



## EVALUATION OF PROPOSED AMENDMENTS TO CRIMINAL CODE (THE SO-CALLED *GIRGVLIANI AMENDMENTS*)

The legislative initiative regarding amendments to the Criminal Code of Georgia (the so-called *Girgvliani Amendments*) was initiated within the Parliament of Georgia. The initiative passed its first reading. On demand of the leading committees the Bureau extended the period of review of the above draft Law. As stated in the [reasoning](#) the foregoing was conditioned by the necessity of clarification some aspects and additional consultations.

### Draft Law, Initiator



Legislative initiative [On Making Amendments to the Criminal Code of Georgia](#)

Initiator: Parliamentary faction Georgian Dream

### Essence of the Draft Law



The legislative initiative was presented under the name of the so-called *Girgvliani Amendments* and it focuses on toughening up the liability for malfeasances in office committed by public political officials. Specifically, it becomes punishable to give unlawful orders and assignments, also the abuse of official power or status thereby. The commitment of crime as a result of order or assignment given by a public political official is added as an aggravating circumstance to a number of articles of the Criminal Code of Georgia which mainly concern the crimes against human freedom. According to the [Explanatory Note](#) to the Draft Law, the proposed amendments will promote the prevention of systemic crime.

### Effective Version



The effective criminal regulation specifically provides for malfeasance in office. According to Article 332 of the Criminal Code punishable is the **abuse of official power**, meaning the abuse of power by an official or equalized thereto person to gain some benefit or advantage for himself/herself or for another person, what resulted in substantial violation of the rights of a physical or legal person, or of the lawful interests of the public or the state. The punishment includes fine or house arrest for a period from 6 months up to 2 years, or/and imprisonment for a period up to 3 years, with the deprivation of the right to hold an official position or carry out a specific activity for a period up to 3 years.

Further to the foregoing, an aggravating circumstance in the above cases is the abuse of official power by **a person holding public-political office**, what is punishable by imprisonment for a period of 3- 5 years, with the deprivation of the right to hold an official position or carry out a specific activity for a period up to 3 years<sup>1</sup>.

The other aggravating circumstances, like commitment of a crime repeatedly, violently or using some weapon, abusing personal dignity of a victim, are also prescribed for this type of malfeasance in office. In this case the punishment is more stringent and makes imprisonment for a period of 5-8 years, with the deprivation of the right to hold an official position or carry out a specific activity for a period up to 3 years.

### Proposed Amendment



1. According to the draft Law, a special provision is added to the Criminal Code - **Giving an illegal order or assignment by a public-political official**. Liability for such an action originates from the moment of giving an unlawful order or assignment by the person concerned, irrespective of the consequence of his/her such action. The punishment for the foregoing makes imprisonment for a period of 5-8 years, with the deprivation of the right to hold an official position or carry out a specific activity for a period up to 3 years.

The liability and, respectively the punishment becomes stricter if an order or assignment resulted in the respective specific consequence: extortion of assets in large amounts or damage or destruction of large amount of things, belonging to the other person, breach of privacy, unlawful imprisonment, taking hostage or misappropriation of large amount of things through robbery and other cases.

2. Another special provision is also added to the Criminal Code - **Abuse of official power or status by a public-political official**. This Article provides for a specific subject. In such cases liability originates from the moment of the abuse of power or status irrespective of the consequence of such action.

As prescribed, the liability of a public-political official will be further aggrieved if his/her proposal was followed by suppression or non-disclosure a grave or particularly grave crime by the direct executor thereof.

Also punishable becomes offering a person to take a blame upon himself, suppress or not to disclose a crime by a public-political official with a view to obstructing legal proceedings. The punishment for the foregoing is imprisonment for a period of 4-7 years with the deprivation of the right to hold an official position or carry out a specific activity for a period up to 3 years.

The same action resulting in suppression or non-disclosure of a grave or a particularly grave crime will be punishable by imprisonment for a period of 5-8 years with the deprivation of the right to hold an official position or carry out a specific activity for a period up to 3 years.

3. In the case of rape, various types of sexual assault, unlawful imprisonment, taking of hostage, breach of privacy, robbery and other crimes, **an aggravating circumstance is their commitment as a consequence of an unlawful order, assignment of a public-political official**.

### Evaluation/Recommendation



The proposed initiative provides for expanding the range of malfeasances in office and toughening the liability for malfeasances in office committed by public-political officials, furthermore, in a number of cases the additional aggravating circumstances are introduced. In this light the proposed amendments should be viewed favourably. However, the account should also be taken of the following aspect:

- The proposed amendment does not extend to persons who are not public-political officials under the Law of Georgia on Civil Service. In this respect the Head d of the State Security Service are not subject to the regulation of the amendments. Based on the purpose of the above initiative and accounting for the status of the Head and the Deputy Head of the State Security Service, it is important for these persons also to be the subjects of the proposed elements of crime.

<sup>1</sup> Criminal Code of Georgia, Article 332, Part 2.

