



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

COMPARATIVE ANALYSIS

United Nations Convention against Corruption and Current Legislation of Georgia

February 2005

On December 4, 2000 by its resolution #55/61, UN acknowledged the necessity for the creation of effective international legal act against corruption, independent from the United Nations Convention against Transnational Organized Crime, and made the decision to establish the special committee, which would lead the negotiations on the matter. The stated committee was established in Vienna, at the headquarters of the prevention of international crime, the office for control and prevention of the crime. The text of the convention was being prepared from 21 January, 2002 through October 1, 2003 during the seven sittings of the Special Committee.

The convention approved by the Special Committee was adopted by the Resolution #59/4 of the General Assembly on 31 October, 2003. The convention is known as United Nations Convention Against Corruption (UNCAC). The conference for signing the convention was held in Merida, Mexico, where all states were invited by the Assembly. From the 118 States signatories to the convention 15 have already completed the procedure for acceding to the Convention. These states are: Algeria, Benin, El Salvador, Kuwait, Madagascar, Mauritius, Mexico, Namibia, Nigeria, Peru, Romania, Sierra Leone, South Africa, Sri Lanka and Uganda. At least 30 States have to ratify the convention for it to enter into force (Art. 68.2).

On the international day against corruption - December 9, 2005 – the Parliament of Georgia adopted the resolution addressing the President to sign the UNCAC and present it to the Parliament for ratification.



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

The UNCAC addresses two main issues: adoption of additional measures for preventing and investigating corruption, and strengthening international cooperation in the fight against corruption.

PREVENTION OF CORRUPTION

The Convention puts special emphasis on the prevention of the crime. The stated issue is discussed in the separate chapter, which considers the measures to be implemented in public as well as private sector. Namely, the convention defines the ways of preventing the corruption in such spheres as the recruitment, hiring, retention, promotion and retirement of the public officials; public procurement; management of public finances; judiciary; public prosecution agencies; accounting; auditing standards and etc.

According to the convention, the parties shall endeavor the implementation of the appropriate measures in the **public sector** for the transparency of recruitment, hiring, retention, promotion and retirement process of the civil servants, which in turn should be determined by the merit and aptitude of the civil servants.

The convention also supports the idea of increasing the transparency and accountability with respect to the issued of **public procurement** and establishment of the special requirements in such fields as judiciary and public procurement in order to prevent the corruption.

In order to raise the effectiveness of the fight against corruption the convention, differing from the similar legal acts, **established as criminal offences** not only the main forms of corruption (bribery, embezzlement of public property and etc.), but the acts such as corruptive influence (trading in influence), the usage and laundering of the proceeds obtained due to corruption, obstruction of justice, etc.

The fight against the **corruption in the private sector** represents one of the new developments in the convention.

The convention considers the **support of the society** as one of the important tools for the prevention of the corruption. Taking this into consideration the convention calls on the states parties to encourage the involvement of the community-based organizations and other elements of the civil society in the measures and decision-making process directed against the corruption.

INTERNATIONAL COOPERATION

18, Rustaveli Ave • Second Floor • Tbilisi • 0108
Phone/fax: + 995 32 99 66 15 • e-mail: info@transparency.ge•
www.transparency.ge



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

The convention gives special importance to the cooperation between the states parties in the fight against corruption. Under the present act the parties agree to cooperate on all stages (prevention, investigation, prosecution) of the fight against corruption.

The convention obliges the parties to develop the **special forms of mutual legal assistance** for gathering and transmitting of the evidence to be used in the court proceedings and extradition of the offenders. The states parties also have the duty to take measures in order to search, freeze, seize and confiscate the advantages gained as a result of corruption.

One of the new developments of the convention is the agreement of the states on the matter of **recovering the assets**, which is defined as the „Fundamental Principle of the Convention“. The act defines the concrete forms of international cooperation and assistance in this field. Namely, according to the convention, in case of embezzlement of public funds, the property to be confiscated should be returned to the requesting State Party. With respect to the proceeds gained due to any other offence covered by the Convention, the recovery of the property is possible, if the document certifying the ownership or the damage incurred by the requesting State is presented.

Article 51 of the Convention recognizes the return of the assets to the State of origin as a fundamental principle of the Convention. Article 43 confers on the States the duty to increase the possible cooperation in the process of investigation and bringing a charge.

With respect to the recovery of assets the stated article also considers the following: "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties."



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

DIFFERENCES BETWEEN THE GEORGIAN LEGISLATION AND THE UNCAC

In case of accession of Georgia to the UNCAC the Parliament of Georgia shall have to adopt certain legislative measures in order to bring the Georgian legislation in conformity with the Convention. The comparative analysis of the provisions of the Convention and the norms of the legislation of Georgia is presented bellow:

The definition of the public official as given in the Convention is wider than the one defined by the Georgian legislation:

According to the paragraph a of Article 2 of the Convention, the public official is „any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority... any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party... any other person defined as a “public official” in the domestic law of a State Party.

The Criminal Code of Georgia does not contain the definition of the public official.

According to the paragraph 47 of Article 44 of the Criminal Procedural Code: “The Public Official (against whom the criminal proceedings are conducted) for the purposes of this law is the public official, civil servant, the head of the legal person of public law or his/her deputy as defined by Article 2 of the Law of Georgia on “Conflict of Interests in Public Service and Corruption” or in the enterprise, of which the State owns 50% or more than 50 % of shares, the person holding the managerial and/or representative authority, which has allegedly committed the crime directed against the interests of the office, legalization of illicit income, extortion, appropriation or embezzlement while being in the office whether he/she still holds the position or not”.

According to paragraph 1 of the Article 6 of the Law of Georgian on Public Service: “The civil servant is the person appointed or selected for the permanent staff position of the budgetary institution”.

Thus the definition given by the Convention is much wider than the one given by the Georgian legislation. The Georgian legislation, opposite to the Convention, does not consider the part-time civil servant (official – as per Law on Public Service), who is appointed for specific period as the subject of the crime. Therefore the Georgian legislation needs to be amended in this respect.



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

Compared to the Convention the Georgian legislation contains the weaker regulation of confiscation:

Article 2 of the Convention and the main text defines the term confiscation and the legal proceedings in connection thereto. Namely, under Article 54 of the Convention, each State party to the convention has the duty to:

- Take such measures as may be necessary in accordance with the domestic legislation to permit its competent authorities to give effect to an order of confiscation of the illicit property issued by a court of another State Party;
- Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death or flight or in other appropriate cases;
- Provide its competent authorities with competence to make the decisions on the confiscation; also, to freeze or seize such property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party, to which the decision on confiscation may apply.

The possibilities for using the stated legal institute is very poorly regulated by the Georgian legislation. This is partly determined by one of the first decisions of the Constitutional Court of Georgia, which declared the confiscation of the property, as an additional form of punishment, to be against the Constitution.

The Code of Administrative Offences contains the provisions concerning the legal nature of the confiscation. The general part of the law (Articles 24 and 25) establishes the possibility for using the confiscation as the main as well as additional administrative penalty.

The various types of the confiscation are considered by the Articles 44, 124, 410, 412, 424, 425, 426, 427, 510 and 511 of the Criminal Procedural Code of Georgia. Namely, these article define the so called procedural confiscation - the taking of the tool and subject of the crime free of charge, which is conducted on the basis of the judge's decision. These definitions conform to the requirements of the Convention in part.

As to the question of confiscation of the property before the court decision on the criminal matter is passed, the Criminal Law Code and Administrative Procedures Code of Georgia considers the possibility of conducting administrative prosecution with respect to those public officials, which hide from the investigation. Namely, according to the Article 37¹ of the Criminal Code the public prosecutor is authorized to initiate a case under the rule of administrative procedure with respect to the illegal and illicit property of the public official with the purpose of requisition of such property and hand it to the State.



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

The Criminal Procedural legislation of Georgia also considers the special procedural regulation of the racket and the property obtained through racket.

Despite the provisions of the domestic legislation, the additional legislative amendment are to be made in order to make the legislation in conformity with the Convention, as the latter establishes the possibility of applying the confiscation regime without limits to any person and matter, when certain circumstances (flight, death of the offender and etc.) are present.

Legislative amendments are to be made with respect to the obligations concerning the confiscation in the enforcement, procedural legislation, so the Georgian law enforcement and other competent bodies are able to enforce the decisions on confiscation of the competent bodies of the other States.

As to the matter of the harmonization of the legal relations concerning the so called freezing, seizure of the property with the provisions of the Convention, this part of the domestic legislation is in conformity with the international obligations and does not require significant legislative developments.

Due to the above stated, we may conclude that the legislative and judicial, including the constitutional court practice with respect to the regulation of the legal nature of confiscation is developing inconsistently and chaotically, except the few exceptions, and is hardly in conformity with the established and recognized international regulations. Of course, the stated situation requires the implementation of the appropriate and well-considered legislative amendments. In this respect the draft, which establishes as a form of punishment the seizure of the tool of crime, the object to be used for the purposes of committing a crime or/and the illicit property is being discussed at the moment. The definition of the seizure and its application is described in details in the new edition of Article 52 of the Criminal Code.

The form of punishment – “seizure of property” - suggested by the presented draft differs from the punishment considered against the constitution. The provision declared against the Constitution considered the confiscation of all the property of the person despite the origin of the stated property and its connection with the crime. The suggested draft considers the seizure of just the subject and means of crime, the object to be used for the purposes of committing the crime and the property obtained illicitly. In this case the aim of the penalty is not just punishment of the guilty person, but the protection of the public interest by preventing the usage of the property used for the purposes of committing the crime or the property thus obtained from being used again for the criminal purposes.

As opposite to the Convention, the legislation of Georgia does not consider the promise as the crime:

18, Rustaveli Ave • Second Floor • Tbilisi • 0108
Phone/fax: + 995 32 99 66 15 • e-mail: info@transparency.ge •
www.transparency.ge



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

Paragraph (a) of Article 15 of the Convention considers the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official takes certain actions in the exercise of his or her official duties to be the crime. Paragraph b declares it criminal for public official to solicit or obtain undue advantage directly or indirectly in order to act in a certain way in the exercise of his or her official duties.

The stated elements of crime are considered by Articles 338 (Acceptance of a Bribe) and 339 (Giving of a Bribe) in Chapter XXXIX (Crimes of Public Servants) of the Criminal Code of Georgia, however the current edition of the stated articles does not consider the promise or offering of the bribe. The giving of a bribe itself represents the formal crime (which means that the criminal action does not require the result to be established in order for it to be considered as a crime), whereas the promise or offering is one of the stages of the crime.

The criminal legislation of Georgia considers the preparation of crime and attempted crime. Namely, paragraph 1 of the Article 18 (preparation or intentional creation of circumstances for commission of a crime) and paragraph 1 of the Article 19 (attempted crime or intentional act) considers such circumstances, when the acts were directed towards commission of the crime, however the crime was not completed.

The promise or offer established by Article 15 of the Convention may be considered as the preparation of the crime, though according to the Criminal Code of Georgia the criminal responsibility arises only upon the preparation of the serious and grave crimes. The crime defined by Article 339 of the Criminal Code of Georgia is considered to be a minor crime and accordingly, in case of commission of the act defined by the convention there no criminal responsibility may arise under the Georgian legislation.

With respect to the Article 338 of the Criminal Code of Georgia, subparagraph c of paragraph 3 thereof considers the extortion to be circumstance aggravating the criminal responsibility and not the crime itself.

The draft prepared by the Ministry of Justice partly regulates the problems discussed above. Namely, the paragraph 1 of the Article 338 and Article 339 of the draft of Criminal Code read as follows:

“Article 338 (1):

1. The direct or indirect receipt or request of the money, securities, other property, property interest or any other undue advantage, also acceptance of the offer or promise thereof by the civil servant or the person equal thereto for his/her own advantage or the advantage of the other person, in order for the stated civil servant or the person equal thereto to take certain actions in



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

the interest of the person giving of a bribe or any other person or abstain from any action or use his/her official authority for achievement of the similar aim while exercising his/her official duties, also the granting the official protection, shall be punished by the imprisonment for a period of five to ten years”.

“Article 339. Giving of a Bribery

1. The promise, offering or giving directly or indirectly of the money, securities, other property, property interest or any other undue advantage to the civil servant or the person equal thereto to the advantage of the civil servant (person equal thereto) or other person, in order that this servant (person equal thereto) while exercising his/her official duties take or refrain from certain actions or use his/her official authority for the achievement of the similar aim, also carry out official protection, shall be punished by imposition of a fine or correctional labor for the period up to two years or restriction of liberty for the same period or incarceration for the period up to three months or imprisonment for the period up to two years.

2. The same act committed: a) for the purpose of committing an illegal act; b) by the organized group, shall be punished by imprisonment for the period of four to eight years.

Note:

1. The bribe giver shall be released of criminal responsibility, if he/she was forced to give a bribe or he/she immediately deliberately reported the fact of bribery to the body initiating the criminal law case.

2. The fine shall be imposed on the legal person having committed the act considered by this article.”

As opposite to the Convention, the legislation of Georgia does not impose criminal responsibility for the corruptive acts committed by the public officials of the foreign country:

Paragraphs (b) and (c) of Article 2 of the Convention define the terms “foreign public official” and “official of a public international organization”. Namely, foreign public official is “any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise”. Official of a public international organization is “an international civil servant or any person who is authorized by such an organization to act on behalf of that organization”.

Article 16 of the Convention addresses the bribery of foreign public officials and officials of public international organizations and requests the states parties to implement appropriate



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

legislative and other measures in order to declare as a criminal offence the bribery of the foreign public officials and officials of public international organizations.

The Criminal Code of Georgia does not consider the responsibility of the above stated persons for the commission of the corruptive offences.

The draft prepared by the Ministry of Justice contains appropriate provisions for the regulation of the stated matter. According to the draft for the purposes of the appropriate articles of the code the persons equal to the civil servants are:

- foreign public official (including the member of the state body enforcing the legislative and/or administrative authority);
- the official of international organization or body, or the staff member hired on the basis of contract, of which Georgia is a member;
- any person sent or not sent on a mission, which performs the functions similar to the functions of the stated official or staff member;
- the member of international parliamentary assembly to which Georgia is a member;
- the judge and official of the international court or judicial body the jurisdiction of which is recognized by Georgia.

The limitation of the subjects of the crime on the basis of the membership of Georgia in certain international organization or treaty artificially limits the list of subjects considered by the Convention. Therefore, the stated provision of the draft needs to be amended.

The Convention gives the definition of the “trading in influence”, which is not present in the current legislation of Georgia:

Article 18 of the Convention gives the legal definition of the “trading in influence”. The Criminal Code of Georgia contains such notions (the abuse of official powers, official authority, official protection, etc.), which partly include the stated development of the Convention.

The draft of the Ministry of Justice considers the addition of the new provision containing the elements of the corruptive influence to the Criminal Code of Georgia. Namely, the provision of the draft reads as follows:

“The promise, offering or giving by the person for himself or herself or another person directly or indirectly of money, securities, other property, property interest or any other undue advantage to the person, which proves or confirms that he/she can have undue influence on the decision-making of the civil servant or the person equal thereto, despite the fact whether the stated influence was conducted or not and/or whether due to such influence the claimed result was



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

obtained or not, shall be punished by a fine or correctional labor for the period up to two years, or restriction of liberty for the same term, or incarceration for the period of up to three months, or imprisonment for the period up to two years.

Note: The person having committed the crime considered by this paragraph shall be released of his/her responsibility if he/she deliberately reports the commission of this crime to the body initiating the criminal case.”

“The request or acceptance directly or indirectly by the person, who claims or confirms that he/she can have undue influence on the decision-making by the civil servant or the person equal thereto for the interest of himself or herself or another person of the money, securities, other property, property interest or any other undue advantage, or acceptance of the promise or offer thereof from the person, who acts to his/her advantage or the advantage of another person, despite the fact whether such influence was conducted and/or the claimed result was obtained, shall be punished by the imprisonment for the period of three to five years”.

“The act considered by paragraph 2 of this article when committed by the organized group, shall be punished by the imprisonment for the period of four to seven years”.

Note: The fine shall be imposed on the legal person having committed the crime considered by this article.

The Convention considers the abuse of functions as a criminal offence. Georgian legislation qualifies such act to be a material crime:

Article 19 of the Convention regulates the abuse of powers. Although article 332 (abuse of authority) of the Criminal Code of Georgia regulates the stated matter, but the stated crime represents a material crime and the precondition for the responsibility is “the significant breach of the right of the natural or legal person, legal interest of the society or the State”. The provisions of the Convention consider the abuse of functions as a crime and the establishment of the result is not the compulsory precondition.

The Convention considers illicit enrichment as a crime. The administrative legislation of Georgia is familiar with the notion of the illicit enrichment, but this notion is not incorporated in the Civil Code:

According to the Article 20 of the Convention illicit enrichment means a significant increase in the assets of a public official, so that the person’s assets exceed his/her income in such an amount that he or she cannot reasonably explain the stated circumstance. The Convention



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

requests the States parties to implement legislative and other measures in order to declare the stated act as a criminal offence.

The Code of Administrative Offences of Georgia is familiar with the notion of illicit property and gives the following definition thereof: “Property, as well as income obtained from the stated property, stock (share), the documents proving the legal obtainment of which are not owned by the official, his/her family members and close relatives or which is obtained with the money supplies obtained due to the conversion of the illicit property”; however the notion of the illicit enrichment is not present in the Criminal Code of Georgia.

According to the Georgian legislation only the obtainment or conversion of the proceeds of intentional criminal acts constitutes the crime, whereas the Convention considers the possession and use of such proceed as criminal offence:

Article 23 of the Convention regulated the matter of laundering of proceeds of crime. The elements of crime established by the first part of the stated article are similar to the provisions contained in Article 194 of the Criminal Code and the Law of Georgia on Promotion of the Eradication of the Laundering of Illicit Income, however according to one of the paragraphs of the first part of the same article the acquisition, possession or use of property constitutes a crime, if at the moment of receipt thereof it was established that the origin of the property is the criminal activity.

According to paragraph 1 of the Article 186 of the Criminal Code of Georgia just the acquisition or conversion and not the possession or use of the proceeds of intentional criminal act constitutes a crime.

The Convention considers the criminal responsibility of the legal persons. Georgian legislation is not familiar with the criminal responsibility of the legal persons:

Article 26 of the Convention establishes the criminal responsibility of the legal persons as well as administrative and civil liability. Only the natural persons may be the subjects of the current Criminal Code of Georgia, which excludes the criminal responsibility of the legal persons.

The significance of the criminal responsibility of the legal persons and the necessity of the implementation of such responsibility in the domestic legislation is recognized by the international organizations and in those international treaties, of which Georgia is a member. Examples of such instruments are the **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** of 8 November, 1990 (ratified by the Parliament of Georgia by its decision #3345-rs of 17 February, 2004), **UN Convention for the Suppression of**



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

the Financing of Terrorism of 1999 (ratified by the Parliament of Georgia by its decision # 1486-ii of 7 June 2002) and **European Convention for the Suppression of Terrorism** of 27 January, 1997 (ratified by the Parliament of Georgia by its decision #509-rs of 27 September 2000).

The Criminal Law Convention on Criminal Law of Council of Europe of 27 January, 1999 was signed by Georgia on 27 January, 1999; however it has not been ratified. By the decision # 1454-rs of 18 May, 2002 the Parliament of Georgia recommended the President of Georgia to present the Parliament for ratification the **United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**.

Thus the initiation of the discussion on the matter should be the immediate objective, as the solution of the stated problem shall contribute to the integration of Georgia in the international community.

The draft prepared by the Ministry of Justice partly regulates the stated matter. Namely, the draft defines the conditions the presence of which shall render the invocation of the criminal responsibility of the legal person possible. Also, the types of punishment applicable to the legal person and the rules and conditions of their imposition and enforcement are defined.

According to the draft, the legal person shall be responsible for the crime included in the Criminal Code of Georgia, which has been committed by the authorized individual on behalf of the legal person or by the means of legal person and/or to the advantage of the legal person. Authorized individual shall mean the person having the right to lead, represent, and make decisions on behalf of the legal person and/or the member of the supervising, controlling, auditing and consultative body thereof.

According to the stated draft the criminal responsibility of the legal person shall be invoked for the crimes considered by:

- Article 143¹: of the Criminal Code: Trade in Humans (Trafficking);
- Article 143²: Trade in Juvenile (Trafficking);
- Article 194: Laundering of Illicit Income;
- Part 1 of Article 22: Commercial Bribery;
- Article 224¹: Participation in Racket Group;
- Articles 323 – 330: Terrorist Act, Technological Terrorism, Cyber Terrorism, The Attack of the State Political Official of Georgia, the Attack of the Person or Establishment Enjoying International Protection; Creation and Management of the Terrorist Organization and/or Participation Therein, Joining and/or Assistance to the Foreign Terrorist Organization or Such Organization Under the Control of a Foreign Power,

18, Rustaveli Ave • Second Floor • Tbilisi • 0108
Phone/fax: + 995 32 99 66 15 • e-mail: info@transparency.ge•
www.transparency.ge

12

Prepared together with the Parliamentary Committee on Legal Issues



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

Taking Hostages for Terrorist Purposes, Obtainment or Blockade of the Object Having Strategic or Special Significance for the Terrorist Purpose;

- Article 331¹: Financing Terrorism;
- Article 338: Acceptance of a Bribe;
- Article 339: Giving of a Bribe;
- Article 339¹: Corruptive Influence;
- Article 364: The Interruption of the Legal Proceeding or the Preliminary Investigation;
- Article 365: Coercion or Violence in Connection with the Enforcement of Legal Proceeding or Preliminary Investigation;
- Article 372: Bribery or Coercion of the Witness, Victim, Expert or Interpreter.

The stated draft of the Ministry of Justice establishes the criminal responsibility of the legal persons only for those crimes, which are listed in the UN Convention. For the sake of the development of the country in the way analogous to the developed countries of the West it would be desirable to spread the criminal responsibility of the legal persons to the wider list of the crimes.

The Convention considers the presence of the defendant in the criminal proceedings. The legislation of Georgia permits the possibility of conducting court proceedings without the presence of the defendant:

Paragraph 4 of Article 30 of the Convention considers the presence of the defendant at the criminal proceeding as compulsory. Article 443 of the Criminal Procedures Code of Georgia permits the possibility of conducting the court hearing without the presence of the defendant, if the latter is the official and fails to appear in the court.

According to the Convention the accused public official may be removed, suspended from his official duties or reassigned to the other position. The Georgian legislation only considers the possibility of dismissal from the office:

According to paragraph 6 of the same Article of the Convention, the States Parties should consider establishing procedures through which the accused public official may be removed, suspended or reassigned.

The Criminal Procedures Code of Georgia is familiar with the just the possibility of dismissing the accused from the office. Namely, according to the Article 183 the accused may be dismissed from the office, if there is trustworthy evidence that by staying in the office the accused with prevent the establishment of the truth, the indemnification of the damage caused due to the crime, or continues the criminal activities. Special legislation which regulates the legal status of



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

the individual officials (e.g. judges, members of the Parliament, policemen, etc.) also considers the suspension of the authorities of the officials during the investigation and court proceedings before the acquittal or conviction.

The Convention establishes the necessity for implementation of the special protective measures for the witnesses, experts, victims and persons cooperating with the investigation. The Georgian legislation does not regulate the stated issues:

Articles 32 and 33 of the Convention establish the necessity for implementation of the special protective measures for the witnesses, experts, victims and persons cooperating with the investigation. Georgia has to develop whole set of legislative amendments in this respect, as the current legislation does not contain any provisions for the implementation of the stated obligation established by the Convention.

The Similarities of the Georgian Legislation and the UN Convention against Corruption

18, Rustaveli Ave • Second Floor • Tbilisi • 0108
Phone/fax: + 995 32 99 66 15 • e-mail: info@transparency.ge•
www.transparency.ge



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

Article 17 of the Convention considers as a criminal offence the misappropriation, of such property, public and private funds and illicit appropriation of the securities or any other thing of value entrusted to him/her by virtue of his or her position. The Criminal Code of Georgia, namely Chapter 25 thereof qualifies such crimes as larceny (Article 278), appropriation or embezzlement (Article 182).

Under Article 21 of the Convention the States Parties take the responsibility to discuss the possibility of adopting such measures as may deem criminal bribery in the private sector. In this respect Article 221 of the Criminal Code of Georgia should be mentioned, which regulates the matters of commercial bribery and under which the subjects of the crime are the managing, representative and other persons entrusted with special competence. Despite some differences between the provisions of the Criminal Code and the Convention (Convention recognizes any official working in the private sector to be the subject of the crime), the domestic legislation does not need any amendments as this difference bears only the formal nature. The notion of “the person with special powers” considered by the Criminal Code of Georgia gives us the possibility to fully implement the objectives set by the Convention.

Article 34 of the Convention addresses the results of the corruption such as the corruption as a basis for annulment of the contracts. According to the Article 54 of the Civil Code of Georgia a transaction, that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void. The stated provision fully satisfies the requirements of the Convention.

Article 37 defines the matters of mitigating the punishment and granting the immunity to those persons, who participate in the investigation or criminal prosecution. The criminal material and procedural legislation considers the set of legal institutes (types of plea bargaining, the confession of crime, right of immunity, etc.) in this respect, which are in conformity with the international standards.

The Convention also addresses such issues, as the establishment of jurisdiction, mutual legal assistance, rules of extradition, cooperation between the law enforcement bodies, joint investigations, the measures to be implemented for the recovery of the property and etc. While regulating such spheres the domestic legislations of Georgia permits the possibility for defining the special relations by the means of international treaties and agreements. Thus, there should be no legislative obstacle in enforcement of the provisions of the Convention in this respect.



საერთაშორისო გამჭვირვალობა საქართველო
Transparency International Georgia

At the end it should be stated that the granting the obligatory legal force to the discussed international act for Georgia would greatly contribute to the integration of Georgia into the unified international legal system.

Nowadays it is universally recognized that corruption causes serious danger to the stability and safety of any society, violates the democratic institutions, justice, ethic values, damages the stable development of the States and universal rule of law. Corruption is no longer a local problem. It is a transnational phenomenon, which determines the great importance of the international cooperation to the prevention and fight against corruption.

The prevention and eradication of corruption is the responsibility of every State and in order to make its forces effective in this field Georgia should cooperate with individual States or groups of States as well as the civil society and non-governmental organizations.