance of the confession.
2. Ensure that all prosecutorial decisions – as basically any other state measure – are subject to judicial review (whenever they affect essential interests of a victim), balancing the need for prosecutorial discretion with the need of oversight and accountability, and with the gravity of the crime; this would require to consider including measures such as

non-opening of procedures, plea bargaining, dropping charges, investigative measures, opening investigations.

3. Make interactive ethical trainings part of the regular trainings of prosecutors, using case scenarios on ethical dilemmas based on real life cases in Georgia. Among the objectives of the trainings should be to counteract a culture of “scoring high numbers of convictions at any prize”. Trainings should also include joint trainings involving judges and members of the bar in order to establish a common mentality of values in the criminal procedure system in Georgia.
4. Complement the legislative transplantation of the adversarial system into (continental based) Georgian Criminal Procedure by awareness raising and research on risks and real life cases of prosecutorial misconduct typical for countries with a long standing tradition of adversarial systems.
5. Introduce a system of performance appraisal for prosecutors based to a substantial extent on qualitative criteria; the system should ensure that it would counteract adverse incentives of the past (“scoring high numbers of convictions”) and would reward prosecutors who in appropriate cases safeguard essential procedural rights of defendants or counteract procedural violations. Similarly, bonus payments, if admissible in law-enforcement at all, must continue to represent a small percentage of the salary and must be based on objective and transparent criteria and decisions.
6. Revise high minimum sentences foreseen in the Criminal Code that would seem to exert problematic pressure upon any suspect to submit to a plea proposal, or would reduce a judge’s discretion and role in the process disproportionately.
7. Transparency
 - a. Review the possibility of improvements with regards to making key indicators and statistical data public and to engage in a more active reporting to the public.
 - b. Publication of complaints and disciplinary statistics might provide food for a negative image in the public and for sensational reporting in the media. On the other hand, showing disciplinary action to the public and presenting it in the right way could counteract a perception of impunity and inertia.
 - c. Ensure the availability of statistical data and case material for research and analysis of cases of prosecutorial misconduct including support of work by NGOs, academics, and other stakeholders.
 - d. With regard to above Recommendation 2, as an intermediary measure, create full transparency on all decisions concerning the non-prosecution of especially debated cases, such as case of abuse by the police, the prosecution services, or complaints on events such as law enforcement against religious minorities or the Tbilisi gay parade 2013.
8. Disciplinary sentences should include also reasoning on sentences handed down, as only this would allow de facto for the necessary appeal option in all cases.
9. Adversarial system
 - e. Monitor and evaluate whether there are benefits of transplanting the adversarial system into Georgian Criminal Procedure and whether they outweigh the additional risks and disadvantages with regards to risks of abuse of power. It would probably seem too far reaching for an assessment of this size and means to suggest reversing the whole criminal law reform introducing the adversarial system into Georgia, and reversing everything back to an inquisitorial system

would put the legal sector again through a costly transformation process. However, continuing to transplant this alien concept into Georgian justice and society as a whole will entail risks of abuse for years to come; it is thus recommended to at least carefully review the shortcomings of this reform, the potentials for abuse, and to make use of the findings for ensuring the availability of sufficiently empowered defence for citizens of all “classes” and regions, for vocational training, educational curricula, and for awareness measures towards society.

- f. Foster a culture where even during trials prosecutors will not stick to the “accusatory direction” should there be a certain degree of reasonable doubts about the guilt of the defendant.
10. Active outreach to vulnerable minorities (such as for religious reasons or because of sexual orientation), for example by designating a contact officer or commissioner, seems worth considering. Such an officer could also counteract biases within the services and protect the rights of victims in cases where a legal remedy would not be available or feasible.
 11. Given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it seems worth considering a form of participatory control for the prosecution services; such a measure might also improve the perception and understanding of the work of prosecutors by other sectors and the public at large.

13 ANNEX

13.1 Interviews

Monday, 23 September 2013, Tbilisi
<ul style="list-style-type: none">- Ministry of Justice- Transparency International Georgia- Bar Association- Young Lawyers Association
Tuesday, 24 September 2013, Tbilisi
<ul style="list-style-type: none">- Prosecution Services<ul style="list-style-type: none">o Department of the Procedural Administration of Investigation and the Supervision over the Criminal Intelligence Actions in the Public Security Agencies of the Ministry of Internal Affairs of Georgia, Special State Protection Service, Intelligence Serviceo General Inspectiono Investigation Divisiono Department of Human Resource Management and Development
Wednesday, 25 September 2013, Tbilisi
<ul style="list-style-type: none">- Prosecutor's Office<ul style="list-style-type: none">o Division of statistics, analysis and innovative projectso Department of Supervision over Prosecutorial Conduct in Regional Territorial Authorities of the Ministry of Internal Affairs of Georgia- GIZ, Advice on Legal and Judicial Reform Project- High Council of Justice
Thursday, 26 September 2013, Tbilisi
<ul style="list-style-type: none">- Prosecution Services and Ministry of Justice (debriefing)

A request for a meeting with one NGO remained unanswered; a scheduled meeting with another NGO was cancelled on short notice due to conflicting obligations and schedules by that NGO.

13.2 Law on Prosecution Services (as of 30 May 2013)

(Version including amendments as of 30 May 2013; unofficial translation provided by the Georgian authorities)⁶⁴

The Law of Georgia on the Prosecution Service

Chapter I

General Provisions

Article 1

The Prosecution Service of Georgia

1. The Prosecution Service of Georgia (*hereinafter – the Prosecution Service*) is the state subordinated authority within the system of the Ministry of Justice of Georgia which exercises its powers in compliance with the legislation of Georgia.
2. The establishment of special or extraordinary *Prosecution Service* is prohibited.
3. The Minister of Justice of Georgia (Hereinafter- the Minister of Justice) upon the proposal of the Chief Prosecutor of Georgia (Hereinafter- the Chief Prosecutor) has a power to set up *ad hoc* specialized Prosecution Service within the common jurisdiction determined by the Georgian legislation and under the rule established by law define its powers and the term of activities.

Article 2

Definition of Terms

The terms referred to in this law shall have the following meanings:

- a) Prosecutor – the Chief prosecutor, his/her first deputy prosecutor and other deputy prosecutors, the prosecutors of the Autonomous Republics of Abkhazia and Adjara, the prosecutor of Tbilisi City, the district prosecutor, the regional prosecutor, the prosecutor of specialized prosecutor's office, the prosecutor of the cases of extraordinary significance, the senior prosecutor, the prosecutor, the prosecutor – criminalist, the prosecutor - intern, as well as the heads and deputy heads of departments, units, divisions and their equal structural divisions of the prosecution service who are directly performing the functions foreseen by the criminal procedure legislation of Georgia, and in some cases the employee of the Prosecution Service, who directly does not fulfill the functions of the criminal procedure legislation of Georgia, but who have passed the qualifying examination of the employees of the prosecution service and has been granted the Prosecutor's authority in accordance with the Chief Prosecutor's decision;
- b) The Investigator of the Prosecution Service – Senior Investigator of Extraordinary Cases, Investigator of Extraordinary Cases, Senior Investigator, Investigator, Intern-Investigator;
- c) The employee of the Prosecution Service – Prosecutor, the Investigator of the Prosecution Service, the Legal Advisor of the Prosecution Service, the Intern of the Prosecution Service, the Assistant Employee of the Prosecution Service, the Supernumerary Officer of the Prosecution Service;
- d) Intern of the prosecution service – a person with a higher Legal Education assigned by the Chief Prosecutor according to the rule prescribed by the law as an intern on the position of the prosecutor of the structural unit, the senior investigator and the

⁶⁴ Georgian version: www.laws.codexserver.com/3512.DOC.

investigator or without this positions, at the Chief Prosecutor's Office of Georgia, at the prosecutor's offices of the Autonomous Republics of Abkhazia and Adjara, at the prosecutor's office of Tbilisi City, at the district prosecutor's offices, at the regional prosecutor's offices, at the specialized prosecutor's offices, who has passed the qualifying exam of the employees of Prosecution Service;

- e) The Legal Advisor of the Prosecution Service – a person who is appointed at the position envisaged by the staff of the Department, Unit, Division and the Structural Unit equal to them and whose function is not to carry out the competencies provided for in the Criminal Procedure Legislation. The Legal Advisor has not the same functions as carried out by the assistant employee or supernumerary officer;
- f) The Assistant Employee of the Prosecution Service – technical employee who is hired with the labor contract to the position of assistant employee of the Prosecution Service envisaged by the staff;
- g) The Supernumerary Officer – the person who is received for a certain period by appointment or labor contract to the Prosecution Service in order to fulfill inconstant tasks.

Article 3 Tasks of the Prosecution Service

1. In accordance with the rule established by the law the Prosecution Service:

- a) Carries out prosecution;
- b) In order to exercise prosecution carries out procedural supervision at the stage of preliminary investigation;
- c) Conducts full preliminary investigation in the cases envisaged by law;
- d) Supervises the precise and homogenous observance of the legal requirements in the work of the operative-intelligence agencies;
- e) Verifies the facts of the violation of the rights of the persons who are deprived of their liberty and carries out procedural duties at the places of detention, pre-trial detention and also where the freedom is restricted and at other institutions executing the penitentiary functions or any other punishment measure imposed by court;
- f) Participates in the court hearings of the criminal case as a party and supports state prosecution;
- g) Coordinates the fight against criminality;
- h) In the name of the State participates as a plaintiff in the discussion of the cases to be examined under the rules of civil litigation concerning the racketeering group, racketeer, official, the member of the realm of thief-in-law, human trafficker, the promoter of drug diffusion, also regarding the submission of illegal, undocumented and racketeering property of the person convicted under Article 194 §3 (c) of the Criminal Code of Georgia to the State;
- i) Implements operative-criminal activities under the rules established by the legislation of Georgia.

2. The obligations which are not envisaged by the Constitution, the given law or other legislative acts shall not be imposed on the Prosecution Service.

Article 4 Principles of the Activities of the Prosecution Service

The principles of the activities of the Prosecution Service are:

- a) legality;
- b) the protection and respect of the rights and freedoms of natural entity and the rights of legal person;

- c) professionalism and competency;
- d) objectivity and impartiality;
- e) Unity and centralization, subordination of all subordinate prosecutors and other employee of the Prosecution Service to the Chief Prosecutor;
- f) political neutrality;

Article 5 Legal Basis of the Activities of the Prosecution Service

The legal bases of the activities of the Prosecution Service are: the Constitution of Georgia, the International Treaties and Agreements of Georgia, the given law and other legal acts.

Article 6 the International Obligations of the Prosecution Service

The prosecution service, within its competence, participates in resolving the issues related to the International treaties and agreements of Georgia.

Chapter II

The System and Organization of the Prosecution Service

Article 7 System of the Prosecution Service

1. The system of the Prosecution Service is made of: the Office of the Chief Prosecutor of Georgia (*Chief Prosecutor*) the Prosecution Services of the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecution Service, District Prosecution Services, Regional Prosecution Services, also Specialized Prosecution Services envisaged by Article 1 §3 of the same law. The term of the authorization of the Prosecutors of the Specialized Prosecution Service is determined by the term of the authorization of the Specialized Prosecution Service.
2. The structure of the prosecution service bodies, the staff positions and the number of the positions are approved by the Minister of Justice upon the proposal of the Chief Prosecutor.

Article 8 the Competence of the Ministry of Justice

1. The Minister of Justice for the purposes of this Law:
 - a) Upon the proposal of the Chief Prosecutor creates and abolishes bodies of the prosecution service, determines territory of their activity and defines competencies of the structural units;
 - b) Based on the Law and for its implementation issues the normative and individual legal acts – orders, instructions and directives;
 - c) With regard to priority of the human rights and freedoms, upon the proposal of the Chief Prosecutor, approves the guideline principles of the criminal policy;
 - d) Upon the proposal of the Chief Prosecutor approves the regulations of the bodies of the prosecution service and their structural units and the rule of internship in the bodies of prosecution service;
 - e) Upon the proposal of the Chief Prosecutor approves the Code of Ethics for the employees of the prosecution service;
 - f) Upon the proposal of the Chief Prosecutor approves the amount of remuneration of the employees of the prosecution service, within the framework of the allocated salary fund;
 - g) Upon the proposal of the Chief Prosecutor elaborates the proposals for the financing and material-technical maintenance of the prosecution service;

- h) Requests the materials of respective criminal case from the body of the Prosecution Service at the European Court of Human rights and at other international courts, tribunals and arbitrages, within the limits of the State Representation of Georgia;
 - i) Considers within its competence the complaints and applications of natural and legal entities;
 - j) Fulfills other authorities assigned to him/her in accordance with the legislation of Georgia;
2. The Minister of Justice does not interfere in the decisions made and actions performed by the Prosecution Service related to certain criminal cases investigations and/or criminal prosecution.
3. In case of absence the Minister of Justice or termination of authority the powers foreseen by the first Paragraph of this Article shall be implemented by the first deputy of the Minister of Justice and in case of absence or termination of authorities of the first deputy of the Minister of Justice– one of the deputies of the Minister of Justice.
4. Order or any other act of the Minister of Justice may be appealed in the court based on the motive of irrelevance to the Constitution of Georgia or the Law.

Article 9 the Chief Prosecutor’s Office

1. Chief Prosecutor’s office is headed by the Chief Prosecutor who is appointed to and dismissed from the position by the President of Georgia upon the proposal of the Minister of Justice.
2. Chief Prosecutor has the first deputy and other deputies who are appointed to and dismissed from the position by the Chief Prosecutor.
3. The Chief Prosecutor:
- a) Organizes and manages the activity of the Prosecution Service s/he is responsible for the activities of the Prosecution Service;
 - b) Appoints to and dismiss from the positions of the prosecutors of the Autonomous Republics of Abkhazia and Adjara, the district prosecutors and the prosecutors of Tbilisi City and the subordinate prosecutors, investigators and other employees of the Prosecution Service;
 - c) Determines the functional duties of his/her first deputy, and the deputies, also the functional duties of the bodies of the Prosecution Service and their structural divisions;
 - d) Carries out prosecution according to the rule prescribed by the Law against the President of Georgia, the member of the Parliament of Georgia, the Chairperson of the Supreme Court of Georgia, the judge of the common courts of Georgia, the Chairman and member of the Constitutional Court of Georgia, the member of the Government of Georgia, the Public Defender of Georgia, the Auditor General, the President of the National Bank of Georgia, the council member of the National Bank of Georgia, Ambassador Extraordinary and Plenipotentiary of Georgia and Envoy, the supreme military person holding an office or officer having the higher special ranks or the equivalent person, the prosecutor, the investigator of the Prosecution Service or the advisor of the Prosecution Service, in case of commission of a crime by them;
 - e) Assigns a specially authorized prosecutor, who according to “the Law of Georgia on Counterintelligence Activities” shall review the applications of the special service implementing the counterintelligence activities and the Counter-terrorist Center of the Ministry of Internal Affairs of Georgia on the issue of the implementation of the operative –technical measures;
 - f) Assigns a specially authorized prosecutor, who files an application to the court on the recognition of an organization as a terrorist organization;
 - g) Represents the Prosecution Service at the supreme bodies of the State Authority and with respect to the international organizations and other State law enforcement bodies;
 - h) Based on Law and for its implementation issues the individual legal acts – orders, instructions and directives;
 - i) Abolishes the illegal orders, instructions and directives issued by the subordinated prosecutors;

- j) Determines the issue of applying the disciplinary sanction towards the employees of the Prosecution Service;
 - k) Submits the guideline principles of the criminal policy for approval to the Minister of Justice;
 - l) Submits to the Minister of Justice the drafts of legal acts on creation and abolishment of the bodies of Prosecution Service, determination of the territory of their activity and establishment of competences of the structural units;
 - m) Submits to the Minister of Justice for approval the regulations of the bodies of the Prosecution Service and their structural divisions and the rules of internship at the bodies of Prosecution Service;
 - n) Submits to the Minister of Justice for approval the Code of Ethics of the employees of the Prosecution Service;
 - o) Submits for approval to the Minister of Justice the amount of the remuneration within the allocated salary fund;
 - p) According to the rule prescribed by the Law and within the limits of own competences assigns to and deprives from the employees of the Prosecution Service the State special ranks;
 - q) Elaborates the proposals on the financing and material-technical maintenance of the Prosecution Service and submits them to the Minister of Justice ;
 - r) Elaborates relevant measures with respect to the informational security;
 - s) Provides statistical reports, organizes the generalization and improvement of prosecutorial and investigative practices, dissemination and implementation in practice of the advanced experience and scientific-technical means;
 - t) Creates the consultation councils for supporting the activities of the Prosecution Service;
 - u) Reviews the complaints and applications of the legal and natural persons;
 - v) Fulfills other authorities assigned to him/her in accordance with the legislation of Georgia;
4. In case of absence or termination of authority of the Chief Prosecutor his/ her duties shall be fulfilled by the first deputy of the Chief Prosecutor and in case of absence or termination of the authorities of the first deputy of the Chief prosecutor—one of the deputies determined by the Chief prosecutor.
5. The order or other act of the Chief Prosecutor may be appealed in the court based on the motive of its irrelevance with the Constitution of Georgia or the Law.
6. In the Chief Prosecutor's Office are departments, units and other structural divisions and subunits which have the heads and may have the deputy heads of the structural units (subunits), the prosecutors of the cases of an extraordinary importance, the senior prosecutors, the prosecutor-criminalists, the prosecutors, the senior investigators of the cases of an extraordinary importance, the investigators of the cases of an extraordinary importance, the advisors and specialists.

Article 10 the Prosecutor's Offices of the Abkhazia and Adjara Autonomous Republics

1. The Prosecution Services of the Autonomous Republics of Adjara and Abkhazia are headed by the Prosecutors of the Autonomous Republics of Adjara and Abkhazia respectively who are appointed and dismissed from the offices by the Chief Prosecutor.
2. The prosecutors of the Abkhazia and Adjara Autonomous Republics have their deputies, who are appointed to and dismissed from the offices by the Chief Prosecutor.
3. In the Prosecutor's Offices of the Abkhazia and Adjara Autonomous Republics are the divisions and other structural divisions which have their heads and may have the deputies of the structural divisions, the senior prosecutors and the prosecutor-criminalists, the prosecutors, the senior investigators, the investigators, the advisers and specialists.
4. The Chief Prosecutor assigns to and dismisses from the positions of the employees of the Prosecutor's Offices of the Abkhazia and Adjara Autonomous Republics;

5. The prosecutors of the Abkhazia and Adjara Autonomous Republics within the limits of their competences issue the individual legal acts – orders, implementation of which is mandatory for the subordinate prosecutors and other employees of the Prosecution Service.

Article 11 the Prosecutor’s Office of the Tbilisi City and the Regional Prosecutor’s Offices

1. Tbilisi Prosecution Service and Regional Prosecution Service are headed respectively by Tbilisi Prosecutor and the Regional Prosecutor who are appointed and dismissed from their positions by the Chief Prosecutor.
2. Regional Prosecution Service is established due to the territorial units. The territory under the jurisdiction of the Regional Prosecution Service shall be determined by the Minister of Justice upon the proposal of the Chief Prosecutor.
3. Tbilisi and Regional Prosecutors shall have their deputy prosecutors who shall be appointed and dismissed from their positions by the Chief Prosecutor.
4. Tbilisi Prosecution Service and Regional Prosecution Service shall include the Departments and other structural divisions which shall have heads and may also have deputy heads of the structural divisions, senior prosecutors, criminalist-prosecutors, prosecutors, senior investigators, investigators, advisors and specialists.
5. The employees of the Prosecutor’s Office of Tbilisi City and the regional prosecutor’s offices are appointed to and dismissed from the positions by the Chief Prosecutor.
6. The prosecutor of Tbilisi City and the regional prosecutors issue the individual legal acts within the limits of their competences –orders, implementation of which is mandatory for the employees of their subordinate prosecutor’s offices.“

Article 12 District Prosecution Services

1. District Prosecution Services are headed by the District Prosecutors who shall be appointed and dismissed from their positions by the Chief Prosecutor.
2. The District Prosecution Service is established due to the territorial units. The territory under the jurisdiction of the District Prosecution Service shall be determined by the Minister of Justice upon the proposal of the Chief Prosecutor.
3. The District Prosecutors may have their deputies who shall be appointed and dismissed from their positions by the Chief Prosecutor.
4. The District Prosecution Services shall have prosecutors, office managers and may have special employees who are appointed and dismissed from their positions by the Chief Prosecutor.
5. The District Prosecutors within its competency shall issue individual legal acts – orders that shall be executed by the subordinate employees of the respective Prosecution Service.

Article 13 Forms of Subordination of the Subordinate Prosecutor to the Supervising Prosecutor

1. The subordination of the subordinate prosecutor to the supervising prosecutor shall have the following meanings:
 - a) The compulsiveness of the execution of supervising prosecutor’s instructions given to the subordinated prosecutor concerning the organization of the Prosecution Service and regarding the issues related to its activities;
 - b) The duty of the subordinated prosecutor to report to the supervising prosecutor in the course of performing their office duties;

- c) In case of necessity the fulfillment of the duties of the subordinated prosecutor by the supervising prosecutor or imposing his/her certain authorizations on the subordinated prosecutor;
 - d) The supervising prosecutor shall abolish and amend the acts and decisions of the subordinated prosecutor or replace them with other decisions and acts;
 - e) The supervising prosecutor shall examine the appeals on the decisions and acts of the subordinated prosecutor;
 - f) The subordinated prosecutor shall submit the report on his/her activities, information, cases and materials to the supervising prosecutor;
2. The Chief Prosecutor has the right to impose other forms of subordination of the subordinated prosecutor to the superior prosecutor, which are not inconsistent with the Constitution of Georgia or the Law.
 3. The subordinated prosecutor and other employees of the Prosecution Service are obliged to fulfill all lawful requirements and instruction of the supervising prosecutor.

Chapter III

The Trends of the Activities of the Prosecution Service

Article 14 the Implementation of Prosecution

1. The Prosecution Service implements the prosecution according to the rules and within the frames established by the Legislation of the Criminal Procedure Law.
2. The Prosecution Service in order to provide prosecution does procedural supervision at the stage of the investigation;

Article 15 Investigation

The Prosecution Service carries out comprehensively the investigation and may conduct operative-criminal activities in the cases envisaged by the Procedure Legislation and within the established rules concerning criminal and other illegal acts.

Article 16 Supervision over the precise and homogenous realization of the activities of the Operative Counter Criminal Agencies

1. The prosecutor during the activities of the Operative Counter Criminal Agencies supervises over the operative counter criminal measures taken by the Operative Counter Criminal Agencies and the legality of their decisions within this process in order to provide the precise and homogenous realization of the requirements set by the Legislation on the Activities of the Operative Counter Criminal Agencies.
2. The legitimacy and validity of the order issued by the judge concerning the authorization, continuation and suspension of the operative counter criminal measures is not the subject of the prosecutor's surveillance.
3. The data of the person who renders and rendered classified assistance to the Operative Counter Criminal Agency, cooperates or cooperated with it, also the tactic of obtaining operative counter criminal information, organization, operative processing and the classified part of the operative counter criminal registration of the cases are not the subject of the prosecutor's surveillance.
4. The right of access to the secret documents of the cases of operative processing and the cases of operative-investigative registration have the Chief Prosecutor, his/her first deputy and deputies, the heads of structural divisions of the chief prosecutor's office

and their deputies, the prosecutors of Abkhazia and Adjara Autonomous Republics and their deputies, the district prosecutors and their deputies, the prosecutor of Tbilisi City and his/her deputies and the district prosecutors with respect to their own activity territories, as well as other prosecutors determined by the Chief Prosecutor, his/her first deputy and deputies, prosecutors of the Abkhazia and Adjara Autonomous Republics, the district prosecutors, the prosecutor of Tbilisi City and the regional prosecutors.

Article 17 Protection of Individual Rights and Performing Procedural Duties at the institutions executing arrest, pre-trial detention, deprivation or the restriction of liberty

1. Prosecutor shall have the following rights:

- a) In order to comply with the law to inspect the institutions executing arrest, pre-trial detention, deprivation or the restriction of liberty and other penitentiaries where the penalties and constraining measures of the court are executed;
- b) In order to exercise the authorizations envisaged by this Article (a) to enter the appropriate institutions at any time;
- c) To inquire the persons who are detained, arrested, convicted and the ones sentenced constraining measures;
- d) To get familiarized with the documents under which the persons are detained and arrested, serve sentence or constraining measures are applied against them;
- e) To take immediate measure in order to release the person who is illegally detained, arrested or being under the constraining measures;

2. The Prosecutor exercises other authorizations envisaged by the legislation of Georgia.

Article 18 Prosecutor Prosecuting on behalf of State

1. Prosecutor shall appear before the court of first instance on behalf of state. S/he is obliged to prove accusation.
2. Prosecutor shall have the right to reject accusation completely or partially if the obtained evidences fail to prove the charge. The rejection of the prosecutor on the accusation shall be grounded.
3. At the trial stage of a case the prosecutor has right to file a motion and require withdrawal; to present evidences; to participate in the discussion concerning the issue of admissibility of evidences, termination of the criminal prosecution or/and investigation, suspension of the criminal prosecution, management of a case at the court and other issues.
4. Prosecutor is obliged to take part in the discussion of the case related to the public accusation to the court of the first instance and at the stage of appellate processing. S/he can exercise the following rights: to file motion and challenge; submit evidences; participate in the examination of the evidences represented by the defense party; express his/her opinion regarding the questions arisen during the court discussion; take part in the debate of the parties and introduce his/her attitude to the court concerning the affirmation of accusation, the criminal qualification of the act, liability of the convicted person, the form of penalty, appointment of measure, criminal responsibility and releasing from the punishment.
5. Prosecutor supports his/her complaint or expresses his/her opinion as a party concerning the complaints filed by other parties of the litigation at the stage of the cassation.

Article 19 Coordination of the Fight against Criminality

1. Prosecution Service coordinates the fight against criminality and mutual cooperation of the law enforcement agencies in order to reveal crime timely, investigate, open, constrain and avoid the offence, also evade the development of the criminal situation, eradicate the causes and facilitating conditions of crime.
2. The rule of coordination of the fighting against crime is determined by the regulation which is approved by the Government of Georgia.

Article 20 Civil Action of the Prosecutor on the submission of illegal, undocumented and racketeering property to the State

The prosecutor in accordance with the rule prescribed by the civil procedure legislation of Georgia and within the defined limits, initiates an action on the issue of officials, members of the criminal underworld, human traffickers, people who are participating in the spread of narcotics or on the issue of deprivation and transferring to the State the property and the racketeering property of convicted persons in accordance with subparagraph "c" of the third part of the Article 194 of the Criminal Code of Georgia.

Chapter IV Prosecutorial Acts

Article 21 the System of Prosecutorial Acts

The Prosecutor during exercising his/her powers, within its competence, and in accordance with the rule prescribed by the legislation of Georgia, drafts the following acts: request, submission, objection, decree, consent, instruction, complaint, and information.

Article 22 Request

1. Prosecutor shall have the power to request:
 - a) The inspection of financial-commercial activities of the enterprise, organization, institution in the criminal case;
 - b) The allocation of specialist in order to solve the questions arisen during the exercise of the duties envisaged by law;
 - c) The introduction of the documents, materials, case files, data and other information in order to conduct supervision or procedural administration.
2. The requested information shall be submitted to the Prosecutor within 10 days despite the particularity of this information.
3. The documents and other information can be checked upon the request of the prosecutor at their location by the prosecutor or by the specialist, expert or any other person under the commission of the prosecutor.
4. The document and other information shall be submitted to the place indicated by the prosecutor under his/her request.
5. Prosecutor is obliged to protect State or any other classified data contained by the requested information in the cases envisaged by the legislation of Georgia.
6. The interference in the competency of the court and request of any materials or case file are forbidden beside the cases envisaged by the Criminal Procedure Legislation.

Article 23 Submission

1. The prosecutor within limits of his/her own competences and according to the rule prescribed by the legislation of Georgia submits the representation for elimination of violation of the legislation, its causes and facilitating conditions, to the participants of the legal relationships pointed out in the Articles 14 and 17 of this Law, who have obligation to inform the prosecutor on the implemented measures within 10(ten) days time period.
2. Prosecutor shall be informed about the date of the examination of the submission. S/he shall have the right to participate in the examination.

Article 24 Objection

1. Prosecutor submits written objection on the non-compliance with the Law the acts and actions of the persons specified in the Articles 16 and 17 of this Law and in cases provided under the Code of Administrative Offences.
2. Prosecutor may request the following under objection:
 - a) The complete or partial abolishment of illegal act or ensuring the compliance of it with the law;
 - b) The suspension of illegal act;
 - c) The restoration of violated right;
 - d) The imposition of proper responsibility measures against the wrongdoer;
3. Prosecutor submits the objection concerning the illegal act to the body which issued the act or supervising agency. The illegal act of the official shall be appealed in the same way.
4. The objection of the prosecutor shall be examined within 10 days after its receipt. The prosecutor shall be informed immediately about the outcomes of the consideration.
5. Prosecutor shall be notified regarding the date of examination of the objection. S/he has right to support the objection personally or through his representative.
6. The objection may be withdrawn by the initiating prosecutor or supervising prosecutor.
7. The supervising prosecutor shall have the power to make amendments to the objection before its examination or replace it with the new one.

Article 25 Decree

1. According to the nature of the violation of the Georgian legislation by the individual or official within the competency and rules established by law the prosecutor issues decree in the cases envisaged by the legislation of Criminal Procedure, also concerning the prosecution against administrative offence or initiating disciplinary prosecution.
2. The decree of the Prosecutor on the prosecution against administrative offence or initiating disciplinary prosecution shall be examined within 10 days after its issuance by the authorized body or official. The prosecutor shall be informed about the outcomes of the discussion.

Article 26 Consent

Prosecutor shall give written consent on the behaviors of the governmental authorities and officials in the cases envisaged by law.

Article 27 Instruction

1. Prosecutor shall have the right to give written instruction to the preliminary investigation authorities in the cases envisaged by law.
2. The instruction of the prosecutor concerning the issues of investigation shall be obligatory to be executed.

Article 28. Complaint

1. The prosecutor has right, according to the rule established by the criminal procedure legislation of Georgia:
 - a) Appeal the court's decision on the criminal case at the superior court and participate in the hearing of the case as a party;
 - b) Appeal the court's decision because of the newly revealed circumstances of the case and participate in the hearing of the case as a party;
2. Complaint may be withdrawn by the complainant or supervising prosecutor before the summarizing decision is made.

Article 29. Information

The prosecutor within his/her own competences provides information to the respective bodies of the State and local self governance on the state of the Law and order.

Article 30 the Appeal against the Prosecutorial Acts

1. The submission, objection, decree, instruction of the prosecutor may be appealed to the court pursuant to the rule established by law or appealed once only to the supervising prosecutor within 10 days.
2. The appeal will not suspend the implementation of the prosecutorial acts except for the cases envisaged by the legislation of Criminal Procedure.

Chapter V

The Staff of the Prosecution Service

Article 31 the Requirements to be met by the candidate to hold the position of Prosecutor and Investigator of the Prosecution Service

- 1) The citizen of Georgia may be assigned as a prosecutor or an investigator in the Prosecution Service, who has the high legal education, possesses the language of the legal proceedings, has passed internship in the Prosecution Service for the period from 6 (six) month up to 1(one) year, has passed the qualifying examination to the Qualifying Examination Commission in the following subjects: constitutional law, international human rights law, criminal law, criminal procedure law, penitentiary law and the basics of the operative-investigation activity, has taken the prosecution service employee oath and by his/her working and moral qualities, state of her/his health is capable to perform the duties of the prosecutor, or the investigator of the Prosecution Service.
- 2) The Chief Prosecutor, his/her first deputy and deputies and the person who has passed the qualifying examination for judges or who has passed the bar examination are exempted from the qualifying examination for the Prosecution Service employees. The prosecutors of Abkhazia and Adjara Autonomous Republics if they do not have passed the qualifying examination for judges or the bar examination, shall pass the qualifying examination for the employees of the Prosecution Service within 1(one) year from the date of they took the office.

- 3) From the internship at the bodies of the Prosecution Service are exempted the Chief Prosecutor, his/her first deputy and deputies and the person who satisfies one of the following requirements:
 - a) Has at least 1(one) year experience of working as a judge, investigator or defense counsel;
 - b) has passed the qualifying examination for judges;
 - c) has at least 3(three) years experience in the practice of Law.
- 4) The person who meets the requirements set by the 3rd Paragraph of this Article in order to be released from the traineeship he/she may pass the traineeship at the Prosecution Service voluntarily.
- 5) The qualifying examination for the Prosecution Service employees is conducted through the testing method. The Ministry of Justice of Georgia provides advance publication of the exam tests. Upon the proposal of the Minister of Justice the Government of Georgia approves the procedures of conducting the qualifying examination, the periodicity of the examinations and the examination program, the examination commission regulation and the commission composition. Based on the motion of the Chief Prosecutor the Prime-Minister of Georgia has right to appoint additional qualifying examination.
- 6) The persons who have at least 3(three) years experience in the practice of Law may hold the office of the prosecutor of Tbilisi City and his/her deputy, the regional prosecutors and their deputies, the district prosecutors and the prosecutors of the specialized prosecutor's office. In special cases The Chief Prosecutor based on the substantiated decision has the right to reduce the above mentioned term to 18 (eighteen) months towards the prosecutor of Tbilisi City, and his/her deputy, the regional prosecutors their deputies and to 12 (twelve) months towards the district prosecutors and the prosecutors of the specialized prosecutor's office.
- 7) The employees of the Prosecution Service once in every 3 (three) years shall pass the certification. The Minister of Justice determines the rule of certification upon the proposal of the Chief Prosecutor.
- 8) The advisors of the Prosecution Service, auxiliary personnel and supernumerary employees of the Prosecution Service shall be appointed and dismissed by the Chief Prosecutor under the rule established by the Law of Georgia on Public Service.
- 9) The position of the employee of the Prosecution Service shall not be compatible with any position of state and local self-government, also with entrepreneur or paid job except for the scientific and pedagogical activities. The employee of the Prosecution Service shall have the right to perform other paid job or/and hold other position simultaneously at the Prosecution Service.
- 10) The employee of the Prosecution Service cannot be a member of political union or involved in the political activities.
- 11) The employee of the Prosecution Service shall not be allowed to organize strikes or participate in it.

Article 31¹ Common Data base on the persons wishing to be employed at the Bodies of the Prosecution Service

1. For the purpose of ensuring the stable and effective functioning of the system of the Prosecution Service and for the purpose of recruiting the highly qualified staff, the Chief Prosecutor, if necessary, is authorized to create the common data base on the persons wishing to be employed at the bodies of the Prosecution Service.
2. The rule for creation of the common data base of the persons wishing to be employed at the bodies of the Prosecution Service is determined by the Minister of Justice upon the proposal of the Chief Prosecutor.

Article 32 the Oath of the Employee of the Prosecution Service

1. The employee of the Prosecution Service upon starting working at the bodies of the Prosecution Service makes the written oath: „I (Name, Surname) swear before God and the nation, to execute the duties of the employee of the Prosecution Service of Georgia in good faith and while executing them to obey only the Constitution and the Law of Georgia.
2. To give an oath of the employee of the Prosecution Service may be held without religious vow. The text of the oath is signed by the person who gives an oath and it is kept in his/her personal file.

Article 33 Basis for denial to recruit the person to the Prosecution Service

The following persons cannot be recruited to the Prosecution Service:

- a) Having criminal records;
- b) Alcoholic, drug addicted, solvent abuser, ill with psychical and other serious chronic disease;
- c) recognized as an incapable or with limited capacity by the court;
- d) The person who was fired from another job due to the commission of the act against the generally accepted morals.

Article 34 Discharging the employee of the Prosecution Service from the Office

The employee of the Prosecution Service may be discharged due to:

- a) personal statement;
- b) deterioration of health condition, mutilation or in case of chronic illness that disables him/her to perform office duties;
- c) Expiration of the term envisaged by the contract;
- d) Non-fulfillment or improper performance of office duties;
- e) Non-fulfillment or improper performance of the requirements envisaged by the contract;
- f) Office incompatibility;
- g) Violation of office discipline roughly or systematically;
- h) Staff reduction;
- i) In case of election or appointment at legislative, executive, judicial branches of authority or local self-government and in other cases of office incompatibility;
- j) In case of breaking the oath, revealing professional secret or committing a behavior improper to the employee of the Prosecution Service;
- k) On the basis of the conviction being in force;
- l) In cases envisaged by Article 33 (a, c) of this law;
- m) In case of losing the citizenship of Georgia;
- n) Breaking the requirements needed to recruit at an office;
- o) Retiring age.

Chapter VI

Legal Protection of the employees of the Prosecution Service

Article 35 the Legal Protection of the Employee of the Prosecution Service

3. In his/her activities the employee of the Prosecution Service shall be independent. S/he cannot be resigned or dismissed from the position apart from the cases envisaged by this law and established rules.
4. The encroachment on the employee of the Prosecution Service during the performance of office duties, humiliation of his/her dignity, threat against him/her, resistance, violence, infringement of life, health and property of the employee of the Prosecution Service results in the responsibility envisaged by law. In case of receiving announcement or information on the encroachment of health or property of the employee of the Prosecution Office or his/her family member the State bodies are obliged to take measures envisaged by law in order to protect their personal and estate security.
5. The employee of the Prosecution Service has the right to carry and retain firearms also special means of individual defense under the rules established by law.

Article 36 the Inadmissibility to interfere in the Activities of the Employee of the Prosecution Service

The interference in the activities of the employee of the Prosecution Service by the officials, social and political unions, their representatives or other persons who are not entitled under the law to interfere in the activities of the employee of the Prosecution Service or influence him/her by any form, also impeding the activities of the employee of the Prosecution Service is punishable by law.

Article 37 the Right to the Court Defense of the Employee of the Prosecution Service

The Employee of the Prosecution Service has the right to apply to the court in order to defend his/her rights and freedoms.

Article 38 the Responsibility of the Employee of the Prosecution Service

1. The employee of the Prosecution Service will be responsible for the commission of the crime and administrative infraction in compliance with the general rules.
2. The detained, arrested or convicted employee of the Prosecution Service is placed or serves sentence in isolation with special inmates.
3. On the fact of crime committed by the prosecutor, the investigator of the Prosecution Service or the advisor of the Prosecution Service, the criminal prosecution is initiated only by the Chief Prosecutor. The crime committed by the employee of the Prosecution Service is investigated only by the Chief Prosecutor's Office with respect to the investigative subordination defined by the legislation of Georgia.
4. In the course of the investigation of the case and before taking final decision the Chief Prosecutor is entitled to resign the employee of the Prosecution Service from the position under the established rules.
5. If the employee of the Prosecution Service breaks the oath, violates working discipline, commits the act improper to the employee of the Prosecution Service or/and fails to

perform or executes improperly imposed obligations the following disciplinary punishment will be used against him/her:

- a) remark;
 - b) rebuke;
 - c) lowering his/her official position;
 - d) dismissal from the position;
 - e) dismissal from the Prosecution Service;
6. The disciplinary sanction is applied in case of establishing (discovering) the fact of misconduct no later than a year. The aforesaid term does not include the time of being on leave or the period when the employee of the Prosecution Service is ill. The disciplinary sanction cannot be applied if 3 years are passed since the commission of disciplinary violation. The employee of the Prosecution Service is fired from the Prosecution Service in case of intentional offence despite the term passed after its commission. If the employee of the Prosecution Service commits the crime negligently the question regarding his/her dismissal from the Prosecution Service is determined by the Chief Prosecutor regardless how much time has passed from the commission of such action, except the cases foreseen by the legislation of Georgia.
 7. The Chief Prosecutor shall have the power to apply any disciplinary sanction envisaged by 5th paragraph of this Article against the employee of the Prosecution Service.
 8. The Prosecutors of the Autonomous Republics of Adjara and Abkhazia shall have the power to apply only the following punishments: remark or rebuke
 9. If the application of disciplinary sanction, imposed only by the Chief Prosecutor within his competence, is necessary due to the misconduct committed by the employee of the Prosecution Service, the Head of the respective agency of the Prosecution Service makes proposal to the Chief Prosecutor concerning the application of the relevant disciplinary sanction.
 10. Only one disciplinary sanction may be applied against the same misconduct committed by the employee of the Prosecution Service.
 11. The Chief Prosecutor shall have the power to abolish, mitigate or aggravate the disciplinary sanction applied against the employee of the Prosecution Service.
 12. The disciplinary punishment shall be applied based on the order of the prosecutor. The employee of the Prosecution Service against whom disciplinary punishment was applied shall be familiarized with the order. The order concerning the application of disciplinary punishment shall be kept in the personal file of the employee of the Prosecution Service.
 13. The employee of the Prosecution Service shall not be considered as having disciplinary punishment if one year is passed after the application of disciplinary punishment and also new disciplinary punishment was not applied against him/her.
 14. The disciplinary punishment may be annulled earlier in the cases envisaged by Article 39 of this law. The disciplinary punishment is annulled under the appropriate order that shall be introduced to the employee of the Prosecution Service against whom disciplinary punishment was applied. The order concerning the earlier abolishment of disciplinary punishment shall be kept in the personal file of the employee of the Prosecution Service.
 15. The order issued by the prosecutor concerning the application of disciplinary punishment against the employee of the Prosecution Service may be appealed to the supervising prosecutor or to the court within 30 days.
 16. The appeal against the disciplinary punishment cannot suspend the application of the disciplinary punishment against the employee of the Prosecution Service.

Article 39 Promotion of the Employee of the Prosecution Service

In order to promote the employee of the Prosecution Service for success, excellent performance of office duties and other achievements the following measures shall be applied:

- a) express gratitude;
- b) give premium or award with valuable gift;
- c) give additional paid leave amounting to 10 calendar days;
- d) grant earlier the following special state rank;
- e) Early remove of imposed disciplinary sanction;
- f) grant the title of respectable officer of the Prosecution Service and award with respective breastplate;
- g) nominate for the state award.

Chapter VII

Social Care of the Employee of the Prosecution Service

Article 40 Social Care of the Employee of the Prosecution Service

1. The Social Care of the employee of the Prosecution Service is guaranteed by the Constitution of Georgia, this law and with other legal acts of Georgia. The State provides the social care of the employee of the Prosecution Service.
2. The employee of the Prosecution Service is subject to the compulsory state insurance on behalf of the state budget. The damage from which the employee of the Prosecution Service or his/her family members suffered in the course of performance of office duties completely will be compensated from the state budget under the rules established by law.
3. The employee of the Prosecution Service shall have the right to demand the compensation envisaged by 2nd paragraph of this Article within a year since the person has suffered damage.
4. In case of attack on the employee of the Prosecution Service during the performance of the office duties that resulted in his/her death 10 000 GEL shall be given only once to his/her family members as a kind of assistance.
5. The employee of the Prosecution Service who was attacked during the performance of the office duties that caused him/her to injure the body under which the employee was identified as a person of limited capacities s/he will receive no more than 7 000 GEL only once from the state budget as a kind of assistance.
6. The employee of the Prosecution Service may have annual paid leave amounting to 30 calendar days.
7. The prosecutor, investigator and advisor of the Prosecution Service are exercising the same privileges as the judges of the court of respective instance and the Chief Prosecutor, his/her First Deputy and Deputies are granted the same advantages as the Chairperson of the Supreme Court of Georgia and his/her Deputies respectively.

Article 41 Salary of the Employee of the Prosecution Service

1. The salary of the employee of the Prosecution Service is contained of official salary, premium and other bonuses envisaged by the legislation of Georgia.
2. The official salary of the prosecutor and investigator of the Chief Prosecution Service shall be no less than 500 GEL. The prosecutors and investigators of the Prosecution Services of the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecution Service, District Prosecution Services, Regional Prosecution Services and Specialized

Prosecution Services envisaged by Article 1 §3 of this law shall have no less than 400 GEL as a salary.

Article 42 Special State Ranks of the Employees of the Prosecution Service

1. The prosecutor, investigator and advisor of the Prosecution Service are to be granted special state ranks for his/her position, scientific degree, qualification, length of service and excellent performance of the office duties.
2. The rule of granting and seizing special state ranks is determined by the legislation of Georgia.
3. The special state ranks of the prosecutor and investigator of the Prosecution Service are equal to those special ranks which are established by the legislation of Georgia for the employees of the Military Forces and the Ministry of Internal Affairs of Georgia.

Chapter VIII

Procurement and Financing of the Prosecution Service

Article 43 Procurement and Financing of the Prosecution Service

1. The Prosecution Service is financed by the funds assigned from the State Budget. The expenses of the Prosecution Service shall be envisaged in the State Budget with the separate organizational code pursuant to the rule established by the legislation of Georgia.
2. The current expenses intended for the Prosecution Service in the State Budget in comparison to the amount of budget funds of the previous year shall only be reduced under the consent of the Minister of Justice.
3. Procurement of the Prosecution Service is centralized.
4. The plot, building and equipments being under the ownership and possession of the Prosecution Service, the movable or estate property purchased on behalf of the state budget shall be considered as the State property.
5. In order to compensate the state damage the sums seized by the Prosecution Service shall be directed to the State Budget.
6. The representative expenses of the Prosecution Service are compensated under the rules established by the Georgian legislation.

Chapter IX

Other Issues Concerning Activities and Organization of the Prosecution Service

Article 44 Raising the Level of Skills of the Employees of the Prosecution Service

1. Employees of the Prosecution Service raise the level of their skills at specific scientific and learning establishments.
2. Based on the occasions foreseen in international agreements and treaties and also various international programs, the employees of the Prosecution Service may raise the level of their skills at the learning establishments of other countries, law enforcement institutions and scientific-research centers.

Article 45 Stamp, Personal Identification Card, Uniform and Distinctive Signs

1. The Chief Office of Public Prosecutor and other organs of the Prosecution Service have a round stamp with Georgian state emblem and name of the Office of Public Prosecutor.
2. The Prime Minister of Georgia provides the Chief Prosecutor with approved pattern of the service card.
3. The Chief Prosecutor, his/her First Deputy and Deputies provides the employees of the Prosecution Service with approved pattern of the service card.
4. (Removed – 30.05.2013, N659)

Article 46 Statistical Reports

The Prosecution Service, along with other institutions elaborates united registration forms of statistical data and establishes general rule for composing statistical data in the Prosecution Service agencies.

Article 47 International Relations of the Prosecution Service

The Prosecution Service has a right to collaborate with agencies of other countries and international organizations based on Georgian legislation.

Article 48 Review of Applications and Complaints at the Prosecution Service

1. The Prosecution Service, under the rule established by law, reviews applications and complaints that fall under its competence. The Prosecution Service also conducts the process of the receipt of citizens.
2. The applications and complaints concerning the offence are reviewed immediately.

Chapter X

Control over the Activities of the Prosecution Services and its Utilization of State Budget and Expenditure

Article 49 Parliamentary Control

Parliamentary control over the activities of the Prosecution Services is executed based on the information provided by the Chief Prosecutor upon the request of the Parliament or by the Chief Prosecutor's initiative. This information shall not contain issues related to the criminal proceeding of the specific case, except for the cases expressly foreseen in Georgian legislation, and international agreements and treaties.

Article 50 Presidential and Prime-Minister Control

The President of Georgia, as the head of the state, and the Prime-Minister being the Chairman of the Government periodically consider the information provided by the Chief Prosecutor. This information shall not contain issues connected with criminal proceedings, except for the cases expressly foreseen in Georgian legislation, and international agreements and treaties.

Article 51 Judicial Control

The conduct of such procedural and investigative activities by the Prosecution Services that limit human rights and freedoms defined in the Constitution of Georgia, are allowed based on the reasoned decision of the court according to Georgian legislation.

Article 52 Control over the Usage of State Funds and Expenditure

The State Audit Service controls the expenditure and usage of state funds and other material values of state issued for the Prosecution Services.

Chapter XI Transitional Provisions

Article 53

1. The Office of Public Prosecutor shall be reorganized and formed as a state subordinated institution in the system of the Ministry of Justice.
2. The Prosecution Service of Georgia as a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia is a successor of the Prosecution Service of Georgia.
3. The Prosecution Service of Georgia a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia shall secure the completion of the cases initiated by the Prosecution Service of Georgia based on the provisions of the Code of Criminal Procedure of Georgia.
4. The Ministry of Justice of Georgia shall provide conformity of adequate legislative acts.
5. Normative acts issued by Chief Prosecutor of Georgia shall maintain their force until the activities provided in sub-paragraph 4 of the present article are implemented.
6. The government of Georgia shall ensure transmission of the banknotes issued for the Prosecution Service of Georgia to the Prosecution Service of Georgia as a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia for the day of entering into force of the current law.
7. The Ministry of Economic Development shall ensure the assignation of necessary property for functioning of (including the property placed on the balance of the Prosecution Service of Georgia) the Prosecution Service of Georgia as a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia based on the Georgian legislation.
8. Until March 1, 2009 the Ministry of Justice of Georgia shall ensure the elaboration of legislation that will define the place of the legal entity of public law - Legal Aid Service in the system of state organs, which is currently under the jurisdiction of the Ministry of Justice of Georgia.

Chapter XII Concluding Provisions

Article 54 Entry into Force of the Law

1. This legislation shall enter into force after 15 days of its publication, except for the sub-paragraphs 6 and 7 of Article 53 and Article 54.
2. Subparagraphs 6 and 7 of Article 53 and Article 54 shall enter into force on the day of the publication.

President of Georgia
Tbilisi,
21 October 2008
N 382 - IIS

Mikheil Saakashvili

13.3 Code of Prosecutorial Ethics

(Unofficial translation provided by the Georgian authorities)⁶⁵

Chapter 1. General Provisions

Article 1 Goal of the Code

1. Prosecutorial Code of Ethics (hereinafter referred to The Code) sets forth the standards of conduct of the employees of the Prosecution Service of Georgia in consistence with the public interest.
2. The goal of the Code is the establishment of the norms of conduct for Prosecution Service employees facilitating:
 - a) Strengthening of the position-relevant accountability and principles of justice in the activity of the employees;
 - b) Professional fulfillment of the duties of the Prosecution Service employees;
 - c) Protection of Human Rights under the universal standards;
 - d) Fair, independent and effective prosecution in due respect of human rights;
 - e) Unconditional and effective performance of law-enforcement goals and tasks;
 - f) Strict adherence to the requirements of law by the Prosecution Service employee in professional and private activities;
 - g) Maintain and enhance public confidence, strengthen public respect in regard to the Prosecution Service of Georgia;

Article 2. The Code definition

It is impossible to limit the definition of the code. Its regulations are fully applied against the conduct of the Prosecution Service employee that is not prescribed by the Code but is reflected in the principles of this Code.

Article 3. Scope of the activity of the Code

The scope of the activity of the Code equally covers the employees of the Prosecution Service of Georgia within their authorities;

Chapter 2. General Norms of Ethics

Article 4. Moral Standards

1. The employee of the Prosecution Service of Georgia should be aware that coming from the context of its own profession she/he has the public-service based ethical obligations before the society.
2. The employee of the Prosecution Service of Georgia should behave consistent with the high standards of responsibility and honesty. In his/her activities employee of the Prosecution Service of Georgia should guide the principles of culture, politeness, honor, mutual respect, trust, impartiality, justice and objectivity based on the universal norms of ethics; He/she should support the enhancement of public confidence and belief towards the Prosecution Service of Georgia.

Article 5. Protection of Human Rights and Freedoms

1. The employee of the Prosecution Service of Georgia should be aware, respect and protect the human rights and freedoms recognized by the Constitution and legislation of Georgia and international agreements. The universal principle of respecting a persons dignity and worth is compulsory for the employee of the Prosecution Service of Georgia.
2. The employee of the Prosecution Service of Georgia is obliged to support the elimination of any kind of discrimination.

⁶⁵ Georgian version: http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=261&lang_id=GEO.

Article 6. Public Relations

1. The employee of the Prosecution Service of Georgia should communicate with the representatives of the society with respect, express his/her own ideas tactfully while delivering the proved critics. The employee of the Prosecution Service of Georgia should respect the other persons freedom of word, opinion or expression provided the third persons freedoms and rights are not violated.
2. Its impermissible to express the opinion aiming at limiting or humiliating the person by race, color, language, sex, religion, political or other beliefs, national, ethnical or social diversities, property or rank status.

Article 7. Independence and freedom of Dominance

1. The employee of the Prosecution Service of Georgia should be free of dominance of mass media and separate persons (among them high-rank persons) and should obey only the law, court practice, interagency directions and general public interest.
2. The employee of the Prosecution Service of Georgia should be fully responsible for his/her own behavior. Its impermissible to disclaim responsibility for his/her own decision based on the indications from the superior authority person.
3. The employee of the Prosecution Service of Georgia should refrain himself from expressing his/her own attitudes publicly in respect to any political party or union. Its impermissible to obviously demonstrate the political belief; The employee of the Prosecution Service of Georgia should refrain himself/herself from obviously expressing his/her own religious belief provided these expressions violate the rights of the others.

Chapter 3. The employee of the Prosecution Service of Georgia in performing the duties

Article 8. Using the service status

1. The employee of the Prosecution Service of Georgia should use the authority only for the purposes envisaged by the law;
2. its impermissible:
 - a) To use the service status for illegal pressure on any person;
 - b) To use the work status for advertising the products or service;
 - g) To use the work time and property also the use of other employees time and property for non-service purposes (the rule does not cover the use of service transport and authorized weapon);
 - d) To use the information for private purposes that became known to him/her while performing the duties and will harm the interest of the Prosecution Service of Georgia.
 - e) To use the discounts in purchasing the products and service from the person carrying out the provision of products or services for the Prosecution Service of Georgia.

Article 9. Independence, Impartiality and Justice

1. In fulfilling the duties the employee of the Prosecution Service of Georgia should strictly obey the independence, impartiality and justice principles apart from private interests. In respect with the concrete criminal case he/she should not undergo influence of concrete persons (among them high-rank persons), mass media and public opinion. The conduct of the prosecutor should meet the standards of justice, impartiality and independence related to any criminal case.
2. The employee of the Prosecution Service of Georgia should respect the principles of the presumption of innocence and equality of the individuals in the face of the law consistent with the supreme legal values.

Article 10. Effectiveness and professionalism

1. The employee of the Prosecution Service of Georgia should fulfill the duties with the high professional level and responsibility.

2. The employee of the Prosecution Service of Georgia in performing the professional duties should articulate the respect of the justice to all of the parties;
3. The employee of the Prosecution Service of Georgia should avoid using property or resources of the Prosecution Service of Georgia for personal gain. In case the employee of the Prosecution Service of Georgia misuses the authority and is proved by the service investigation he/she should reimburse the damage imposed on the Prosecution Service pursuant to the rule prescribed by the Legislation of Georgia.

Article 11. Legal Assistance

The employee of the Prosecution Service of Georgia should refrain from providing legal consultations and assistance to any person if this contradicts the requirements of the legislation or the interests of the Prosecution Service of Georgia.

Article 12. Relations with the colleagues

1. The employee of the Prosecution Service of Georgia should guide the principle of professional solidarity while communicating with the colleagues;
2. The employee of the Prosecution Service of Georgia:
 - a) Should facilitate the establishment of mutual trust between and among colleagues and should refrain the arise and development of private of other types of conflict;
 - b) Should share the personal experience to the colleagues who are in need of such based on work experience and qualification;
 - c) Should refrain from intervening in the activity of the colleague;
 - d) Should not demand from the colleague the service that will complicate the performance of his/her own function imposed;
 - e) Should not mislead the colleague on purpose;
 - f) Should express dissatisfaction tactfully in respect with the colleague mistake or fraud;
 - g) Should take into account the other necessary principles and norms for making healthy work environment and professional solidarity;

Article 13. Confidential Information

Its impermissible to use the confidential information being at the disposal of the employee of the Prosecution Service of Georgia for private interests; The employee of the Prosecution Service of Georgia should actively work not to allow the use of confidential information for the interests of the third parties;

Article 14 Comments on Criminal Case

1. Its impermissible to comment on the criminal case being under the process of the employee of the Prosecution Service of Georgia or other employee in case this harms the interests of the investigation.
2. Its impermissible to comment on the criminal case being under the process of the employee of the Prosecution Service of Georgia or other employee in case this harms any participant of the procedure except for the case when the public interest requires the informing of the society concerning the issue or the publication of an information serves the goal of supporting State Case.
3. The employee of the Prosecution Service of Georgia should not publicly demonstrate the attitude being in contradiction with the official position of the prosecution related to concrete criminal case.

Article 15. Relationship with the participants of the criminal procedure

1. In the event of relationship with the participants of criminal procedure the employee of the Prosecution Service of Georgia should guide the Code, interagency norms and standards in order to ensure the ethical and professional conduct of the participant parties of criminal procedure.

2. The employee of the Prosecution Service of Georgia should refrain from professional and other type of relationship with the judge considering the case on pretrial or trial stage (except for the stage of immediate trial of case), should timely appear before the court trial, adhere to the official style of clothing, refrain from humiliating behavior or statements expressing special favorable or negative attitude towards any participant of the procedure as well as from expressing the personal attitude related to the case.

Article 16. Inadequate Status

1. While fulfilling the duties, the employee of the Prosecution Service of Georgia should not be under the influence of alcohol or some other strong substance or in some other condition somehow discrediting the dignity of the employee of the Prosecution Service of Georgia
2. Alcoholic drink is accessible within the buildings of the Prosecution Bodies during official events only.

Article 17. Use of service authorized weapon and the identity card

1. The employee of the Prosecution Service of Georgia should meet the requirements of the legislation of Georgia in the event of keeping and holding the authorized weapon and service identity card;
2. The employee of the Prosecution Service of Georgia should refrain from demonstrating to public the authorized weapon and service identity card without any need;
3. The employee of the Prosecution Service of Georgia is prohibited to hand over the own authorized weapon or service identity card with that violating the rule prescribed by the law;

Chapter 4. Relation with Mass Media

Article 18. Public Statement

1. In the event of making statements through mass media or otherwise before public the official written or oral allegations should be business-like and thoroughly elaborated. The fact that the statements made may be realized as the position of the Prosecution Service of Georgia should be taken into account;
2. The employee of the Prosecution Service of Georgia while making the statements for mass media is not prohibited, envisaging the circumstances, to provide the objective amount of information to mass media being known to him by the time;

Chapter 5. Conflict of Interests

Article 19. Inadequate Activity

The employee of the Prosecution Service of Georgia should refrain from carrying out any activity that will evoke an objective suspicion of his/her independence or make an impact on his service activities;

Article 20. Conflicts of Interest

1. The employee of the Prosecution Service of Georgia should meet the requirements of the Law of Georgia On Conflicts of Interest and Corruption in Public Service;
2. The employee of the Prosecution Service of Georgia having the property or some other personal interest on the issue under the competence of the Prosecution Service of Georgia should not participate with the rule prescribed by the law in the consideration of the issue or its decision;

Article 21. Gift

1. Taking presents being prohibited by law is punishable pursuant to the criminal legislation of Georgia;

2. The employee of the Prosecution Service of Georgia should refrain from taking gifts in the event such activity is the attempt of undertaking influence either at present or in the future.
3. In case of possible conflicts of interest the employee of the Prosecution Service of Georgia should refrain from getting any kind of advantage from Juridical or physical person.

Chapter 6. Mechanisms of Code Execution

Article 22. The execution of the Code

1. Violation of the requirements of the code is considered to be the inadequate behavior for the employee of the Prosecution Service of Georgia leading to disciplinary responsibility envisaged by the Organic Law of Georgia;
2. The employee of the Prosecution Service of Georgia have the right to prove the accordance of his/her own activities with the core principles of the Code of Ethics and represent the motivation of the activity;
3. General Inspection of the Office of the Prosecutor General of Georgia conducts the service investigation related to the facts of violation of the requirements of the code and presents the material to the Prosecutor General of Georgia as well as the suggestions related to the issues of appliance of disciplinary sanction against the employee of the Prosecution Service of Georgia.