

**BUSINESS MONITORING OF THE
GEORGIAN ADMINISTRATIVE CODE**

Consideration of how the implementation of the Georgian Administrative Code can help advance a healthier and freer business climate while simultaneously help ensure the development of democratic society.

*A project of the Center for the Study of the Free Markets, Competition and Private Enterprise
at the Partnership for Social Initiative (PSI)
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I. BACKGROUND

In the last several years, the Republic of Georgia, one of the fifteen successor states to the former Soviet Union, has seen rapid growth and development in its market economy and civil society. Georgian Parliamentarians' decision to actively engage in rapid lawmaking and to enact numerous legal statutes dealing with different political, social, and economic matters has been one of the driving forces behind this process of liberalization. In a short span of five years, the Georgian parliament has passed 700 new pieces of legislation. While such active lawmaking has helped to provide for the basis of a new legal framework for the nation, the process has not been free of drawbacks. The fact that these laws often lack implementation mechanisms and are often ignored by the executive branch of the government are two of the Georgian experience with rapid lawmaking.

One of the most important pieces of legislation passed by the Georgian Parliament in thus far is the Administrative Code, which went into effect on January 1, 2000. This law is widely seen as one of the most progressive legal acts in the NIS. The Code was written with several purposes in mind:

- Ø to ensure for the protection of human rights and freedoms, while simultaneously improving the democratic and the free market climates;
- Ø to provide for a transparent lawmaking and administrative processes;
- Ø to guarantee and to encourage participation of the society as a whole, particularly through various elements of civil society, in lawmaking, law implementation, and decision-making processes;
- Ø to make administrative entities of the Georgian government accountable at times when, due to rampant corruption at all levels of Georgian government, officials choose to ignore the nation's laws and rules;
- Ø to make Georgia's current laws less contradictory with one another by providing certain administrative process for this initiative (Georgia's many new laws contradict each other because some are written based on common law principles, following the British and the American models, while others are written based on the Roman law principles, following the French model);
- Ø to create a practical and real soil for implementation of Georgia's overall legislative program, which aims to move the nation, in its legal, political, economic and social frameworks, to the model of Western liberal democracy.

Unfortunately, since the adoption of the Administrative Code on January 1, 2000, its implementation process has been very slow in coming. Indeed, very few, if any, parts of the executive branch of government follow the requirements of the Code. The implementation process has been particularly slow in relationship to procedures outline in the Code dealing with the citizens' (and institutions') right to claim information from the legislative and the administrative bodies.

One of the major reasons for the slow implementation of the Administrative Code, excuse the executive branch's unwillingness to follow the procedures outlined in the law, is the lack of an understanding, by government representatives, of the requirements of civil society. In addition, the structural defects of the Georgian executive branch, which often make it impossible for the government agencies to follow the requirements of the Code, also account for the lack of implementation of this law.

Overall, four fundamental reasons account for the slow pace of implementation of the Administrative Code:

1. Elements of the Georgian society which have an interest in the law (such as the civil society, the press, and the business community) have no awareness of the Administrative Code and its components, which were meant to protect their rights inherent in democratic society.
2. Few private institutions (particularly the businesses) that are aware of the Code, and of the requirements that it places on the government, choose to make use of it. They are thus unable to gain practical benefits from the Code. (This is at least partly due, of course, to the lack of willingness, readiness, and ability on the part of the executive branch of government to comply with the Code.)
3. The mistrust in the government that developed in Georgia during the decades of Communist rule, along with cultural specificities (mores and traditions) of the Georgian people, has exacerbated not only the slow enactment of the Code but also lack of attempts by the business community, and civil society at large, to make use of its various elements.
4. The Administrative Code itself has drawbacks which make it difficult to put it into full execution, even in those few areas where the executive branch has chosen to comply with it and where the applicants attempting to use it put in a good faith effort to use the Code.

As a result of these developments, the business community, NGOs, and the population at large, have had neither the opportunity to gain an understanding (or a conception) of the essences of the Administrative Code, nor to gain experience in making use of its various components. Consequently, those elements of the society who should have most benefited by the adoption of the Code have been unable to exercise their rights which the Code was meant to promote and help protect. Contrary to the expectations of most lawmakers who supported the Code (please see attached letter of support), neither the distance nor the climate between the government and the most active part of the Georgian society – the business sector – have changed. At the same time, the Code has not yet been able to contribute to the establishment of a limited and accountable government.

II. STATEMENT OF NEED: THE CODE AND THE BUSINESS COMMUNITY

The business community (along with their civil society representatives) was seen as the sector of society that would benefit the most from the Code, according to the Members of Parliament who pushed the law through the Administrative Code (and their international advisors who urged Georgia to adopt such a law). As conceived by the supporters of this legislation, various private industries (and the business community as a whole) would receive several important benefits from the Code (these are detailed below). However, since the Code has not been implemented, these benefits to the business community have not been forthcoming.

The fully implemented Administrative Code would provide the following benefits to the business community:

- Ø ***Enable the business community and the business associations to influence the lawmaking, law implementation, and law enforcement processes, thus encouraging active participation by the business-oriented civil society in governance of Georgia.***

As a result of such involvement, the business climate would undoubtedly improve, since the needs of the business community would be at the forefront of both the legislative and the executive branches' agenda. Actions of the Georgian government in numerous areas – such as the taxation policy, business regulation, privatization, capital market development, labor policies, pension, and many others – have a direct impact on all of Georgia's businesses. In a developing country such as Georgia, even one ill-considered action can have adverse effects on the business community. Therefore, ensuring that business and business associations have the opportunity to impact the lawmaking and the administrative decision-making processes will help ensure that the interests of the Georgian businesses are not forgotten by the government, and are indeed one of the regime's primary concerns.

- Ø ***Empower businesses to use Courts as a recourse against the executive branch, when that branch refuses to abide by the Georgian laws or respect the rights of the a given private business. The added benefit of this would be to strengthen the role of judiciary in the Georgian structure of separation of powers.***

The Administrative Code requires that the executive body from whom an applicant requests information make this information transparent and available within 48, and at the utmost, 72 hours. The Code also provides that the applicant can take that governmental entity that does not meet this standard to Court. In addition, the Code requires that administrative units regulating different business be open about their regulation process and make available all documents concerning regulation upon the request of the business or industry in question. The Code once again points to the judiciary as the enforcing mechanism for this provision.

Such provisions are meant to prevent governmental entities from frivolously prying into businesses to solicit bribes or out of political necessities. The overall result of these provisions, once they are fully implemented, will be to free some

elements of the government from the clause of corruption, helping the Georgian business climate and stimulating the growth of small businesses.

Ø ***Bring additional foreign capital and investments into Georgia.***

Many foreign investors interested in working in Georgia choose to not bring capital into the country because it is very difficult to hold Georgian government officials and entities accountable for bribery and corruption. By making the government activity more transparent, the Administrative Code will strengthen accountability on the part of the government, thus attracting more foreign investments into Georgia.

Ø ***Help the business community and the business associations by forcing the government to proceed with privatization in a fair, rapid, and judicious manner.***

Georgia today is undergoing privatization in numerous different industries. Tenders are used to privatize these industries. Quite often, the winner of a given tender is unable to realize his property rights, because the Ministry of Property Management does not issue the final administrative act (a written order) certifying the privatization. This would be difficult to do in a transparent environment, where the Ministry would have no more than 72 hours to respond to the queries concerning privatization or face litigation in the Courts of law.

Ø ***Speed up the implementation of other recently adopted legal statutes that effect the business community on a daily basis.***

Most of the 700 laws that have been passed by the Georgian Parliament over the last five years do not outline clear mechanisms for their implementation. Therefore, these laws have not been put into effect with all due speed by the administration. Indeed, today it is hard to know which laws have been implemented and which await implementation. However, transparency brought forth by a fully implemented Administrative Code will enable Georgian people, and particularly the civil society, to learn exactly what the government has been doing in relationship to the many news laws that have been enacted in the last five years. With this information, civil society will be able to advocate for a speedier implementation of various laws that affect their constituents.

Ø ***Strengthen the civil society, increase its role in the interworkings of government, and promote values and institutions of democracy and freedom.***

By placing such a strong emphasis on the participating of the citizens in lawmaking, law implementation, and decision-making, the law undoubtedly seeks to encourage and promote values of democracy and freedom. This law is, more than anything, a means through which the Parliament sought to secure, and provide, for citizens' rights which are inherent in a democratic society, but which citizens can claim only through a well-established governmental structure, designed to ensure that these rights are fully respected by the political regime.

The strengthened democratic society and regime would not only represent an inherently good development, but also would serve as an aid to the development of private enterprise and free market economics. Good government, which

respects its citizens and the citizens' rights, is a government that promotes capitalism, encourages private enterprise, and respects the business community.

These six fundamental benefits, which the business community would immediately see if the Administrative Code were fully implemented, have thus far eluded Georgia, because the Code, though a formal statute on Georgia's law books, has not been put into effect. There therefore is a need for a coalition of Georgian business associations, with an interest in the enactment of the law, to advocate for the implementation of the law. "Business Monitoring of the Georgian Administrative Code" is a project that aims to address this need. A project which aims to bring together such a coalition must, in its first iteration, also focus on gaining insight into the business community's understanding of the law. In addition, the project must develop recommendations on how businesses could best use the, monitor the implementation process, and, if necessary, outline structural changes to governmental agencies to ensure their compliance with the Code.

III. PROJECT OBJECTIVES

The goals of "Business Monitoring of the Georgian Administrative Code" is to build a coalition of business associations and other non-governmental organizations that will assist the Georgian government in implementing the Georgian Administrative Code. The project also aims to promote the Code's implementation by monitoring the implementation process. Steps taken to reach these goals will promote a healthier and freer business climate, while simultaneously helping advance a more effective and fruitful interaction between the business community and the government of Georgia, hence assisting with the development of democratic values in Georgia.

Working towards these goals, the project will meet certain practical and measurable objectives:

- Ø To assess the needs of the business community and demonstrate to business leaders and elected officials how and why full implementation of the Administrative Code will assist in the development of a healthier business community, and in turn, a more successful democratic society.
- Ø To design an effective strategy for the implementation of the Administrative Code, which will address the aforementioned reasons for the slow pace of implementation.
- Ø To build a coalition of Georgian business associations and NGOs at large to advocate for and monitor Georgian government's implementation of the Administrative Code.
- Ø To promote cooperation between the business community, on the one hand, and the government officials and elected legislators on the other, to improve the lawmaking that addresses business issues and to ensure that the needs of the business community are addressed in future legislation.

Once these objectives are successfully accomplished, not only will a healthier business climate and democratic values develop in Georgia, but a precondition will exist for certain longer-term objectives, which are related to this project but are

subjects of separate, future, proposals focusing on the Georgian Administrative Code and related business-oriented legal acts.

IV. PROJECT ACTIVITIES

◆ **ACTIVITY ONE: PUBLICATION OF A REPORT ENTITLED "GEORGIAN ADMINISTRATIVE CODE AND THE BUSINESS CLIMATE."**

In order to assist with the implementation of the Administrative Code, the Center for Free Market, Competition, and Private Enterprise at the Partnership for Social Initiative will publish a report detailing various points of inquiry concerning the Administrative Code and the business community. The report will assist business and business association leaders, Parliamentarians, executive branch officials, political parties and journalist with understanding the various components of the Administrative Code, how it should be implemented and how it should be used for the advantage of Georgian businesses, civil society, and the population at large. The report will also discuss the use of the Administrative Code by various businesses, as determined through a monitoring process (please see below).

The report will be distributed to governmental and Parliamentary officials, NGO representatives, national and regional press, academic and think-tank experts, and business leaders, and other organizations. A total of 500 copies of the report will be published, in two languages (Georgian and English). Full Georgian and English versions of the report will also be available on an extensive project web site (see Activity Three). In short, the "Georgian Administrative Code and the Business Climate" report that will serve as a guidebook of how to use the Administrative Code, and will be used by Georgian business, particularly small and medium size businesses, non-governmental association, and citizens who may wish to assist their various initiatives through the protections and procedures outlined in the Code.

The various points of inquiry that will be covered in the report include:

Ø ***Legal Analysis of the Various Components of the Administrative Code.***

Project staff will analyze the legal framework created by the Administrative Code. The analysis will discuss, among other topics:

- the requirements placed on governmental agencies by the Code, particularly those governmental agencies that affect the business community;
- the rules concerning transparency established by the Code;
- the role of the judiciary in the implementation and enforcement processes;
- other legal issues that may arise from a judicious and careful legal considerations of the Administrative Code.

Ø ***Results of Surveys of Businesses and Business Associations.***

PSI will conduct a KAP (Knowledge, Attitude, Practice) surveys of Georgian businesses and of business associations in order to gain an understanding of their experiences with the Administrative Code, *and* to understand how, in their view, the Code should be implemented and/or amended to serve their needs. In addition, project staff will conduct three focus groups.

Knowledge, Attitude and Practice Survey:

KAP is a qualitative survey which is particularly useful because it provides information not only about the consequences, but also about the cases of a particular issue.

Three extensive methods will be used to select at the very minimum 200 participants of the KAP survey. First, project staff will obtain a list of all Georgian NGOs from the Department of State Statistics and select business-related associations from the list (these will include specifically business associations such as the Association of Banks of Georgia and associations which protect the interests of businesses and entrepreneurs, such as the Tax Payers Union of Georgia). To this list, the project staff will add business organizations, such as firms, companies, factories, etc. Applying "simple random method" to this list, the project staff will select a random, representative sample of organizations which will be surveyed. Second, project staff will use what sociologists call "snowball" method. This entails approaching a limited group of participants (people, organizations, etc.) with the survey and then asking the members of this small group to recommend additional participants, based on detailed, previously determined, criteria. Third, the survey will be advertised through a wide-ranging campaign on network TV programs, newspapers, other sources of mass media, NGO and business newsletters, etc. In all, over 200 organizations will form the sampling pool for the KAP survey.

Focus Groups:

From the organizations identified during the first survey process, project staff will select a more limited group of organizations for three separate focus groups. The primary limiting factor for the focus groups will be to eliminate from questioning those business associations which have no knowledge of the Administrative Code whatsoever, which are very weak (i.e., do not represent a large number of members, etc.), or which do not have a problem which can be addressed through a fully implemented Administrative Code. These focus groups will be used to probe participants on certain issues raised during the surveys.

The first focus group will consist of organizations whose members (or industry) would see significant improvements through the implementation of the Administrative Code, but which have not attempted to use the Administrative Code in their activities.

The second focus group will consist of organizations which have made attempts to use the Administrative Code and have failed in their attempts.

The third focus group will consist of organizations which have not only made attempts to use the Administrative Code but have also been successful in using its various provisions to improve the business climate, protect the rights of their member organizations, etc.

Ø ***Analysis of the use of the Administrative Code by Businesses and Business Associations and the Code's Effect on Georgian Democratic Transition.***

A working group consisting of a sociologist, a lawyer, an entrepreneur, and a business association leader will analyze the results of the above-mentioned surveys. The analysis will try to explain how businesses and associations have

used the Administrative Code, how its use can be improved, and what effect the Code has had on the development of democratic political institutions and values.

Ø ***Monitoring of Cases of Application of the Administrative Code and the Role of the Judiciary in the Code Implementation and Administration.***

Using information gathered in the surveys, project staff will select and monitor 10 most difficult and most important cases of NGOs and businesses attempting to use the Administrative Code. These will be cases of organizations interacting with the various governmental agencies, where the provisions of the Administrative Code are applicable, or organizations taking a governmental agency to Court in order to ensure the adherence, by that agency, to provisions of the Administrative Code. In monitoring these cases, the goal is to see the extent to which the governmental agencies comply with the Administrative Code, how the issue plays out in Court, what the results of compliance will be on the applicant's organization and government agency, and what actions will be taken by oversight agencies in cases where non-compliance to the Code comes to light.

The monitoring of the implementation of the Administrative Code by the executive branch will provide PSI with first hand knowledge of how, in practice, the law is being implemented (or not implemented). This knowledge will be vital for the coalition the project envisions to form (see activity two, below) in order to advocate for and push for full implementation of the Code.

In selecting the cases for monitoring, the project staff will use a carefully designed criterion. Cases considered must address problem(s) which are shared by a more than a few of the business associations (in other words a problem(s) which different businesses and associations have in common). Otherwise, the case must deal with a very specific business (or an issue that is not of concern to more than one or two organizations), but which may be of strategic importance to the country's economy and free market.

Ø ***Analysis of monitoring of the Administrative Code Implementation Processes.***

The information gathered from the above discusses monitoring procedures in specific cases will then be analyzed. The goal of the analysis will be to gather some overall understanding of the extent of implementation of the Administrative Code in various governmental agencies. Some results from the KAP survey and the focus groups will also be used in developing this analysis.

◆ ***ACTIVITY TWO: BUILD OF A COALITION TO ADVOCATE FOR AND MONITOR THE IMPLEMENTATION OF THE GEORGIAN ADMINISTRATIVE CODE.***

In order to advance the implementation of the Administrative Code, the project envisions to build a coalition of Georgian businesses and business NGOs. The idea is to select organizations which can work effectively to advocate the implementation, but also form a coalition which will represent not only larger businesses, but also small and medium size enterprises. Potential members of the coalition include the following organizations:

- Federation of Business Associations (these include Associations of Georgian Insurance Companies, Banks, Independent TV and Radio Companies,

Independent Filmmakers, Professional Accountants and Auditors, Independent Optical Engineers, Freight Forwarders, and Security Industry Companies, along with Energy Builders Union and Confederation of Entrepreneurs).

- Congress of Georgian NGOs, which consists of over 100 organizations, including business associations.
- Businesses representative of various industries, including small and medium size companies.
- Protector organizations, such as the Taxpayer Union, Consumer Rights Protection Association, and other human rights protection associations.

The coalition will meet every three weeks for seminars, conducted by the working group. During these seminars the coalition will first design an action plan for its activities, outlining the methods by which it will advocate and monitor the implementation of the Administrative Code. The action plan will include such events as the participation of the coalition members on various Georgian television programs, discussing the advantages of the implementation of the Administrative Code and what the government should do to implement the law. Seminars will also be an opportunity for the project staff to present the coalition with updates of its activities and inquiries.

The coalition will advocate for the implementation of the Administrative Code by mounting an aggressive and joint lobbying effort, concentrating on various governmental agencies that have a significant impact on the business community (such as Ministry of Finance, Georgia's Central Bank, Taxation Police, and Ministry of Property Management), and by rallying the public opinion in support of implementation of the Administrative Code. To accomplish the latter goal, coalition members will actively participate in television programs focusing on this issue, write articles in journals and newspapers discussing the need for full implementation, and build support for the legislation on the grassroots level, through Georgian provinces.

◆ *ACTIVITY THREE: DEVELOPMENT OF AN EXTENSIVE WEB PAGE.*

Taking advantage of the new medium of the Internet, which can be used to reach the largest possible audience ever imagined through the world, all activities of the project which will be in written form will be made available on a web page designed specifically for the "Business Monitoring of the Georgian Administrative Code" project. The web page will include a detailed description of the project, its goals, objectives and components, survey results, and reports. Notes from coalition seminars will also be posted following each meeting.

As various components of Activity One are completed, reports detailing the results will be immediately posted on the web site. This will enable Georgians citizens and interested parties from around the world to gain access information about the surveys, the analysis of Administrative Code implementation, monitoring details, etc. In addition, various news articles and interviews conducted as part of the mass media campaign by the coalition members will also be available on the web site.

Many Georgian NGOs have received grants from the Soros Foundation giving them access to the World Wide Web. In addition, many Georgian businesses now have access to the Internet. Therefore, entrepreneurs and business association leaders will be able to access the information available on the web page immediately after it is posted in iterations, rather than having to wait for the publication of the full "Georgian Administrative Code and the Business Climate" report at the end of the

project. In addition, because materials on the web page will be posted in Georgian and in English, members of the international community living in Georgia, as well as interested parties abroad, will have the access to this information.

The project will also use the web page in the coalition building and advocacy activities. The web page will have a password-protected chat-room. Passwords to access this chat-room will be made available to the coalition members, as well as any other associations and business leaders who express an interest. The chat-room will serve as a discussion room, where the business association leaders will be able to post their thoughts on progress of the project and how it can be more successful in its activities. NGOs who are not direct members of the coalition will be able to make recommendations by posting their thoughts in the chat-room, while the immediate members of the coalition will have a place for communication with each other, separate from face-to-face bi-monthly meetings.

The world has witnessed the rapid growth of the Internet and the important role it can play in the development of democracy and freedom. The recent developments in Yugoslavia are but one of the many examples where the information superhighway has played a key role in rallying the people around freedom and democracy. The US government has certainly recognized this, and has been willing to invest resources into Internet development grants through the Caucasus. The Internet, at a very cheap cost, can serve as a very important component of a movement to implement the Administrative Code.

ACTIVITY FOUR: CONFERENCE AND PRESENTATION OF RESULTS

The last component of the project will be a Conference entitled "Georgian Administrative Code: Business Benefits and Perspectives." Georgian government officials, NGOs, business community and academia leaders, international community representative, and members of the mass media will attend the Conference.

The full report, Georgian Administrative Code and the Business Climate, as described above, will be presented at the Conference. This will be an opportunity to educate the attendees about the conclusions reached during various points of inquiry and the progress made by the coalition. In addition, the Conference will be an excellent opportunity for the members of the coalition to lobby for the implementation of the Code.

Through a prior arrangement, a special show will be produced about the Conference (and hence the project) by one of Georgia's popular television stations (either "Rustavi-2" or state Channel One) to showcase the conclusions of the project and to Administrative Code monitoring.

V. ORGANIZATIONAL BACKGROUND

PSI...Defining Ideas for the Georgian Democracy

Partnership for Social Initiative (PSI) was founded in Tbilisi, Republic of Georgia, in January 2000 as an independent, nonpartisan, research and educational organization dedicated to the study and advancement of public policy. Through its research, conferences, publications, and seminars, PSI advocates public policy based on the principles of freedom and representative democracy--just government, rule of law,

individual liberty and responsibility, pursuit of happiness, private enterprise and the values of virtue, honor and dignity. PSI's fundamental goal is to help develop and advance democratic institutions and values in Georgia.

PSI is also actively involved with the Georgian Collegiate Consortium (GCC), an initiative dedicating to advancing reforms in Georgian higher education and developing a liberal arts curriculum in a Georgian university. GCC was founded jointly by PSI, the Caucasus Institute for Peace, Democracy and Development (CIPDD) and the Institute for the Study of Western Thought at Chavchavadze University.

PSI research takes place in five centers:

Ilia Chavchavadze Center for the Study of Constitutionalism: PSI's activities in this area focus on establishing in Georgia the political framework necessary for the development of a modern democracy. PSI aims to outline and to implement a constitutional arrangement for Georgia which fits the modern, Western model, yet which also suits Georgia's unique history and traditions. PSI focuses its inquiries on the questions of governmental powers, governmental structure, and protection of individual rights. Its research also focuses on ways to free the governmental institutions from the claws of corruption.

Center for the Study of Free Markets, Competition and Private Enterprise: *PSI's activities in this area focus on encouraging the development of private businesses and enterprises, free from the overly intrusive governmental regulations. The organization believes that a healthy business environment and an expanding market-oriented economy contribute to strengthening Georgian democracy. PSI's research strives to provide policy makers and business executives with practical solutions to emerging market-economy policy issues.*

Center for the Study of Social Welfare: PSI's activities in this area focus on helping establish of values crucial for the sustainable development of social welfare through private activity and community action.

Center for the Study of Political Mores and Community Development: PSI's activities in this area focus on encouraging individuals, families, communities, churches and other organizations in developing and supporting a civil society that can play an integral role for the developing of individual liberty and democracy in Georgia. While encouraging freedom and liberty, PSI recognize that this is impossible to achieve without a drastic shift in the Georgian society's way of thinking, the rekindling of the Georgian love of freedom, and the alignment of the liberal principles with the traditional Georgian values and mores.

Center for the Study of International Affairs and Foreign Policy: PSI's activities in this area focus on supporting and fostering continued development of Georgia's close relationship with the United States, the EU, other democratic and free nations, NATO, the UN, and other international organization.