Groupe d'Etats contre la corruption
Group of States against corruption

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Evaluation Report on Georgia

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I. INTRODUCTION

1. The GRECO evaluation team (hereafter "GET") was composed of Mr Georgi RUPCHEV, State Expert, Directorate of Legislation Ministry of Justice (Bulgaria, policy expert), Mr Jerzy SZYMANSKI, Prosecutor of the Appellate Prosecutors Office, Delegated to the State, Prosecutor's Office, Bureau for Fighting Organised Crime, Ministry of Justice (Poland, prosecution expert) Mr Ray SMITH, Assistant Chief Investigating Officer, HM Customs & Excise (United Kingdom, law-enforcement expert). The GET, accompanied by Ms Natalia VOUTOVA, Administrative Officer at the Economic Crime Division, visited Tbilissi from 16 to 20 October 2000. Prior to the visit the GET were provided with replies to the Evaluation questionnaire.

2. The GET met with officials from the following Georgian Governmental organisations: Ministry of Foreign Affairs, Working Group drafting the state programme on fight against corruption, General Directorate against corruption and economic crime within the Ministry of Interior, General Prosecutor's Office, Division of Internal Audit in the Ministry of Tax Revenue, Ministry of Finance, Parliamentary Committee on Legal Affairs, Ministry of State Security, Chamber of Control and National Security Council, Ministry of Justice.

3. Moreover, the GET met with representatives of the following non-governmental institutions: Corruption Research Centre and Chamber of Commerce of Georgia.

4. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Art. 10.3 of the Statute, the evaluation procedure would be based on the following provisions:

   - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);

   - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);

   - Guiding Principle 6 (hereafter "GPC 6": immunities from investigation, prosecution or adjudication of corruption);

5. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations regarding each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Georgian authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation regarding the phenomenon of corruption in Georgia, the general anti-corruption policy, the institutions and authorities in charge of combating it and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing in particular whether the system in place in Georgia is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Georgia in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a1. The phenomenon of corruption and its perception in Georgia

6. Georgia is a relatively small country (territory 70 000 square kilometres, population – 5.444.700 inhabitants). It lies by the Black Sea and is bordered by Azerbaijan, Armenia, Turkey and Russia.

7. It is generally accepted both within governmental and non-governmental circles, including most representatives of Georgian society, that corruption phenomena are endemic in Georgia and could jeopardise the further political, economic and social development of the country. This is also stressed in the draft "Guidelines for the national anti-corruption program". According to the Transparency International Corruption Perception Index 1999, Georgia is ranked 85 (out of 99, score 2.3 out of 10)[1].

a2. Domestic legislation for preventing and fighting corruption

8. The New Criminal Code of Georgia, in force since 1 January 2000, contains several provisions that deal with active and passive bribery of domestic public officials, as well as with active and passive bribery in the private sector. It is to be noted that article 4 defines of the Law on Public Service the concept of "public official". This concept does not include foreign public officials.

9. Article 338 of the Criminal Code defines passive bribery as the acceptance by an official of money, securities, property or any other material advantage to act or refrain from acting in the exercise of his/her functions in favour of the briber. The sanction provided for passive bribery is imprisonment for a period of at least five years.

10. Accepting illegal presents is established as a separate criminal offence, different from receipt of a bribe (Article 340). Sanctions provided for this offence are fines or socially useful labour or deprivation of the right to occupy a position or pursue a particular activity. The Georgian authorities indicate that these sanctions are provided for violations of the Law on Conflict of Interests and Corruption in the Public Service.

11. The Law on Conflict of Interests and Corruption in the Public Service was adopted in 1997 and deals with the prevention and suppression of corruption. It contains a definition of "public official" as well as definitions of "corruption in the public sector", "corruption offence", "conflict of interests in the public sector" and "gift". According to the law, public officials are under the obligation to declare their property. For that purpose an *Information Agency on Property and Financial Declarations of Public Officials* exists. Public officials are liable to disciplinary sanctions (which could lead to a dismissal from official duties) for a breach of this law which constitutes a criminal or administrative offence.

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[1] A number of surveys have concluded that there is a deeper level of corruption within the police, customs and courts, the very agencies which must be at the heart of any measure to tackle the problem of corruption. According to surveys conducted by the Corruption Research Centre, 83.6% of the respondents believe that there is no corruption-free sphere in Georgia – "Investigation of a social field of the society's attitude towards the problem of corruption", Corruption Research Centre, Tbilissi 1999, p.22. According to the Business Environment and Enterprise Performance Survey of the European Bank for Reconstruction and Development, 36.8% of all Georgian firms are bribing frequently or more. This figure is the highest among all 20 Central European and Former Soviet Union countries. The same survey shows that the average "bribe tax" constitutes 8.10 % of the annual revenue of Georgian firms - "Transition Report 1999", European Bank for Reconstruction and Development.

12. Article 339 of the Criminal Code defines active bribery as the action of bribing an official. The sanctions which are imposed for active bribery are fines (or corrective labour) or various kinds of deprivation of liberty. Under Georgian legislation the briber should be released from criminal liability if he/she has been extorted or has voluntarily informed the prosecuting body of the bribe giving.

13. Active and passive commercial bribes are established as separate criminal offences under Article 221 of the Criminal Code. Under paragraph 1 of this Article the illegal transfer of money, securities or other properties or property services illegally rendered to a person who occupies a leading position within an enterprise so that such person use his/her official position in favour of the briber's interests, is punished by fine or different kinds of deprivation of liberty and by deprivation of particular rights. Similar sanctions are applicable to those accepting a bribe from such a person.

14. Money laundering is criminalised under Article 194 of the Criminal Code as "Legalization of Illicit Income". The sanctions imposed for this crime are fines or/and imprisonment. Article 194 does not define the concept of "predicate offence" for the purpose of prosecuting money laundering. Any kind of legalization of illicit income (including those deriving from corruption) is considered as punishable.

15. A translation of the relevant provisions of the Georgian Criminal Code is reproduced in Appendix II to this report.

16. In the Criminal Code there are no specific provisions criminalising trading in influence.

17. Georgian legislation does not know the concept of criminal liability of legal persons. It seems also that the law does not provide for special non-criminal sanctions, which may be imposed on legal persons for active bribery and money laundering offences committed by a natural person occupying a leading position within the legal person.

18. The GET was informed that the ratification of the two Council of Europe Conventions on Corruption is foreseen to take place shortly and that only minor changes in the Georgian legislation will be required to ensure the latter's compatibility with the provisions of these two Conventions.

19. It should be noted that the GET was informed that the Georgian authorities are considering a Code of conduct for public officials, but the GET was unable to obtain more information on this issue.

a3. International cooperation

20. Article 6 of the Constitution of Georgia establishes the precedence of international treaties biding upon Georgia over domestic legislation, in the cases where the relevant treaties do not contradict the Constitution itself.

21. Georgia has signed the Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption, but neither of these conventions has been ratified yet. The Georgian authorities acknowledged that at present their legislation does not meet the standards of the Criminal Law Convention on Corruption. In accordance with the existing rules the relevant amendments have to be prepared in advance and submitted for adoption by the Parliament

together with the Convention. Georgia intended to adopt the relevant legislation and to ratify both anti-corruption conventions as soon as possible.

22. Moreover, the European Convention on Extradition has been signed but not ratified.

23. The European Convention on Mutual Assistance in Criminal Matters and the Convention on the Transfer of Sentenced Persons have been ratified and have entered into force. Georgia has concluded a number of bilateral agreements on cooperation in criminal matters with States of the former Soviet Union as well as with Greece, Bulgaria, and Turkey. There are neither special treaties providing for co-operation with respect to corruption cases, nor requests for mutual legal assistance in corruption cases registered for the last five years.

24. Georgia does not allow for the extradition of nationals except when a special agreement is concluded with the relevant country.

25. The Criminal Procedure Code of Georgia contains provisions which deal with the mutual assistance in criminal matters and extradition (Articles 248-260).

a4. The Guidelines for the National Anti-Corruption Program

26. In July 2000, the President of Georgia adopted a Decree creating a Group for the elaboration of a National Anti-corruption Programme. A draft of such a National Programme was published in November 2000.[2] Society was actively involved in its preparation and had time to present opinions and proposals.

27. The President of the Commission for the drafting of the programme explained to GET members that this body was created, *inter alia* as an acknowledgement of the inefficiency of the law-enforcement authorities in fighting corruption: in the last three years only three corruption cases have been dealt with by the Supreme Court; in 1997 13 cases of passive bribery were brought to court and 12 persons convicted; in 1998 there were 9 cases brought to court and 12 persons convicted for this crime and in 1999 there were 5 cases brought to court and 4 persons convicted. In the first half of 2000 only one corruption case was brought to court.

28. The draft programme deals mainly with the prevention aspects of corruption phenomena but also with the prosecution of corruption offences.

29. The draft programme contains an assessment of this phenomenon in Georgia, stressing, in particular, that corruption has deeply penetrated all spheres of economic and social life, including the functioning of the executive and legislative branches of Government. It also acknowledges that parliamentary mandates are used for lobbying private interests and avoiding responsibility for corruption and other offences.

30. This document contains proposals for the improvement of the State administration system, the strengthening of controls over, *inter alia,* the budgetary system, the tax collection system, state procurement, the development of anti-corruption activities of non-governmental organisations etc.

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[2] During the on-site visit the draft programme was still under preparation. Members of the GET received a copy in November 2000 and were informed that it would be adopted by Presidential Decree at a later stage.

31. Several measures are foreseen by the draft programme as regards the activity of bodies in charge of the fight against corruption. The draft programme provides for the establishment of an agency for coordinating the anti-corruption policy with the President of Georgia. The agency will be also responsible for monitoring the implementation of this policy, as well as for co-operation with civil society and the relevant international programmes. This agency will not carry out criminal investigations and prosecutions. However, it is foreseen that if the strategy fails, it would be possible to empower the agency to conduct preliminary investigations on serious corruption offences committed by high-ranking governmental officials.

32. The Commission informed the GET that procurement legislation and the relevant parts of the Administrative Code would be amended, following the recommendations of the World Bank and in accordance with the EU Directives. These amendments will be mainly related to the transparency of the procedures for public tenders. They also underlined that there is an antimonopoly law that deals with unfair competition. Regarding the process of privatisation, 70% of which is completed, the representatives of the Commission acknowledged that it was very likely that during the different procedures corrupt practices had occurred. They also stressed that it would now be impossible to start any investigation and prosecution *vis à vis* the physical persons which have participated in the privatisation process. However, the GET members were told that now much more attention would be paid to the issue of transparency for the remaining targets for privatisation.

b. Bodies and institutions in charge of the fight against corruption

b1. Ministry of Internal Affairs

33. The Ministry of Internal Affairs is responsible for the police forces, staffed by approximately 21,000 officers.

34. The Main Administration was created to deal with corruption and economic crime cases, within the Ministry of Internal Affairs. It is composed of the following departments: department against economic crime, department against bribery, division for analysis, pacification and regional control.

35. The Main Administration is the inquiring body on cases of corruption. It has also 13 regional divisions and an overall staff – including the central and regional levels – of 335 persons.

36. In 2000, so far, 1147 economic crimes were dealt with by the Main Administration including 299 cases of selling of goods without excise, 285 cases of embezzlement, 126 cases of counterfeiting, 123 of abuse of power and 34 cases of bribery.

37. Investigations are conducted by the respective Investigative Departments of the Ministry of Internal Affairs, of the General Prosecutor's Office and of the Ministry of State Security.

38. The Criminal Procedure Code provides for a "division of tasks" between these three law enforcement agencies as regards the investigation of cases. The Ministry of Internal Affairs may make preliminary enquiries but does not conduct investigations in cases of corruption, which are within the competence of the Prosecutor's Office.

39. Officials working for the Main Administration have a high level of legal or economic education but do not have the necessary special training in this field, because of budgetary difficulties.

40. It does not seem that the Main Administration fighting against economic crime and corruption has a proactive approach towards possible cases of corruption. The officers of the Main Administration react on the basis of information received from the operational units.

41. One of the functions assigned to the General Inspection of the Ministry of Internal Affairs is to control and detect possible corrupt behaviour among staff. If such cases are detected, the Prosecutor's Office investigates them. However, cases of minor abuses of power committed by officers of the Ministry of Internal Affairs are dealt with by the Ministry itself. There is no code of conduct for officers of the Ministry of Internal Affairs, but on taking up their functions, they take an oath, which contains, according to the representatives of the Ministry, elements of a code of conduct.

42. The GET was informed that owing to financial difficulties, there is no centralised database or intelligence unit collecting information about cases linked to the corruption phenomenon. However, the GET was told that the Main Administration fighting corruption and organised crime has a very good working relationship with the other law enforcement bodies and despite the absence of a centralised data base of corruption cases, each law enforcement authority shares its own data base with the others.

b2. Public Prosecution Office

43. Duties, organisation and guarantees of the Public Prosecution Office are defined by the Organic Law on the Prosecution Office, of November 21st, 1997. According to this law (Article 2), the Public Prosecution Office co-ordinates the prevention and the fight against criminality, conducts the public prosecution before court, supervises the lawfulness of inquiries conducted by the police and other authorised agencies and supervises the execution of sentences.

44. The Public Prosecution Office is a hierarchically centralised system with the following structure: the General Prosecutor's Office, the prosecutor's Offices of Tbilissi and of the Adjarian and Abkhazian Automous Republics, 10 District Prosecutor's Offices, 9 Regional Prosecutor's Offices, the Military Prosecution Office competent for prosecution of persons employed in military, security and intelligence bodies, the Transport Prosecution Office prosecuting cases related to traffic crimes, and the Prosecutor's Offices for the Penitentiary system. The GET was informed that within the structure of the General Prosecution Office there is a department dealing exclusively with corruption related cases. There is an investigative department in the Prosecutor's Office. The General Prosecutor is empowered to create specialised units if needed. Most of the prosecutors appointed by the General Prosecutor are employed in the regions and in large cities.

45. The General Prosecutor is appointed for a period of five years by the Parliament upon proposal of the President of Georgia, by majority of the total number of deputies with the possibility of a single re-election. The General Prosecutor has the obligation to present general information on its activities to the Parliament. S/he has the same obligation *vis à vis* the President of Georgia (Head of the Executive).

46. Within the structure of the General Prosecutor's Office there is a consultative board to the General Prosecutor. The head of the board is the General Prosecutor empowered, in case of disagreement between the General Prosecutor and the board, to make the final decision. The main task of this body is to discuss the issues concerning "the struggle against crime, disciplinary

decisions, personnel questions, etc". According to need, the Ministry of Internal Affairs and the Ministry of State security also participate in the discussions and decisions of the board (art.8 of the Law).

47. The Law has also defined the political neutrality of the office. Moreover, the membership of prosecutors in political parties is strictly prohibited. Public prosecutors have no right to perform any other kind of pecuniary activities besides scientific, artistic and pedagogical ones. Any undue interference with the public prosecutor's activities is, by law, a criminal offence, although, the GET was informed, such cases occur very seldom in practice.

48. The Prosecutor General is vested with specific procedural powers concerning the initiation of criminal proceedings in case of commission of a crime by the President of Georgia, members of the Parliament, the Public Defender, a judge, a prosecutor, an Ambassador of Georgia – obviously after lifting the immunity from investigation. Such a proceeding is conducted solely by the Prosecutor General (Article 38 paragraph 4 of the Law).

49. It should be underlined that if a criminal procedure is initiated against a prosecutor, he/she shall be suspended from his/her position by decision of the Prosecutor General until the decision of the relevant authority (Article 38 paragraph 5 of the Law).

50. In this connection, the disciplinary rules within the Prosecutor's Office are also to be mentioned, in particular Article 34 of the Organic Law, which contains the rules for dismissal of prosecutors. The peculiarity of this procedure is that although the disciplinary decision is subject to judicial review, (Article 37 of the Organic Law) there are no legal provisions providing for eg. the necessity to conduct an internal disciplinary procedure before the disciplinary decision is issued. Despite the fact that Article 8 of the Organic Law provides that a disciplinary decision is to be discussed by the Board of the General Prosecutor's Office, it should be stressed that there is no internal, independent disciplinary court/body with the competence of making decisions on disciplinary issues. Neither does the Law provide a satisfactory internal grievance procedure.

51. The general reasons for dismissal are defined by law in a vague way, as Article 34 of the Organic Law stipulates that "a member of the Prosecutor's Office can be removed from his/her position (…) in case of violating the oath (…) or in case he/she commits another act, which is impermissible for a member of the Prosecutor's Office".

52. According to Article 22 of the Organic Law, a prosecutor is under the obligation to protect confidential information obtained in documents requested during the enquiry.

53. The prosecutor is responsible for pressing charges and proving the guilt of the defendant before the courts.

54. The GET was informed orally and could not obtain any written text about the fact that the prosecutor handling a case may request from his/her hierarchical superior prosecutor that any instructions given on the case be put in writing. Similarly, the GET did not have access to any written provisions dealing with internal procedures which could lead to the eventual replacement of the prosecutor concerned in a case when the instructions given by the superior investigator appears illegal or in conflict with his/her conscience.

55. The staff (prosecutors and investigators) must undergo qualification courses once every three years. The rules and provisions of these courses are defined by the Prosecutor General. The

GET was informed that there are no specific training programmes devoted to the topic of the prevention of - and fight against - corruption.

56. The GET was advised that the General Prosecutor's Office has worked out a specific methodology as concerns corruption cases.

57. The GET was informed that the Prosecutor's Office does not have a proactive approach as concerns corruption cases because, as stated above, the Prosecutor's Office is no longer vested with the function of the general supervision of legality. Nowadays its main tasks concern exclusively the criminal law area.

58. When a member of the prosecution office is appointed, he must, prior to taking up his/her duties, take a special oath containing obligations to apply the legal duties defined by the Constitution and by the law.

59. The Public Prosecutor's Office has its own budget, the amount of which is defined by Parliament. According to the information provided to the GET by the General Prosecutor's Office, basic needs of the service are covered only up to 50 % and despite recent improvements, it seems that the average salary of prosecutors slightly exceeds the social minimum (140 Laris – app. 70 $). Such an amount seems to vary significantly from the average salary of judges (700 Laris – app. 300 $).

60. According to the indications given to the GET members by the Deputy Prosecutor General, the lack of results in prosecuting corruption offences is attributable directly to the ineffectiveness of the other law enforcement agencies to detect those responsible and a general reluctance on the part of the public to report on corruption.

b3. The Ministry of Tax Revenue

61. The Ministry of Tax Revenue was created following a reform in Governmental structures, which started at the beginning of 2000. The main function of the Ministry is to tackle one of the biggest problems of Georgia - the low level collection of taxes from physical and legal persons. The Customs, which before constituted a separated State Committee, have now been incorporated into the structure of the Ministry of Tax Revenue.

62. The Ministry will conduct preliminary investigations before transmitting its findings on possible criminal offences to the Public Prosecutor's Office, which will than pursue the investigation further. An Internal Inspection Office, headed by an Inspector, has been created within the Ministry.

b4. The Ministry of State Security

63. The Ministry of State Security deals primarily with state security matters but also with the economic well-being of the country. Since it is in charge of investigating major economic crimes, which are often perpetrated by senior public officials, it also deals with some corruption offences.

64. The officials of this Ministry are trained in the Academy of the Ministry of State Security. They are empowered to make use of special means of investigation, with a judicial authorisation to be granted by the Presidium of the Supreme Court upon proposal of the General Prosecutor's Office. (see below, under Chapter B6).

b5. The Court system

65. According to the principle of the separation of powers, the judicial power in Georgia is exercised by independent courts (Chapter V of the Constitution) and several provisions of the Constitution guarantee the independence of judges. From the viewpoint of the Principles being monitored, the most important is the provision of Article 84 of the Constitution: "*Any interference in a judge's activities in order to influence his decision is prohibited and punishable by law*".

66. Furthermore, judicial independence is further guaranteed by the existence of an institution, the Council of Justice, which is the self-governing body of the judiciary. The Council of Justice has at its disposal its own budgetary means.

67. A training centre for judges has been created by the Council of Justice with TACIS financial support and the World Bank is implementing a specific training programme containing corruption issues. The prosecutors have not been included in these training programmes.

68. The GET was advised that there were attempts to introduce integrity tests for applicant judges, but the idea was abandoned because the criteria were very difficult to determine.

b6. Sources of information

69. Although Georgian legislation does not contain specific provisions containing an "official" obligation to report corruption cases, there is a general obligation to report to law-enforcement agencies any crime, including corruption cases conducted by public accusation. Moreover, according to the Criminal Code, the act of abstaining from reporting is recognised as a criminal offence.

70. In the fight against organised crime, including corruption, the Code of Criminal Procedure and the Law on the Operative-Searching activities provide for the possibility of making use of so-called "special investigative techniques". First of all there should be a preliminary court decision (the Presidium of the Supreme Court when used by the Ministry of State Security). The special investigative techniques available under Georgian law are the following: undercover agent, telephone tapping, other interception of communications, secret observations, controlled purchase, controlled delivery. The use of informants does not require court authorisation. In urgent cases, and only for 24 hours, police officers and the officers of the Ministry of State Security can make use of these special investigative techniques without prior judge's order, but on the condition that within this period the judge is advised in order to evaluate the legal grounds for the use of such measures and decide on the justification to continue it. If, according to the judge's assessment, the decision to use special means appears to be groundless, sanctions can be imposed on the person responsible within the police or the Ministry of State Security.

71. Police undercover agents have to testify under their real name. The GET was told that although information obtained from informants might be unreliable and needs to be confirmed in the course of the proceedings, it is still one of the basic sources to gather intelligence necessary for criminal investigations.

72. Georgian legislation does not provide for specific witness protection systems or measures. However, persons under threat by criminals may generally be protected by the police. The Georgian authorities are aware of the necessity to create and implement legislation on witness

protection, but due to budgetary problems they cannot envisage it at this stage. It should also be mentioned that the Criminal Code foresees the possibility of a mitigated sentence for an accused person who cooperates with the justice.

b7. Other bodies and institutions

i. The Presidential Security Council

73. It is a consultative body to the President of Georgia. Its main function is to coordinate the activities of the law enforcement bodies.

74. Two years ago the Security Council proposed the setting up of a special unit on the fight against corruption under the direct responsibility of the President of Georgia. This unit was intended to be the only unique body vested with investigative functions in the field of corruption. This initiative was not pursued.

ii. Parliament

75. In the present Parliament there is no special Committee concerned exclusively with corruption issues. The Legal Affairs Committee comprises three sub-committees – on administrative and legal reform, on the fight against crime and on general legal issues. However, according to the "Law on temporary investigation commissions of the Georgian Parliament", it is possible to create such commissions on concrete issues. Recently a temporary commission was created for the investigation of the misappropriation of considerable funds in the fleet. According to the Chairman of the Committee of Legal Affairs, the findings of a temporary investigative commission in the previous Parliament led to the resignation of the Minister for Telecommunications, the Minister for Energy and the Minister for Agriculture.

c. Immunities from investigation, prosecution and adjudication for corruption offences

76. As do many other national legal systems, Georgian legislation provides for two categories of immunities:

- firstly, the "non-liability" ("freedom of speech"), applicable mainly to members of parliament (Article 52, paragraph 4 of the Constitution), in respect of proceedings relating to opinions expressed in and out of office (Parliament) while in the performance of their duties, and

- secondly, the "inviolability" ("freedom from arrest") of several categories of persons shielding them from arrest, detention or prosecution without the consent of the competent body.

77. The scope of "inviolability" is directly related to the implementation of GPC6.

78. Under the Constitution and laws of Georgia a number of categories of persons benefit from immunities from criminal proceedings in case of offences committed.

79. According to the Constitution of Georgia Members of Parliament (Article 52, par. 2), judges (Article 87, par.1), members of the Constitutional Court (Article 88, par. 5), Chairman and members of the Supreme Court (Article 90, par. 4) have "personal immunity". This type of immunity ("inviolability") protects the above persons from any action brought against them (Members of Parliament) or from being brought before a criminal court (judges, members of

Constitutional Court, chairman and members of the Supreme Court), from detention or arrest (for all persons above), personal searches (Members of Parliament), and house, car and office searches (for all persons above) unless the relevant body (Parliament, Chairman of the Supreme Court for judges and members of the Supreme Court, Chairman of the Constitutional Court) consents to it. Detention or arrest is allowed where the person is apprehended *"in flagrante delicto"*. In this case the body/chamber concerned (Parliament for its members and judges, Chairman of the Supreme Court for judges of this court, Constitutional Court for members of this court) has to be notified and, if it does not give consent, the detained or arrested person must be released immediately.

80. The President of Georgia has "personal immunity" which protects him from arrest or criminal proceedings, while occupying this position (Article 75, par. 1 of the Constitution).

81. A procedure of impeachment is provided by the Constitution for some high-ranking officials (President of Georgia, Chairman of the Supreme Court, members of Government, Prosecutor General, Chairman of the Chamber of Control, members of the National Bank's Board) in cases of violation of the Constitution, high treason or commission of "capital crimes" (Articles 63, 64, 75, 80, 96, 97 of the Constitution of Georgia).

82. Several categories of persons benefit from immunity from prosecution for offences committed ("inviolability") under the relevant laws of Georgia.

83. According to the Law on the Parliamentary Elections (1995), the applicant members of Parliament enjoy inviolability similar to the Members of Parliament's immunity. The Central Election Commission is the body competent to decide on lifting this immunity.

84. Under the Organic Law on the Prosecutor's Office, the Prosecutor General, his Deputies, the heads of investigation departments of the Prosecutor Office and other members of the General Prosecutor Board (13 officials altogether) are protected from arrest, detention and house, car or office searches without the consent of the Chairman of the Supreme Court of Georgia.

85. The Law on the Chamber of Control (Audit Office) prescribes that the arrest or detention, as well as the house, car or office search of the Chairman of the Chamber of Control are not allowed without the authorisation of the Parliament.

86. The Georgian authorities informed the GET that the Ombudsman and the members of the National Bank's Board also enjoy some form of "inviolability".

87. In general the proposal to lift the immunity is submitted to the competent body by the Prosecutor General. For example, under the Law on the Regulations of the Parliament of Georgia, the Prosecutor General submits to the Parliament's proposals on the conduct of the relevant investigative actions. Within 5 days, the respective Parliamentary Committee examines the reasonableness of the proposal and then submits its conclusions to the Bureau of Parliament. The Parliament adopts a decision after discussing the proposal in its session.

88. The Chairman of the Legal Affairs Committee explained the very large number of different kinds of immunity in Georgia as being necessary in such a young democracy to guarantee independence and to give the possibility to those who benefit from such immunity to perform their functions and duties properly. The GET was informed that in the previous Parliament there were no immunities lifted for corruption cases.

89. Also, several categories of persons (including members of Parliament, Ministers and heads of local authorities) are immune from disciplinary liability under the Law on Conflict of Interests and Corruption in Public Service (Article 20, par. 4 of the Law).

90. According to the replies to the questionnaire, nobody (except persons who enjoy immunity from criminal jurisdiction of Georgia) has any privilege allowing him/her to be prosecuted or tried in accordance with a procedure constituting an exception to the general law.

91. The lifting of diplomatic immunity of a Georgian diplomat having committed a criminal offence abroad is to be decided by an agreement between Georgia and the State of accreditation. Pursuant to Article 42, par.2 of the Law on Diplomatic Service of Georgia, the Minister of Foreign Affairs of Georgia takes a decision to lift the diplomatic or consular immunity of a Georgian diplomat and the members of his/her family. If Georgia refuses the lifting of the immunity, the competent Georgian authorities should prosecute the diplomat concerned according to domestic legislation. In this case the general rules of the Criminal Code are applicable to the Georgian diplomat who has committed a criminal offence abroad (including corruption offences). On this issue additional written information prepared by the Ministry of Foreign Affairs was provided during the visit.

III. ANALYSIS

1. Domestic legislation against corruption

92. In spite of the fact that the GRECO's first evaluation round is not directly concerned with the application of GPC 2, which deals with the co-ordinated criminalisation of national and international corruption, the GET members did pay some preliminary attention to the elements/material components of the bribery offence, insofar as they were directly related to the definition of corruption, i.e. to the scope of application of GPC 3, 6 and 7 standards.

93. The GET noted, in this respect, that the acts of "promising" and/or "offering" a bribe and the acts of "accepting of a promise or offer" and/or "requesting" a bribe are not explicitly included in the scope of the offence of bribery under the relevant provisions of the Georgian Criminal Code. Article 19 of the Criminal Code of Georgia provides for sanctions for attempts of crime**.**

94. Although the relevant provisions on bribery do not expressly refer to the issue of bribes made directly or indirectly the Georgian authorities stated that they are applicable to the giving or receiving of bribes through intermediaries.

95. An additional difficulty resulting from the current Criminal Code is the scope of the definition of a bribe, which at present is limited only to "material" benefits and does not cover advantages of a non-material nature.

96. Acts of bribery of foreign public officials, officials of international organisations, officials of international courts, members of foreign public assemblies and international parliamentary assemblies are not covered by the Criminal Code.

97. The Georgian Criminal Code differentiates between "passive bribery" and "receipt of illegal presents". Whilst the sanctions provided for passive bribery are sufficiently severe (imprisonment for a period of at least five years), those applicable for the receipt of illegal presents exclude the

possibility of imposing a sanction of imprisonment. Without additional information on the relevant court practice it is not possible to determine how these provisions are applied in practice.

98. The GET observed, therefore, that the existing legislation would clearly require amendment in line with the requirements deriving from the Council of Europe Conventions on corruption, in order to achieve an effective and comprehensive action against corruption in Georgia. Moreover the GET observed that the shortcomings indicated above, as well as the fact that Georgia is not a party the European Convention on Extradition, might hamper the ability of the Georgian authorities to develop international judicial co-operation in the fight against corruption.

2. A policy for the prevention of corruption

99. All persons met by the GET during its visit, including public officials and representatives of Georgian society, agreed that Georgia is widely contaminated by corruption and corruption-related offences, to an extent that endangers the further political, economic and social development of the country. Some surveys have concluded that there is no corruption-free sphere in Georgia, that a high percentage of Georgian companies frequently or regularly pay bribes and that the police, the customs and the courts, those very agencies responsible for fighting corruption, are most widely affected by it.

100. When analysing the stage of the prevention and fight against corruption in Georgia, the GET bore in mind the large variety of problems affecting the country, including its recent civil war, political instability, breaches in territorial integrity and a refugee and IDP crisis, a difficult geo-political situation, economic problems, heavy tax system, poor control and regulatory systems as well as cultural acceptance of corruption as being necessary to survive because of low salaries. In the GET's opinion, the extent of these problems makes the struggle against corruption a difficult issue for the Georgian authorities.

101. While agreeing that an improvement of the economic situation could facilitate the effective implementation of measures against corruption and result in a reduction of the level of this phenomenon, the GET expressed the strong belief that no stable and consistent improvement of the economic situation was likely to occur in the absence of a comprehensive anti-corruption policy, applied with full determination and resolve. The GET was aware of the fact that that there is no corruption-free sphere in the Georgian society and that, consequently, measures need to be taken at all levels. It stressed, however, that priorities need to be defined and that the most obvious and dangerous forms of corruption need to be openly and consistently confronted through a strong reaction by a fully committed criminal prosecution system.

102. According to the GET, if corruption is to be defeated, a comprehensive, long-term and pragmatic strategy is required. Such a strategy must win both public and official acceptance. Citizens must be made aware of the measures undertaken and of the efforts made and results obtained. Public officials at all levels must also receive precise information about anti-corruption measures to be introduced. Therefore, the GET started by recommending the swift adoption of a comprehensive national anti-corruption strategy, defining priorities for action, associating all agencies involved and raising awareness among public officials and the general public about the danger entailed by corruption and the need to co-operate with law-enforcement authorities in the detection, investigation and gathering of evidence in corruption cases.

103. Moreover, if the public is to play an active role in preventing corruption within Government, they should be able to identify those with whom they come in contact and have recognised methods

for complaints. In addition the authorities need to ensure adequate visibility of their anti-corruption efforts and of the results obtained, by regular reports informing on corruption prosecutions. Therefore, the GET recommended that officials who regularly come into contact with the public should be readily identifiable.

104. It further recommended implementing proper complaints procedures for submitting complaints (it must be clear to the general public to whom they can complain), advising on the reaction (a clear explanation of the action taken should be given to every complainant) and informing on possible compensation, where applicable. In this connection, the Georgian authorities should consider the possibility of establishing appropriate channels such as hotlines enabling citizens to report easily and directly to the authorities information at their disposal on suspected corruption acts. Moreover, a regular bulletin should be issued informing the public of corruption prosecutions.

105. The GET found in all departments and agencies visited a clear acknowledgment of the importance of tackling corruption. Most of them had introduced some measures to this end. However, this activity was un-coordinated and sporadic. The GET found with concern that there was no coordination across departments and no central intelligence database in relation to corruption activities or statistics. In addition, there does not seem to be a clear understanding, shared by all those involved in dealing with this problem, of the term "corruption" and thus no realistic assessment of the number of cases dealt with by the various law enforcement departments. It was the GET's view that this situation clearly impairs the effectiveness of anti-corruption efforts.

106. Therefore, the GET recommended the establishment of a co-ordination mechanism involving all agencies and departments involved in the prevention, detection, and investigation of corruption. This unit should co-ordinate anti-corruption policies and measures, control their effectiveness and follow-up the implementation of the anti-corruption strategy. It should also, as a matter of priority, establish a centralised database to capture, *inter alia***,** all strategically relevant corruption intelligence, case progress and prosecution statistics.

107. The GET further noted that the *Information Agency on Property and Financial declarations of Public Officials,* established according to the Law on conflict of interests and corruption, was a simple repository for declarations. Even though the GET was informed that there were proposals to create a commission within the parliament to check declarations made to this *Agency,* it regretted that no proactive use was being made of the possibilities offered by such an *Agency* in the general struggle against corruption. Indeed, neither the law nor the practice provide for a proactive use of the information collected by the *Agency.* The GET noted with concern that no investigation can be open in case of an obvious discrepancy between the income declared by a public official to the *Agency* and his/her way of life. In the GET's view the *Agency* could become a very valuable source of information, which deserves to be taken advantage of in a comprehensive fight against corruption. Therefore, the GET recommended to make use of the *Information Agency on Property and Financial Declarations* as a source of information to be used in a pro-active way to detect and investigate possible corruption cases.

108. The GET stressed that in confronting corrupt behaviour all leaders and heads of State bodies and agencies must make clear their intention to maintain the highest level of integrity within their respective bodies and agencies. They should start by displaying high standards of behaviour in their personal and professional lives in order to demonstrate the leadership required of the authority. They should also charge those responsible for command and supervision to ensure that there is proper accountability at all stages of work and that standards set are adhered to.

109. The GET recalled the importance of creating and maintaining an environment within each of these authorities where everyone has the confidence to confront inappropriate behaviour. In its opinion long periods of service in certain sensitive posts without effective management can breed corruption.

110. Consequently, the GET recommended to put in place procedures to support managers to identify, prevent, challenge and deal with corrupt, dishonest and unethical behaviour. Such procedures should include education, training, prevention and enquiry. In order to ensure that such measures are put in place within all departments the GET further recommended envisaging the introduction of some form of independent audit of departments strictly related to integrity measures (for heads of departments and staff). This could take the form of a "coordinating council" comprising State officials and NGOs

111. In the GET's view the prevention of corruption requires the application of some measures from the moment a person applies for appointment to an official position. It therefore recommended to establish rigorous selection criteria and to conduct robust vetting checks in order to ensure integrity of all those recruited for public service, particularly those called to occupy sensitive positions. Checks on educational qualifications, previous employment, disciplinary/criminal records, etc should be made. Law enforcement and judicial authorities should be subject to particularly rigorous recruitment procedures. Finally the GET recommended to consider the introduction of tenure policies which will reduce the potential for corruption, in particular in sensitive posts.

112. The GET saw little evidence of the existence of a Code of Conduct in the various departments although it was orally advised that a Code of Conduct was being created along the lines of the Council of Europe model Code. In the GET's view it is an essential element of an effective anti-corruption strategy that each department introduces adequate ethical standards and provides initial training which familiarises officials with Codes of Conduct and Employment Regulations. The Codes of Conduct and the rules and procedures should be totally transparent and available for inspection by members of the public. In addition staff should receive continuous training to ensure that they are aware of the correct methods of carrying out operational procedures. This will enable individuals to identify inappropriate or corrupt practices and negate any defence based on uncertainty with regard to correct procedures. Therefore, GET recommended the introduction of Codes of Conduct in all Government Departments and Agencies, using the Model Code drawn up by the Council of Europe and included in the Committee of Ministers Recommendation R(2000) 10 as inspiration. It further recommended that all public officials receive training in Codes of Conduct and in applicable integrity/ethics rules and regulations relating to their employment.

113. The GET observed that the internal inspection regime in the Ministry of Tax Revenue appeared stronger in comparison with those of other Ministries visited by the GET. The inspection unit headed by an Inspector General appointed directly by the President has been able to develop various procedures designed to examine the causes of and to prevent corruption. The GET noted with interest that it examined, *inter alia*, the effectiveness of personnel, transparency and trust of individuals, establishment of work ethics, review of legislation, control and audit, methodology etc.

114. The GET was informed that a similar unit had been introduced within the Chamber of Control, but could not obtain confirmation of this or details on the functioning of this unit. The GET was also

told that the Inspector General within the Ministry of Tax Revenue intended to introduce an external monitoring council to allow for external scrutiny of the Inspectorate.

115. In the GET's opinion, the introduction of measures in line with the above in all Government departments and agencies would lead to a constant update of recruitment, training and anti-corruption preventive measures and enable the transmission of information to the competent law-enforcement bodies in cases of suspicions of corruption. The standards would be the same across all legal and law enforcement authorities and there would be external verification. Such a system would inspire public confidence that the Government was serious in its efforts to combat corruption.

116. In the light of the above, the GET recommended that all Government Departments and Agencies introduce internal inspection units similar to that created in the Ministry of Tax Inspection. It further recommended the introduction in all departments and agencies of external monitoring councils in line with the proposal elaborated by the Ministry of Tax Revenue.

117. The GET noted with interest the work done by Non Governmental Organisations and namely by the *Corruption Research Centre* and were gratified to learn that some cognisance had been taken of their work. The GET was conscious of the enormous economic and financial problems faced by the Georgian authorities, which prevent them from providing financial assistance to Non Governmental Organisations active in the field of the fight against corruption but advised and hoped that domestic and international authorities would provide financial support to the activities of these organisations.

118. More generally, the GET underlined that non-governmental organisations have much to offer in the policy-making process in the fight against corruption and contribute to raising public awareness about this dangerous phenomenon. However, the GET received indications that NGO contributions are often left unanswered and do not receive any feedback. In this context, the GET recommended to continue co-operation with NGOs in the form of a more structured dialogue. In particular the authorities should take care that correspondence is acknowledged and a considered written response to suggestions/recommendations given.

3. Law enforcement agencies

119. It appeared evident to the GET that there was almost no co-ordination between law-enforcement authorities in charge of the fight against corruption. It observed that there was no systematic collection of data on corruption cases and that no central database was available to those investigating corruption cases. The GET was often told by members of individual law enforcement bodies that their authority was effective in tackling corruption but that others were not. In reality no authority was able to convince the GET that they were, at present, particularly effective in detecting and gathering evidence in corruption cases. The results shown by the number of prosecutions for corruption were, in the GET's view, disappointing.

120. In order to overcome this situation the GET recommended the Georgian authorities to consider the formation of an independent specialised anti-corruption investigation unit. All law-enforcement and other authorities would be required to report to this unit any suspicions of corrupt behaviour. Cases of corruption, as soon as identified during a preliminary investigation would also be transmitted to the unit, which would continue and deepen the investigation to the extent necessary to bring charges. The creation of this special unit would also allow a better collection and analysis of data relating to corruption and would enable the preparation of

accurate statistics to assist future strategy and policy enhancement. The GET further recommended that this unit should be pro-active and have the authority to require information and assistance from all Governmental Departments and bodies. Co-operation between the unit and other law-enforcement bodies, Governmental departments and State agencies should be governed by law. The unit should also be empowered to make use of special investigative techniques available in the Georgian legal system with due respect to constitutional and legal safeguards and establish close working relations with the specialised unit which is recommended to be created within the Prosecutor's Office (cf. § 125)

121. In the GET's opinion it would be imperative to ensure that the Head and the staff of such a unit are of the highest integrity and that their appointment, activity and results are fully transparent and open to independent scrutiny. The unit should produce an annual progress report to be made available to the general public. Therefore, the GET recommended to select the Head and staff of this unit with the greatest care to ensure their highest integrity. It also recommended that the unit be open to independent scrutiny and produces an annual progress report of its activities to be made available to the general public.

122. The GET has already stressed above that the fight against corruption requires the use of every available investigation technique: telephone interception, audio and video recording, etc. The GET was informed that several Departments have the authority to use such techniques, including those which currently investigate corruption offences, but the reality was that such equipment was often not available.

123. Therefore, the GET recommended that the equipment necessary for implementing new investigative techniques be made available to the bodies in charge of investigating corruption offences and specifically to the specialised independent unit which could be created in pursuance of the recommendation made above. The GET pointed out, in this respect, that concentrating the necessary equipment in one place this would lessen problems of availability and improve judicial control.

4. Public Prosecution Office

124. The GET noted that constitutional provisions concerning the Public Prosecutor's Office guarantee a relatively strong position of the Public Prosecutor's Office in relation to the other State authorities. In its view the legal environment (the Constitution, the Organic law and the Criminal Procedure Code) would generally guarantee the proper functioning of the prosecution and judiciary while dealing with corruption related cases.

125. It also noted, however, that the public prosecution and the judiciary were broadly perceived by the public as being ineffective in fighting corruption. The inconspicuous number of persons sentenced for corruption (e.g. 1 case was examined by the Supreme Court in 1999) seems to indicate the necessity for much more effective action on the part of all the law enforcement and controlling bodies which are firstly responsible for disclosure of corruption. As experience in other countries shows, the financial statements (declarations) made by public officials might constitute a rich source of information on corruption. But, in the GET's view, it would be even more important in this respect to set up an efficient mechanism for verifying these declarations. In this respect the GET, reiterating its recommendation made above when dealing with the *Information Agency on Property and Financial declarations of Public Officials,* further recommended to establish a mechanism for testing the accuracy of income declarations made by public officials.

126. Moreover, the GET noted the absence of any specialised unit dealing specifically with corruption cases in the Public Prosecutor's Office. It recalled that the investigation and prosecution of such a silent and complex offence as corruption, requires special training and experience. In order to promote public confidence in the new measures to combat corruption it would seem imperative that all cases identified and investigated by the new independent specialised anti-corruption unit are prosecuted by specialised prosecutors, with adequate training and experience. In the GET's view the Public Prosecutor's Office, as the State authority generally responsible for the prevention and the fight against corruption should also play a more pro-active role in this area by conducting more intensive actions provided for e.g. in Article 20 of the Organic Law, and to increase cooperation in this area between prosecutors and law enforcement bodies, on the one hand, and the other controlling bodies, on the other (e.g. the Chamber of Control).

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

128. The GET noted with concern the very low level of salaries paid to prosecutors, which could jeopardise their ability to deal efficiently with corruption cases and to remain immune to financial incentives. Moreover, the judiciary should attach much more attention to the improvement of their public image and credibility in order to *inter alia* encourage the public to report on corruption cases. In this respect, the introduction of a code of ethics would be very helpful.

129. The GET expressed concern that the provisions empowering a superior Prosecutor to change any decision taken by a subordinate prosecutor dealing with the case, could lead to undue interference into the criminal proceedings. The GET considered that procedural decisions taken by prosecutors in criminal proceedings should be performed independently. The right of the superior prosecutor to change them should remain exceptional and accompanied by adequate safeguards.

130. Moreover, in the opinion of GET, the power of the Prosecutor General to directly render decisions on disciplinary issues against prosecutors, including their removal from office, was excessive and should be restrained. A detailed and comprehensive procedure on disciplinary issues to be followed before the adoption of disciplinary sanctions needs to be established.

131. In view of the above, the GET recommended that the Georgian authorities undertake the necessary measures to ensure an adequate level of remuneration for prosecutors, to establish fair and objective disciplinary proceedings for prosecutors, (disciplinary court), to guarantee access to a satisfactory grievance procedure and to specify the conditions and the safeguards applicable to cases where the superior prosecutor overrules decisions taken by the prosecutor in charge of the case, including the right to request that instructions addressed to the lower prosecutors be put in writing.

132. According to the GET, the Georgian authorities should envisage the implementation of a witness protection programme addressed especially to those who co-operate with the police and the criminal justice system. Although protection programmes are expensive, the costs are reasonable in comparison with those related to the use of such techniques as infiltration or long-term surveillance. The GET underlined that witness protection could be particularly useful and

effective in cases of organised crime connected with corruption. Therefore, the GET recommended the Georgian authorities to ensure the adequate protection of witnesses and collaborators of criminal justice, who report and provide the evidence which is necessary for the conviction of perpetrators of corruption offences.

133. In the GET's opinion, the provision of Article 48 of the Organic Law on Public Prosecutor's Office, stating that prosecutors will not prosecute on the basis of anonymous applications or complaints, appeared problematic. Of course the existence of such a provision could easily be explained as a reaction to the communist past of the country, where many "prosecutions" were carried out on the basis of anonymous applications. The GET stressed, however, that in the framework of the fight against corruption, anonymous reports might be an important source of information. Once public confidence in the criminal justice system increases, the majority of the reports will also be signed. Therefore, the GET recommended amending the above-mentioned provision to the effect that prosecutors should examine anonymous reports on corruption as a source of information, despite the fact that, in the absence of additional corroborating sources, anonymous reports could not form a sufficient basis for the opening of a formal investigation.

5. Immunities from investigation, prosecution and adjudication for corruption cases

134. The GET noted with concern the wide scope of immunities in Georgia. The circle of officials who enjoy immunities and/or inviolability in this country appeared to be much too large. According to the information received the scope of the "personal immunity" in Georgia covers not only the investigative and court actions mentioned in the relevant legal texts concerning immunities, but also preliminary inquiries and other criminal investigations in relation to the person in question. Moreover, the "inviolability" applies for the complete term of office. For parliamentarians it is not confined to the Parliament's session period. The immunity granted to candidates to Parliament may indeed lead to a permanent obstruction of the course of justice.

135. The GET observed that no offences of certain gravity were excluded from the scope of immunity. Even if the relevant person is arrested in "*flagrante delicto*", s/he will have to be immediately released and no subsequent proceedings will be instituted unless authorisation is granted by the body of which the offender is a member.

136. The GET was not made aware of the existence of special conditions, rules or guidelines applicable to the lifting of the immunity, a decision that remains, in essence, a political one, the competent body holding full discretionary powers in the matter.

137. Consequently, the GET felt concerned about the wide circle of categories of persons who enjoy immunity/inviolability, about the extensive scope of these institutes and about the lack of guidelines containing criteria to be applied when deciding on requests for the lifting of immunities. In the GET's opinion, the current situation in Georgia goes beyond the limits admissible by the GPC6 standard.

138. Therefore, the GET recommended to amend the national legislation in order to reduce the categories of persons who enjoy immunity from criminal proceedings**,** in particular, to abolish the immunities provided for the candidates to member of Parliament. It further recommended the drawing up of guidelines containing criteria to be applied when deciding on requests for lifting of immunities, ensuring moreover that decisions are based on the merits of the request submitted by the Public Prosecutor. Finally, the GET recommended to abolish the requirement of the authorisation of the body concerned where the offender is apprehended "in flagrante delicto".

IV. CONCLUSIONS

139. Georgia is a young State facing tremendous economic and social difficulties. Its authorities are aware of the extreme danger that corruption phenomena represent for the future development of the country. Different kinds of measures have been undertaken by the authorities in the field of the prevention and the fight against corruption. The comprehensive and full implementation of these measures is not an easy task and much remains to be done in this respect.

140. The provisions of the recently adopted new Criminal Code, of other legislative acts as well as the forthcoming adoption of a national programme on the fight against corruption are aimed at improving the capacity of the Georgian legal and enforcement system to tackle this problem. However, Georgia has to redesign the role of the different law enforcement bodies involved in the struggle against corruption and the coordination between them, to review the recruitment and management of public officials, as well as to amend the system of immunities granted to different categories of officials.

141. In view of the above, the GRECO addressed the following recommendations to Georgia:

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

ii. that officials who regularly come into contact with the public should be readily identifiable;

iii. the implementation of proper complaints procedures for submitting complaints, advising on the reaction and informing on possible compensation;

iv. the establishment of a co-ordination mechanism involving all agencies and departments involved in the prevention, detection, and investigation of corruption. This unit should co-ordinate anti-corruption policies and measures, control their effectiveness and follow-up the implementation of the anti-corruption strategy. It should also, as a matter of priority, establish a centralised database to capture, *inter alia,* all strategically relevant corruption intelligence, case progress and prosecution statistics;

v. to make use of the *Information Agency on Property and Financial Declarations* as a source of information to be used in a pro-active way to detect and investigate possible corruption cases;

vi. to put in place procedures to support managers to identify, prevent, challenge and deal with corrupt, dishonest and unethical behaviour - such procedures should include education, training, prevention and enquiry;

vii. to envisage the introduction of some form of independent audit of departments strictly related to integrity measures (for heads of departments and staff) which could take the form of a "coordinating council" comprising State officials and NGOs;

viii. to establish rigorous selection criteria and to conduct robust vetting checks in order to ensure integrity of all those recruited for public service, particularly those called to occupy sensitive positions. Law enforcement and judicial authorities should be subject to particularly rigorous recruitment procedures;

ix. to consider the introduction of tenure policies which will reduce the potential for corruption, in particular in sensitive posts;

x. the introduction of Codes of Conduct in all Government Departments and Agencies, using the Model Code drawn up by the Council of Europe and included in the Committee of Ministers Recommendation R(2000) 10 as inspiration. Furthermore, that all public officials receive training in Codes of Conduct and other applicable integrity/ethics rules and regulations relating to their employment;

xi. that all Government Departments and Agencies introduce internal inspection units;

xii. the introduction in all departments and agencies of external monitoring councils in line with the proposal elaborated by the Ministry of Tax Revenue;

xiii. to continue co-operation with NGOs in the form of a more structured dialogue;

xiv. to consider the formation of an independent specialised anti-corruption investigation unit. All law-enforcement and other authorities would be required to report to this unit any suspicions of corrupt behaviour. Cases of corruption, as soon as identified during a preliminary investigation would also be transmitted to the unit, which would continue and deepen the investigation to the extent necessary to bring charges. The creation of this special unit would also allow a better collection and analysis of data relating to corruption and would enable the preparation of accurate statistics to assist future strategy and policy enhancement;

xv. to select the Head and staff of the above-mentioned unit with the greatest care to ensure their highest integrity. It also recommended that the unit be open to independent scrutiny and produces an annual progress report of its activities to be made available to the general public;

xvi. that the above-mentioned unit should be pro-active and have a legal basis for requiring information, assistance and cooperation from all Governmental Departments and bodies. The unit should also be empowered to make use of special investigative techniques available in the Georgian legal system with due respect to constitutional and legal safeguards and establish close working relations with the specialised unit which is recommended to be created within the Prosecutor's Office ;

xvii. that the equipment necessary for implementing new investigative techniques be made available to the bodies in charge of investigating corruption offences and specifically to the specialised independent unit which could be created in pursuance of the recommendation made above;

xviii. reiterating its recommendation dealing with the *Information Agency on Property and Financial declarations of Public Officials,* the GET further recommends to establish a mechanism for testing the accuracy of income declarations made by public officials;

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

xx. to undertake the necessary measures to ensure an adequate level of remuneration for prosecutors, to establish fair and objective disciplinary proceedings for prosecutors, to guarantee access to a satisfactory grievance procedure and to specify the conditions and the safeguards applicable to cases where the superior prosecutor overrules decisions taken by the prosecutor in charge of the case;

xxi. to ensure the adequate protection of witnesses and collaborators of criminal justice, who report and provide the evidence which is necessary for the conviction of perpetrators of corruption offences;

xxii. amending the provision of Article 48 of the Organic Law on the Public Prosecutor's Office to the effect that prosecutors should examine anonymous reports on corruption as a source of information, despite the fact that, in the absence of additional corroborating sources, anonymous reports could not, on their own, form a sufficient basis for the opening of a formal investigation;

xxiii. to amend national legislation in order to reduce the categories of persons who enjoy immunity from criminal proceedings**,** in particular, to abolish the immunities provided for the candidates to member of Parliament;

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

xxv. to abolish the requirement of the authorisation of the body concerned where the offender is apprehended *'in flagrante delicto'*.

142. Moreover, the GRECO invites the authorities of Georgia to take account of the observations made by the experts in the analytical part of this report.

143. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Georgia to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.

Appendix I

Programme of the visit

16 October, Monday

11.00 – 12.00	General meeting at the Ministry of Foreign Affairs of Georgia (participants: Mr. Shota Dogonadze, Deputy Minister, Mr. Konstantin Korkelia, Deputy Director of International Law Department, Mr. Mamuka Jgenti, Head of Division of the Council of Europe and Human Rights Protection)
12.15 – 14.15	Meeting with the working group drafting the state program on fight against corruption
14.30 – 16.00	Lunch
16.00 – 18.00	Meeting at the Ministry of Internal Affairs (Department fighting against corruption and economic crimes and Department dealing with the prevention and fighting against corruption in the police)

17 October, Tuesday

11.00 – 13.00	Meeting at the General Prosecutor's Office
13.15 – 14.15	Meeting at the Ministry of Tax Revenue
14.30 – 16.00	Lunch
16.00 – 17.00	Meeting at the Ministry of Finance
17.15 – 18.15	Meeting at the Ministry of Justice

18 October, Wednesday

11.00 – 12.00	Meeting with the Commission on Fight against Corruption of the Parliament of Georgia
12.15 – 13.15	Meeting with the Law Commission of the Parliament
13.15 – 15.00	Meeting with the Commission dealing with the Immunities of the Members of Parliament
15.00 – 16.00	Lunch
16.00 – 17.00	Meeting at the Ministry of State Security

19 October, Thursday

11.00 – 13.00	Meeting at the Control Chamber
13.00 – 15.00	Lunch
15.00 – 16.00	Meeting at the Corruption Research Center
16.15 – 17.15	Meeting at the Chamber of Commerce

20 October, Friday

11.00 – 13.00	Meeting at the State Chancellery
13.00 – 14.30	Lunch
14.30 – 16.30	Final meeting at the Ministry of Foreign Affairs (with the participation of the representatives of all the institutions)

Appendix II

Criminal Code of Georgia

Article 221. Commercial Bribe

1. Illegal transference of money, securities or other property or property service illegally rendered to a person exercising managing, representative or other special authority in an enterprise, or any other organisation, so that such person use his/her official position in favour of the briber's interests,-

   shall be punishable by fine or by restriction of freedom for up to a two-year term or by imprisonment for the term not excess of three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length or without it.

2. The same action, committed:

   a) by a group;
   b) repeatedly,

   shall be punishable by fine or by restriction of freedom for up to a four months term or by jail time from two to six months in length or by imprisonment for the term not excess of four months, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length.

3. Illegally accepting money, securities, or any other property or illegally enjoying property service by a person exercising managing, representative or other special authority in an enterprise or any other organisation so that such person use his/her official position in favour of a briber's interests,-

   shall be punishable by fine or by restriction of freedom for up to a three-year term or by imprisonment for the term not in excess of five years, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length.

4. The action referred to in Paragraph 3 of this Article, perpetrated:

   a) by a group;
   b) through extortion,-

   shall be punishable by fine or by imprisonment for up to five years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years in length.

Note: The perpetrator of the actions 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.

Article 338. Accepting Bribes

1. Accepting bribes by an officer or a person equal thereto, in the form of money, securities, property or any other material benefit, for performing or not performing this or that action in favour of the bribe-giver that the officer or the person equal thereto must have or could have performed by using his/her official position, or his/her official authority could have promoted such action, as well as exercising official patronage by him/her,-

   shall be punishable by prison sentences ranging from five to ten years in length.

2. Accepting bribes:

   a) by a political official;
   b) in large quantities;
   c) by a prior consent of a group,-

   shall be punishable by prison sentences ranging from six to twelve years in length.

3. The action referred to in Paragraph 1 or 2 of this article, committed:

   a) by a person previously convicted of bribery;
   b) repeatedly;
   c) through extortion;
   d) by an organised group;
   e) in especially large quantities,-

   shall carry legal consequences of imprisonment ranging from eight to fifteen years in length.

Note: Bribe in large quantities shall be the amount exceeding ten thousand laris in the form of money, securities, other property or material benefit, and the amount in excess of thirty thousand laris shall be construed as bribe in especially large quantities.

Article 339. Bribe Giving

1. Giving bribes to an official or a person equal thereto,-

   shall be punishable by fine or by corrective labour up to two years in length or by restriction of freedom up to a similar term or by jail time not in excess of three months or by imprisonment for up to two years in length.

2. Giving bribes to an official or a person equal thereto for committing an illegal action,-

   shall be punishable by fine or by imprisonment for up to eight years in length.

Note: A briber shall be released from criminal liability if he/she was extorted of bribe or if he/she voluntary informed a prosecuting body on the bribe-giving.

Article 340. Accepting Illegal Presents

1. Accepting an illegal present by an official or a person equal thereto,-

shall be punishable by fine or by socially useful labour from one hundred to three hundred hours or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

2. The same action committed repeatedly,-

shall be punishable by fine or by socially useful labour from two hundred to four hundred hours or by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.