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## LEGAL TRENDS

### Overview of the Legislative Activities of the Government of Georgia (Statistics and Trends)

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#### I. Background

After the Rose Revolution, it became necessary to undertake a number of institutional reforms which would have been first and foremost oriented on the principle of the supremacy of law and required the drafting of correct and efficient normative acts. Legal drafting is a set of measures which, being well planned and based on scientific principles, ensures the successful realisation of basic legal values.

In this light, the Government of Georgia became particularly active and legal drafting was acknowledged as one of its key priorities. In 2005, the main priorities of the legislative activities of the Government of Georgia were set by the Enactment № 10, dated 31 January 2005, on the basis of which a number of conceptual tasks were identified together with specific draft laws prepared by various agencies.

Unfortunately, it is impossible to provide for a detailed and exhaustive plan of the legislative activities of the Government of Georgia which creates, as a result, certain problems. The Ministry of Finance, for example, has twice prepared the draft law on Changes to the Law on the State Budget. Moreover, the liberalisation of tax legislation necessitated the regulation of the allocation of tax revenues between the budgets on a legislative level, it became necessary to prepare changes to the Code of Administrative Offences with respect to state symbols and the Law on Higher Education has required an amendment to equalise the diplomas of the graduates of 2005 to the level of a Master's degree.

The prepared draft laws are markedly deficient in the light of the legal drafting technique and general legal aspects. Many of them lack specificity and systemic arrangement and are of a declarative nature. At times, this situation is followed by an accelerated consideration of the draft laws without their agreement with the relevant Ministries which then becomes the subject of disputes between the Ministries and the Parliament of Georgia. Because of this, it would be desirable for the draft laws to be submitted to the Government of Georgia in full compliance with the established rules and procedures. Further, it is necessary for reforms-related issues, or those of particular importance, to be presented to the Parliamentary Session by the respective Minister as a state-political official.

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## II. Legislative Activities in I-II Quarters of 2005

The legislative activities of the Government of Georgia in I-II Quarters of 2005 were mainly oriented on institutional reforms. As a result of the implementation of constitutional amendments, it became necessary to bring the effective legislation in line with the Constitution of Georgia.

The Ministries prepared a total of 113 draft laws, 110 of which were submitted to the Parliament. The various Ministries have submitted 79 draft laws according to the above plan. Subsequently, the Government had to withdraw 15 of these draft laws which were not provided for by the plan. This proves that the author agencies often do not thoroughly analyse and assess the necessity of the legislative initiative which has been prepared by them.

### 1. Financial Legislation

The problem of local budgets in the field of financial legislation is still unresolved. With a view to the regulation of this issue, the Law on the Budgetary System of the Autonomous Republics and Other Territorial Units of Georgia was submitted to the Parliament under the legislative initiative of the Government of Georgia on 29 September 2004. This is the vision of the Ministry of Finance of Georgia concerning the regulation of the generation and disbursement of the budgets at the legislative level. Although the submission of the aforementioned draft law was assigned to the Executive Power by virtue of the Law of Georgia of 24 April 2003 on the Budgetary System of Georgia, the Parliament has not yet considered it insofar as the draft law requires a further thorough revision.

The only issue with respect to which there is still no consensus between the Government and the Parliament is the legislative initiatives of the Government of Georgia; that is, the cancellation of the Law on the Basic Principles of Indicative Planning of the Economic and Social Development of Georgia and the amendment of the Law of Georgia on the Budgetary System whose amendments aim to bring the budget of programme nature and result-oriented. Both of the parties have their positions which are adhered to and, despite the approval of the second draft law by the Parliament at the first hearing, the Ministry of Finance refused to uphold the comments of the Parliament.

The Government of Georgia initiated the preparation of the draft law on the Allocation of Tax, Non-Tax and Capital Revenues between the Budgets which was adopted on 29 December 2004. According to the new Tax Code, however, it became necessary to regulate the procedure of the allocation of budgetary revenues from received taxes which have now been cancelled. Consequently, the respective change was made on 20 April 2005.

Further unregulated was the budgetary allocation of revenues received from the leasing and privatisation of the property of the Autonomous Republic of Adjara. Under the consent of the Government of the Autonomous Republic, the Ministry of Economic Development prepared and, under the initiative of the Government, the Parliament legalised the allocation of these revenues between the Central Budget and the Budget of the Autonomous Republic according to the following proportion: 35.0% and 65.0% respectively (05.05.05).

With a view to the perfection of the budgetary processes, the Parliament approved the draft law on Changes to the Law of Georgia on the Allocation of Tax, Non-Tax and Capital Revenues between the Budgets. Legal persons conduct their economic activities on the entire territory of the country and, consequently, the places of their registration and economic activities do not, as a rule, coincide. Quite often, the profit from the economic activity pursued in one region is being transferred to the budget of another region. As a result it became necessary to regulate this issue and transfer the profit tax to the Central Budget (with the exception of the Autonomous Republic of Adjara). The aforementioned amendment resulted in the increase of the tax revenues of the State Budget by approximately GEL 240 million.

Despite the fact that many of the non-industrial organisations were engaged in micro-financing activities, there was no legal framework for the identification of their organisational-legal form on a mandatory basis. A relevant legislative amendment was subsequently prepared on the initiative of N. Kalandadze, a Member of the Parliament of Georgia. By virtue of this amendment, the already incorporated and future legal persons pursuing this type of activity (unions and foundations) would be registered as micro-financing organisations. The first version of this draft law was supplemented by the draft law on the Amendment of the Law of Georgia on Grants under which the small loans raised for the attainment of industrial purposes and overcoming poverty in the country – transferred to micro-financing organisations for issuing and servicing small loans – would have been treated as grants. Due to the uncompromising position of the Government of Georgia, however, the changes were introduced only to the country's Civil Code wherein the concepts of "a micro-financing organisation" and the "amount of small loan" were defined. As regards the amendment of the supplementing draft law, it was unreasonable given that the issuance of money for commercial activities contradicted the essence of a grant and, furthermore, would have resulted in the decrease of budgetary revenues.

Twice in 2005, on 21 March and 4 May, the Government of Georgia made recourse to its constitutional prerogative and submitted to the Parliament draft laws of increased state budgets. The Minister of Finance presented the report to the Parliament on the fulfilment of the budget for the year 2004. Commensurate with the requirements of the Constitution of Georgia and the Law of Georgia of the Budgetary System, the Government submitted the following document to the Parliament under the consent of the President: Basic Data and Directions for 2006-2009.

## 2. Tax Legislation

The new Tax Code of Georgia was adopted on 22 December 2004. Despite the efforts of the Government, the practical application of the Code still necessitated its amendment. In the first half of 2005, five amendments and additions were introduced into the Code with two draft laws also given consideration.

The amendment introduced into the Tax Code on 20 April 2005 aimed at the alignment of the Code with the basic changes made to the Code of Criminal Proceedings of Georgia.

Afterwards, the Government initiated the enactment of the provisions providing for the introduction of the practice of trial of tax disputes through arbitration from 1 January 2008. Due to the disagreements in the Parliament, the integrated amendments were prepared under the participation of the Ministry of Finance and then adopted under the initiative of the Parliamentary Committee for Legal Matters (22.04.05). By virtue of these amendments, the lawmakers rejected the option of consideration of tax disputes through arbitration which resulted in taxpayers losing their privilege to unilaterally make a decision on the choice of an arbitration panel. Through the introduction of private arbitration, a state offers its subject an alternative way of resolution of disputes and does not interfere in their consideration. It was rather early, it can be said, for Georgia to introduce this institution for the settlement of tax disputes insofar as at this stage it is only the court which can ensure the fair resolution of similar matters. With this draft law on the Amendments to the Tax Code, the Government of Georgia was asked to prepare and submit proposals on the perfection and efficient application of the practice of consideration of tax disputes through arbitration to the Parliament of Georgia for its consideration before 1 June 2005. The relevant draft law was prepared and, according to the entry made to the minutes of the Governmental Session, it was agreed with the State Minister for the Co-ordination of Reforms.

The next draft amendment was prepared by K. Okriashvili, a Member of the Parliament, which provided for the exemption of certain types of machinery (fire-fighting and agricultural machinery, construction appliances, for example) from the VAT. The draft law was subsequently considered at a session of the Government of Georgia. Insofar as the legislative initiative would have caused the breaking apart of the so-called chain of transactions subject to VAT – and, consequently, the increase of cost price of the taxable transaction and incurring damages to the population as a result of this benefit – the Government did not uphold the initiative and submitted the relevant opinion to the Parliament.

With a view to restructuring the deficit owed to the State Budget from Georgian resident natural persons who work for diplomatic organisations and international institutions having diplomatic status on the territory of Georgia due to their non-payment of income tax for 2004, the Government of Georgia addressed the Parliament with the legislative initiative on the amendment of the Law of Georgia on Restructuring of Tax Arrears and State Loans (18.03.05). This draft law, however, was strongly opposed at Parliamentary considerations from the very outset. The legislative body claimed the release of these persons from the obligations which they failed to fulfil due to a flawed administration on the part of the state. At its session of 28 June 2005, the Government of Georgia upheld this initiative but offered the new version of the draft law for the correct application and interpretation of the law in practice (the joint draft of the Right opposition and the Parliamentary Committee for Legal Matters was a repetition of the current provisions of the Code and did not actually allow for the exemption of the mentioned category of resident person) which was approved and adopted by the Parliament of Georgia on 29 June 2005.

On 27 May 2005, the Government of Georgia submitted and the Parliament approved a further amendment which was prepared by the Ministry of Economic Development of Georgia. According to this amendment, a certificate of a tax authority is no longer re-

quired for state enterprises and enterprises with a 50% share-participation of the state therein in order to register a title to some property.

Under the initiative of the President of Georgia, the Parliament adopted the amendments to the Code of Civil Procedure of Georgia which was followed by the draft law on the Amendment of the Tax Code of Georgia which specified the amount owed and that its non-payment results in criminal liability.

The amendment providing for the exemption of the value of privatised apartments from the payment of income tax was adopted through the first hearing under the initiative of the opposition. It should be mentioned that the initiator empowers the Law with retroactive force from 1 January 2005. According to verbal information from the Ministry of Finance, the State Budget received GEL 4,000 from this type of tax and the presented amendment does not endanger state revenues. Insofar as the draft law was not officially presented to the Government and also because of the boycott of the Right opposition to the Parliamentary sessions, it was not advanced. Commensurate with established procedure, the position of the Government of Georgia with respect to this draft law will be presented to the Parliament after the second hearing.

### **3. Duties and Charges Payable to the State Budget**

After the Code of Administrative Offences, the Criminal Code and the Codes of Procedures, it is the laws on duties in Georgia which are most frequently changed. The Law on Fees for the Usage of Natural Resources was adopted on 29 December and came into force on 1 January 2005 but, unfortunately, was adopted in a hasty manner and without thorough analysis. Upon its enactment, for example, the rule provided for by Article 45 of the Law of Georgia on Normative Acts was not observed. Commensurate with the aforementioned rule, the new duties set out within the law must be enacted not earlier than the 15<sup>th</sup> day following its publication. Furthermore, by virtue of the amendments of 25 March 2005, these duties were removed without reason – and mistakenly so – from the Law of the Basics of the System of Duties. It is inadmissible, therefore, to introduce such duties which are not envisaged by this Law. The Ministry for the Protection of Environment and Natural Resources is currently working on the draft law for the removal of the aforementioned legal shortcoming.

Under the initiative of G. Kheviashvili, a Member of the Parliament with support of the Government, the duty on freshly cut hay and the seasonal consumption of fodder for a single domestic animal was cancelled under the legislative amendment of 2 June 2005. The existing principle not only complicated the identification of the exact amount of the duty to be paid but also resulted in a great amount of disapproval from Georgian farmers.

The most problematic draft law, which was categorically rejected by the Government of Georgia, was the draft law on the Amendments and Additions to the Law of Georgia on Fees for the Usage of Natural Resources which was initiated by G. Tortladze, a Member of the Parliament. This draft law provided for the identification of the rate of duty on the basis of the price of the products transferred to the other consumer in the course of the sale of mineral resources. The Government considered that this method of calculation of the rate contained a danger

of evasion of the duty to an artificial reduction. The scheme offered by the draft law allowed for the option of the market participant to identify the inadequately low price on the basis of mutual agreement which would have automatically lowered the amount of duty to be paid. By itself it would have resulted in the reduction of the revenues part of the state budget. Further, the non-existence of a classic market in this field would have complicated the identification of the actual price according to this principle. The method of identification of the price of mining and non-mining mineral resources differed and furthermore, the draft law was not supported by comprehensive financial-economical estimates. Due to the above reasons and the potential reduction of state revenues, the Government of Georgia did not uphold the draft law and its negative opinion was presented after the adoption of the draft law concerned through the second hearing. It was supported in its decision by the Parliament.

Unlike the aforementioned draft law, the Government of Georgia upheld the initiative of R. Tedoradze, a Member of the Parliament, as follows. Under the effective version, the amount of duty for the use of carbon dioxide depended on the output rate: 1 tonne – GEL 18. With a view to the rational use of carbon dioxide and in order that mining enterprises would not extract the total amount of this resource available, Tedoradze offered a different principle for the calculation of duty; namely, the amount would be identified according to the amount of carbon dioxide the person would be given following a licence for the use of mineral resources. The author accepted the comments and proposals of the Government of Georgia.

L. Bejashvili, a Member of the Parliament, was the initiator of the draft law on the Duty for the Copy of Public Information. According to the first version of the draft law, duty was to be paid to an administrative body responsible for its collection and administration. Insofar as these so-called special accounts were cancelled, this principle contradicts the principles of budgetary arrangement. With due consideration of the position of the Government, the law was adopted on 13 May.

The reformation of the law enforcement agencies and the intensification of the defence power of the state necessitated the reduction of the high permit fees related with the supply and production of arms and ammunition. On 25 March, the Parliament, with the support of the Government, adopted the legislative initiative of M. Machavariani concerning the Amendments and Additions to the Law of Georgia on Licence and Permit Fees which reduced the amount of the aforementioned fee.

The Government of Georgia intensively supported the liberalisation of budgetary charges. The state fee for the registration of citizens and issuance of the Georgian Identity Card, for example, were cancelled. Irrespective of the low rate, its payment remained problematic for the socially unprotected part of the population.

The Ministry of Agriculture prepared the following draft laws which will be considered during the fall session of the Parliament: the draft law on the Amendments and Addenda to the Law of Georgia on Registration Fees and the draft law on the Amendments and Addenda to the Law of Georgia on Quarantine Service Fees. They aim at the simplification of the formalities of international cargo conveyances commensurate with the requirements of the international conventions, the rendering of phyto and veterinary services free of charge and the

alignment of the amount of the fee with the reality of the situation (under the current versions, for example, the price of a chicken is GEL 0,6-0,7 whilst the fee amount for GEL 2,4 per capita). Despite the fact that the budgetary revenues will be reduced by GEL 120-130 thousand, the Government of Georgia upheld this draft law and submitted it to the Parliament.

The Governmental initiative on the introduction of a rather high rate of registration fee for the so-called "prestigious numbers" was an innovation in the legal file of Georgia. The State enjoyed the exclusive right to it by law and, taking account of the political and economic interest of the state, it made the aforementioned decision based on the similar practice which occurs in foreign countries. On 18 March 2005, the Parliament of Georgia received the draft law on Fees for State Certificates which was prepared by the Ministry of Finance. The notes of the Parliamentary Secretary certify that the draft law was not well-developed and required additional revision. These comments, however, were not upheld by the author. Consequently, following the hearing of the draft law within the Parliamentary Committee, the representative of the Ministry requested the suspension of the consideration of this draft law at the plenary session.

#### 4. Legislation in the Field of Labour, Healthcare and Social Security

A number of amendments were made to the legislation regulating the labour, healthcare and social security fields.

The Ministry of Labour, Health and Social Affairs of Georgia prepared a block of legislative amendments and additions to the laws of Georgia on Medical Practice, on Health Care and on Licensing of Medical and Pharmaceutical Activities which was adopted on 13 May 2005. This block aimed at the perfection of a continuous professional education; that is, a continuous professional rehabilitation and improvement of the Georgian medical service. In this regard, a new term was introduced; namely, "post-graduate professional training". The two components of the post-graduate professional training were identified as a medical residency (*rezidentura*) and its alternative.

The Ministry also prepared the amendments and additions to the Law of Georgia on Licensing of Medical and Pharmaceutical activities which was adopted on 3 June 2005. This Law identified separate authorities for the licensing of medical and pharmaceutical activities. In particular, the licences for medical practice would subsequently be issued by the Ministry of Labour, Health and Social Affairs of Georgia whilst the licenses for pharmaceutical activities would come from the Drug Agency which is a state authority within the jurisdiction of the Ministry of Labour, Health and Social Affairs.

The draft Law on the Amendment of the Code of Georgia of Administrative Offences, which was adopted on 3 June 2005, specified in a more detailed manner the functions of the Labour Inspection of the Ministry of Labour, Health and Social Affairs of Georgia and provided for the violations of the labour rights of minors.

On 7 March 2005, the Parliament of Georgia sent the letter 17-6/216 to G. Khuroshvili, the Parliamentary Secretary of the Government of Georgia, concerning the draft law on the Labour Code of Georgia which was prepared under the legislative initiative of the Parliamentary Committee for Legal Matters. We have circulated the submitted draft amongst the Ministries and Offices of the State Ministers for the agreement thereof. In relation to this legislative initiative, a number of meetings were arranged under the aegis of the Parliamentary Secretary of the Government of Georgia under the participation of the Parliamentary Secretaries of the Georgian Ministries. As a result of diligent efforts of the Government of Georgia, the opinion was prepared which was sent to the Parliamentary Committee for Legal Matters by the letter 11/18 of 2 June 2005. Further, the relevant Committee was requested to involve the Ministry of Labour, Health and Social Affairs of Georgia in the consideration of the draft Code. It should be mentioned that this draft was included in the legislative plan of the Government of Georgia but under the initiative of the Parliamentary Committee.

On 10 March 2005, following consultations with the Government of Georgia, the Law on Social Security Guarantees for the Family Members of Former High Rank Political Official of Georgia was adopted. Previous to this, the issue was not regulated by the legislation in force.

#### **5. Privatisation**

The property privatisation processes, ongoing in the country, conditioned the amendment of the domestic legislation. This is proved by a multitude of changes to the Law of Georgia on the Privatisation of State Property. In particular:

On 10 February, R. Gotsiridze, a Member of the Parliament of Georgia, submitted the draft law on the amendment of the Law of Georgia on the Privatisation of State Property which provided for the removal of Article 7 VIII from the law. In the case of adoption of this amendment, there would have been no mechanism for the reduction of the initial price of marketed property. With respect to proposed amendments, the Government of Georgia considered it reasonable to reserve the decision-making authority concerning the issues discussed in the draft law with the Ministry of Economic Development of Georgia. In parallel with this draft law, the Ministry of Economic Development of Georgia also proposed the draft law on the Amendment of the Law of Georgia on the Privatisation of State Property which provided the Ministry the opportunity to discuss the option of the reduction of price in the course of identification of the initial price of the property subject to privatisation, specified by law, on a case-by-case basis. Finally, the Committee upheld the version of the draft law, approved by the Government, which was adopted on 22 March 2005. Commensurate with the Law, in the case of failure to privatise the offered state property, its price may be reduced by up to 50%. If the property remains unsold at this price, the price may be reduced again.

Together with the aforementioned draft law, R. Gotsiridze, proposed another draft law on the amendment of the Law of Georgia on the Privatisation of State Property



which provided for the publication of information concerning state property, subject to tender proceedings, auction, lease with subsequent buying out and direct sale through such printed media, which is being distributed on a large part of the territory of Georgia. The Government of Georgia upheld the conduct of the privatisation proceedings in as transparent a manner as possible and considered it reasonable to specify what is meant under the printed media which is being widely distributed within Georgia.

On 25 March 2005, T. Diasamidze, a Member of the Parliament of Georgia, proposed the introduction of an addition to the Law of Georgia on the Privatisation of State Property under which small enterprise of a commercial, public catering and utility services profile, located on the territory of the Autonomous Republic of Adjara, will be privatised through a direct sale to the employees of such establishments. With respect to this addition to the law, account should be taken of the fact that the Law of Georgia on the Privatisation of State Property provides for the ways of privatisation of state property as regards the direct sale. Any decision concerning the privatisation of state property through direct sale is made by the President of Georgia who also specifies the terms and conditions of such privatisation. Consequently, making of a decision on the direct sale of state property is the discretionary right of the President of Georgia. For this reason, it was proposed that this issue be agreed upon with the Administration of the President of Georgia. The issue was also discussed at a session of the Government of Georgia. The Ministry of Economic Development of Georgia maintained that in the case of the adoption of the aforementioned addition, the State Budget of Georgia would lose measurable revenues. The draft law concerned was adopted through the first and the second hearings. Its consideration, however, was suspended at the plenary session of the Parliament of Georgia in the course of third hearing on the basis of the Governmental Opinion.

On 31 March 2005, V. Gegelashvili, a Member of the Parliament of Georgia, proposed the amendment to the Law of Georgia on the Privatisation of State Property which provided for the dissemination of information concerning units subject to privatisation. Insofar as television was added to the sources of dissemination of information concerning the property subject to privatisation, by virtue of the amendments to the Law of Georgia on the Privatisation of State Property, a new legislative initiative became necessary to specify that information which is to be disseminated by television through the denomination of property and opening and closing dates for the submission of bids. The Government of Georgia did not have any comments with respect to the draft law concerned.

## **6. Legislation in the Field of Environmental Protection and Natural Resources**

The Ministry of Environmental Protection and Natural Resources prepared several draft laws, in particular: commensurate with the draft law on the amendment of the Law of Georgia on the Structure, Powers and Operational Procedures of the Government of Georgia, which was adopted on 10 March 2005, the State Department for Land Management was cancelled and its functions were redistributed between three Ministries

according to the fields which they managed. In connection with the redistribution of these fields, the Ministry of Agriculture of Georgia and the Ministry of Environmental Protection and Natural Resources became involved in a dispute given that the fields were so interconnected that it was very difficult to separate them and have them regulated by law. Following the working sessions with the representatives and specialists of these Ministries, the final version of the draft law was developed. The Archive and Land Management State Departments were transferred to the jurisdiction of the Ministry of Justice of Georgia. Further, the Ministry of Agriculture of Georgia was assigned with the duties and powers of the Land Management State Department and became associated with the measures related with the conservation, rehabilitation and improvement of fertility of soils to include complex measures for fighting erosion, the transformation of agricultural land into the other categories of agricultural land, the development of state targeted programmes in this field, quality assessment of soils and the creation of an integrated bank concerning their state and the promotion of a target use of agricultural lands. Finally, the Ministry of Environmental Protection and Natural Resources took over the duties and powers of the Department related to the co-ordination and organisation of state control over the implementation of the measures for fighting against erosion of agricultural and non-agricultural land and the participation in the determination of the boundaries of the land parcels allocated commensurate with the law and delimitation thereof.

The Ministry also developed the draft law on the amendment of the Law of Georgia on the Structure, Powers and Operational Procedures of the Government of Georgia under which the Forestry, Protected Territories, Preserves and Game-Preserves, Geology, Hydrometeorology and Geodesy and Cartography State Departments were transferred to the jurisdiction of the Ministry of Environmental Protection and Natural Resources. The draft law passed through all the procedures provided for by the law and was submitted to the session of the Government of Georgia on 22 April 2005 where it was approved and submitted to the Parliament of Georgia for consideration. The consideration of the draft law at the Parliament of Georgia, however, was suspended on the request of the management of the Ministry of Environmental Protection and Natural Resources until the completion of the structural changes ongoing within the Ministry.

On 23 July 2005, the draft law on the State Control over the Protection of Environment, prepared by the Ministry, was adopted. The draft law aims at the development of the framework of state control over the protection of the environment for ensuring state control over the creation and maintenance of a safe climate for a natural ecosystem. A new state agency, the Inspection for the Protection of Environment, was created under this draft law which is subordinate to the Ministry of Environmental Protection and Natural Resources of Georgia.

Preparation of the draft law on the Amendments and Additions to the Law of Georgia on the Creation and Management of Kolkheti Preserved Territories was conditioned by social surveys conducted on the territory adjoining the Kolkheti National Park and the analysis of the sustainability of the life of the population of the National Park which showed the

Accounting that by virtue of Article 89 VIII of the Law “the diploma for higher education issued before the adoption of this Law shall be equalised to the level of a Master’s degree provided it was granted to a person on the basis of graduation of at least five-years educational programme”, it will be reasonable for the relevant faculties to identify the additional requirements needed for the harmonisation of the mandatory educational programmes and diplomas with those of the Bologna process. To this end, the Government of Georgia initiated an amendment to Article 87 VII which provides for the determination of the procedure for the equalisation to the level of a Master’s degree and, during the transition period, the equalisation of a diploma obtained after the completion of at least a one-tier five-year educational programme to the level of a Master’s degree.

As a result of the amendments, the diplomas for higher education, issued before the 2005-06 academic year after the completion of a one-tier five-year educational programme, was equalised to a level of Master’s degree whilst a diploma issued before the 2005-06 academic year after the completion of one-tier but less than five-year educational programme, was equalised to that of a Bachelor’s degree.

#### **8. Miscellaneous**

On 13 May 2005, the Office of the State Minister of Georgia for the Co-ordination of Reforms proposed the draft law on the Legal Status of the Acknowledged Technical Regulations within the framework of the National Programme for the Harmonisation of the Georgian Legislation with That of the European Union. The urgency of adoption thereof was conditioned by the necessity of fulfilment of the commitments of Georgia assumed after joining the World Trade Organisation and also by the simplification of the administrative barriers to the circulation of goods and services on the internal market of the country on 15 April 1994 commensurate with the World Trade Organisation Agreement. In this regard, we received a number of comments. In particular: the draft law was to take account of the provisions which were Georgia’s commitments under the international agreements. Insofar as commensurate with Article 6 II of the Constitution of Georgia an international treaty or agreement of Georgia, unless it contradicts the Constitution of Georgia, shall take precedence over the domestic normative acts, we considered that the additional stressing of the prevalence of the international agreements of Georgia over the national legislation in the proposed draft law was devoid of legal implication.

Commensurate with the draft law, products manufactured in Georgia on the basis of technical regulations acknowledged in Georgia can be put into circulation only after the implementation of these regulations. This provision is not acceptable as it allows for the more favourable treatment for imported products, produced abroad on the basis of acknowledged technical regulation as compared with local products, which constitutes a case of expressed discrimination and discourages the domestic production.

Modern practice is aware of the acknowledgement of the results of the assessments of the compatibility of products with foreign technical regulations conducted abroad (quite

often, in the form of the issuance of certificates). No state in the world, however, is aware of the practice of the equalisation of foreign technical regulation to domestic normative acts before the transposition thereof into the domestic legislation. The author has not yet submitted the final version of the draft law to the Government of Georgia.

The draft law on the amendment of the Law of Georgia on Enforcement Proceedings submitted to the Parliament of Georgia on 13 June 2005, under the legislative initiative of the President of Georgia, concerned the aforementioned issues. The draft law aimed at the perfection of the enforcement proceedings which has been conditioned by the deficiencies of the Georgian legislation. Insofar as no writs are issued with respect to the judgements of the European Court of Human Rights, which are legally binding commensurate with the European Convention on Human Rights, the enforcement proceedings with respect to these issues are being undertaken on the basis of an administrative act of the Minister of Justice of Georgia. In any other cases, the enforcement proceedings will be undertaken commensurate with the current legislation.

No comments and proposals were made with respect to the draft law concerned and it was adopted by the Parliament of Georgia.

#### 9. Problematic Issues

The amendments and additions to the Law of Georgia on the Relations Originating in the Course Using Dwelling Area aim at the regulation of the relations which originated between the owner and the user before 27 June 1996. Even the Members of Parliament have had a differentiated attitude towards the problem of the so-called *atstupnikebi*, by reason of which no decision was made with respect to the draft law at the plenary session of 24 June. Of particular importance is Article 2 VIII which concerns the relationships originating from a forced settlement on the basis of an administrative act. With a view to the resolution of this problem, it was proposed that the state compensate the market value of the dwelling area to the tenant as a result of which the tenant's ownership rights on the item concerned would be terminated. Insofar as the explanatory note to the draft law did not contain any financial and economic estimates of the consequences of its adoption, the payment of compensation amounts from 1 January 2007 was imposed on the state on the demand of the Government of Georgia.

M. Machavariani initiated and the Parliament adopted a law under which a single independent body was established in the transport field. This legislative initiative, as a result, rendered unnecessary the block of legislative amendments which were submitted to the Parliament by the Government of Georgia. Mandatory and leading Parliamentary Committees demonstrated their markedly negative attitude as concerns the block of legislative amendments On the State Management of the Transport Field and the Procedure of Its Regulation. Consequently, this draft law was withdrawn. The aforementioned draft law was another useless effort of the Ministry of Economic Development of Georgia to regulate this field (previously, the Parliament of Georgia received the block of legislative amend-

ments to the Railway Code of Georgia which was also withdrawn under the Governmental Enactment No. 219 of 2 June 2005).

The Law on Free Trade and Competition of 3 June 2005 and the draft laws based upon it were prepared under the legislative initiative of the Government of Georgia. Although it was conceptually approved by the Government of Georgia at its session, the authors of the draft law did not take account of the proposal of the Parliamentary Secretary of the Government of Georgia on the agreement of the draft law on the amendments to the Law of Georgia on Restructuring the Tax Arrears and State Loans with the Ministry of Finance which has a special state commission working on these issues. As a result, it was the amendments which created an unfavourable climate for the operation of the commission set up with the Ministry of Finance of Georgia which were adopted. In particular, by virtue of Article 3 X of the Law, the "Commission shall be required to notify the Agency for Free Trade and Competition on the plan for the issuance of state aids, substitution of the aids and or implemented aid".

In the case of a positive decision of the commission, the relevant materials will be submitted to the Government of Georgia for the making of a final decision (Article 3 VII and VIII) with the decision being executed in the form of an enactment. Herein, the commission studying the reasonability of restructuring of overdue tax and loan arrears is authorised to address the Agency for Free Trade only with respect to the aid, envisaged by the Law on Restructuring the Tax Arrears and State Loans, the list of which aid is provided for by Article 3 III of the Law.

Article 8 II (b) of the Law of Georgia on Free Trade and Competition does not specify the enterprises which may take advantage of state aid (deferral of taxes, writing off the debts, restructuring) "granted with a view to the promotion of certain economic activities or the development of economic zones and or the maintenance of culture and cultural heritage".

Commensurate with Article 8 III of the Law of Georgia on Free Trade and Competition, the Agency must design the general procedure of the granting the state aid. It should be mentioned that the Law of Georgia on Restructuring the Tax Arrears and State Loans provides for the procedural rules of granting state aid.

Further, Article 8 III of the Law of Georgia on Free Trade and Competition is in conflict with the provisions of Article 3 of the Law of Georgia on Restructuring the Tax Arrears and State Loans. For the purpose of avoidance of conflict of laws, it is necessary to introduce certain amendments thereto.

On 7 March 2005, L. Bezhashvili, N. Kalandadze and N. Gvaramia, Members of the Parliament of Georgia, submitted the draft Law on the Seizure of the Property Owned by the Trade Unions of Georgia to the Government of Georgia for final opinion. The issue is rather topical insofar as the trade unions, which are now very much split apart and perform their duties with a lesser efficiency, own enormous tracts of property. This property became the object of private commercial activities with the interests of society being completely ignored.

The draft law was sent to the Georgian Ministries and the Offices of the State Ministers for their opinions. On the basis of the proposals and comments of these agencies, it became apparent that the draft law was legally imperfect and required a thorough revision.

In particular, the property of the trade unions was created in the Soviet era and, commensurate with the Soviet legislation, belonged to social organisations and not to the state. Furthermore, by virtue of Article 21 III of the Constitution of Georgia, the seizure of property is admissible only when public needs so require and in cases, directly envisaged by the law, on the basis of a court decision or in the case of urgent necessity, provided for by an organic law and only in exchange for adequate compensation.

Commensurate with Article 2 of the Law of Georgia on the Procedure of Seizure of Property for Urgent Public Needs, "urgent needs means the situation when human life and health and the security of the state or the society is endangered due to ecological catastrophe, natural calamities or epizootics".

Furthermore, according to the draft law, a decision on the seizure of the property is made by the President of Georgia under his Ordinance which is devoid of legal basis as, commensurate with the Georgian legislation, the delivery of such decisions is the sole prerogative of the judicial power.

The draft law did not regulate and, therefore, it required specification from the legal point of view how the state was to ensure the transfer of the property specified by this law to the state with civil and administrative procedural measures. Moreover, the implementation of these measures does not fall within the terms of reference of the Government of Georgia.

Based on the aforementioned, the consideration of the draft law at the Parliament of Georgia was suspended irrespective of its pressing nature and it is subjected to thorough revision from legal point of view.

In June of the year to date, the Ministry of Energy of Georgia submitted the draft law on Power Energy and Natural Gas to the session of the Government of Georgia. As stated in the explanatory note which was attached to the draft law, the development of this law was conditioned by the fact that the Ministry of Energy had no adequate levers for the development and implementation of the basic trends of state policy in the field of power energy and natural gas.

The draft law provided for the direct intervention of the Ministry of Energy in the determination of a tariff policy. Insofar as currently the main property of the power sector is owned by the state, it was considered that the law would have caused the over regulation of the field, made it unattractive for investors and precluded the privatisation of the power sector. On the basis of this opinion, the session of the Government of Georgia decided not to put the draft law through further procedures, envisaged by law, until removal of the deficiencies identified by the Government.

### III. Legislative Activities for III-IV Quarters 2005

During the fall session of the Parliament of Georgia, the Government of Georgia proposed 49 legislative initiatives which included 137 draft laws of which Parliament adopted 96. In total for 2005, the Government of Georgia submitted 105 legislative initiatives with 257 draft laws therein.

During its fall session, the Parliament of Georgia adopted 205 draft laws, amongst them: 81, under the initiative of the Parliament; 28, under the initiative of the President, and 96, under the initiative of the Government of Georgia. For the period of its fall session, the Government of Georgia thrice applied its constitutional right and proposed amendments to the state budget to the Parliament of Georgia for its approval for the year to date. A number of legislative proposals were initiated with respect to the preparation of the State Budget for the year 2006. The legislation on pensions and compensations was adopted under the initiative of the Government of Georgia with the wages of the judges specified by a special law and a revision of the procedure for the remuneration of civil servants. Based on the Law on Licenses and Permits, the relevant amendments were introduced to the normative acts in force.

Some of the initiatives of the Government of Georgia, however, are still under intensive debate. These include: the draft laws on the amendment of the Law of Georgia on Road Transport, on the amendment of the Law of Georgia on License and Permit fees and on the amendment of the Law of Georgia on Licenses and Permits (the author is the Ministry of Finance of Georgia). The aforementioned draft laws provide for the cancellation of the permits for cargo conveyances from the territory of Georgia by foreign carriers which, in the opinion of the majority, increases an unequal environment for local and foreign carriers and would result in the deterioration of the status of the local Georgian carriers. Consequently, additional consultations are required with this respect.

The Ministry of Justice of Georgia initiated the draft law of Georgia on Arbitrage and the draft secondary legislation based thereon: the draft laws on the amendments and additions to the Code of Civil Procedure of Georgia, on the amendments to the Law of Georgia on Enforcement Proceedings and on an addition to the Law of Georgia on Private Arbitrage which aim at the harmonisation of the Georgian legislation with that of the European one in the field of arbitrage.

#### 1. Financial-Budgetary Legislation

The legislative activities in the financial-budgetary field are conducted mainly under the initiative of the Government of Georgia. For the reporting period, only one legislative initiative concerned the allocation of resources between the budgets. In particular, by virtue of the draft law prepared by the Parliamentary Committee for Agrarian Issues, the revenues from the sale of state-owned agricultural lands must be equally distributed between the budgets.

Taking account that, in fact, more than 80 percent of the state-owned agricultural lands are governed and leased by local self-governments and governments whilst the remain-

The introduction of tax benefits during a budgetary year causes an imbalance between the state and local budgets and considerably decreases the revenues part of the approved budget. In this case, it becomes necessary to reduce *pro rata* its expenditure part and/or search for alternative sources of revenues which is frequently impossible.

For the first six months of 2005, the sole entrepreneurs falling within the scope of draft law paid GEL 10,5 million to the state budget, as an income tax, and GEL 3,4 million, as a social tax, which means that the state budget will receive GEL 27,8 million annually for these types of taxes. The proposed legislative amendment, as such, has the potential of considerably reducing the budgetary revenues.

The liberalisation of the Tax Code was initiated by the Government of Georgia, a position which it continues to support intensively, but the stability of the tax legislation is not only a guarantee for the sustainability of budgetary revenues but also promotes the planning and development of the stages of business activities of an entrepreneur. Frequent legislative changes in this field give economic agents the expectation that new tax benefits will be introduced but, at the same time, this often leads to a non-performance of tax obligations.

Further, with a view to enjoying a beneficial tax regime, the majority of enterprises would change their legal organisational form and be registered as sole entrepreneurs through an artificial manipulation with legal means (liquidation, reorganisation and establishment of future enterprises, for example, within this form). In this case, there will be an increased potential negative fiscal effect as compared to the aforementioned annual income.

### 3. Social Field

The adoption of the Law on State Pensions and the Law on State Compensation and State Academic Scholarships, which were initiated in December 2005, regulated the key issue of the social field.

According to the data of the United State Insurance Fund of Georgia for September 2005, pensioners receiving a pension amounted to 919,318 persons, amongst them:

- Retirement pensioners – 537,099 persons
- Handicapped pensioners – 195,157 persons
- Persons receiving pension for the loss of a bread-winner – 57,903
- Pensioners receiving a differentiated pension provided for by the Georgian legislation 88,519
- Pensioners receiving pension according to their wages and length of service – 40,640 persons

According to the data of the United State Insurance Fund of Georgia, the number of pensioners will increase by 28,744 persons in 2006. We can presume that the estimated amount of pensioners for 2006 will amount for 948,062 persons. Unless the pension is increased in 2006, GEL 377,2 million will be required for funding current pensions. If the Government of



Georgia increases pension by GEL 7 from 1 September of the next year, GEL 401,8 million will be required for funding the current pensions in 2006. Based on the aforementioned, the difference caused by the increase of pensions will amount to GEL 24,6 million.

Commensurate with the laws on the provision of pensions which aim at the regulation of current pension legislation, GEL 389,3 million will be required for funding current pensions in 2006.

Mindful of the fact that the amount of pension for pensioners falling within the scope of the new pension scheme will increase from 1 September 2006, GEL 413,1 million will be needed for funding the current pension amounts in 2006.

#### **4. Power Sector**

On 27 December 2005, the legislative initiative of the Government of Georgia on amendments and addenda to the Law of Georgia on Electric Power and Natural Gas was adopted.

This laws aim at the improvement of the relevant legal framework for the implementation of the ongoing reforms in the field of the power and gas sectors which cover several directions, in particular:

##### **a) Ensuring the Implementation of the Basic Directions of the State Policy in the Field of Electric Power and Gas**

Commensurate with the Constitution of Georgia, one of the basic functions of the Parliament is the identification of key directions of the country's national policy (Article 48). The aforementioned provides for the authority of the Parliament of Georgia to identify the basic directions of state policy in the field of electric power. Commensurate with the current Law of Georgia on Electric Power and Natural Gas, the key function of the Ministry of Energy of Georgia is the development of the basic directions of the state policy in the field of electric power and gas and co-ordination of their implementation (Article 1 III (a) and Article 3 I).

Despite foregoing, by virtue of Law of Georgia on Electric Power and Natural Gas, the Ministry of Energy of Georgia has no actual lever for ensuring the performance of this function. In general it can be said that the basic directions of state policy should not make a merely declarative document but it must become the guidelines for future actions to be undertaken for the identification of the market model of electric power and gas and to be active in the course of the resolution of the issues related to tariffs and licenses. Consequently, the key documents which must contain the details of the basic directions of state policy are Market Rules, tariff methodology and other regulatory normative acts. In keeping with the current law, however, the right to issue these documents is entrusted to the Georgian National Energy Regulatory Commission which is neither a political body nor belongs to either of the branches of the state power. In this situation it is apparent that the Ministry, which is one of the branches of the executive power, has no lever for the enforcement of the policy approved by the legislative body.

Based on the aforementioned, the draft law delegated the Ministry of Energy of Georgia with the task of ensuring the implementation of the basic directions of the state policy in the field of electric power and gas which was approved by the Parliament of Georgia. To this end, the preparation and issuance of Market Rules, Technical Regulations and Rules of the Natural Gas Market was assigned to the Ministry of Energy of Georgia which provide market models of the sector, the mechanisms of its management, general principles of discharging licensing authority and several other related issues.

The draft law concerned developing the logical scheme for the delimitation of the terms of reference of the authorities performing the legislative, executive and regulatory functions in the electric power and gas sectors. In particular: the Parliament of Georgia identifies the basic directions of the state policy based on the needs of the country's development, the Government of Georgia in the person of the Ministry of Energy of Georgia develops the specific normative framework commensurate with the policy and the Georgian National Energy Regulatory Commission, which is an apolitical and independent organisation, makes concrete unbiased decisions in the course of discharge of tariff and licensing authorities and approves the tariff methodology commensurate with the state policy.

#### **b) Direct Consumers and Distribution Licensees**

Before the adoption of this draft, the legislation in force associated both the status of direct consumers and obtaining a licence of a distributor with such technical parameters which include, amongst others, the availability of the necessary voltage grid and its technical link with the high voltage transmission grid. Such an approach resulted in the creation of a multitude of small distribution companies and direct consumers. Given this status they mechanically became the actors within the electric power wholesale market which has caused an unreasonable splitting up of the energy sector and, subsequently, the complication of its management. The granting of the status of direct consumers and the licensees for electric power distribution is consequential only for those companies which influence the power sector in the light of both technical sustainability and economic indices.

As a result, the granting of the status of a direct consumer and the obtaining of a license for distribution under the proposed draft law will depend on the amount of electric power the unit concerned will consume or distribute.

The Law of Georgia on Licenses and Permits reduced the number of licenses and permits and simplified the administrative procedures for the issuance thereof. Based on the foregoing, it is necessary, then, to adequately amend the Law of Georgia on the Electric Power and Natural Gas.

Before the adoption of the aforementioned amendments, the licence for the supply of gas included the purchase of natural gas within the country from one supplier and the sale of it to another supplier or to a consumer to further include its export. From the commercial point of view, a licence for supply may include all the previously mentioned activities but they differ

from one another according to their volume and specific features and, as such, require a differentiated regulation. For this reason, the adoption of these amendments results in the cancellation of the license for the supply of natural gas; that is, its import, export and supply within the country become independent from the other fields of activities.

The aforementioned activities, as well as the import and export of electric power, are no longer subject to licensing or issuance of permits insofar as these activities are based on purely commercial relationships and, subsequently, are not a threat in the light of technical security. It is quite sufficient, therefore, to regulate these activities by a law and the adequate secondary legislation.

### **c) Operation of the Power Supply Systems in a Parallel Regime**

The Law of Georgia on Electric Power and Natural Gas provided for the status and functions of a licensee for the dispatching of electric power. As it is known, the basic function of these licensees is the management of the power supply system of the country in such a manner as to maintain its parameters and, consequently, its stability.

The discharge of this function was nearly impossible without the operation in a parallel regime with the power supply systems of the neighbouring country. The essence of this regime is as follows: the power supply systems of two or more countries ensure the mutual sustainability of electric power in the case of a failure within either country to meet the demands of domestic electricity. In this case, the electricity comes in from the other country, instead of being imported, whilst later the same amount will be returned to the country concerned, when it encounters the same problems. It is particularly important for Georgia to work within such a regime as the country's electric power is generated by hydro-power stations and is generally excessive; that is, the power system of the country is adjusted to peak powers whilst neighbouring countries have thermal and atomic stations with their power systems oriented on basic powers. Consequently, working within a parallel regime would make it possible for neighbouring countries to receive electric power from Georgia generated by hydro-power stations in excess during the summer months with a reverse situation in winter; that is, Georgia receiving back the electricity generated by the basic stations of the neighbouring countries.

A further aspect which was not regulated by the Georgian legislation has been the differentiation of the operation of the power supply systems in a parallel regime from export and import of the electric power. The aforementioned amendments established that this activity should not be construed as an import and/or export of electric power insofar as the operation within a parallel regime is not an economic activity and is not profit-oriented. This activity is the part of dispatch of the electric power. The only case when this activity may be attributed to export and import is the balance outflow of the electric power given that the validity period of the agreement on the operation within a parallel regime is exhausted and, consequently, the buyer or the seller of the electric power inflowing or outflowing in excess is to be identified.

#### **d) The Concept of Deregulation**

One of the major innovations of the aforementioned amendments is the exercise of the right of deregulation of licensable activities by the Ministry of Energy of Georgia. The discharge of this function will enable the Ministry to adjust the energy sector to the rate of the economic development of the country which results in the exemption of a certain activity from the regulation in the case of need either through the withdrawal of a licence or the cancellation of regulated tariffs.

#### **e) Approval of the Balances of the Electric Power**

The balances of the electric power are of particular importance for the normal development of the power sector of Georgia. The past year and lessons learned have demonstrated that their approval is more a product of a political decision than the outcome of the analysis of purely technical and economic parameters. It is generally admitted that the purpose of balances is the identification of the domestic demand of Georgia on electric power through the correct planning of the supply. The identification of the amount of electric power to be supplied is followed by the identification of the sources of supply. The sources of supply mean not only internal (power stations) and external (import) sources but also the sources of various types of energy (thermal, hydro, renewable).

Consequently, it is the political decision on the basis of which the country is to decide what is more beneficial for it a specific stage of development: development of internal, but expensive, sources of supply or the consumption of external, but cheaper, power.

### **5. Judicial Power**

The Legal Issues Parliamentary Committee initiated the preparation of the draft law on the amendments and additions to the Organic Law of Georgia on the Courts of General Jurisdiction which was adopted on 25 September 2005. The draft law provided for a number of innovations which aimed at the increase of the independence, importance and prestige of the judicial power. Account was also taken of the recommendations of the European experts which were oriented on the increase of the influence of the corps of judges and on a more efficient management of the processes ongoing within the judicial power.

It is proposed to expand the composition of the High Council of Justice of Georgia which will be done through the increase of the number of its member judges (currently there are three member judges in the Council). The draft law provides for the membership of eight judges in the Council. Of them, only one, the Chairman of the Supreme Court of Georgia, will be a member of the High Council of Justice due to his official status. The other seven will be elected by the Conference of the Judges of Georgia under the submission of the Chairman of the Supreme Court of Georgia. The aforementioned amendment will result in the increase of the influence of judges upon making an important decision at the High Council of Justice. Together with the judges, it is proposed that the High Council of Justice would have amongst its members the Prosecutor General and one further member elected

by the Parliament of Georgia. In total the number of the members of the High Council of Justice will be increased to 16 with half of them being judges.

The amendments provide for the inclusion of the High Courts of Autonomous Republics into the uniform system of appellate courts. The Chapter on the Supreme Courts of the Autonomous Republics was deleted from the Organic Law as, in actual fact, it was a repetition of the content of the Chapter on the Appellate Courts. This amendment was conditioned by the fact that the administration of justice and creation of appellate courts does not fall within the jurisdiction of the Autonomous Republics.

The current situation illustrated the need for keeping order during the court proceedings and in court halls. To this end, based on the experience of many countries, it was proposed to introduce the institute of court *mandaturi* who would be charged with keeping order in the court, rendering organisational assistance to the judges with respect to certain issues and following the directions of the chairperson of the court and of the session. The draft law explicitly regulates the rights and obligations of a *mandaturi*, the cases and rules of use of force, special means and official weapons.

Inasmuch as the draft law provided for additional expenditures and was of a pressing nature, the draft law was considered by the Government of Georgia at its session of 9 November 2005. The Government of Georgia upheld the consideration of the draft law by the Parliament of Georgia, provided the measures envisaged by the draft law would have been financed by the agencies participating therein within the assignments from the budget approved by the law.

## 6. Healthcare and Safe Environment

The Law of Georgia of Food Safety and Quality was initiated by Z. Tskitishvili, a Member of the Parliament, and adopted on 27 December 2005. The provision of the population with safe and qualitative foodstuffs is one of the key tasks of any state. These days, when global trade and technologies are highly advanced, the problem of food safety becomes particularly important and even more relevant. With this reality in mind, advanced countries of the world place particular emphasis on this problem and try to create such institutional models and legislation which will make it possible to ensure the food safety of its citizens to the maximum possible extent and in the most efficient manner.

For the time being, when Georgia endeavours to become a member of the European institutions, it is exceptionally important for the country to develop such an institutional model which will ensure the observance of food safety requirements to the maximum possible extent along with complying with all the other terms and conditions. To this end it is necessary to approximate our legislation with the western ones and to fulfil all the international agreements made in this field. It is a generally acknowledged fact that the situation in Georgia in light of food safety is not satisfactory and it does not ensure the protection of the interests of either consumers or of manufacturers. There are frequent cases of counterfeiting and poisoning of consumers with tainted foodstuffs as a result of

the multitude of services which are responsible for food safety. Their terms of references are too diversified and often overlapping which causes non-concerted actions and, ultimately, the inefficient operation of the system and the unlawful and improvident usage of state resources. On the other hand, this situation makes corruption within the industry flourish.

With a view to suppressing the aforementioned negative trends and fulfilling the commitments assumed by Georgia, the Ministry of Agriculture of Georgia developed a draft law in close co-operation with the World Bank and United States Agency for International Development. This draft law aims at the modernisation of the food safety system in Georgia and an alignment of current approaches, principles and institutional arrangements with the international requirements.

The development of the draft law on Food Safety and Quality was identified as the first step amongst the ones ahead. This draft law was to cover the issues related to the safety of foodstuffs and animal nutrition. The basic part of the draft law was developed on the basis of the Regulation (EC) No. 178/2002 of the European Parliament and of the European Council. Account was also taken of the Council Directive 89/397/EC – The Official Control of Foodstuffs and Directive 93/99/EC Additional Measures concerning the Official Control of Foodstuffs.

The Law of Georgia on Food Safety provides for and regulated the following issues:

- The basic principles and responsibilities related to food safety;
- The aspects of the legal and institutional arrangement of food safety in the country;
- The function of risk analysis in the decision-making process and the mandatory integration of the outcomes of risk assessment;
- The problems related with the arrangement of laboratories;
- The requirements for the complete chain of production and distribution “from farm to table” (by virtue of these requirements the producers are required to implement the system of internal control of hazards at their enterprises; also the term “traceability” is being introduced. These requirements shift the main focus from controlling the final product to the control of the process);
- The quality control and the mechanisms of its implementation;
- The basic principles of state control.

After the enactment of the Law, the internationally acknowledged and recognised principles and approaches will be introduced in Georgia, a single body responsible for food safety will be identified and the system will be developed which will deal with safety issues based on the elements of justified risk analysis, management and communication.

The Law provides for the creation of a single independent authority which will be set up mainly on the basis of the Veterinary Department. By virtue of these amendments, the Foodstuffs Expertise and Monitoring Office and the Agricultural Products and Flour Quality Inspection of the Ministry of Agriculture will be abolished. The functions of these two offices will be discharged by the aforementioned single authority. It is also envis-

aged to integrate the foodstuffs hygiene function into the terms of reference of this authority (currently this function is being discharged by the State Sanitary Inspection of the Ministry of Labour, Health and Social Affairs). Safety related functions will also be taken away from the Vine and Wine Department SAMTRESTI and Mineral Waters Department SAKMINKHILTSKALI. By virtue of the Law, these functions will be delegated to the Food Safety Department. Subsequently, insofar as risk assessment is a scientific process, it is planned that the aforementioned single authority will seek the assistance of scientists in this process as well as creating Councils of Scientists.

Under the Law, the food safety service would comprise three main verticals: the Veterinary Department, which will be responsible only for issues related to animal health; the Food Safety Department, which will undertake the supervision of all foodstuffs, and the Border Control Department, which will be responsible for the control of animals, veterinary products and foodstuffs at Georgian state borders. Further, the framework of the single independent authority will include a Risk Assessment Division, which will be engaged mainly in academic-research activities in order to develop the policy of reduction of undesirable risks on the basis of the results of risk analysis, and a Risk Communication Division, which will directly inform consumers about potential risks.

Border control, as a result, will become simplified considerably as only one border control authority will operate within the framework of the single service and be responsible for sanitary, veterinary and phytosanitary control. The country-wide integrated network of laboratories will also operate within the framework of this single service.

Commensurate with the Law, the activities of the Food Safety Department will be supervised by the Foodstuffs Safety Council, the members of which will be the Ministers of Agriculture and Labour, Health and Social Affairs of Georgia and representatives of producers, consumers, scientists and other stakeholders.

The Law also provides for the obligation of pertinent authorities to develop adequate primary and secondary legislation.

The interested Ministries and the Office of the State Minister for the Co-ordination of Reforms have made their comments and proposals with respect to this Law. With a view to an agreement of the disputed aspects, the draft Law was considered by the Government of Georgia at its session of 7 September 2005 following which a number of issues were resolved: by virtue of the draft law, the Foodstuffs Safety and Veterinary Service will be established in order to exert control and supervision in the field of foods safety and quality. This service will be established as a public law legal person which will have no controlling authority. This provision contradicted the requirements of Article 11 of the Law of Georgia on Public Law Legal Persons under which the lawfulness, reasonability, efficiency of its activities and financial and economic activities of a public law legal person must be supervised.

The state control of a public law legal person is undertaken by a state authority identified by law or an Ordinance of the President of Georgia which is entitled to request the presentation of the materials and information necessary for the administration of control. A body exercising state control is entitled to suspend or cancel an unlawful decision of a public law legal person. Ignorance of these requirements of the law would have resulted in unlimited freedom of the agency concerned in the course of the discharge of its activities but it would have become doubtful then, whether or not the principle of unlimited freedom was able to ensure the legitimacy of such activities.

A further legislative initiative is related to the implementation of the National Programme for the Harmonisation of Georgian Legislation with that of the European One developed on the basis of the Partnership and Co-operation Agreement (PCA) made between Georgia and the European Communities and their Member States. As previously mentioned, consumer protection is one of the priority sectors of this programme. Additionally, the timeframes and period for exploiting this field is provided for by the Action Plan for the Harmonisation of Georgian Legislation with that of the European Union. The initiative was embodied in the draft law on the amendments and additions to the Civil Code of Georgia which was submitted by D. Bakradze, a Member of the Parliament. The legislative initiative aims at the protection of the interests of the consumers in the light of the improvement of tourist services, the suppression of some unacceptable practices in the tourism field, the perfection of the deficient legal framework and minimum requirements for travel agencies. The Government of Georgia had certain comments with respect to this draft law. In particular, based on the experience of foreign countries and the rights of the travellers, it is necessary to specify the terms and conditions of the traveller's contract in a more detailed manner, to provide for reasonable timeframes for the amendment of the terms and conditions of a contract, to compensate damages incurred due to the non-performance of the contract within a timely manner, to provide for safety guarantees and to identify the persons by and to whom this guarantees are to be submitted. We had some legal comments on the draft law as well. In general, when talking about this legislative initiative, account must be taken of the fact that there is an effective Law on Tourism and Resorts which does not provide for the full picture of the problems existing within this field and the legislative regulation of the tourism field should have started with this very Law and not with the proposition of the aforementioned initiative.

## **7. Construction Field**

The President of Georgia proposed the draft Law of Georgia on the Promotion of Resorts, Resort Areas and Zones of Limited Development and the draft law on an amendment to the Code of Administrative Offences of Georgia for consideration. These draft laws aim at the introduction of different regimes of regulation of and responsibility for construction work within the territory of resorts, resort areas and the zones of limited development. The Government of Georgia had the following comments and opinions concerning these draft laws: for the time being the state regulation of construction work is based on Resolution No. 140 of 11 August 2005 of the Government of Georgia on the Rules of Issuing a Construction Permit and on Construction Terms. Consequently, it is not



necessary to regulate this field anew on a legislative basis. The draft law does not separately regulate the issues related to with the buildings (buildings under construction) and land parcels belonging to the local population. Due to the lack of resources, the construction of dwelling houses of the local population may take months to complete and the imposition of an initial 100% fine for the violation of the timeframes of construction work will be the same as the deprivation of the title to these real estates. Basically the problem of protracted building activities is conditioned by the crisis situation existing in the country for the last years and shifting the problems to current owners of the real estates may not have the desired consequences.

Account should also be taken of the fact that there continues to be no explicit mechanism of assessment and calculation of market values of the land parcels in the regions of Georgia and the protracted constructions situated thereon. Fines and other sanctions need to be more realistic and not such which would result in the bankruptcy of the owner. Further, the problem of unfinished or abandoned constructions should not be related to land ownership and sanctions should not be applied to the land parcels. It will be reasonable to establish those principles for identifying the market value of protracted constructions and who will perform this work. Apart from the aforementioned, the Government of Georgia had additional comments of a legal nature which were submitted to the Parliamentary Secretary of the President of Georgia.

#### **8. Land Privatisation**

The Agrarian Issues Parliamentary Committee proposed the draft law on the amendments and additions to the Law of Georgia on the Privatisation of the State-Owned Agricultural Lands within the framework of its legislative initiative. This draft law provides for the perfection and simplification of the procedures related to the privatisation of state-owned agricultural lands. The law also provides for the exemption from the payment of the mortgage registration fee. Commensurate with the current version of the law, the fee for the registration of mortgage and cancellation thereof is no less than GEL 100. The authors of the draft law believe that this fee considerably increases the total expenses of land privatisation and obstructs the privatisation process.

Commensurate with Article 6 of the Law of Georgia on Registration Fee for Service Rendered by the National Agency of Public Registry, there is no charge is payable for ten business days upon the initial registration of an agricultural land parcel whilst the following rates and timeframes are envisaged for any further registration as follows: five business days and GEL 7 for the registration of an agricultural land parcel with an accelerated service of one business day and GEL 35 or three business days and GEL 21.

Commensurate with Article 7 V of the Law of Georgia on Registration Fee for Service Rendered by the National Agency of Public Registry, the fee is to be transferred to the account of the National Agency and, subsequently, it will not be directly reflected in the State Budget of Georgia.

The Ministry of Justice of Georgia (the National Agency of Public Registry is a public law legal person subordinated to the Ministry of Justice of Georgia) does not oppose the exemption from the payment of fees as proposed by the draft law.

The draft law must be supplemented with a draft law on an addition to the Law of Georgia on Registration Fee for Service Rendered by the National Agency of Public Registry insofar as Article 8 of the Law provides for the cases of exemption from the payment of the fee.

With a view to the removal of this deficiency, the Agrarian Issues Parliamentary Committee proposed the draft law as an addition to the Law of Georgia on Registration Fee for Service Rendered by the National Agency of Public Registry which provides for the exemption from the payment of the fee envisaged for the registration of the mortgage. Account should be taken of the fact that the proposed amendments will cause the reduction of the revenues of both the National Agency of Public Registry and the State Budget.

The Government of Georgia considered the aforementioned draft law at its session of 31 October 2005. Against the background of the current liberalisation policy implemented in Georgia in the field of the privatisation of lands, the Government of Georgia could not uphold the legislative initiative proposed by the Agrarian Issues Parliamentary Committee.

## 9. Legal Education

The draft law on Legal Education was submitted to the Parliament of Georgia under the initiative of N. Kalandadze, a Member of the Parliament. The preparation of this law was conditioned by the requirements of Article 75 of the Law of Georgia on Higher Education which identifies the regulated educational professions. The draft law aims at the development of uniform educational standards, identification of regulated legal professions and the procedure and the terms and conditions of holding the state certification examinations. With respect to the proposed legislative initiative, the Government of Georgia has the following comments: the state goals of legal education must be specified in relation to the technical organisation of the state certification examinations and, subsequently, the legal status, the rules of setting up, the functions and powers of the authority who will be responsible for the development of the standards of legal education; the legal basics of practical activities within the framework of legal education, the mechanism of acknowledgement of education obtained through practical training, permanent education, the forms of organisation of further professional development of lawyers who take certification examinations; the subjects implementing the professional development programmes for lawyers, programmes, the aspects of their accreditation and acknowledgement of the programmes of professional development.

The issues envisaged by the draft law require an adequate amendment of the current rules of conduct of qualification examinations provided for by the Laws of Georgia on the Courts of General Jurisdiction, on Bar, on the Prosecutor's Office, on Notary.

The draft law provides for the establishment of the State Board for the Co-ordination of Legal Education which will be responsible for setting up the organisational and examination commissions for the preparation of state certification examinations, the discharge of whose functions will be related with certain expenses. The draft law does not specify the agency which will be responsible for the funding of these measures. Consequently, the Government of Georgia is not in the position to assess the financial and economic consequences of the draft law.

The Government of Georgia believes that the reasonability of further promotion of the presented draft law must become the topic of continued deliberations together with the development of a uniform approach towards the regulation of legal education.

#### 10. Other Fields

The President of Georgia initiated the draft law on the amendment of the Organic Law of Georgia on the Citizenship of Georgia which provides for the delegation of the authority to the Ministry of Foreign Affairs of Georgia to conduct the procedure of granting citizenship of Georgia to a foreign national. Further, the draft law removes the conflict of rules in relation with the exemption from state duty. The Government of Georgia has no comments with respect to the draft Organic Law.

D. Bakradze, a Member of the Parliament, initiated the draft Law on the additions to the Law of Georgia on Advertisement which aims at the legislative regulation of comparative advertisement which is directly related to consumer protection. The legislative initiative is based on the National Programme for Harmonisation of the Georgian Legislation with that of the European Union. One of the priority sectors of the National Programme is the protection of consumer rights. The draft law was prepared by the Parliament of Georgia.

A further attempt to approximate the Georgian legislation with that of the European Union is seen in the legislative initiative of the Parliamentary Committee for the European Integration on the amendments and additions to the Law of Georgia on Intellectual Property Related Border Measures. The draft law aims at ensuring the better protection of the holders of copyrights on the objects of intellectual property rights insofar as the implementation of adequate customs procedures is very efficient for the disclosure of counterfeited and pirated goods and the suppression of their distribution. It should be mentioned that commensurate with the proposed amendments, a register of the objects of intellectual property rights will be created within the framework of Customs Department wherein every interested copyright holder will be entitled to register his own object and oblige the customs to detain the pirated goods.

The Parliament of Georgia has set up the Gender Equality Advisory Council, headed by the Chairperson of the Parliament of Georgia, which works on various aspects of the legislative regulation of the problems of gender equality in Georgia based on the generally acknowledged international provisions. This Council has already considered and approved

the draft law on the Prevention of Family Violence, Protection and Support of the Victims of Family Violence which was submitted to the Parliament under the legislative initiative of K. Makharashvili, a Member of the Parliament of Georgia. The draft law provides for the mechanism of protection of the victims of family violence and the preventive institutions. The draft law regulates the issues of suppression and the prevention of family violence and also provides social and employment guarantees for the victims.

The draft law was considered at the session of the government of Georgia. It should be mentioned that the draft law provides for the already regulated social relationships. The provisions of this draft law are regulated by the pertinent legislation of Georgia, criminal, civil and administrative procedures. Subsequently, we consider it unreasonable to adopt the draft law as an independent, framework law. The draft law also provides for the creation of social protection service, asylums and rehabilitation centres for the victims of violence within the framework of the Ministry of Labour, Health and Social Security which necessitates the allocation of additional resources from the State Budget. The Government of Georgia is not in the position to speak about the financial commitments to be undertaken in this respect and considers it unreasonable to create the social protection service, asylums and rehabilitation centres at this point.

The President of Georgia has submitted the following draft laws on the amendments and additions to the Law of Georgia on Electronic Communications, on the amendments and additions to the Law of Georgia on Broadcasting and on an amendment to the Code of Administrative Procedure of Georgia, the preparation of which was conditioned by the necessity of ensuring conformity with the Laws of Georgia on Licenses and Permits and on Regulation Fees. After the adoption of the aforementioned draft laws by the Parliament of Georgia through the first hearing, the Ministry of Economic Development proposed some material comments on these draft laws. Particularly interesting is the proposed amendment to the Law of Georgia on Broadcasting by virtue of which 80% of the license fee is to be transferred to the State Budget of Georgia, 10% to be given to a special account of the National Communications Commission of Georgia with a view to ensuring universal services and a further 10% to the account of the same Commission for the financial provision of the functions delegated to the Commission under the Georgian legislation. Account should be taken of the fact that a license fee is fully paid to the State Budget of Georgia. Consequently, we considered it reasonable for the Government of Georgia to discuss the draft law before its second hearing.

The President of Georgia has initiated and the Parliament of Georgia has adopted the Law on Organised Crime and Racketeering and the draft laws based thereon: on an addition to the Criminal Code of Georgia, on the amendments and additions to the Code of Criminal Procedure of Georgia and on the amendments and additions to the Code of Civil Procedure of Georgia which provided for the development of efficient civil and criminal law mechanisms for fighting organised crime and racketeering. In particular the draft laws provided for the definitions of the following terms: "thieves' world," "a member of the

thieves' world," "thieves' disputes" and "thief-in-law." A new Article 2231 was added to the Criminal Code of Georgia which is entitled "Member of the Criminal World" and "Thief-in-law."

#### IV. Proposals for the Perfection of the Legislative Activities of the Government

Given its complexity and specific features, the Government's legislative activity is characterised by a number of problems with their analysis and resolution being vitally important for the perfection of the legislative process. The efficient conduct of legislative activities depends on the perfection of those procedural and methodological means which promote the development of the legal framework. It is the perfection of the legal drafting forms and methods that empowers the Government to actively participate in the formation of the legal framework and promotes the successful implementation of the programmes of modernisation and harmonisation of the legislation. First and foremost, the methodology and procedure of the legislative activities – and also its planning – must be improved and perfected. These methodologies and procedures still have many negative trends. The annual plan of the Government must initially include those draft laws whose adoption is provided for by previously adopted and enacted legal acts. The lists of such so-called "assignments" are contained in the transitional provisions of many laws and the Resolutions of the Parliament of Georgia which must be duly accounted for by the pertinent Ministries. The other draft laws should not be included in the annual plan automatically simply because the pertinent Ministry so desires. It is necessary, instead, for the Ministry concerned to thoroughly work out a legislative initiative with respect to a specific normative act which will provide for good reasons to prove the necessity of the adoption of the law concerned. Only afterwards and following a certain analysis can a draft law be included in the annual plan. The well-known method of "implementation of a legislative proposal" must be introduced which is peculiar for the legal frameworks of a number of advanced countries. Further, it is necessary to identify the criterion by which the pertinent agency will be guided in the choice of the form of legal regulation. Of course, there are relationships which must be regulated by a law but there are also those which do not require the regulation through a statute. It is also particularly important for the principle of the supremacy of law to be ensured, not through purely quantitative evolution but with the focus to be shifted towards the qualitative features. This will only be possible within legislative policy which is based on the academic principles which means, first of all, the analysis and the prognosis of the complicated processes ongoing within the society, the development of a substantiated criteria of legislative regulation of social relationships, the modelling of the provisions, the arrangement of legal experiments of local importance taking account of the efficiency of formerly existing laws and the legal practice of foreign countries and other aspects. In this regard, it is desirable to increase the role and the importance of the pertinent academic institutions within the legislative activities of the Government.

The frequent application of such legal mechanism in 2005 as it is the withdrawal of a draft law from the Parliament by the authority submitting it was conditioned by the fact that all the

aforementioned was not duly accounted for. The actual employment of this mechanism promoted further intensification of co-operation between the Government and the Parliament in the field of legal drafting. During this year, 15 draft laws were withdrawn from the Parliament. It should be mentioned, however, that the withdrawal of a draft law must not become the means of escaping responsibility. It should not be turned into the mechanism which bears the functions of a "lightning rod" for certain state authorities. To this end it is necessary for the pertinent authority to give well-founded argumentation of the expediency of his choice, together with the legal consequences thereof, both at the point of inclusion of a draft law into the plan and its withdrawal from the Parliament which, at a later time, should be analysed by the Legal Drafting division of the Legal Department of the Governmental Chancellery with the relevant opinion presented to the Prime-Minister of Georgia and considered at the session of the Government of Georgia. This procedure will considerably improve the current situation in the field of legislative activities of the Government.

The co-operation of the Government with the Parliamentary Committees and factions should become more intensive. Closer and more collegial relationships must be developed between the pertinent sectoral Ministries and the Parliamentary Committees. Moreover, this issue is particularly important for the newly elected Parliament. The existence of the institute of the Parliamentary Secretary of the Government of Georgia and the Parliamentary Secretaries of the Ministries serves this very purpose.

Lawmaking activity is a complicated, time-consuming and, at the same time, a creative process. Quite often the Ministries fail to foresee all the stages of the legal advancement of a draft law and, for this reason, their submission is obstructed by omitting certain procedural steps envisaged by law which adversely affect both their activities and the entire legal framework.