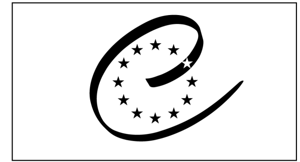


**Economic Crime Division**
**Directorate of Co-operation**
**Directorate General of Human Rights and Legal Affairs**

**“SUPPORT TO THE ANTI-CORRUPTION STRATEGY OF GEORGIA” (GEPAC)**

# TECHNICAL PAPER ON THE COMPLIANCE OF THE GEORGIAN LEGISLATION WITH THE COUNCIL OF EUROPE CRIMINAL AND CIVIL LAW CONVENTION ON CORRUPTION

**COE PROJECT NO: 2007/DGI/VC/779**

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**The views expressed in this document are author’s own and do not necessarily reflect official positions of the Council of Europe**

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**INTRODUCTION**

I have been requested by the Council of Europe to present an opinion and prepare this Technical Paper on the compliance report of the Georgian legislation with the Council of Europe Conventions on corruption. Views and opinions expressed in this work are personal, and do not represent official views or positions of the institutions I regularly work for in my country. This Technical Paper is an oversight of the accuracy of the reviews conducted by the local Consultant. The aim of the paper is to assess the level of compliance of the legislation of the Republic of Georgia with selected provisions of the Council of Europe Criminal Law Convention on Corruption, and the Council of Europe Civil Law Convention on Corruption.

Technical Paper that was prepared by the local Consultant lays out a very good and extensive oversight on the compliance of the Georgian legislation with provisions of the Council of Europe Criminal Law Convention on Corruption, and the Council of Europe Civil Law Convention on Corruption. However, some issues are still opened where legislation in question has not been implemented yet in a way to fully and adequately cover all obligations under the above mentioned conventions. There are some conventions provisions which are by the opinion of the local Consultant adequately implemented, but the author of this text (we) assesses the level of implementation only as partial or even inadequate. At those instances it is clear from the reviews what are the problems, lacks or gaps in implementation. At other occasions where we can agree with the local expert fully or at least to tolerable level, we might have added to his opinion just a sentence or two to confirm or slightly modify his findings.

It also has to be emphasised at this point that the scope of this oversight is more or less limited to the assessment of the accuracy of the local Consultant report.

## COMPLIANCE REPORT

## 1. COUNCIL OF EUROPE CRIMINAL LAW CONVENTION ON CORRUPTION

### Compliance observations on Article 1

| **Article 1 – Use of terms**<br>For the purposes of this Convention:<br>a) "public official" shall be understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law;<br>b) the term "judge" referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;<br>c) in the case of proceedings involving a public official of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law;<br>d) "legal person" shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations. |
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The local Consultant review indicates that according to Article 44(47) of the Criminal Procedure Code of Georgia, public official is to be defined as provided for in Article 2 of Georgian Law on Conflict of Interests and Corruption, the state official, the head or the deputy head of the legal person under public law, the person of managerial and/or representative capacity in the company with stock capital of 50% or more in the ownership of the state that is charged with the crime committed while holding office in the state or other organization, against the interests of service, legalization of illegal income, extortion, misappropriation, or embezzlement, evading the payment of taxes or violation of customs regulations notwithstanding the person in question is removed from office or not. Under Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, a wide range of persons is considered to be public officials: Members of the Parliament of Georgia, heads and deputy heads of the High Representative and Executive Organs of the Autonomous Republics of Adjara and Abkhazia, Ministers and Deputy Ministers of Georgia, the Head of the structural division of the Ministry of Georgia or the person equals thereto, the Head of the structural division of the State Chancellery or the person equals thereto, Heads of Divisions of Customs and Tax Departments, Head of the Central Electoral Commission, Prosecutor, and Deputy Prosecutor of Georgia, heads of divisions of the Office of the Prosecutor General, prosecutors, heads of local representative and executive bodies, judges, other persons elected or appointed based on constitution, etc.

Where for the purposes Article 339 and 339/1 (foreign officials), the person with an equal status to public official includes also include foreign state officials (members of the national legislative or administrative body), officials of international organization or organ or employees hired by contract, or any person on mission or without it, performing the functions equivalent to that of an official or other employee, member of international parliamentary bodies, judge or an official of an international court or that of a judicial organ.

Our analysis of relevant provisions shows that Georgian legislation is in line with Article 1 of Criminal Law Convention on Corruption. We can agree with the Local Consultant review that compliance of the domestic legislation is within standards of Criminal Law Convention on Corruption. Officials as defined in Georgian legislation correspond to definitions and use of terms as stated in Criminal Law Convention on Corruption.

### Compliance observations on Article 2

| **Article 2 – Active bribery of domestic public officials**<br>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions. |
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According to the local Consultant review the definition of active bribery as regulated by Georgian Criminal Code Article 339 means:

- Direct or indirect promising, offering, or giving money, securities, property or any other material benefit to an official or a person with an equal status, in favor of the bribe-receiver or third person, in order that official or a person with an equal status to perform or not to perform any action or to use his official position for that end or to exercise official patronage in favor a bribe-giver or a third person, shall be punished with fine or corrective labor for a term of 2 years or the restriction of liberty for the same term or the deprivation of liberty for a term up to 3 years.
- Giving bribe to an official or a person with an equal status in exchange of the commission of an illegal act shall be punished with fine or the deprivation of liberty for a term from 4 to 7 years.
- The conduct defined in paragraphs 1 and 2 of the present Article committed by an organised group, shall be punished with the deprivation of liberty for a term from 5 to 8 years.

Where bribe giver will be exempted from the criminal liability provided that the bribe was extorted from bribe-giver or he/she voluntarily informed the law-enforcement body about the fact of bribe giving. A legal person shall be punished with fine for the crimes provided by the Article 339 of Georgian Criminal Code.

Our analysis of relevant provision shows that Georgian legislation is in line with the content of Article 2 of the Criminal Law Convention on Corruption. Georgian legislation covers active bribery of domestic public officials adequately. However, it has to be emphasized that Georgian legislation criminalizes promising, offering, or giving money, securities, property or any other material benefit, where Criminal Law Convention on Corruption use the generic term “any undue advantage”. As stated in Explanatory Report to Criminal Law Convention on Corruption, what constitutes "undue" advantage will be of central importance in the transposition of the Convention into national law. "Undue" for the purposes of the Convention should be interpreted as something that the recipient is not lawfully entitled to accept or receive. For the drafters of the Convention, the adjective "undue" aims at excluding advantages permitted by the law or by administrative rules as well as minimum gifts, gifts of very low value or socially acceptable gifts.

Limiting the undue advantage only to reception of money, securities, property or other material benefit, does not fully meet the substance of Article 2. The Georgian legislation therefore covers the requirements of Article 2 of Criminal Law Convention on Corruption adequately but in the terms of non-lawfully entitled gain as a synonim for undue advantage, only partially.

### Compliance observations on Article 3

| **Article 3 – Passive bribery of domestic public officials**<br>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions. |
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According to the local Consultant review the definition of passive bribery as regulated by Georgian Criminal Code Article 338 as stated below:

- Direct or indirect demanding or accepting money, securities, property or any other material benefit, or accepting such a promise or offer, committed by a public official or a person

with an equal status, in exchange for performing or not performing, in favor of the bribe-giver or a third person, any action as well as using his official position for that end or exercising official patronage, shall be punished with the deprivation of liberty from 6 to 9 years.

- Bribery committed,

a) by a state official with political status;
b) in respect of a large amount of bribe;
c) by a group, due to an agreement in advance,
shall be punished with the deprivation of liberty for a term from 7 to 11 years.

- the conduct defined in paragraphs 1 and 2 of the present Article, committed:

a) by the person previously convicted for bribery;
b) repeatedly;
c) by extortion;
d) by an organized criminal group;
e) in respect of especially large amount of money,
shall be punished with the deprivation of liberty for a term from 11 to 15 years.

Where "large amount of bribe" represents the sum amounting to more than 10000 GEL (over 4.60000 EUR) in the form of money, securities, other property or material benefits and an especially large amount of bribe constitutes the sum of more than a 30000 GEL (over 14.00000 EUR)

Although that Georgian legislation use term "demand or acceptance" over term "request or receipt", we can agree with the local expert and conclude that Georgian legislation is in accordance with Article 3 of Criminal Law Convention on Corruption.

## Compliance observations on Article 4

| **Article 4 – Bribery of members of domestic public assemblies**<br>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers. |
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According to the local Consultant review and according to the use of terms as explained in the commentary to Article 1 the definition also covers the members of domestic public assemblies. This means that the Georgian legislation extends the scope of the active and passive bribery offences defined in Articles 2 and 3 also to members of domestic public assemblies, at local, regional, and national level, whether elected or appointed.

Since the definition of "public official" refers to the applicable national definition, it is understood that contracting parties to the Criminal Law Convention on Corruption, would apply, in a similar manner, their own definition of "members of domestic public assemblies."

Although that local Consultant review does not comment on the Georgian legislation in regarding Article 4 of Criminal Law Convention on Corruption, the definition of public official according to Article 44(47) of the Criminal Procedure Code of Georgia also covers the members of domestic public assemblies.

Our analysis of the relevant Criminal code provision confirms that these articles implement the Article 4 of the Criminal Law Convention on Corruption adequately.

## Compliance observations on Articles 5-6

**Article 5 – Bribery of foreign public officials**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

**Article 6 – Bribery of members of foreign public assemblies**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

Although that local Consultant review does not directly comment Georgian legislation in the scope of Article 5 and 6 of Criminal Law Convention on Corruption, the definition of official, for the purposes of Article 339 and 339/1 (foreign officials), also include foreign state officials (members of the national legislative or administrative body), officials of international organization or organ or employees hired by contract, or any person on mission or without it, performing the functions equivalent to that of an official or other employee, member of international parliamentary bodies, judge or an official of an international court or that of a judicial organ.

Our analysis of the relevant Criminal code provision confirms that these articles implement Articles 5 and 6 of the Criminal Law Convention on Corruption adequately.

## Compliance observations on Articles 7-8

**Article 7 – Active bribery in the private sector**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

**Article 8 – Passive bribery in the private sector**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

According to the local Consultant review active and passive bribery in the private sector is regulated by CCG Article 221: Commercial Bribery. An article 221 of Georgian Criminal Code defines that:

- Illegal transfer of money, securities or other property, or illegal rendering of property service to a person exercising managerial, representative, or other special authority in an enterprise, or any other organization, in order such person to use his/her official position for the interests of a briber or other person, is punishable with fine or with the restriction of liberty up to two years or by the deprivation of liberty up to three years, by deprivation of the right to hold the office or pursue a particular activity for up to three years or without it.
- The same act, committed:

a) by a group;
b) repeatedly, -

is punishable with fine or with the restriction of liberty up to four years or with the deprivation of liberty from two to four years, by deprivation of the right to hold the office or pursue a particular activity for up to three years.

- Illegal request or accept of money, securities, or any other property or illegal enjoyment of property service by a person exercising managerial, representative, or any other special authority in an enterprise or any other organization with intent to use his/her official capacity for the interests of a briber, is punishable with fine or with the restriction of liberty up to three years or with deprivation of liberty from two to four years, by deprivation of the right to hold the office or pursue a particular activity up to three years.

- The action referred to in Paragraph 3 of this Article, committed:

a) by a group;

b) repeatedly;

c) by extortion, -

is punishable with fine or with the deprivation of liberty from four to six years, with deprivation of the right to hold the office or pursue a particular activity up to three years.

Where the perpetrator of the crimes referred to in Paragraph 1 or 2 of this Article shall be released from criminal liability if he/she was extorted of his/her property or he/she voluntarily informed a government authority thereon.

Although that Georgian legislation covers bribery in the private sector it does not correspond the scope of Article 7 and 8 of Criminal Law Convention on Corruption. Article 7 of Criminal Law Convention on Corruption criminalizes promising, offering or giving, directly or indirectly, of any undue advantage and Article 8, the request or receipt, directly or indirectly of any undue advantage. Article 221 of Georgian Criminal Code however, criminalizes illegal transfer of money, securities or other property, or illegal rendering of property service. This means that Georgian legislation does not criminalize active and passive bribery in the private sector in required extent.

Georgian legislation covers some requirements of Article 7 and 8 but not implement them in full respect and adequately as defined in the Criminal Law Convention on Corruption.

## Compliance observations on Articles 9-11

**Article 9 – Bribery of officials of international organisations**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

**Article 10 – Bribery of members of international parliamentary assemblies**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

**Article 11 – Bribery of judges and officials of international courts**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

Although that local Consultant review does not directly comment the Georgian legislation in the scope of Article 9, 10, and 11 of Criminal Law Convention on Corruption, definition of official as presented in the local Consultant review, also covers officials of international organizations, members of international parliamentary assemblies and judges and officials of international courts (see Commentary to Article 1).

Therefore, we can conclude that Georgian legislation adequately addressees the requirements of Article 9, 10, and 11, and is compatible with these provisions of the Criminal Law Convention on Corruption.

## Compliance observations on Article 12

| **Article 12 – Trading in influence**<br>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result. |
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According to the local Consultant review trading in influence as it is defined by article 12 of the Criminal Law Convention on Corruption is regulated by Georgian Criminal Code Article 339/1. According to this article promise, offering or giving to a person who claims that he can illegally influence an official or a person equal in the same status, directly or indirectly, of stocks, other property, material benefit or other undue advantage, regardless such influence is exercised or the desired result is obtained, is punishable with fine, corrective labor up to two years, restriction of liberty for the same term or deprivation of liberty up to two years.

Where a person shall be exempted from criminal liability under preceding paragraph if he/she voluntarily gives a confession at the competent authorities.

The demand or receipt, directly or indirectly, of stocks, other property, material benefit or other undue advantage or receive of such promise or offer by a person who claims or proves that he/she can illegally influence an official or a person of equal rank for the benefit of oneself or others, regardless such influence is exercised or the desired result is obtained is punishable with deprivation of liberty from three to five years.

Where crime under previous paragraph, if committed by organized criminal group, is punishable with deprivation of liberty from four to seven years. A legal person is also to be fined for the commission of these crimes.

Our analysis of the relevant Criminal code article (Article 339/1) confirms that these articles implement Article 12 of the Criminal Law Convention on Corruption adequately.

## Compliance observations on Article 13

| **Article 13 – Money laundering of proceeds from corruption offences**<br>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), Article 6, paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation. |
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Local Consultant review indicates that article 194 of the Georgian Criminal code includes criminal acts related to money-laundering.

Local Consultant review stipulates that legalization of illegal income is criminalized in Article 194 of the Criminal Code of Georgia. It is notable that new wording of relevant provision was introduced with the amendments dated December 28, 2005, and April 28, 2006. Under current formulation, the legalization of illegal income is defined as giving the legal form to the property obtained in the illegal manner with the view of concealment of its illegal origin as well as concealment or masking the true nature, source of origin, whereabouts, location, movement of this property. It is punishable with deprivation of liberty for a term from 2 to 4 years. The same criminal act, committed by a group, repeatedly, accompanied with the receipt of a large amount of income is punishable with deprivation of liberty for a term from 4 to 7 years. Money laundering committed by the organized group, through abuse of power, accompanied with especially large amount of income – is punishable with deprivation of liberty for a term from 7 to

10 years. For the purposes of Article 194, the income received through the commission of crime related to taxes as well as an income in the amount not exceeding 5000 GEL (over 2300,00 EUR) is not to be considered as an illegal income. For this article income with the amount from 30000 to 50000 GEL is to be considered of a large amount, while the income exceeding 50000 GEL is to be considered as of especially large amount.

Although that Local Consultant review indicates that Georgian legislation is in line with requirements of Article 13 of Criminal Law Convention on Corruption, our analysis of Article 194 of the Criminal code, show that Georgian legislation does not meet the Criminal Law Convention on Corruption standards.

The purpose of Article 13 of the Criminal Law Convention on Corruption is to criminalize all specific situations from Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime. Georgian Criminal code covers these issues incompletely and even exclude criminal responsibility in cases where income received through the commission of crime is related to taxes as well as when the amount of the income does not exceed 5000 GEL.

Therefore, we may conclude that Georgian legislation does not adequately address requirements of Article 13 of the Criminal Law Convention on Corruption.

## Compliance observations on Article 14

**Article 14 – Account offences**
Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:

a) creating or using an invoice or any other accounting document or record containing false or incomplete information;

b) unlawfully omitting to make a record of a payment.

According to the local Consultant review Article 204/11 of Georgian Criminal code criminalizes the violation of accounting rules, which are defined as: filling of incomplete or incorrect accounting data, creating falsified documents, and invoices in order to hide trade of influence or other illegal action. The sanction is fine and in case of repeated violation can be punished by imprisonment up to one year.

Our comparison of relevant Article 14 of Criminal Law Convention on Corruption and relevant articles of Georgian Criminal code shows that Georgian legislation is in line with the requirements of Article 14.

## Compliance observations on Article 15

**Article 15 – Participatory acts**
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

Local Consultant review indicates that Article 22 through 27 of the Criminal Code of Georgia regulates participatory acts. Criminal code indicates 4 forms of complicity: perpetrator, organizer, instigator, and assistant. The code defines between "previously agreed group" and "organized group."

Our analysis of Article 22 through 27 of the Criminal Code of Georgia confirms that these articles implement the criminal liability of the accomplice, assistant, and instigator adequately. These provisions of the Criminal code are of general application and therefore apply to all offences in the code - subsequently also to the offences implemented upon Criminal Law Convention on Corruption.

### Compliance observations on Article 17

| **Article 17 – Jurisdiction**<br>1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:<br>a) the offence is committed in whole or in part in its territory;<br>b) the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;<br>c) the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.<br>2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.<br>3 If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.<br>4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law. |
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Local Consultant review indicates that Article 4(2) of the Criminal Code of Georgia expressly states that an offence is considered to be committed on the territory of Georgia if it has started, extended, terminated, or concluded on the territory of Georgia, which implies a very broad application of criminal law of Georgia.

Georgian citizens and permanent residents of Georgia who does not have any citizenship will be a subject to this code for committing acts outside the Georgian territories which are crimes according to the law of the foreign country and the present code (double criminality). If the committed act is not a crime under the law of foreign state then only crimes directed against Georgia's state interests, crimes that fall under international treaties and very grave crimes will be prosecuted by the state of Georgia.

In our view the requirements from Article 17 are met in Georgian legislation in adequate manner.

### Compliance observations on Article 18

| **Article 18 – Corporate liability**<br>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:<br>– a power of representation of the legal person; or<br>– an authority to take decisions on behalf of the legal person; or<br>– an authority to exercise control within the legal person;<br>as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.<br>2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority. |
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| 3 Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1. |
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According to the local Consultant review on June 25, 2006, the criminal liability of legal persons has been introduced in Georgian legislation. The said amendments entered into force on July 10, 2006.

According to Criminal code Article 107/2 (Crimes which rise criminal responsibility of a legal person) legal person shall bear criminal responsibility for the crimes envisaged under Articles 143/1 (human trafficking), 143/2 (trafficking in minors), 194 (legalization of illegal incomes), 221 (commercial bribery), 224/1(participation in a group of racketeers), 227/1 (endangering the navigation of vessel), 227/2 (obtaining illegal possession over, damage or destruction of artificial platform [at the sea]), 231/1 (threatening to gain illegal possession over nuclear substance), 255/1 (involvement of minor in production and/or distribution of pornographic materials), 260-271 (drug crimes), 323-330 (terrorism crimes), 330/1 (incitement to commit terrorism crime), 330/2 (persuasion to commit terrorism crime), 330/3 (preparation/training for the commission of terrorism crime), 331/1(financing of terrorism), 339 (bribe-giving), 339/1 (trade in influence), 344/1 (facilitation of crossing Georgian border by an migrant illegally or creation favorable conditions for a illegal migrant to stay in Georgia), 364 (adverse interference in legal proceedings or pre-trial investigation), 365 (threat or violence related to legal proceedings or pre-trial investigation) and 372 (bribery or forcing a witness, victim, expert or interpreter).

Under the mentioned amendments, the legal person is brought to criminal responsibility for the crime committed in its name, through using it and/or for its benefit by the person in charge, i.e., the person with the representative or managerial capacity, the decision-maker, and/or the member of the supervisory, control, consultative or auditing board of the legal person. Fine, liquidation, deprivation of the right to pursue activity and seizure (forfeiture) of property (i.e. seizure (forfeiture) of property acquired as a result of criminal activities and/or seizure (forfeiture) of the object or means of the crime) are provided as sanctions for legal persons. Liquidation and deprivation of the right to pursue activity may be applied only as basic sanction, fine – both as a basic and additional sanction, while seizure (forfeiture) of property only as an additional sanction. It is notable that liquidation is to be applied only in exceptional circumstances, when the criminal activities represent the main aim of its creation or essential part of its activities.

In our opinion and following the analysis of the local expert we can conclude that Georgian legislation is to a large extent in line with Article 18 of Criminal Law Convention on Corruption. The question that remains on the table is whether omissions, related to leading persons in legal entities (lack of supervision or control) are defined in Georgian legislation as independent ground for liability of legal persons or is this requirement comprised in above mentioned provisions. If neither is the case, then requirement from second paragraph of Article 18 is not met.

### Compliance observations on Article 19

| **Article 19 – Sanctions and measures**<br>1 Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.<br>2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.<br>3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds. |
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Local Consultant review claims that in Georgian criminal legislation punishments prescribed for corruption related offences are proportionate to the gravity of offences. Sanctions vary depended on the crime and the could be a fine or imprisonment under restrictive conditions, as well as forfeiture of the property or liquidation for legal persons. The applied principle is the principle of proportionality.

Therefore, at least from the strictly legal point of view we can conclude that Georgian legislation follows the requirements of Article 19 of Criminal Law Convention on Corruption.

**Compliance observations on Article 21**

| **Article 21 – Co-operation between authorities**<br>Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:<br>a) by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or<br>b) by providing, upon request, to the latter authorities all necessary information. |
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According to the local Consultant review co-operation and exchange of information is part of the civil service tradition although there are special measures designed as well. Georgian Law on Facilitating the Prevention of Legalization of Illegal Income of June 6, 2003, envisages the mechanisms of monitoring over transactions (identification of the person that is the participant of the transaction, the systematisation of information, and its presentation to the Service of Financial Monitoring) and lists transactions that are a subject to monitoring. The law defines the bodies that are entitled to exercise monitoring for the identification of suspicious transactions. Those bodies are commercial banks, organizations dealing with currency exchange, precious metals, antiques, the organizations giving out grants and involved in charity, notaries, etc. Furthermore, the mentioned law provides for existence of supervisory bodies that ensure supervision over the activities of persons that carry out monitoring, namely, the National Bank of Georgia, Georgian Commission of Securities, Ministry of Finances, Ministry of Justice, etc.

The body exercising monitoring will inform Service of Financial Monitoring about every transaction that falls within the scope of the given law, giving the special notice with regard the doubtful transactions, indicating the existence of the legalization of illegal income.

However, it has to be emphasized that this method and area of co-operation is just one of the large scope of co-operation opportunities. If this is the only area of co-operation that can be identified we can conclude that the conditions of Article 21 of Criminal Law Convention on Corruption are not met in full respect.

Taking into account relevant information provided by the local consultant we can conclude that Georgian legislation does not prevent different authorities from exchange of information and effective co-operation, but on the other hand does not prescribe and regulate or even enhance and promote it either. Further measures aimed at promoting and enhancing cooperation are highly desirable.

**Compliance observations on Article 22**

| **Article 22 – Protection of collaborators of justice and witnesses**<br>Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:<br>a) those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;<br>b) witnesses who give testimony concerning these offences. |
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According to the local Consultant review measures for the protection of witnesses and collaborators of justice can be divided in two parts; first part, measures mitigating sanctions for collaborators and second part developing special measures for the protection from threat or other illegal influence. Articles 109/1, 109/2, 109/3, 109/4, 109/5 of the Criminal Procedural Code of Georgia create safeguards for physical safety of witness or collaborator, including changing of names, data in state official registry etc.

As for mitigation of sanctions, various articles of Criminal Code on corruption include collaboration as mitigating factor as indicated above.

The whistle-blower protection is not properly defined in the legislation and there is only one general statement in the law on Freedom of Expression and Press which asks for the protection of whistle-blowers. The draft law on whistle-blowers has been prepared by government but not yet adopted.

Our assessment of this issue is that present Georgian legislation is in line with Article 22 of Criminal Law Convention on Corruption only to a certain extent. According to the Explanatory Report to the Criminal Law Convention on Corruption, the word "witnesses" refers to persons who possess information relevant to criminal proceedings concerning corruption offences as contained in Articles 2 – 14 of the Convention and includes whistle blowers. The law on whistle blowers protection has not yet been adopted.

It also has to be emphasised that terms "effective and appropriate" are more matter of fact and not the matter of law and therefore should be under constant revision and amelioration.

### Compliance observations on Article 23

**Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds**

1 Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Article 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.

2 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of this article.

3 Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article.

Local Consultant review claims that Article 52 of the Criminal Code of Georgia defines the term of forfeiture of property and sets rules for its application. The first paragraph of Article 52 defines forfeiture of property as taking means and/or object of crime and/or proceeds from crime by the state without compensation. Proceeds from crime are defined broadly and included criminally obtained property (material objects as well as rights on property and documents granting such right), income obtained from that property, or other equivalent property.

The second paragraph of Criminal code Article 52 deals with forfeiture of means of crime; objects of crime, and objects designated for the commission of crime. The necessary preconditions are that the property in question is in the legitimate ownership or proprietorship of the suspect, accused or convict, the forfeiture is in the interests of public or state or serves for the protection of the rights of others or for the prevention of crime. In order to exclude arbitrariness, forfeiture needs to be ordered by the court.

Under the third paragraph of Criminal code Article 52, forfeiture of property which is proceeds of crime shall be ordered by the court for all premeditated crimes, including the corruption related crimes. Furthermore, Article 52 introduces value confiscation, as required by various international instruments applicable to the anti-corruption and organized crime issues.

Article 23 of Criminal Law Convention on Corruption acknowledges the difficulties that exist to obtain evidence that may lead to the prosecution and punishment of persons having committed those corruption offences defined in accordance with the present Convention. Behind almost every corruption offence lies a pact of silence between the person who pays the bribe and the person who receives it. In normal circumstances, none of them will have any interest in disclosing the existence or the modalities of the corrupt agreement concluded between them.

Forfeiture of property and confiscation as stated by local consultant review is just one of the requirement of Article 23 of Criminal Law Convention on Corruption.

States Parties, according to this article, shall adopt measures, which will facilitate the gathering of evidence in cases related to the commission of the offences (not just forfeiture of property). This provision includes an obligation for the Parties to permit the use of "special investigative techniques."

Because of this reason and lack of references and information related to the issue of special investigative techniques and also the issue of bank secrecy, we can only conclude that is not clear to what extent conditions and requirements from Article 23 of Criminal Law Convention on Corruption are met.

**Compliance observations on Articles 25-26 and 28-30**

| **Article 25 – General principles and measures for international co-operation**<br>1 The Parties shall co-operate with each other, in accordance with the provisions of relevant international instruments on international co-operation in criminal matters, or arrangements agreed on the basis of uniform or reciprocal legislation, and in accordance with their national law, to the widest extent possible for the purposes of investigations and proceedings concerning criminal offences established in accordance with this Convention.<br>2 Where no international instrument or arrangement referred to in paragraph 1 is in force between Parties, Articles 26 to 31 of this chapter shall apply.<br>3 Articles 26 to 31 of this chapter shall also apply where they are more favourable than those of the international instruments or arrangements referred to in paragraph 1. |
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| **Article 26 – Mutual assistance**<br>1 The Parties shall afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with this Convention.<br>2 Mutual legal assistance under paragraph 1 of this article may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or ordre public.<br>3 Parties shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences. |
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| **Article 28 – Spontaneous information**<br>Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on facts when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request by that Party under this chapter. |
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| **Article 29 – Central authority**<br>1 The Parties shall designate a central authority or, if appropriate, several central authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution. |
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2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

**Article 30 – Direct Communication**
1 The central authorities shall communicate directly with one another.
2 In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).
4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
5 Requests or communications under paragraph 2 of this article, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
6 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this chapter are to be addressed to its central authority.

According to the local Consultant review the Office of the Prosecutor General of Georgia is the competent body for mutual legal assistance in criminal maters in Georgia when the request concern the case at the pre-trial investigation stage. The Ministry of Justice is responsible for the legal assistance in family law, civil and commercial matters.

The process of international cooperation in criminal matters is regulated by the European Convention on Mutual Assistance in Criminal Matters of 1959 (the Convention entered into force on November 1, 2000) and other bilateral agreements and the Code of Criminal Procedure of Georgia (February 20, 1998). If there is no treaty on mutual legal assistance between Georgia and requesting country, the special agreement can be concluded between the Prosecutor General of Georgia (the Minister of Justice within his/her competence) and the relevant foreign authorities to render the legal assistance in question as provided by Article 247 §2 of the Criminal Procedure Code of Georgia. The Office of the Prosecutor General of Georgia is currently drafting the new law on International Legal Cooperation encompassing both mutual legal assistance and extradition.

In conformity with Articles 14 and 15 of the European Convention on Mutual Assistance in Criminal Matters and the relevant Georgian reservation, the request for legal assistance shall be drawn up in Georgian, English or Russian, and shall be sent by the competent authorities of a requesting state to the Office of the Prosecutor General of Georgia. The extract/s from article/s (extract of the whole article and not of its part only) of the Criminal Code of the requesting state, in accordance with which the conduct has been qualified, shall be annexed to the request. The request itself and all the pages of the papers annexed shall be certified by the official stamp.

Under Article 251 of the Criminal Procedure Code of Georgia investigative or judicial measures which involve restriction of constitutional rights and freedoms of citizens of Georgia are executed only if they are duly authorized by judicial or other relevant authorities of the foreign country concerned. In certain cases envisaged by international treaties, foreign agents may attend the execution of request for legal assistance.

The execution of the request for legal assistance may be refused if it is impossible due to factual circumstances, or it contradicts the national interests, sovereignty and security of Georgia. In any case, requested country shall be informed concerning the reasons of the refusal. Regarding other possible basis for refusal, Georgia has availed itself to the right provided by article 5 of the European Convention on Mutual Assistance in Criminal Matters. Therefore, execution of letters for search and seizure of property can be conditional to the dual

criminality principle, i.e. that the offence motivating the letters is punishable under the laws of both requesting and requested states, either the principle that the offence motivation the letter is an extraditable offence in the requested country. Furthermore, according to the Georgian reservation to the European Convention on Mutual Legal Assistance in Criminal Matters, the execution of a request may be refused if criminal proceedings have been instituted in Georgia for the offence in respect of which assistance is requested or if the offence in respect of which assistance is requested has already been tried by a court of law and the judgement has entered into force.

Georgia will not execute any request related to political, fiscal, or military offence. Regarding freezing assets based on the court order issued in foreign country, Georgia can execute them in conformity with the national legislation.

Sharing of information is regulated by article of Criminal Procedures Code 260/1, which states that in relevant cases Ministry of Foreign Affairs informs International Maritime Agency as well as IAEA .

In our opinion and following the analysis of the local expert we can conclude that Georgian legislation is in line with Article 25-26 and 28-290 of Criminal Law Convention on Corruption. Georgia has a comprehensive legal framework for international co-operation and mutual assistance. It also has the central authority responsible for mutual legal assistance in criminal maters.

Of course, the question remained open what is the scope and efficiency of factual mutual legal assistance in criminal maters. Practical mutual legal assistance shall not be restricted to the gathering of evidence in corruption cases, but should cover many other aspects, such as notifications, restitution of proceeds, transmission of files.

According to the Explanatory Report to the Criminal Law Convention on Corruption Convention provision incorporates an additional requirement: that the request is processed "promptly". Experience shows that very often acts that need to be performed outside the territory of the state where the investigation is being conducted requires lengthy delays, which become an obstacle to the good course of the investigation and may even jeopardise it. Various bureaucratic procedures as stated by local Consultant review may in our view oppose that factual international co-operation and mutual assistance is fast and promptly.

Nevertheless, we can conclude that Georgian legislation - as far as legislative issues are in question - is in line with the content of relevant Articles of the Criminal Law Convention on Corruption.

## Compliance observations on Article 27

**Article 27 – Extradition**

1 The criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

2 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence established in accordance with this Convention.

3 Parties that do not make extradition conditional on the existence of a treaty shall recognise criminal offences established in accordance with this Convention as extraditable offences between themselves.

4 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

5 If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party, and shall report the final outcome to the requesting Party in due course.

According to the local Consultant review Georgia is a party to European Convention on Extradition 1957 as well as relevant bilateral agreements. The extradition is regulated by Criminal Code Article 6 and Criminal Procedures Code articles 254 – 259/1.

Article 6 of Criminal code provides general framework and declares that citizens of Georgia are prohibited from extradition to foreign countries if there is not a special regulation of particular crime or as part of co-operation with International Criminal Court. The law also prohibits the extradition of those persons who attained political refuge in Georgia, conducted and act which is not crime on the territory of Georgia, or face death penalty in country which request extradition.

Extradition cases are decided by Prosecutor General and if there are several countries demanding extradition of person then Prosecutor General consults Minister of Foreign Affairs and Minister of Justice.

Extradition to Georgia is based on the request of Prosecutor General if the punishment for crime conducting of which the person is accused is deprivation of liberty for period of more than 1 year.

Georgia will not extradite a person to a third country without a prior permission from the country which extradited that person to Georgia.

The decision of Prosecution General on extradition can be appealed in the court of first instance by the person subjected to extradition. The appeal should be heard by court within 15 days, and the decision can be further appealed through causation procedures to the Supreme Court within 10 days and final decision is rendered in 10 days.

Although Criminal code prohibits citizens of Georgia from extradition to foreign countries if there is not a special regulation of particular crime or as part of co-operation with International Criminal Court and in spite of the fact that the law also prohibits the extradition of those persons who attained political refuge in Georgia, conducted and act which is not crime on the territory of Georgia, or face death penalty in country which request extradition, there is no reason for negative assessment concerning the implementation of relevant Articles for the moment. We can therefore concord with all findings of the local expert concerning Article 27 of Criminal Law Convention on Corruption.

## 2. COUNCIL OF EUROPE CIVIL LAW CONVENTION ON CORRUPTION

### Compliance observations on Article 2

| **Article 2 - Definition**<br>For the purpose of this Convention, "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof. |
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According to the local Consultant review the Law on corruption and conflict of interests in public sector in Article 3 defines corruption as an act of public official directed towards misusing power to receive unlawful financial or other type of gain or to help legalize unlawful income of any kind. Corruption violation is a crime which has characteristics of corruption and which is followed by disciplinary, administrative, or criminal sanctions.

Definition from the Civil Law Convention on Corruption is much more specific and at the same time broader then above cited provision from Georgian legislation. Misusing power does not adequately cover requesting, offering, giving, or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof.

The above mentioned definition and its application in the area of civil law is at least questionable. As there is no other definition of corruption that would correspond the definition from the Convention in the Georgian legislation the conclusions whether individual acts and deeds can be defined as corruptive and fall within the scope of Article 2 can be based only on comparisons of individual cases directly with the Convention provision.

## Compliance observations on Article 3

**Article 3 – Compensation for damage**
1 Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.
2 Such compensation may cover material damage, loss of profits and non-pecuniary loss.

According to the local Consultant review and pursuant to Article 30, 37 and 42 of the Code of Criminal Procedure of Georgia the victim of a criminal act shall have the right to bring a civil action and to obtain compensation for non-material, physical and material damage as required by the Code.

Article 30 of Code of Criminal Procedure of Georgia gives civil claim and basis for its presentation as stated below:

1. Person suffering property, physical or moral damages as a result of criminal act, has the right to demand reimbursement in the course of criminal proceedings and for that end, file a civil claim.
2. Legal person has the right to demand the reimbursement of property and moral damages in cases considered by law.
3. The reimbursement of property shall be carried out in full extend, including both direct damage and the lost income, based on the indexation of average market prices.
4. Refund for physical damages shall comprise compensations covering the costs of funeral, medical treatment, prosthetics and medicines, already paid insurance costs, doles and pension.
5. The moral damages shall be reimbursed in a form of money and other means of property for the damages inflicted upon the victim as a result of criminal act, including mutilation, defacement, termination or deterioration of biological and mental functions, or other kind of suffering caused by physical or moral damages. The amount of monetary compensation for moral damages inflicted as a result of criminal conduct shall be determined by court based on the gravity of the injury and by taking into consideration the property status of the accused (civil respondent).
6. Civil claim may be filed against the person subject to the proceedings for the application of medical coercive measures. In such a case the participation of the respondents representative is mandatory.

Article 37 of Code of Criminal Procedure of Georgia gives presentation and support of civil claim by the prosecutor:

1. In case the damages have been inflicted upon the state as a result of the criminal act of the person subject to criminal proceedings, prosecutor is obliged to lodge a claim.
2. Prosecutor is authorized to present a civil claim upon the request of the victim in case the later lacks the counsel/representative or the opportunity to defend his/her interests due to the dependent on accused, illness, infancy or other reason.
3. Prosecutor supports his claim in court. He/She is authorized to support or object the claim filed by civil applicant.

Article 42 of Code of Criminal Procedure of Georgia gives the execution of the civil claim approved in the criminal case and defines that the claim approved in the criminal case shall be executed in conformity with the rules established by civil legislation.

The intention of the Civil law Convention is to provide for the possibility for every person who had suffered from corruption (as defined in Article 2) for full damage compensation proceedings outside the scope of criminal law – from the procedural as well as from the substantive point of view. A convention requires for parallel, additional to criminal, proceedings that are not necessarily related to findings and conclusions from criminal proceedings. Of

course, there is always Civil Procedure Code available for initiating of damage compensation claims. In spite of that the main issue in question here still remains: Is everybody who had been a victim of an act corresponding Article 2 of the Convention de lege entitled to claim compensation in the sphere of civil law without initiating criminal proceedings? In our view this is not the case in Georgia yet.

## Compliance observations on Article 4

| **Article 4 - Liability**<br>1 Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:<br>i) the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;<br>ii) the plaintiff has suffered damage; and<br>iii) there is a causal link between the act of corruption and the damage.<br>2 Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable. |
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Although in vague terms and incomplete, local Consultant review indicates that Georgia legislation, under the Civil code gives substantial conditions in order for the damage compensation. According to the local Consultant review, Civil code provides that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

An article 998 of Georgian Civil code defines Joint Liability for Harm Caused:

1. If several persons participate in the infliction of the harm, they shall be liable as joint obligors.

2. Not only shall the person who directly caused the harm be liable, but also the person who supported or assisted him, as well as one who consciously benefited from the harm caused to another shall be liable for the harm.

The local Consultant review is too incomplete to give any specific and detailed conclusions. It is not clear if all acts of corruption falling within the scope of Article 2 can be defined as civil delicts according to the Civil Code of Georgia.

## Compliance observations on Article 5

| **Article 5 – State responsibility**<br>Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party's appropriate authorities. |
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The Local Consultant review indicates that pursuant to Article 1005 of the Civil code covers the liability of the State for Harm Caused by its Employee.

1. If a state employee [public servant] breaches his official duties before other persons by intent or gross negligence, then the state, or that body ["organ"] in which the employee works shall be bound to compensate the harm incurred. In the case of intent or gross negligence, the employee, and the state shall be liable jointly.

2. The obligation to compensate the harm shall not arise if the victim, either by intent, or by gross negligence, did not try to avoid the harm through legal action.

3. The harm caused by illegal conviction of a rehabilitated person; illegal criminal prosecution; illegal application of enforcement measures in the form of detention or an order not to leave a place; or improper imposition of an administrative penalty in the form of imprisonment or correctional labor, shall be compensated by the state regardless of the fault of officials of inquiry or preliminary investigation agencies, the procurator's office or the court. In the case of intentional misconduct or gross negligence, these persons and the state shall be liable jointly.

In our opinion, internal law of Georgia is in line with Article 5 of Civil Law Convention on Corruption. There are suitable procedures available in the civil as well as criminal legislation (see above) for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions.

### Compliance observations on Article 6

| **Article 6 – Contributory negligence**<br>Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation. |
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According to the local Consultant review and pursuant to paragraph 2 Article 1005 of the Civil code of Georgia the obligation to compensate the harm shall not arise if the victim, either by intent, or by gross negligence, did not try to avoid the harm through legal action.

There is not much to add to the local Consultant review which indicates that pursuant to the Civil code, in the event both parties are to blame for the non-performance or improper performance of the obligation, obligation to compensate the harm shall not arise.

### Compliance observations on Article 7

| **Article 7 – Limitation periods**<br>1 Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.<br>2 The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1. |
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According to the local Consultant review and, pursuant to Article 1008 of the Civil code of Georgia the limitation period on a claim for damages resulting from a tort is three years from the moment at which the victim became aware of the harm or [the identity of] the person liable for compensation of the harm.

Although it is not clear if second condition from Article 7 of the Civil Law Convention on Corruption, that such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption, is respected, in our view Georgian legislation still fulfills all major requirements from Article 7.

### Compliance observations on Article 8

| **Article 8 – Validity of contracts**<br>1 Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.<br>2 Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages. |
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The local Consultant review indicates that pursuant to Article 54 (unlawful and immoral transactions) and pursuant to Article 56 (sham and fraudulent transactions) of the Civil code contract concluded with violation of conditions stipulated in this Code shall be invalid/void.

Civil code of Georgia in Article 54 stipulate that a transaction, that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, are void. Article 56 of the Civil code of Georgia stipulates that when a transaction that has been

made only for the sake of appearances, without the intent to create legal consequences corresponding to its terms, it is void (sham transaction) and if, by making a sham transaction, the parties intended to conceal another transaction, then the rules applicable to concealed transactions shall apply (fraudulent transaction).

We are of the opinion that Articles 54 and 56 adequately address the content and the essence of Article 8.

### Compliance observations on Article 9

**Article 9 – Protection of employees**
Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

The local Consultant review claims that there is no direct provision in Georgian legislation regulating appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities. However, the Law on freedom of expression and press should indicate that such protection exists.

In our opinion, Article 9 requires active attitude of the Parties to its fulfillment. States have to provide for protection for corruption-reporting employees. Special regulations dealing with this issue have to be not just passed but widely publicized and supported by all stake holders. Only then we can speak about appropriate protection system for whistle-blowers. At the moment Georgia legislation is not in line with the Convention.

### Compliance observations on Article 10

**Article 10 – Accounts and audits**
1 Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.
2 With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

According to the local Consultant review and pursuant to Article 13 of Law on corporations, the obligation for financial accounting annually and annual auditing exists for those companies, who:

- is trading with securities
- is licensed by financial supervision agency
- in company where number of partners exceed 100

Where the auditor should be independent of founder, executive board.

Although local Consultant review indicates that obligation for financial accounting annually and annual auditing exists, it is not clear what is the legal basis (if any) for such companies to give a true and fair view of the company's financial position. There is also no indication that Georgia provides in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

Without any further information on this issue It seems that legislation in this area is not in line with the Convention standards.

### Compliance observations on Article 11

**Article 11 – Acquisition of evidence**

Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

The local Consultant review claims that Civil Procedural Code which provides detailed guidelines for securing evidences for the court hearing (Articles 109-119) and that the witness testimony is considered as one of the evidence according to Article 102/2 of the same code.

Pursuant to Civil Procedural Code, Court shall secure evidence in particular through testimony of witnesses, and other appropriate evidence.

It seems that legislation in this area is in line with the Convention standards.

**Compliance observations on Article 12**

**Article 12 – Interim measures**
Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

The local Consultant review claims that conditions of Article 12 of a Civil Law Convention on Corruption are met by Article 42 of the Constitution which provides the right to appeal to the court and by the Article 2 of the Code of Civil Procedure which also points to this right in Article 83 of the same code. This right is the right which includes:

- right to appeal,
- right to present evidence
- right to make petition etc.

We would like to draw attention to the actual aim of Article 12 of a Civil Law Convention on Corruption: it aims at preserving the position of both parties (the plaintiff and the defendant) while justice is rendered in the dispute. In civil law cases (including corruption cases), very often it is necessary to preserve the property which is the object of the civil action (or any other property which belongs to defendants), until the final judgement on the case is given. According to the Explanatory Report to the Civil Law Convention on Corruption, measures referred to in this Article aim mainly at:

- providing preliminary means of securing assets out of which an ultimate judgement may be satisfied; or
- maintaining the status quo pending determination of the issues at stake.

The local Consultant review does not give any explanation at all if such measures exist in Georgian legislation and it is therefore impossible to asses if legislation in this area is in line with the Convention standards.

**Compliance observations on Article 13**

**Article 13 - International co-operation**
The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

The local Consultant review does not give any basis for the purpose of assessing the implementation of Article 13 and is therefore impossible to conclude if there are sufficient or even any legal framework in the sphere of civil law for effective mutual co-operation and assistance between Georgia and other Parties to the Convention.