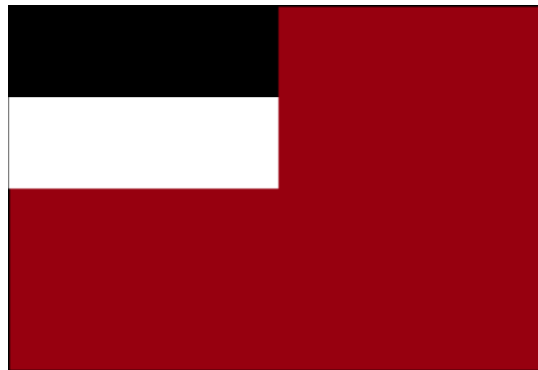


AMERICAN BAR ASSOCIATION
CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE



OVERVIEW OF THE LEGAL SYSTEM

GEORGIA



FEBRUARY 2003

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EXECUTIVE SUMMARY

- The right to initiate legislation is vested in the president, members of the Parliament, parliamentary factions, committees of the Parliament, supreme governing bodies of Abkhazia and Ajaria, or a group of 30,000 or more citizens via petition.
- Draft laws are considered by Parliament in a series of three readings. Constitutional laws may be adopted by two-thirds of the total number of parliamentarians, while other draft laws require the support of a simple majority of parliamentarians.
- Upon receiving a law degree from an accredited institution, law school graduates are considered qualified to work for both the public and private sectors, and are usually referred to as jurists—an umbrella term used to denote judges, prosecutors, advocates, public notaries, judicial assistants, and investigators. Concrete steps are now being taken to establish a legal basis for delineating more precisely who should be considered a legal professional. These steps include the adoption of the Law on Advocates in June 2001.
- The independence of the legal profession is codified by the Law on Advocates. In reality, however, Georgian advocates may be subjected to improper influences from the Collegium of Advocates and the procuracy.
- Georgia has yet to adopt a code of ethics for advocates. For the time being, standards of professional conduct and the resolution of issues arising from the breach of these standards are regulated, very generally, by the Law on Advocates.
- Legal education in Georgia is presently regulated by the Law on Higher Education, which provides general guidelines for all university-level education in the country. There are approximately 250 educational institutions that grant degrees in law.
- Judicial independence is proclaimed in the Constitution of Georgia, which also sets forth the principle of separation of powers.
- Georgian law establishes a three-tier court system comprised of common courts, regional courts, and the Supreme Court. In addition to the three-tier system, there is a separate Constitutional Court.
- Given Georgia's civil law traditions, the common law doctrine of *stare decisis* does not formally apply and, therefore, decisions rendered by higher courts are not binding on lower courts in Georgia.
- The Constitutional Court of Georgia is composed of nine judges, with each branch of government appointing three judges to the Court. They serve a term of ten years.
- The Supreme Court of Georgia consists of 30 judges. The president nominates judges to the Supreme Court on the recommendation of the Council of Justice. Nominees are elected for a period of not less than ten years by a majority of the total number of parliamentarians.

- Judges serving in the common courts of Georgia are appointed by the president of Georgia upon the recommendation of the Council of Justice of Georgia.
- The procuracy is formally part of the judiciary. Its status as such has both a constitutional and statutory basis. The procuracy in Georgia is headed by the prosecutor general who is appointed for a period of five years by Parliament upon the president's nomination. The prosecutor general enjoys the exclusive right to nominate, promote, and dismiss other prosecutors.
- Pre-trial investigations are conducted by investigators of the procuracy's investigation department. The authority to issue initial arrest warrants rests with judges of the common courts.
- Once a suspect is in police custody, investigative bodies have 48 hours in order to bring formal charges. Pre-trial detentions are applicable to all criminal cases, and they are ordered by the principal investigator. Both the *de jure* and *de facto* duration of pre-trial detention is nine months.
- The right to legal counsel begins the moment a suspect or an accused is brought to the police station. At no point during criminal proceedings is there a right against self-incrimination. Arrested or detained individuals do not have the right to seek judicial review of the legality of their arrest or detention.
- Due to the requirement of mandatory prosecution for all crimes, plea-bargaining procedures are not available in Georgia.
- The Georgian legal system does not recognize nor utilize jury trials. In common courts (courts of first instance), cases are heard by individual judges. The higher courts of appeal and cassation hear cases in panels comprised of three professional judges.
- Participants in a criminal proceeding include the prosecutor, defendant and defense counsel, and the victim with his or her legal counsel. The judge plays the role of arbitrator in the proceedings. The judge chairs the trial and supervises it according to rules and procedures consistent with inquisitorial-style proceedings.
- Criminal trials are conducted in four phases: preliminary hearing, trial investigation, presentation of arguments, and announcement of the court's decision.
- An appeal against the judgment of the district (city) court may be brought before an appellate court (regional courts) on points of fact and points of law. Judgments or other decisions of the appellate court are brought before the Court of Cassation (the Supreme Court), which may review the legal points of the decision that either have not yet entered into force or are considered unjust by the appellant.



GEORGIA

Capital: Tbilisi
 Population: 4,960,951 (July 2002)
 Form of Government: Republic
 Head of State: Eduard Shevardnadze
 Head of Government: Eduard Shevardnadze
 Legislature: Unicameral, 235 seats
 Legal System: Civil Law
 CEELI Offices: Tbilisi and Kutaisi

I. INTRODUCTION

Georgia regained its independence in 1991 amidst the dissolution of the Soviet Union. The country's first years of independence, however, were marred by political instability, economic dislocation, and social tension related to the transition from decades of authoritarian rule and communist mismanagement. Georgia also experienced armed conflicts in Abkhazia and South Ossetia that threatened the territorial integrity of the newly independent state. Despite these phenomena, however, Georgia moved forward by the mid-1990s with structural reforms aimed at fashioning democratic institutions and a market-oriented economy.

Initiatives to reform the country's legal system, guarantee fundamental rights and freedoms, and promote the rule of law have figured prominently in Georgia's transition from Soviet rule. After initial steps to repeal Soviet-era legislation and to promulgate democratically oriented laws in its place, Georgia subsequently revived the 1921 Constitution of the Georgian Democratic Republic. Georgia also drafted and adopted a new post-socialist Constitution in 1995.

In the latter half the 1990s, the Georgian parliament adopted laws designed to implement provisions of the new Constitution and harmonize its legislation with international and European standards. These laws have re-enforced the authority and independence of the Georgian judiciary, supported the development

of an independent and well-trained legal profession, curtailed the pervasive powers of the procuracy, and strengthened human rights guarantees and protections in Georgia.

II. HIERARCHY OF LAWS

There are three types of normative acts in Georgia, including national, sub-national, and local. National normative acts are those issued by state bodies. They are considered applicable throughout the entire territory of Georgia unless specified otherwise in the act itself. Normative acts adopted by Georgia's autonomous republics are considered binding, but only within those specific territories. Likewise, normative acts promulgated by local organs of self-government are applicable only within their geographic areas of jurisdiction.

There are a variety of national-level normative acts that serve as a source of law within the Georgian legal system including:

- Constitution and constitutional law
- International treaties and agreements
- Organic laws
- Parliamentary laws and codes
- Presidential decrees
- Directives of Parliament, Orders of the minister of state
- Directives of other governmental agencies

International law, especially treaty law, serves as an important source of law as well. According to the Constitution, international treaties and agreements to which Georgia is a State party supercede domestic or national law. It also stipulates that national legislation of Georgia must correspond to the norms and principles of international law. (Constitution, Article 6)

III. THE LEGISLATIVE PROCESS

According to Article 67 of the Constitution, "the right to initiate legislation is vested in the president, a member of the Parliament, a parliamentary faction, a committee of the Parliament, the supreme governing bodies of Abkhazia and Ajaria, or not less than 30,000 citizens." As a general rule, parliamentary committees and the president are the primary initiators of legislation. A draft law prepared by a parliamentary committee or received through legislative initiative is discussed at a meeting of the relevant committee. The draft, along with the committee report and any explanatory notes, is then forwarded to other parliamentary committees. It is later published in the *Parliamentary Review*. A draft law submitted by the president may be considered using an accelerated procedure.

Prior to submitting the draft law to the plenary session of Parliament, the appropriate committee organizes and conducts a public hearing on the draft. This hearing is announced at least seven days in advance. Once the committee decides that the draft is ready for the plenary session's consideration, it is passed to the staff of the Parliament. The latter is responsible for putting discussion of the draft on the agenda of the Parliament's Bureau. This body consists of the chairperson of Parliament, deputy chairmen, deputies of the parliamentary committees and the parliamentary factions. If the draft is initiated by the president of Georgia, supreme governing bodies of Abkhazia and Ajaria, or a constituency, the Bureau refers the draft to the relevant committee.

Draft laws are considered by Parliament in a series of three readings. The first reading focuses on examining the draft's general principles and main propositions. Once it passes the first reading, the draft is then returned to the appropriate committee(s) for discussion. A revised draft, accompanied by the record of discussions, is then submitted to the parliamentary session for the second reading. During the second reading, the draft is discussed by sections, chapters, and clauses or parts of clauses, each of which is put to a separate vote. For the third reading, members of Parliament are supplied with the latest version of the draft. At this stage, they may introduce only editorial changes to the draft. Once any changes of this nature are made, the draft law is then put to a final vote.

According to Article 66 of the Constitution, a draft law is considered adopted if it is supported by the majority of those present, if those present are not less than one-third of the total number of parliamentary deputies, or by another procedure set forth by the Constitution. The draft of an organic law is, in contrast, considered adopted if supported by the majority of the total number of parliamentary deputies. Resolutions may be adopted in the form of a decree, unless some other procedure is required by the Constitution. The right to adopt other kinds of resolutions is determined by parliamentary rules of procedure.

The draft law, once adopted by Parliament, is submitted to the president of Georgia within five days. (Constitution, Article 68). The president may either sign the law within ten days or return it to Parliament with further amendments. If the president returns the draft to Parliament, the legislature then votes on the president's amendments using the procedures set forth in Article 66 of the Constitution. If the amendments are adopted, the president is obliged to sign the law and publish it within seven days. If Parliament votes

against the president's amendments, the draft law as originally passed by Parliament and submitted to the president is voted on again. It is considered adopted if supported by not less than three-fifths of the total number of deputies, or by not less than two-thirds of the total number of deputies in the case of constitutional amendments. If the president refuses to sign the law within the prescribed period, it may be signed and issued by the chairperson of Parliament. A law enters into force on the fifteenth day after its official publication, unless provided otherwise by law.

IV. THE LEGAL PROFESSION

A. Structure of the Legal Profession

The question “who is a legal professional in Georgia” is not necessarily easy to answer. A legal professional is understood very broadly and includes all individuals that hold a law degree from accredited institutions of higher education. Upon receiving this degree, law school graduates are considered qualified to work for both the public and private sectors, and are usually referred to as jurists—an umbrella term that denotes judges, prosecutors, advocates, public notaries, judicial assistants, and investigators.

Concrete steps are now being taken to establish a legal basis for delineating more specifically who should be considered a legal professional. For example, in June 2001, the Parliament of Georgia adopted the Law on Advocates, which regulates a particular subgroup of legal professionals, i.e. advocates. In the most general terms and as provided in the Law, an advocate “is a person of independent profession, which obeys only the laws and norms of professional ethics, [and] is registered in the General List of Georgian Advocates” (Law on Advocates, Article 1).

The Law on Advocates further provides that “an advocate can be any physical body

(person), if he/she: possesses a legal education, has passed the advocates’ test, has been given the oath of an advocate, possesses at least one year of working experience as an advocate or intern of an advocate” (Law on Advocates, Article 10). It may therefore be deduced from both the spirit and the letter of the law that Georgian advocates are comparable to attorneys in the United States, or persons who are appointed or authorized to represent and act on behalf of another. However, although this Law was adopted by Parliament and has entered into force, it has yet to be implemented.

Prosecutors are also considered part of the legal profession in Georgia. Georgian prosecutors have much broader powers than their counterparts in the United States and the European Union. In addition to representing the state in court, prosecutors also oversee pre-trial investigations, decide on the viability of a given case, and choose an advocate for the accused.¹

Similarly, judges and judicial assistants are considered legal professionals, or jurists, in Georgia as well. This is largely considered one of the legacies of the Soviet legal system, which is not likely to be retained due to extensive legislation regulating the profession.²

Finally, public notaries are also considered under the umbrella term “jurist,” which denotes individuals who have acquired a law degree. As such, they may be considered part of the legal profession. Notaries in Georgia, like in other civil law countries, play a significant function in the drafting, authentication, and storage of important legal documents.

B. Independence of the Legal Profession

The legal profession’s independence is

¹ For more information about the procuracy, please refer to pages 11-12 of this document.

² For more information on Georgian courts and the judiciary, please refer to pages 6-11.

institutionalized by the Law on Advocates. According to Article 3 of this Law, principles of legal practice include independence and freedom to practice the profession, non-discrimination and equality of all advocates, and non-interference in the professional activities of advocates.

Frequently in post-socialist legal systems such as Georgia, the declaration of professional independence often carries an aspirational quality. In reality, however, Georgian advocates may sometimes be subjected to improper influences from the Collegium of Advocates, an institution with almost an exclusive right to appoint counsel in criminal matters. Moreover, this body, a legacy of the Soviet legal system, may be prone to corrupt or improper practices that negatively affect the independence of advocates. For example, the Collegium is reported to sometimes suspend advocates who do not provide financial or similar benefits to members of the Collegium.

Furthermore, advocates may be subject to improper influences from the procuracy. Often, acts of intimidation are aimed at coercing the advocate to pursue a line of defense preferred by the state. At times, however, advocates themselves serve as willing participants in corrupt practices of the judiciary and law-enforcement agencies. In some instances, it is the prosecutor who alerts "friendly" advocates about pending cases, knowing that he or she is more likely to accept the line of defense proposed by the prosecutor, or serve as an intermediary between the client, the prosecution, and the judge. And, in politically sensitive cases, advocates have been subject to both overt as well as subtle pressures from various government officials. Moreover, they are frequently pressured by opposing parties and may be threatened or even harmed by organized crime and other members of society.

C. Regulation of the Legal Profession

The profession of advocate is governed by the Law on Advocates. It addresses the licensing of advocates, organization of legal practice, formation and operation of bar associations, responsibilities of advocates, and the legal protections enjoyed by the profession. The Law also addresses, albeit somewhat in passing, issues of professional conduct and legal ethics.

Implementation of the Law on Advocates since it was passed in June 2001 has been delayed by the fact that Georgia has yet to administer a qualification examination for advocates and establish the mandatory national bar association. According to Article 10 of the Law, an advocate is a person who has (1) higher legal education, (2) passed the advocate qualification examination, (3) taken the oath of an advocate, and (4) worked at least one year as an advocate or intern of an advocate. Failure to implement provisions of the Law seems to have both logistical and political reasons. Already, several amendments to the Law on Advocates have been suggested, which if adopted, would effectively prevent the establishment of new professional and ethical standards for advocates, thus further exposing the legal system to already strong temptations of corruption. These amendments are scheduled for the Parliament's consideration in the future.

D. Organization and Governing Bodies of the Legal Profession

The Law on Advocates devotes an entire chapter to the organization of the legal profession and its governing bodies, including bar associations. However, Georgia has been unsuccessful thus far in creating the network of bar associations as envisioned by the Law. There are, nevertheless, two professional organizations representing lawyers and advocates in Georgia: the Collegium of Advocates, and the Georgian Young Lawyers' Association.

The Collegium is the successor to the Soviet Collegium of Advocates. Unlike its predecessor, however, the Georgian Collegium is now a voluntary association. Moreover, it no longer has a monopoly over advocates as the Soviet body generally did. The Collegium has branch offices in Georgian regions that have been granted courts of first instance according to the Law of Georgia on Common Courts.

The Georgian Young Lawyers' Association (GYLA) is another association of legal professionals that has taken a prominent role in the development of the legal profession since Georgia regained its independence. Among its many activities, GYLA has taken a leading role in providing non-mandatory continuing legal education to Georgian advocates.

E. Entry into the Legal Profession

Training/Apprenticeship Requirements

The Law on Advocates requires a minimum of one year of professional experience as an advocate or an advocate-intern (Law on Advocates, Article 10). Advocate-interns are individuals who have completed a degree in higher legal education and have passed the advocate qualification examination (Law on Advocates Article 16). Internships may be conducted in either a legal department or in a private law office. Rights and duties of advocates also apply to advocate-interns. Apart from the post-graduation apprenticeship requirement, advocates, like other students of law, are required to complete a specialization-related internship for one semester prior to receiving a law degree.

Qualification Examination

The Law on Advocates requires the successful completion of an advocate qualification examination as a peremptory

condition for entry into the profession. Only those individuals, who possess a law degree, who have worked as a jurist for one year, and who do not have a criminal record are eligible to take the qualification examination.

According to the Law, the first round of examinations must be administered by the Council of Justice. The first 100 advocates who pass this examination and apply for membership will then form the national bar association. The national bar association, in turn, will be responsible for administering all future qualification examinations. At the present time, however, the qualification examination has not been administered, even though the Law was adopted in June 2001. Given recent developments and the pending parliamentary hearing on amendments to the Law, the timetable for administering a professional qualification examination remains uncertain.

Professional Conduct and Discipline

Georgia has yet to adopt a code of ethics for advocates. For the time being, standards of professional conduct and the resolution of issues arising from the breach of these standards are regulated, very generally, by the Law on Advocates. According to the Law, the responsibility of disciplining legal professionals is vested in the national bar association, which has yet to be established. Once established, it will be responsible for drafting a comprehensive code that will set forth ethical standards and norms of professional conduct standards for advocates.

Types of disciplinary measures provided for by the Law include: formal warnings, suspension of practice from six months to three years, or expulsion from the national bar association (Law on Advocates, Article 34). All disciplinary decisions taken in disciplinary proceedings are subject to judicial review. Thus far, disciplinary measures have not been used to any measurable extent.

V. LEGAL EDUCATION

Legal education in Georgia is presently regulated by the Law on Higher Education, which provides general guidelines for all university-level education in the country. The Law outlines a “four-plus-two” formula for higher education. It was designed, in part, to harmonize the Georgian education system with that found in the United States. According to this formula, an individual receives a bachelor’s degree equivalent after successfully completing four years of coursework and related institutional requirements. He or she may then begin the two-year component. Once this component is completed, the student is awarded a master’s degree in law. Most of the 245 private educational institutions that grant law degrees in Georgia do so after four years, using this four-plus-two formula.

However, in order to obtain a degree in law from Tbilisi State University (TSU), an individual must attend the University for five years, complete the requirements of the law faculties, and successfully pass the state examination given by the institution. Both law departments at TSU, i.e. the Department of Law and the Department of International Law and International Relations, have a five-year law curriculum. They do not follow the four-plus-two formula outlined by the Law on Higher Education. While these five-year degrees are sometimes referred to as LL.B.s, they are perhaps best compared to Italian *Laurea* degrees.

In both cases, law students are required to complete a six-month internship in public or private institutions in their field of study, including but not limited to courts, private law offices, and legal departments of ministries and other governmental agencies. The internship requirement must be completed during the final year of legal education. Law students have recently been given the option of substituting internships with participation in legal clinics. Legal clinics are offered by two institutions,

most notably by the Georgian Young Lawyers’ Association.

In the future, once the Parliament of Georgia adopts the relevant legislation, legal education is likely to become more unified and centralized. The Law on Legal Education, for instance, which is soon to be considered by the Parliament, is designed to “regulate relationships established during the process of legal education, determines the mandatory criteria for the educational institutions of law specialization, the mandatory requirements to receive the qualification of a lawyer, the basis for acknowledgement of documents issued by the law schools of foreign countries, and the condition for employment of a lawyer in a public governmental agency” (Law on Legal Education, Article 1).

VI. THE JUDICIARY

A. Judicial Independence and Immunity

Judicial independence is proclaimed in the Constitution of Georgia. It also explicitly sets forth the principle of separation of powers. Article 84 of the Constitution provides “a judge is independent in his activity and is subject only to the Constitution and law. Any interference in a judge’s activities in order to influence his decision is prohibited and punishable by law... All acts that restrict the independence of a judge are void.” The laws of Georgia on the Constitutional, Supreme, and Common Courts further elaborate on the principle of judicial independence.

When acting in an official capacity and exercising judicial functions, judges enjoy certain safeguards such as personal immunity from prosecution. This is explicitly stated in the Constitution (Constitution, Article 87) as well as in legislation on the Constitutional, Supreme, and Common Courts. According to these laws, “bringing a judge before a criminal court, his detention or arrest, the search of his workplace,

car or place of residence without the consent of the chairperson of the Supreme Court is impermissible. In cases where [a judge] is caught committing a crime, this should be immediately reported to the chairperson of the Supreme Court. If the chairperson of the Supreme Court does not consent, the detained judge must be released forthwith.” (Constitution, Article 87; Law on Common Courts, Article 52).

B. Court Structure, Judicial Powers, and Enforcement of Courts Decisions

Court Structure

Georgian law establishes a three-tier court system comprised of common courts, regional courts, and the Supreme Court. Common courts (sometimes referred to as district courts) hear routine criminal, civil, and administrative cases at the lowest level in this tiered system. Regional (city) courts of appeal are established at the next level. They serve as appellate courts for cases previously considered by the common courts. Regional courts also serve as courts of first instance for major criminal and civil cases. The Supreme Court of Georgia occupies the highest of these three tiers. It serves as the court of last instance and, thus, acts as the higher appellate court or court of cassation. However, the Supreme Court also serves as a court of first instance for capital crimes and appeals regarding decisions rendered by the Central Election Commission.

In addition to the three-tier system, there is a separate Constitutional Court. The Court is the judicial body competent for arbitrating constitutional disputes between branches of government and ruling on individual claims concerning human rights violations that are sanctioned by law.

Judicial Powers/Constitutional Review

According to Georgian law, the power

of constitutional review is vested solely in the Constitutional Court. Neither ordinary courts, i.e. common or regional courts, nor the Supreme Court, have the right to review legislation for conformity with the Constitution. According to Article 19 of the Law on the Constitutional Court, the Court’s jurisdiction includes ex-post review of the constitutionality of laws, interpretation of constitutional provisions, and review of the constitutionality of international treaties and other agreements (both ratified and un-ratified).

Furthermore, the Court may issue decisions on disputes arising from (1) the formation of a political union, (2) conflict of competences among state bodies, (3) the constitutionality of elections or referenda, (4) recognition or pre-term termination of authority of a member of the Parliament, and (5) possible violations of the Constitution committed by the president, chairperson of the Parliament, chairperson of the Supreme Court, prosecutor general and other officials of similar stature. Article 26 of the Law on the Constitutional Court clearly states that the Constitutional Court cannot review the constitutionality of legislation dissociated from concrete cases, and grants the Court only the power of concrete review.

Decisions of the Constitutional Court are final and binding on the entire territory of Georgia. In cases in which a law is declared unconstitutional, it becomes null and void from that moment forward (Law on the Constitutional Court, Article 25). Implementation and enforcement of Court decisions have proven somewhat problematic in practice, as both executive and legislative bodies have on occasion ignored judicial decisions.

According to Articles 33-42 of the Law on the Constitutional Court, proceedings before the Court may be initiated by the president, members of Parliament, the public defender, state agencies engaged in a dispute over competencies, common courts, and individuals

regardless of their citizenship status.

Jurisdiction Over Fundamental Rights

The Law on Common Courts grants common courts jurisdiction over cases concerning civil rights and liberties. There are no “ad hoc” or special courts exercising ultimate jurisdiction over cases involving fundamental human rights. However, Georgia is a member of the human rights regime established by the European Convention on Human Rights and, consequently, the Convention is a source of law which may be directly applicable in Georgian courts.

Contempt/Subpoena Powers and Enforcement of Court Decisions

Georgian judges do not have subpoena powers, but the Law on Common Courts does grant them contempt powers. Court decisions are enforced by public bailiffs, but at present, there is no reliable information available about the rate of enforcement. According to one unsubstantiated report, however, the rate of enforcement of civil judgments is only 16 per cent. It is presumed that 100 per cent of criminal judgments which result in imprisonment are indeed enforced.

The Role of Precedent

Given Georgia’s civil law traditions, the common law doctrine of *stare decisis* does not formally apply. Decisions rendered by higher courts are not binding on lower courts in Georgia. However, courts of first instance do sometimes refer to the published opinions of higher courts, in order to develop a consistent and uniform jurisprudence. During the last few years, increased attention has been given to case law, and decisions of the higher courts are now regularly published and distributed to all lower court judges, in order to ensure the transparent and uniform interpretation of laws.

C. Composition, Education and Training

There are 333 judges in Georgia, with an average age between 35 and 40 years of age. According to the Constitution of Georgia “a judge must be a citizen of Georgia who has attained the age of 30, who has high legal education and at least five years experience in the practice of law” (Constitution, Article 86). Individuals with a criminal record or those who have been dismissed for committing a disciplinary offense, failing to complete the training course for new judges, and/or holding a position incompatible with the status of a judge, cannot be appointed as a judge (Law on Common Courts, Articles 46, 54, 69). Since the official language of legal proceedings is Georgian (Law of Georgia on Common Courts, Article 10), judges are also required to speak the national language.

Judges must take and pass a professional examination prior to assuming office. They are not, however, required to complete a judicial apprenticeship. Once they have assumed their professional duties, they are offered optional continuing legal education, which is administered by the Council of Justice and/or the Judicial Training Center (Law on Common Courts, Articles 69 and 87).

D. Selection, Tenure, Promotion, and Removal of Judges

The Constitutional Court of Georgia is composed of nine judges. Three members of the Court are appointed by the president, three members are elected by the Parliament (upon receiving support of three-fifths of the total number of deputies), and three members are appointed by the Supreme Court. Members of the Constitutional Court serve a term of 10 years.

The Constitutional Court selects the chairperson of the Court for a non-renewable term of five years. Constitutional Court judges must also be citizens of the state above the age

of 35 and have pursued a higher education in law (Constitution, Article 83, 88; Law on the Constitutional Court, Articles 1-3). The removal of a member of the Constitutional Court is governed by Article 16 of the Law on the Constitutional Court. According to this provision, the removal of a judge may only be considered at the plenary session of the Court. A decision to remove a particular judge requires the support of a simple majority of judges.

The Supreme Court of Georgia consists of 30 judges. The president nominates Supreme Court judges on the recommendation of the Council of Justice. Nominees are elected for a period of not less than 10 years by a majority of the total number of deputies of the Parliament (Constitution, Article 90). Supreme Court judges are subject to a mandatory retirement age of 70 years (Law on the Supreme Court, Article 24/L). The chairperson of the Court may only be removed from office via a formal impeachment procedure.

The impeachment procedure may be initiated by one-third of the total number of parliamentary deputies, if the chairperson violated the Constitution or committed treason, and/or another criminal offense. After receiving the necessary judgment from the Supreme and/or Constitutional Courts, the Parliament may remove the chairperson by a majority vote (Law on the Supreme Court, Article 23). Members of the Supreme Court, other than the Chairperson, however, may be removed by the Parliament on the recommendation of the president.

According to the Law on Common Courts, judges serving in the common courts are appointed by the president of Georgia upon the recommendation of the Council of Justice of Georgia. The Council of Justice recommends candidates to the president, who then issues a decree appointing them to a court. Judges of the regional (city) and district courts operating within the Autonomous Republics of Abkhazia and Ajaria are also appointed by the president of Georgia based on recommendations of the Council of Justice of Georgia and the Councils of Justices of either Abkhazia or Ajaria (Law on Common Courts, Article 48).

In every case, the selection of a judge is a competitive and transparent process managed by the Council of Justice. The selection criteria for judges are as follows: successful results of a qualification examination, notable moral and professional reputation, professional experience, and good physical health (Law on Common Courts, Article 47).

Common court judges serve for a period of 10 years, with a mandatory retirement age of 65 (Law on Common Courts, Article 49). They may only be removed from office by the president, based on the recommendation of the Council of Justice. In similar fashion, judges of common courts operating within the Autonomous Republics of Abkhazia and Ajaria are removed from the office by the president based on the recommendation of the Council of Justices of Abkhazia and Ajaria respectively (Law of on Common Courts, Article 53).

Judges may be removed from office for various reasons, including conviction for a criminal offense, failure to perform his or her duties for more than six months, deliberate or repeated violation of law when dispensing justice, acting in a manner that undermines the reputation of the courts or the dignity of judges, disciplinary misconduct, or occupying a position incompatible with the status or the activities of a judge (Law on Common Courts, Article 54).

The Constitution as well as the laws regulating Georgia's Constitutional, Supreme, and Common Courts provides rules on incompatibility of the office of judge with other activities and professions. The Constitution explicitly states, for instance, that "the position of a judge is incompatible with any other occupation or remunerative activity, except pedagogical activities. A judge cannot be a member of a political party, or participate in political activities" (Constitution, Article 86). In addition to these sources, issues of compatibility are also regulated by the Judicial Ethics Code of Georgia. This instrument was adopted by the Conference of Judges in July 2001 and serves as

an important source of standards for judicial conduct in Georgia.

E. Representation of the Judiciary/Judicial Associations

The Conference of Judges is the primary self-governing body of the Georgian judiciary. It was established by the Law on Common Courts. The Conference is responsible for maintaining the independence of the judiciary, promoting its public standing, and increasing the authority of the institution of a judge (Law on Common Courts, Article 77). It is composed entirely by judges and is governed by an Administrative Committee, which is chaired by the chairperson of the Supreme Court (Law on Common Courts, Article 78). The Conference of Judges is also responsible for electing and approving members of the Administrative Committee and Coordination Council, electing members of the Disciplinary Council of the Judges of Common Courts, planning strategies for court administration and organizational management, and adopting the Code of Judicial Ethics presented by the Council of Justice of Georgia (Charter of the Conference of Judges of Georgia, Chapter II, Article 5).

The Council of Justice is another important self-governing body representing the judiciary. It is an advisory body of the president of Georgia that addresses issues affecting the judiciary's ability to function and administer justice efficiently. The Council develops proposals for judicial reform, selects and nominates candidates for judgeships, dismisses judges, organizes qualification examinations, nominates members of the Qualification Test Commission, defines the specialization of ordinary court judges, defines the administrative structure and the staff of common courts based on the recommendations of the Department of Common Courts, and initiates disciplinary proceedings (Law on Common Courts, Article 63).

The Council of Justice is comprised of 12 members. According to the Law on Common Courts, its membership automatically includes the chairpersons of the High Courts of the Autonomous Republics of Abkhazia and Ajaria, and three members of the Parliament of Georgia. The remaining members may include any citizen of Georgia who has reached the age of 25 and has a higher legal education. The present composition of the Council of Justice includes three judges, three members of Parliament, the minister of justice and five citizens of Georgia who hold a law degree but hold no other public office. Each branch of government appoints four of the 12 members of the Council.

The Association of Judges of Georgia is another important body involved in supporting the judicial branch of government. The main function of this body is to advocate on behalf of judges and the judiciary in general matters as well as those involving, labor, economic, and social issues. The Association of Judges of Georgia also organizes roundtables on substantive legal issues and publishes a newsletter to inform judges about recent developments affecting the judiciary.

F. Material Conditions of the Judiciary

The material conditions of the Georgian judiciary are governed by various pieces of legislation. The Law on Common Courts, for instance, regulates the salaries of all common court judges. According to Article 82 of this Law, material compensation of common court judges should not be less than that received by members of Parliament. Similarly, the salary of Supreme Court judges is regulated by the Law on the Supreme Court. Article 29 of the Law states that the salary of the chairperson of the Supreme Court must not be less than that of the chairperson of Parliament. The salary of the first deputy chairperson, other deputies, and the members of the Supreme Court is respectively 95, 90, and 85 percent of that received by the chairperson of the Supreme Court. Thus,

remuneration of the judiciary is tied to that of the legislature, and is both directly and indirectly determined by Parliament.

Judges of the Constitutional Court receive a monthly salary of 900 Georgian laris (approximately \$450), and judges of the Supreme Court receive at least 590 laris (or approximately \$280). A judge on the Higher Courts of the Autonomous Republics of Abkhazia and Ajaria receives 535 laris (\$267), judges of common courts (courts of first instance) receive 525 laris, and judges at the courts of first instance receive 500 laris.

The judiciary's budget is formulated by the Council of Justice after considering recommendations submitted by the Department of Common Courts, which was established by the Law on Common Courts. The body is charged with managing the court finances, supplying the courts with buildings, office space, legal publications, and copies of other materials necessary for their operation (Law on Common Courts, Article 71).

G. Judicial Ethics Codes and Discipline

The Code of Judicial Ethics was adopted by the Conference of Judges in July 2001. The purpose of the Code is to support the independence, impartiality, and integrity of the judiciary; to establish and to promote public trust and confidence towards the judiciary; and to protect the prestige and authority of judges and the judiciary. Chapter II of the Code articulates general principles of judicial ethics. These include: independence, objectivity, impartiality, and commitment to the rule of law (Code of Judicial Ethics, Articles 4-9).

VII. PROCURACY

A. Status and Structure of the Procuracy

In Georgia, the procuracy is formally part of the judicial branch of government. Its

status as such has both a constitutional and statutory basis. According to the Constitution, "the procurator's office of Georgia is the institution of the judiciary that performs capital prosecution, supervises investigation, enforces sentences handed down by the courts, and prosecutes state indictments" (Constitution, Article 91).

The procuracy in Georgia is headed by the prosecutor general. The prosecutor general is appointed for a period of five years by Parliament upon the nomination of the president (Law on the Procuracy, Article 7).

The Law on the Procuracy establishes the structure and organization of the country's procuracy. According to Article 6, the Office of the Prosecutor General consists of the military procuracy, transport procuracy, procuracies of the Autonomous Republics of Abkhazia and Ajaria, procuracy of Tbilisi City, regional military and transport procuracies, regional (city) procuracies, and the procuracy for the prison system.

B. Functions and Powers of the Procuracy

The procuracy's general functions include the formulation and implementation of criminal justice policies, supervision of police activities and criminal investigatory agencies, and participation in criminal, civil, and administrative proceedings. The procuracy is also charged with general supervision of the lawfulness of acts undertaken by state bodies. Prosecutors have the right to file a complaint with the same body that acted in violation of the law, to propose changes to pertinent bodies in order to eliminate illegal elements in their decisions and acts, to file complaints in court, and to file reports on criminal activity with bodies of state and local self-government.

Prosecutors also have the authority to commence and suspend investigations, to initiate criminal proceedings, to decide which

cases actually go to court, and to withdraw criminal charges if necessary. The Law on the Procuracy gives prosecutors the ability to exercise both supervisory and direct powers during the course of criminal investigations. Thus, prosecutors are charged with supervising both police investigations and the legality of police arrest and detention of individuals. They also have the ability to assess available evidence and to supervise the country's prison system. Furthermore, prosecutors have been given direct powers such as the power to summon witnesses or suspects to hearings and the right to formulate formal charges and indictments. It should also be noted, however, that criminal judges are also active participants of criminal proceedings in Georgia. As such, they review the decision to prosecute or not prosecute the case at hand.

In Georgia, the prosecutor's participation in criminal trials is mandatory. During trials, prosecutors formulate the indictment, present evidence, examine and cross-examine witnesses, call for acquittal or conviction, recommend the appropriate sentence, mediate and file an objection, or return the case to preliminary investigation. Post-trial powers include, among other things, the right to appeal against the judgment, supervision of the execution of judgments in a criminal case, and implementation of other measures restricting personal freedom.

C. Entry and Professional Requirements

In order to become a prosecutor or investigator within the procuracy, an individual must be a citizen of Georgia, possess a law degree, speaks the official language of court proceedings, and have completed at least a two-year internship at the procuracy. He or she must also pass professional qualification exams in criminal law, criminal procedure, evidence collection, and information processing given by the Qualification Commission of the Council of Justice.

The prosecutor general of Georgia, deputies of the prosecutor general, military prosecutor, transport prosecutor, prosecutors of the Abkhazian and Ajarian Autonomous Republics and their deputies must be at least 30 years of age. They must also have at least five years of professional experience at the procuracy as a judge, investigator, or defense attorney. The same criteria apply to the regional (city), military, transport, and penitentiary prosecutors. Finally, all prosecutors must take the official oath before assuming their official duties.

D. Appointment, Tenure, and Dismissal of Procurators

The prosecutor general is nominated by the president and then appointed by parliament for a renewable term of five years. According to Article 7 of the Law on the Procuracy, the prosecutor general's term may be renewed only once. The same article provides that the prosecutor general enjoys the exclusive right to nominate, promote, and dismiss other prosecutors within the extended procuracy system. The right to dismiss the prosecutor general is vested in the Parliament of Georgia. Dismissal may take place only via a formal impeachment procedure.

VIII. CRIMINAL PROCEEDINGS

A. Pre-Trial Stage

Pre-trial investigations are conducted by investigators of the procuracy's investigation department. These investigators have the right to examine the crime scene, conduct searches and seizures, interrogate suspects or the accused, and take testimonies from experts, witnesses, and victims. They do not issue initial arrest warrants against a suspect. This authority rests with judges of the common courts.

Once a suspect is in police custody, investigative bodies have 48 hours in order to

bring formal charges. The suspect is first brought before the judge only after procedural measures of detention have been concluded. Although the law provides for a bail mechanism in order to secure a suspect's release from pre-trial detention, this provision has rarely been used in Georgia. Pre-trial detentions are applicable to all criminal cases, and they are ordered by the principal investigator. Both the *de jure* and *de facto* duration of pre-trial detention is nine months. This time-frame coincides with the maximum duration allowed for conducting preliminary investigations.

According to the Criminal Procedure Code of Georgia, the right to legal counsel begins the moment a suspect or an accused is brought to the police station. So long as this person is identified as a "witness" and not as a "suspect," he or she may be questioned for twelve hours without counsel. The practice of referring to suspects as witnesses is fairly widespread. At no point during criminal proceedings is there a right against self-incrimination. It must be noted that arrested or detained individuals do not have the right to seek judicial review of the legality of their arrest or detention.

Defense counsel has the right to participate in investigative activities, question witnesses, demand that investigators enter into the criminal file any information that calls into question the guilt of the suspect or accused, be present during and participate in the interrogation and indictment of the suspect or accused, explain to the suspect or accused his or her rights and freedoms and make sure that these rights are not violated, and state any procedural objections. And, from the moment of interrogation of a person as a suspect, defense counsel also enjoys the right to become familiarized with the results of the interrogation, the decisions of arrest, and the transcript of the interrogation.

B. Plea Bargaining Procedure

Plea-bargaining procedures are not available in Georgia. This is largely due to the fact that Georgia has mandatory prosecution for all crimes. As a result, procurators have very little room for bargaining with suspects and accused persons. However, the accused may often avoid trial if they plead guilty. By doing so, individuals are eligible for an "expedited procedure," which ultimately shortens the duration of pre-trial detention.

C. Trial Stage

Individual judges or panels of judges hear and decide cases at trial. The Georgian legal system does not recognize nor utilize jury trials. In courts of first instance, cases are heard by individual judges. The higher Courts of Appeal and Cassation (the regional courts and the Supreme Court) hear cases in panels comprised of three professional judges. When the Supreme Court acts as a court of first instance, then the case is heard by one Supreme Court judge and two lay judges.

Participants in a criminal proceeding include the prosecutor, defendant and defense counsel, and the victim with his or her legal counsel. The judge plays the role of arbitrator in the proceedings. The judge chairs the trial and supervises it according to the principles of inquisitorial legal proceedings. As such, the judge does not participate in arguments of the parties, but simply issues decisions and a final judgment.

Criminal trials are conducted in four phases. Phase one of the trial, the preliminary hearing, begins with the formal opening the trial, followed by the verification of the presence of individuals obliged to appear before the court, identifying the defendant, and hearing and deciding any objections made by the parties. The second phase is the trial investigation. It begins with the prosecutor reading the conclusions of the indictment, followed by entry of the defendant's plea, and then an examination of the evidence. This stage concludes with the examination of the

defendant, victim, and witnesses.

Phase three begins with arguments put forth by the parties (prosecutor, victim or his/her representative, defendant and/or defense counsel). It is followed by short statements made by the parties and then a final statement of the defendant. Recommendations about the formulation of final charges concludes phase three of the trial. The court's decision is announced during the fourth and the final stage of the trial. Possible outcomes of trial include a conviction, a decision involving confinement and treatment at a medical facility, acquittal and release of the defendant, or the referral of the case back to law enforcement authorities for additional investigation.

An appeal against the judgment of the district (city) court may be brought before an appellate court (regional courts) on points of fact and points of law. Judgments or other decisions of the appellate court are brought before the Court of Cassation (the Supreme Court) which may review the legal points of the decision that either have not yet entered into force or are considered unjust by the appellant. The term unjust denotes incorrect qualification of defendant's actions, inadequate use of punishment, violations of criminal procedure that were not revealed at the previous trial hearings, and/or violation of criminal procedure during the trial hearings.

ANNEX: RULE OF LAW CHRONOLOGY – GEORGIA

October 28, 1990.

Non-communist coalition wins the first multi-party elections to the Supreme Soviet of Georgia.

April 9, 1991.

Supreme Soviet of Georgian Soviet Socialist Republic declares independence following a referendum.

January 1992.

1921 Constitution of Georgia is restored.

March 10, 1992.

Eduard Shevardnadze is elected to head the now defunct State Council.

October 11, 1992.

Georgia holds first parliamentary elections. Shevardnadze elected chairperson of Parliament.

November 6, 1992.

Law on State Authority adopted thereby establishing a constitutional order in the country.

January 31, 1993.

Law on the Constitutional Court adopted.

February/March 1993.

State Constitutional Commission is established and charged with revising the 1921 Constitution.

August 24, 1995.

New constitution instituting a presidential system is adopted by Parliament.

November 5, 1995.

Shevardnadze elected president of Georgia with 74 percent of popular vote.

1997

Parliament adopts organic laws to implement constitutional provisions, including Law on Common Courts, Law on the Supreme Court, Law on Local Self-Government and Administration, as well as Civil, Criminal and Tax Codes.

1998

President Shevardnadze declares 1998 as the year of anti-corruption. Georgia holds first certification exams for common court judges. The passing rate was 19%.

April 27, 1999.

Georgia becomes member of Council of Europe.

June 20, 2001

Law on Advocates adopted; implementation pending.