

Fighting Corruption in Eastern Europe and Central Asia

# Anti-corruption reforms in Georgia

4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan

OECD ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

# **Anti-Corruption Reforms in**

# **GEORGIA**

**Fourth Round of Monitoring of the  
Istanbul Anti-Corruption Action Plan**

**2016**



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## **About the Istanbul Anti-Corruption Action Plan**

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kyrgyzstan, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption and other international standards and best practice. Find out more at [www.oecd.org/corruption/acn/istanbulactionplan/](http://www.oecd.org/corruption/acn/istanbulactionplan/).

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## ACRONYMS

<b>ACC</b>	Anti-Corruption Council
<b>ACN</b>	Anti-Corruption Network for Eastern Europe and Central Asia
<b>AML/CFT Law</b>	Anti-Money Laundering and Countering Financing of Terrorism Law
<b>CC</b>	Criminal Code
<b>CEO</b>	Chief Executive Officer
<b>CoE</b>	Council of Europe
<b>CoI</b>	conflict of interests
<b>CPC</b>	Criminal Procedure Code
<b>CSB</b>	Civil Service Bureau
<b>CSL</b>	Civil Service Law
<b>DRB</b>	Dispute Resolution Board
<b>EBRD</b>	European Bank of Reconstruction and Development
<b>FATF</b>	Financial Action Task Force
<b>FIS</b>	Financial Investigation Service
<b>FMS</b>	Financial Monitoring Service
<b>FOI</b>	Freedom of Information
<b>GEL</b>	Georgian national currency, Lari
<b>GRECO</b>	Group of States against Corruption
<b>GUAM</b>	GUAM (Georgia, Ukraine, Azerbaijan and Moldova) Organization for Democracy and Economic Development
<b>GYLA</b>	Georgian Young Lawyers' Association
<b>HCoJ</b>	High Council of Justice
<b>HSJ</b>	High School of Justice
<b>HRM</b>	Human resource management
<b>IAP</b>	Istanbul Anti-Corruption Action Plan
<b>IDFI</b>	Institute for Development of Freedom of Information
<b>IFC</b>	International Financial Corporation
<b>LEPL</b>	legal entity of public law
<b>MDF</b>	Municipal Development Funds
<b>ML</b>	money laundering
<b>MLA</b>	mutual legal assistance
<b>MoF</b>	Ministry of Finance
<b>MoJ</b>	Ministry of Justice
<b>MoU</b>	memorandum of understanding
<b>MP</b>	Member of Parliament
<b>NGO</b>	non-governmental organisation
<b>NIS</b>	National Integrity System
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OGP</b>	Open Government Partnership
<b>OSCE/ODIHR</b>	Office for Democratic Institutions and Human Rights, Organisation for Security and Co-operation in Europe
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>PPL</b>	Public Procurement Law
<b>PPP</b>	Public-Private Partnership
<b>PSG</b>	Prosecution Service of Georgia
<b>SOE</b>	state owned enterprise
<b>SPA</b>	State Procurement Agency
<b>SSS</b>	State Security Service
<b>TI</b>	Transparency International

<b>UNODC</b>	United National Office on Drugs and Crime
<b>USAID</b>	United States Agency for International Development
<b>WTO GPA</b>	World Trade Organisation Government Procurement Agreement

## EXECUTIVE SUMMARY

Georgia has achieved remarkable progress in fighting corruption over the past decade. This success was largely due to strong law-enforcement and administrative simplifications that eliminated petty corruption in the public administration. Now that these 'low-hanging' fruits have been picked, Georgia is now at the next stage of fighting corruption and, as many other countries, may be facing a new challenge of high level and complex corruption. Georgia is in a strong position to address this challenge, but to be successful it should not wait in complacency, but be a creative and active anti-corruption fighter, as it has been so far.

### **Anti-corruption policy**

The development of the new Anti-Corruption Strategy and its Action Plan was based on evaluation of the results of the previous policy, took into account many corruption studies and reports and involved intensive public consultations. The Strategy is a sound policy document with clear goals and objectives. The Action Plan includes specific actions, a timetable for implementation, responsible bodies and a budget. Developing the budget estimates and ensuring a targeted allocation of funds for its implementation will be an improvement in the future. Efforts are needed inside state institutions to develop internal corruption risk assessment, actions and mechanisms to effectively implement anti-corruption reforms at the sectoral level. A tailored approach has to be developed to tackle corruption on the local self-government level.

The government actively used reports by NGOs and international partners for the development of the anti-corruption policy, but it did not commission its own surveys to identify corruption risks and to set the baseline for measuring progress. A new methodology for monitoring and evaluation is an important achievement; in the future, it will be important to further develop impact indicators. Civil society provided an important input into shaping the anti-corruption policy development and has had an important role in its monitoring.

Anti-corruption education and awareness-raising were included in the new Anti-Corruption Strategy and Action Plan as recommended. However, only some related activities have been implemented. It is important to finalise the anti-corruption public relations strategy and to secure funding for its implementation.

The Anti-Corruption Council forms a strong coalition against corruption in Georgia. Its mandate is limited to policy co-ordination, but within this mandate it has proven to be an effective mechanism for the development and monitoring of anti-corruption policy. Invitation to the local self-governments to take part in the ACC will further increase its role. The ACC Secretariat does not have sufficient financial resources, including for staff development and for implementation of its tasks under the anti-corruption action plan. The ACC and its Secretariat did very little since the previous round of monitoring to increase the visibility of their activities.

### **Prevention of corruption**

The conceptual direction of the **civil service reform** has been decided in line with the principles of impartiality, legality and political neutrality. The new Civil Service Law has established the fundamental institutional and legislative framework for reform and the capacity of the Civil Service Bureau is improving. However, to put the new CSL into practice, additional primary legislation has to be developed, and the capacity of the Civil Service Bureau and HR units in the ministries and agencies must be boosted. There is no clear allocation of integrity tasks on the central level and inside ministries and other state bodies; the leading role of the heads of institutions is only declared, but it has not yet been supported by an operational internal mechanism.

Mechanisms in the new Law on Civil Service to delineate political and professional civil service are not sufficient to protect in practice the professional civil servants from the undue influence of political



appointees. Even more worrying is the influence of powerful private sector persons on the functioning of the state bodies. Such situation constitutes a threat of state capture and should be urgently addressed.

The new Civil Service Law provides for sufficient conditions to ensure the merit-based approach to employment and promotion of civil servants. The authority of the Civil Service Bureau has been strengthened to ensure oversight, but its role and status can be further strengthened vis-à-vis line ministries. The capacity of line ministries and other state bodies to apply the merit-based principles in practice is not sufficient. The detailed procedures concerning remuneration system will be regulated in a separate new law that has yet to be adopted.

The Law on Conflict of Interest and Corruption in Public Service is in place but practical enforcement is almost non-existent. The internal audit units have the duty to enforce, but no analysis of their effectiveness was done. The Civil Service Bureau provided training on conflict of interest but does not have a centralised role in guidance and/or prevention. The CoI Law does not cover all positions with high corruption risk. The introduction of verification of asset declarations is an important step forward. It will be important to collect and analyse data about the implementation of the verification and the impact of this mechanism on the spread of conflict of interest. Since the last monitoring round, Georgia has further improved its legislation for the whistle-blower protection. The CSB prepared a manual, organised training and established a web-site for reporting. As a result of these efforts, first reports were filed. It is a good start, but much more should be done to promote and to improve the system.

The integrity of MPs and other **political officials** is a concern in Georgia. There is a wide and strong public perception of the high level of corruption among the politicians. There are no specific integrity rules for MPs or members of the Government, and general conflict of interests and integrity rules that are applicable to them are not properly enforced, violations are not sanctioned.

Integrity and independence of the **judiciary** have remained one of the main challenges in the development of democratic governance and the rule of law in Georgia. Finding a right balance between independence and accountability of judges is a difficult task and Georgia is still struggling with it. The new government coalition that came into power in 2012 made judicial and criminal justice system reforms one of its priorities. In few years several waves of the reform have been implemented and another one is pending. These reforms are commendable and bring Georgian law and practice closer to the international standards. They have already resulted in the better statistics in terms of administrative decisions overturned on appeal, the number of guilty verdicts and endorsed plea bargains. The court proceedings have also become more open, as the media and other persons were allowed to record court hearings. At the same time, the reforms have not resulted yet in irreversible changes in terms of integrity and independence of the judiciary. A number of structural deficiencies are still in place and should be addressed (among them: secure tenure of judges, transparency and integrity of the High Council of Justice, delegating to the secondary law of too many important procedures related to selection, appointment, promotion, transfer and dismissal of judges, appointing court chairpersons and case distribution among judges).

In the past evaluations, the main concerns with regard to integrity and independence of the **public prosecution service** were insulation of the Chief Prosecutor from possible political interference and ensuring the independence and professionalism of the lower-level prosecutors. The report finds that the recent reforms in the law on the Prosecution Service of Georgia and procedures announced by the Chief Prosecutor appear to be reasonably calculated to address many of the concerns about political interference and fair and effective self-governance procedures. The monitoring team, however, is concerned with the limited role of the body of prosecutorial self-governance, namely the Prosecutorial Council that has been established under the recent amendments. The Prosecutorial Council has limited powers, while the newly established Consultative Council plays an important role in the promotion, disciplining and dismissal of prosecutors. The Consultative Council's composition is decided by the Chief Prosecutor and can be changed any moment. Such system may affect the independence of individual prosecutors and concentrate excessive powers in the hands of the Chief Prosecutor. Additionally, while the Chief Prosecutor has secure tenure, he is still appointed with a decisive involvement of too many political bodies (Minister of Justice, Government, Parliament). While initial recruitment of prosecutors is based on competitive selection into the internship, the merit-based criteria are not used for promotion of prosecutors. The disciplinary and dismissal procedures should be regulated in detail by the law, not secondary legislation.

Georgia has basic legal provisions on **access to information** but lacks a modern stand-alone right to information law. There is also no dedicated oversight authority that would ensure enforcement of the relevant provisions. This, together with the lack of sufficient training and awareness raising, affects implementation of the right to information in Georgia and it remains low. Government efforts to draft a new FOI law and the substance of the draft law are very welcome, but it is unfortunate that after two years of work the draft has yet to reach the parliament. The introduction of the system of proactive publication of information was an important reform; however, its implementation is uneven and many public authorities do not comply with the set standards. Georgia launched an open data portal but lacks a comprehensive legal framework to build an open data infrastructure and ensure that public authorities publish and regularly update high-value datasets in open format and under an open licence that allows free re-use. Georgia could also benefit from participation in the Extractive Industries Transparency Initiative and Construction Sector Transparency Initiative.

In the area of **public procurement**, the report states that Georgia has maintained one of the highest levels of transparency and openness of the public procurement in the world through the use of a full-cycle e-procurement platform. However, there are a number of exemptions and deficiencies in the procurement framework, which allow for contracts to be placed outside the electronic platform or through non-competitive processes. The use of the direct contracting is still excessively high. Moreover, the Public Procurement Law does not allow the appeals against the procurement method selection. Mandatory debarment for corruption-related offences of a company or its management has not yet been introduced. The report also recommends Georgia to include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector. Georgia should also ensure publication of procurement data in open data formats and strengthen conflict of interests safeguards in the public procurement.

In co-operation with the private sector, the government prepared and included a **business integrity** section in the Anti-Corruption Strategy and its Action plan, which is welcome. However, no study of business integrity risks was conducted, training was not provided to companies and government officials about business integrity risks and prevention measures. The mandate of the Business Ombudsman does not include anti-corruption, and there is no state entity that is responsible for this issue. While the government took some measures to improve the governance of SOEs, no efforts were made to implement integrity or anti-corruption measures in these companies. Similarly, no efforts were made to explore the possibility of concluding integrity pacts in large publicly funded projects. Corporate governance rules remain vague regarding disclosure and responsibility of boards for prevention of corruption. There are no requirements or mechanisms to disclose information about ultimate beneficial owners of legal entities.

### **Enforcement of criminal responsibility for corruption**

Georgia has a good track record in the prosecution of corruption crimes and money laundering, in using modern methods of confiscating criminal proceeds. There is a perception in Georgia that the government has done an effective job in controlling low-level corruption. At the same time, corruption among local officials is perceived to be not adequately addressed and there is a perception that not enough effort is being made to address the high-level corruption. The report also mentions decisions and reports of some international organisations and officials about the alleged political motivation behind some criminal prosecutions against the former government officials; the current government denies such allegations.

The report discusses the issue of the widespread use of offences of abuse of authority and excessive authority and that these offences have broad and vague language as a basis for opening criminal investigations. As before, the relatively high criminal penalty for basic passive bribery offence is compensated by the extensive use of plea bargains. Previous reports have noted concern with regard to the abuse of the plea-bargaining procedure, but a major reform was undertaken to address those concerns.

Georgia was a leader in the region in establishing the criminal liability of legal entities under its laws. However, the enforcement is still almost non-existent. An additional issue that was disclosed in this round of monitoring involves the autonomous nature of the corporate liability, as the report finds it problematic that a company will be released from liability under certain circumstances excluding guilt or wrongfulness of the action of an individual perpetrator. As with the corporate liability, the lack of investigation of foreign bribery indicates the need for further training and greater awareness of the foreign bribery offence.

Georgia has set up several specialised units to investigate and prosecute corruption which is a welcome step. However, in the report's opinion, placement of an anti-corruption agency within the Security Service is dubious. An issue of concern is also raised with regard to concentrating both investigation and prosecution within the prosecution service. Co-locating investigators and prosecutors can undermine the checks and balances on the exercise of power which should exist as a safeguard against improperly motivated investigations and failures to take action where merited. The autonomy of the Anti-Corruption Unit of the PSG could be strengthened as well.

### **Prevention and prosecution of corruption in a selected sector – procurement for infrastructure projects**

Procurement for infrastructure projects in Georgia is regulated by the general Public Procurement Law (PPL). The existing e-Tendering covers well the conventional routine maintenance contracts as well as the small-scale development projects in infrastructure, based on standard separation of design and construction activities. The system provides good safeguards against the risk of corruption. However, a relatively high proportion of infrastructure contracts is directly contracted without competition or is subject to exemptions from the PPL. Beyond conventional contracting, the infrastructure sector requires the use of turnkey/design and build approaches, where the contract arrangements provide for a single point responsibility of the contractors and timely delivery of performing facilities within the agreed price. Such contracts require the processes based on a dialogue with the industry, which provides for a competition of ideas and technologies rather than prices. Unfortunately, the PPL explicitly prohibits such approach.

Similar competitive dialogue is required for concessions/PPP projects in infrastructure. The current law insufficiently regulates the procedure. As a result, in practice some PPP-, concession-like contracts are awarded directly. An absence of transparency and competition in the process creates a high risk of corruption.

The success of the infrastructure projects as well as reduction of corruption heavily depends on the contract terms and conditions. The absence of fair and balanced contract terms and conditions templates provides a large room for manipulation with the allocation of rights and obligations of the parties in the contracts. This may provide a fertile ground for inappropriate practices and favouritism at both the selection of the contractors and contract implementation phase. The contract conditions and associated contract management should be reviewed to minimise the risks of the cost and time overruns, which reduce the efficiency of the public spending and provide opportunities for corrupt practices.

## SUMMARY OF COMPLIANCE RATINGS

Table 1. Summary table of compliance ratings for the previous monitoring round recommendations

Third Monitoring Round Recommendation	Rating of compliance for the previous recommendation			
	Fully	Largely	Partially	Not compliant
<b>1. Anti-corruption policy documents, surveys</b>	x			
<b>2. Public participation, awareness raising and public education</b>			x	
<b>3. Specialised anti-corruption policy and co-ordination institutions</b>			x	
<b>4. Liability of legal persons</b>			x	
<b>5. Sanctions, plea bargaining</b>		x		
<b>2.7. International cooperation, MLA</b>	x			
<b>6. Application, interpretation and procedures</b>				x
<b>7. Specialised law-enforcement bodies</b>		x		
<b>3.2.-3.3. Integrity of civil service</b>			x	
<b>3.4. Public financial control and audit*</b>	-	-	-	-
<b>9. Public procurement</b>			x	
<b>10. Access to information</b>			x	
<b>11. Party financing*</b>	-	-	-	-
<b>12. Integrity in the judiciary</b>			x	
<b>13. Integrity in the private sector</b>			x	
<b>Total</b>	2	2	8	1

\* Topics of “Public financial control and audit” and “Party financing” are not covered by the Fourth Round of Monitoring.

## INTRODUCTION

The Istanbul Anti-Corruption Action Plan (Istanbul Action Plan or IAP) was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; the other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes a systematic and regular peer review of the legal and institutional framework for fighting corruption in the covered countries.

Georgia joined the Istanbul Action Plan in 2003. The initial review of legal and institutional framework for the fight against corruption and recommendations for Georgia were endorsed in 2004. The first monitoring round report, which assessed the implementation of initial recommendations and established compliance ratings of Georgia, was adopted in 2006. The second monitoring round report was adopted in 2010 and the third monitoring round report – in September 2013. The monitoring reports updated compliance ratings of Georgia with regard to previous recommendations and included new recommendations. In between of the monitoring rounds Georgia had provided updates about actions taken to implement the recommendations at all the IAP monitoring meetings. Georgia has also actively participated and supported other activities of the ACN. All reports and updates are available at the ACN web-site at [www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm](http://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm).

The fourth monitoring round under the Istanbul Action Plan was launched in 2016 according to the methodology adopted by the ACN countries. Georgian authorities submitted replies to the country-specific questionnaire in May 2016 along with other requested materials. Transparency International Georgia, Institute for the Development of Freedom of Information, Human Rights Education and Monitoring Centre, USAID-funded project Georgia Good Governance Initiative submitted their replies to the monitoring questionnaire as well. An on-site visit to Tbilisi took place on 21-24 June 2016. After the on-site visit, Georgian authorities provided additional information as requested.

Mr Dmytro Kotlyar (consultant, OECD/ACN Secretariat) led the monitoring team; the team included:

- Mrs Mary Butler, Prosecutor, Deputy Chief, International Unit, Criminal Division, Department of Justice, USA (Chapter 2.3. – Public prosecution, Chapter 3);
- Mrs Tetyana Kovtun, Civil service reform expert, EU Delegation to Ukraine, Ukraine (Chapters 2.1 – 2.2);
- Mr Jaka Kosmac, Auditor, Court of Audit, Slovenia (Chapter 1);
- Mr Evgeny Smirnov, Associate Director, Policy Advisor, Procurement Policy Department, European Bank of Reconstruction and Development (Chapter 2.5, Chapter 4);
- Mr Davor Dubravica, Judge, Chairperson of Regional Anti-Corruption Initiative, Croatia (Chapter 2.3 - Judiciary);
- Mrs Olga Savran, ACN Manager, OECD/ACN Secretariat (Chapter 1, Chapters 2.1 – 2.2, 2.6.).

Analytical Department of the Ministry of Justice of Georgia was Georgia's national co-ordinator for the monitoring. Mr Aleksandre Baramidze, Deputy Minister of Justice of Georgia, and Mr Zurab Sanikidze, Director of Analytical Department of the Ministry of Justice, were in charge of the monitoring on behalf of Georgia.

During the on-site visit, the monitoring team held 11 thematic panels with representatives of various public authorities of Georgia organised by the national co-ordinator. The OECD Secretariat arranged for separate meetings with representatives of civil society, business and international organisations. Transparency International Georgia hosted and co-organised meetings with representatives of NGOs and business community; the EU Delegation in Georgia hosted and co-organised meeting with international

representatives.

The monitoring team would like to express their gratitude to the Government of Georgia for its effective co-operation during the monitoring and, notably, to officials of the Analytical Department of the Ministry of Justice of Georgia. The monitoring team is also grateful to Georgian authorities and non-governmental representatives for open and constructive discussions that took place during the country visit; to the EU Delegation in Georgia, TI Georgia, USAID Office in Georgia for assistance in organisation of the on-site visit.

This report was prepared on the basis of the government of Georgia's answers to the questionnaire, the monitoring team's findings from the on-site visit, additional information provided by the government of Georgia and NGOs, and research by the monitoring team, as well as relevant information received during the plenary meeting.

According to the methodology of the fourth monitoring round, the report includes an in-depth study of a sector – Public procurement in infrastructure projects in Georgia. The sector was selected based on the survey of non-governmental representatives and Georgian authorities. The monitoring team is thankful to representatives of NGOs, international organisations, business and Government who took part in the survey.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 15 September 2016. It contains the following compliance ratings with regard to recommendations of the Third Round of Monitoring of Georgia: **out of 15 previous recommendations Georgia was found to be not compliant with 1 recommendation, partially compliant with 8 recommendations, largely compliant with 2 recommendations and fully compliant with 2 recommendations. Two recommendations of the previous round were not evaluated, as the fourth monitoring round does not cover relevant topics (Public financial control and audit, Party financing). The fourth monitoring round report includes 19 new recommendations; 3 previous recommendations were recognised to be still valid (fully or partly).**

The report will be made public after the meeting, including at [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn). Authorities of Georgia are invited to disseminate the report as widely as possible and, in particular, to translate it into national language. To present and promote implementation of the results of the fourth round of monitoring the ACN Secretariat will organize a return mission to Georgia, which will include a meeting with representatives of the public authorities, civil society, business and international communities. The Government of Georgia will be invited to provide regular updates on measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

The fourth round of monitoring under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out within the ACN Work Programme for 2016-2019 that is financially supported by Latvia, Liechtenstein, Lithuania, the Slovak Republic, Sweden, Switzerland and the United States.

## *Chapter 1*

### **ANTI-CORRUPTION POLICY**

#### **1.1. Key anti-corruption reforms and corruption trends**

Georgia has achieved remarkable progress in fighting corruption over the past decade. This success was largely due to strong law-enforcement and administrative simplifications that eliminated petty corruption in the public administration. Now that these 'low-hanging' fruit have been picked, Georgia is now at the next stage of fighting corruption and, as many other countries, may be facing a new challenge of high level and complex corruption. Georgia is in a strong position to address this challenge, but to be successful it should not wait in complacency, but be a creative and active anti-corruption fighter, as it has been so far.

##### **Key anti-corruption reforms**

Anti-corruption reforms implemented in Georgia in the past three years have largely built on the initiatives launched at the outset of anti-corruption reforms in the country. For instance, the law on Conflict of Interest and Corruption in Public Service was strengthened, and online asset declaration system established in 2010 was enhanced, the number of declarants has been increased and the development of the monitoring and verification system for declarations has been initiated. Similarly, the electronic procurement system that was introduced in 2010 has become more transparent, the State Procurement Agency has begun publishing online the procurement contracts concluded without competitive selection. The network of Public Service Halls that were created to simplify public services and reduce opportunities for administrative corruption was expanded throughout the country. New Community Centres became operational, and electronic services were introduced by several additional service providing agencies, including the Ministry of Economy and Sustainable Development and the Ministry of Internal Affairs. To further develop freedom of information, the standards for proactive publication of data, including on municipal level, and e-request were introduced in 2013, Open Data Portal was established. Transparency of political finance was enhanced through reforms of the Election Code and the Law on Political Unions of Citizens, mandate and capacities of the State Audit Office responsible for monitoring of party funding were increased.

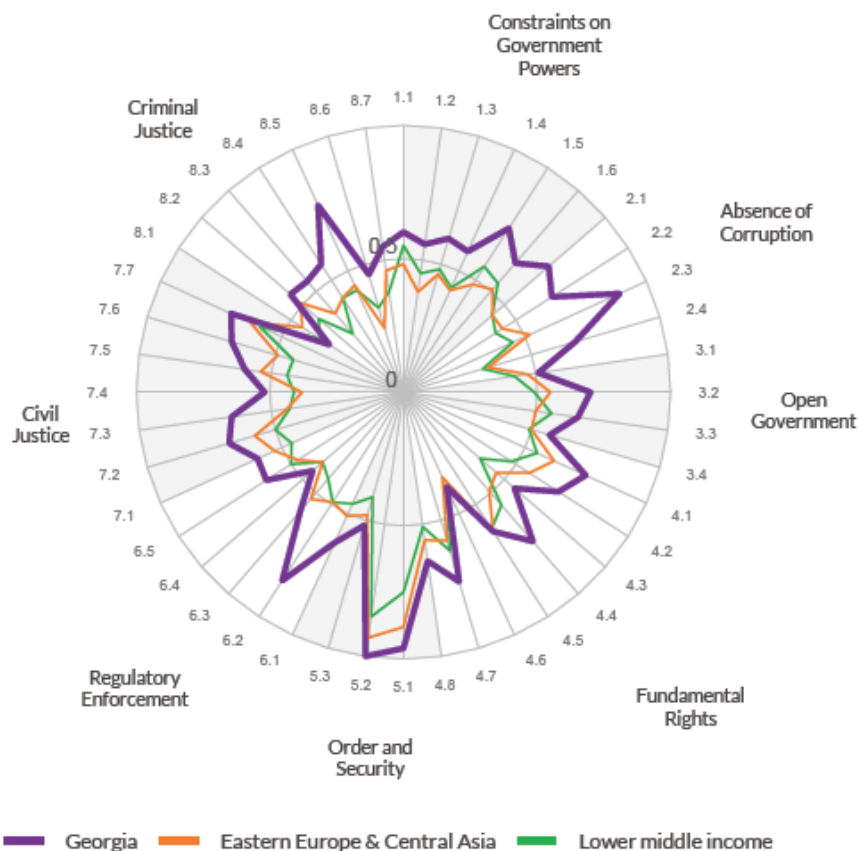
In addition to developing already available anti-corruption tools, Georgian government also launched a fundamental reform of the civil service based on the principle of career-based professional service – the principle to which the previous government was strongly opposed. New whistle blower protection legislation was adopted. Georgia has also started several important reforms of the judiciary and criminal justice system.

These positive developments have contributed to the adoption of the EU Visa Liberalisation agreement and the election of Georgia as co-chair of the Open Government Partnership (OGP). However, some of the new laws and mechanisms did not come into effect yet at the time of the monitoring, and it was too early to measure their impact on the level of corruption in the country.

##### **Corruption trends**

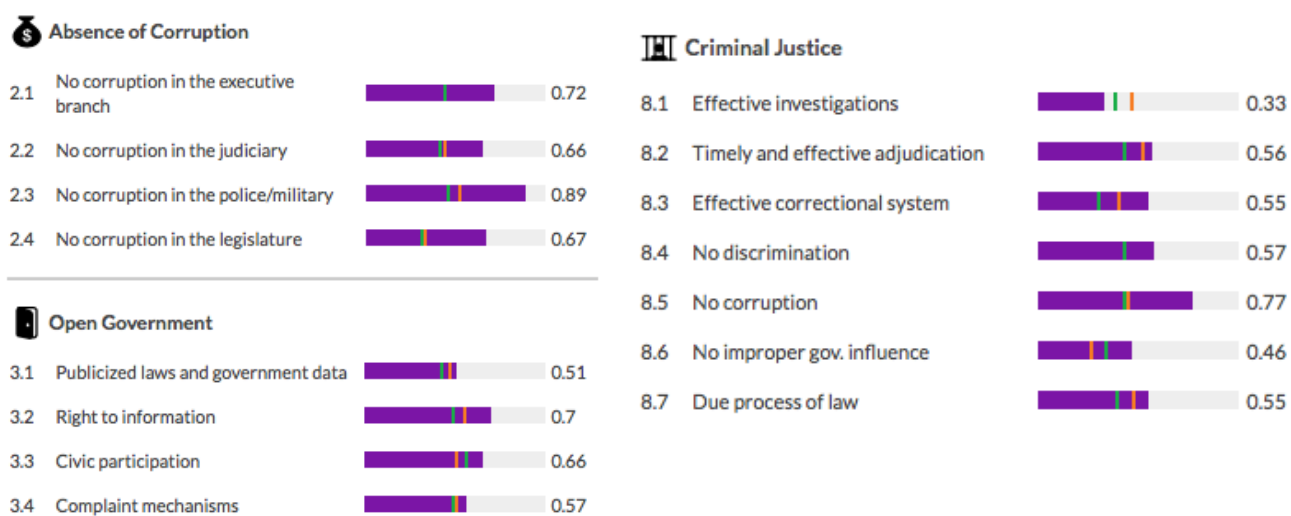
Georgia continues to show high results according to international corruption surveys. The 2015 World Justice Report on the Rule of Law Index found Georgia to be the strongest rule of law performer in Eastern Europe and Central Asia and placed it at 29<sup>th</sup> place in the world in the dimension “Absence of corruption”.

Figure 1. Georgia in the Rule of Law Index 2015



Source: World Justice Project, 2015, Rule of Law Index, <http://goo.gl/KqBbOc>.

Figure 2. Georgia in selected Rule of Law Index 2015 indicators



Source: World Justice Project, 2015, Rule of Law Index, <http://goo.gl/KqBbOc>.



According to TI Global Corruption Barometer 2013, 34% of the respondents thought that corruption was not a problem in the country and 22% that it was a serious problem (one of the lowest per cent in the region of Eastern Europe and Central Asia). Only 4% of respondents paid a bribe in the past year. See additional details below in the table.

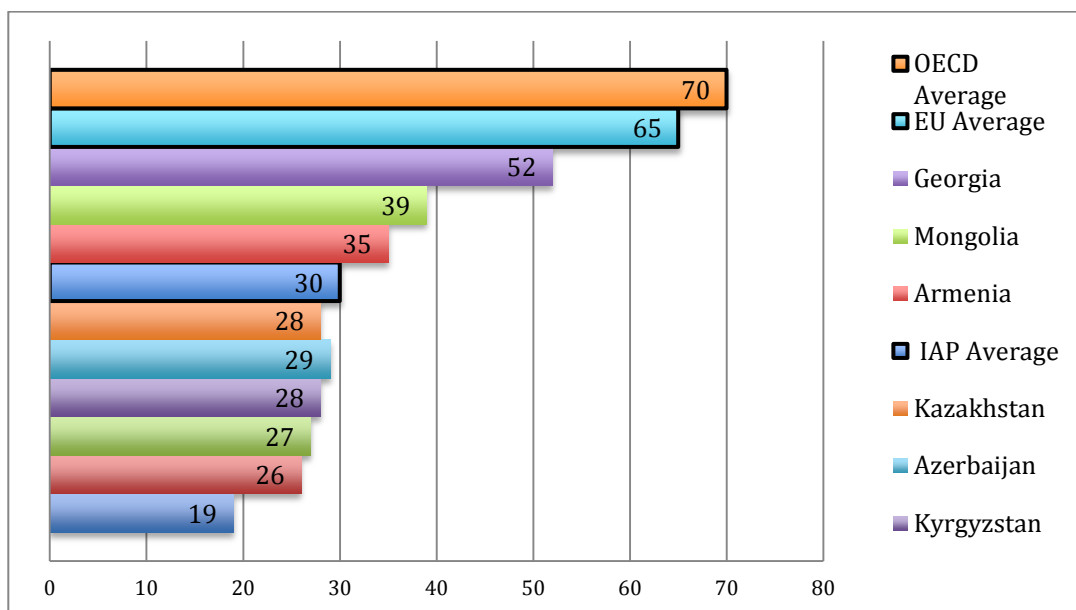
**Figure 3. Perception of corruption by institution, % that think corrupt or extremely corrupt**

Institution	2010	2013
Political parties	24	28
Parliament	22	34
Military	5	13
NGOs	9	13
Media	16	42
Religious Bodies	3	8
Business/Private Sector	15	28
Education system	13	22
Judiciary	31	51
Medical and Health Sector	-	32
Police	14	26
Public officials/Civil servants	24	26

Source: Transparency International, Global Corruption Barometer, <http://goo.gl/dJqNwx>.

In the Transparency International’s Corruption Perception Index, from among the Istanbul Action Plan countries, only Georgia has passed the ‘50’ mark of the CPI score, which surpasses even some of the EU member states. See below Georgia’s rank in TI Corruption Perception Index.

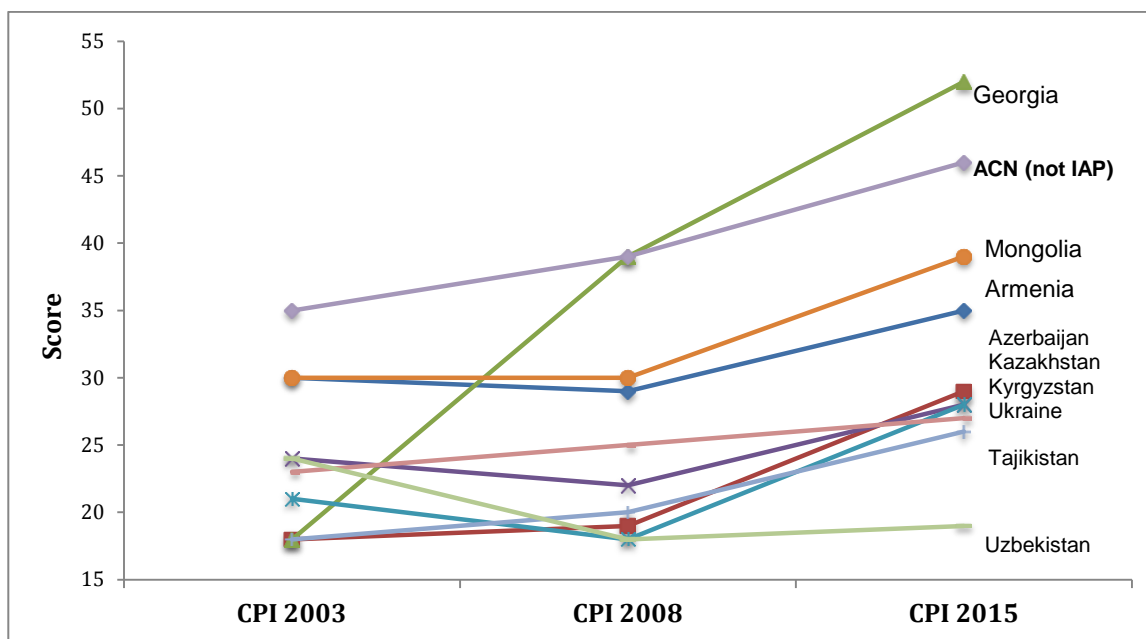
**Figure 4. IAP, EU and OECD countries in the TI’s Corruption Perception Index (2015, Score)**



Note: Higher score means ‘less corrupt’.

Source: Transparency International, CPI, <http://goo.gl/1Ag4HZ>.

Figure 5. IAP countries in the Transparency International Corruption Perception Index (CPI Score)



Notes: Higher score means 'less corrupt'. "ACN (not IAP)" means: Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, FYRM, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia.

Source: Transparency International, CPI, <http://goo.gl/1Ag4HZ>.

TI Georgia in its 2015 report on the National Integrity System (NIS)<sup>1</sup> confirmed that "A number of surveys reflect the notable improvements that have occurred in Georgia over the last decade in terms of corruption, especially in terms of eliminating bribery in public services." But the report states that while there are improvements in many sectors, there are also sectors which have stagnated or deteriorating: "A number of public institutions (the judiciary, the electoral management body, the State Audit Office) and non-state actors (the media, the civil society) have made considerable progress since the last Georgian National Integrity System assessment conducted in 2011. Some improvements have occurred in the legislature, Public Defender, political parties, and business pillars. Meanwhile, the situation has deteriorated in the executive branch and the law enforcement agencies and no progress has been made in the public administration (where the situation has deteriorated in practice)."

The report also raises new concerns: "there are indications that some of the *more complex types of corruption remain a problem*. While virtually no one challenges the idea that the government has largely succeeded in eradicating petty corruption, it is sometimes argued that *corruption has changed shape in Georgia in recent years*. For example, it has been suggested that ... presently, a "clientelistic system" has emerged where the country's leadership "allocates resources in order to generate the loyalty and support it needs to stay in power", ... there are significant opportunities for "cronyism and insider deals" because of the "concentration of power among a small and interwoven circle of individuals ... Unreasonable exceptions to open bidding have created corruption risks in Georgia's otherwise transparent public procurement system. A 2013 study identified a number of possible kickback payments to the ruling party before the 2012 parliamentary elections from the individuals connected with companies that had received non-competitive government contracts. Lack of ownership transparency and weak regulation of 'revolving door' appointments are other factors contributing to corruption risks."

According to the World Bank's Worldwide Governance Indicator report, in 2014 the Government Effectiveness in Georgia marked the highest level for the last 18 years. According to the control of corruption indicator of the same report measuring perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the

<sup>1</sup> Georgia National Integrity System Assessment, Transparency International Georgia, 2015, available at <http://goo.gl/pQFn3n>.

state by elites and private interests, Georgia ranks 52nd among 215 states (compared to 2013 rating, Georgia's rank improved by 11 points). See the table below.







**Table 2. Worldwide Governance Indicators, Control of corruption and Rule of law**

Country	Control of corruption*		Rule of law*	
	2014	2009	2014	2009
Armenia	40	33	44	41
Azerbaijan	18	10	31	22
<b>Georgia</b>	<b>75</b>	<b>52</b>	<b>64</b>	<b>49</b>
Kazakhstan	26	21	34	33
Kyrgyzstan	12	6	16	6
Mongolia	38	24	41	46
Tajikistan	14	10	15	11
Ukraine	15	16	23	24
Uzbekistan	11	7	12	7
<i>High income: OECD</i>	85	86	88	87
<i>Europe and Central Asia</i>	64	62	68	65

Note: Percentile rank indicates the percentage of countries worldwide that rank lower than the indicated country, so that higher value means better governance score. Source: Worldwide Governance Indicators, World Bank, <http://goo.gl/WA66JU>.

According to the new Index of Public Integrity, Georgia ranks 30<sup>th</sup> among 105 countries in the rating (with the highest score in the region of Eastern Europe and Central Asia<sup>2</sup>).

**Figure 6. Georgia in the Index of Public Integrity, 2016**

Components		Component Score	World Rank	Regional Rank	Income Group Rank
Judicial Independence		5.88	36/105	1/12	4/27
Administrative Burden		9.44	8/105	3/12	1/27
Trade Openness		9	13/105	1/12	1/27
Budget Transparency		8.85	18/105	2/12	1/27
E-Citizenship		5.26	54/105	7/12	2/27
Freedom of the Press		5.56	52/105	2/12	7/27

Source: Index of Public Integrity, 2016, European Research Centre for Anti-Corruption and State-Building, <http://integrity-index.org>.

For the government of Georgia, to ensure corruption-free development of the country and to remain a top anti-corruption reformer in the region, it is important to recognise and understand the emerging risks, and to develop effective measures against complex and new types of corruption.

<sup>2</sup> Countries in this region covered in the Index: Albania, Azerbaijan, Bosnia and Herzegovina, Kazakhstan, Kyrgyzstan, The FYR of Macedonia, Russia, Serbia, Tajikistan, Turkey, Ukraine.

## 1.2. Impact of anti-corruption policy implementation

### **Recommendation 1 from the Third Monitoring Round report on Georgia:**

**1) Ensure that anti-corruption strategy is regularly (at least every two years) reviewed based on a comprehensive analysis of the state of its implementation, its validity and corruption situation in different areas. Such reviews should involve meaningful public consultations and be transparent**

#### *Anti-corruption policy documents*

Upon the completion of the previous Anti-Corruption Action Plan for 2010-2013, the Anti-Corruption Council evaluated the results of its implementation. The Evaluation Report was approved at the Council's session in February 2015. The Report is based on the information provided by the responsible agencies as well as international recommendations and surveys, research papers of non-governmental organizations. The Evaluation Report provided an input for the development of the new anti-corruption policy.

The new Anti-Corruption Strategy and 2015-2016 Anti-Corruption Action Plan of Georgia were adopted by the Anti-Corruption Council on 4 February 2015, after extensive public consultations, and approved by the Government Decree on 20 April 2015.

The Anti-Corruption Strategy sets out the following the main goals: *"to develop a unified anti-corruption policy for preventing and combatting corruption; to boost public trust by increasing transparency and accountability of public entities; to enhance civil society and establish transparent and accountable governance."* It further identifies its objectives, and establishes several principles including an integrated approach; focus on reduction of corruption and promoting the rule of law; accountability and integrity; evidence-based and impact-oriented approaches; and the use of international experience. The Strategy clarifies the role of the Anti-Corruption Council and its Working Group in the elaboration process, and establishes the main elements of the monitoring process. Finally, the Strategy includes the following strategic priorities:

#### I. Prevention of Corruption

1. Effective interagency coordination for the prevention of corruption
2. Prevention of corruption in public service
3. Openness, access to public information and civil participation in the fight against corruption
4. Education and public awareness raising for the aim of preventing corruption
5. Prevention of corruption in law-enforcement bodies
6. Prevention of corruption in judiciary
7. Ensuring transparency and prevention of corruption risks in public finance and public procurement
8. Prevention of corruption in customs and tax system
9. Prevention of corruption in private sector
10. Prevention of corruption in health and social sector
11. Prevention of political corruption
12. Prevention of corruption in defence sector
13. Reduction of corruption risks in regulatory bodies

#### III. Criminalization of Corruption

#### IV. International cooperation

For each of the above directions, the Strategy provides long-term goals, assessment of the existing situation and specific objectives.

To support the implementation of the Strategy, the Anti-Corruption Council prepared the Action Plan for 2015-2016. It is a concise table that for each strategic direction identifies expected results, indicators and risks, as well as specific activities, timelines, responsible bodies and partners and the budget.

The budget provided in the Action Plan includes several elements: the estimate of state budget and donor funding needs and the financial gap. The budget estimate is provided for some, but not for all activities, which may be explained by the fact that some activities do not entail costs, or that their costs, such as staff time and other running costs of the responsible body, are not estimated. Furthermore, there is no specific allocation from the state budget for the implementation of the Strategy and the Action Plan. Each body responsible for the implementation of specific actions have to finance these actions from their own funds. At the same time, one of the most common risks mentioned in the Action Plan is the lack of financial and human resources. Experience of the ACN countries shows that effective implementation of anti-corruption policy requires that such policy have its own budget, properly estimated and clearly allocated, and that its implementation is monitored.<sup>3</sup>

As noted above, the strategy contains several sectoral sections for customs, tax, health and social sector, and defence, which were developed with the involvement of the representatives of these sectors in the Anti-Corruption Council. However, with few exceptions, there are no internal corruption risk assessments, anti-corruption plans or institutional mechanisms inside state bodies. At the same time, lack of cooperation is one of the risks for the implementation of policy objective often mentioned in the Action Plan. Several agencies have developed internal action plans. For example, recognising the complexity of the institutional structure and responding to international commitments, the Ministry of Defence has developed its own anti-corruption action plan already in 2014 and established a special board on anti-corruption.<sup>4</sup> The Ministry of Regional Development and Infrastructure (MRDI) have started working on a sectoral anti-corruption strategy that is expected to be developed by the end of 2016 with assistance from the NGO Institute for Development of Freedom of Information and funding from the USAID. The Ministry of Labour, Social and Health Affairs also took special efforts to develop their corruption prevention measures under the general framework of the National Anti-Corruption Strategy. Experience of ACN countries shows that a strong implementation mechanism inside ministries and agencies is key to effectively implement anti-corruption measures inside sectors.<sup>5</sup>

A new goal “Enhancement of the role of local self-government in drafting and implementation of anticorruption policy” was included in the National Anti-Corruption Strategy in 2016. The Action Plans foresees "developing cooperation mechanism between the Anti-Corruption Council and local government" and "incorporating a special part on local government into anticorruption strategic documents". The Secretariat of Anti-Corruption Council developed a concept paper on the mechanism of cooperation with local government, started cooperation with three pilot municipalities – Tbilisi, Rustavi and Telavi. This is a very timely initiative, as corruption at the local level was highlighted by the NGOs and the State Audit as an important issue. For instance, the 2016 audit report to the parliament identifies mismanagement of almost GEL 1 million of state funds in just one of 71 municipalities - Tsalka Municipality. Experience of ACN countries shows that corruption at the local level has specific nature and requires specific approaches; it is therefore important to identify specific risks and adapted solutions at the local level and to develop local level capacity to implement these solutions, in addition to engaging local governments to the Anti-Corruption Council.

## **Conclusions**

The development of the new Anti-Corruption Strategy and its Action Plan was based on evaluation of the results of the previous policy, took into account many corruption studies and reports and involved intensive public consultations.

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<sup>3</sup> Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2013-2016, [www.oecd.org/corruption/ACN](http://www.oecd.org/corruption/ACN), 2016 (forthcoming).

<sup>4</sup> See details at the web-site of the Ministry of Defence of Georgia, <http://goo.gl/KGCv9h>.

<sup>5</sup> Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2013-2016, [www.oecd.org/corruption/ACN](http://www.oecd.org/corruption/ACN), 2016 (forthcoming).

The Strategy is a sound policy document with clear goals and objectives, useful principles and well-defined directions. The Action Plan includes specific actions, timetable for implementation, responsible bodies and budget. Further developing the budget estimates and ensuring a targeted allocation of funds for its implementation will be an improvement in the future.

Focus of the Strategy and Action Plan on several sectors is a positive development. However, further efforts are needed inside state institutions to develop internal corruption risk assessment, action plans and implementation mechanisms to help mobilise political will and resources and to coordinate and monitor actions necessary for effective implementation of anti-corruption reforms at the sectoral level.

Recent inclusion in the Anti-Corruption Strategy of the new goal “Enhancement of the role of local self-government in drafting and implementation of anticorruption policy” is a positive development. However, the Action Plan in this area is yet to be developed. The nature of corruption on the local level is a special phenomenon and will require a tailored approach and special capacity.

### *Monitoring of policy implementation*

#### **Recommendation 1**

**2) Develop and use a new methodology for monitoring and evaluating the anti-corruption action plan implementation based on measurable indicators which are supported by a clear timetable of implementation for each measure and assignment of responsibilities for implementation**

#### *Surveys*

When developing the Strategy and the Action plan, the government did not commission surveys or studies that would allow identifying risks, target actions and set the baseline for measuring progress in implementing policy documents over time. Instead, the government actively used surveys prepared by NGOs, like TI, IDFI and GYLA and other non-governmental and international organisations, which is a positive development. However, these reports lack continuity and comparability necessary for regular monitoring.

#### *Monitoring reports*

The new monitoring and evaluation methodology was adopted by the Anti-Corruption Council together with the new Anti-Corruption Strategy and 2015-2016 Anti-Corruption Action Plan. It consists of three components:

1) *Progress reports and Monitoring Tool* – is an excel template for bi-annual progress reports by responsible agencies. It includes the baseline data, timeframe and two types of ratings: assessment of implementation (activity is implemented; largely implemented; partly implemented or not implemented) and status of implementation (implementation process is not finalized; on-going; suspended; terminated or finalized). The Monitoring Tool is filled out by responsible agencies and then submitted first to NGOs for comments. After submission of NGOs' comments, the Secretariat of the Anti-Corruption Council submits it to the Anti-Corruption Council.

2) *Monitoring Report* – is prepared annually by the Secretariat. The Report assesses implementation process and achieved results based on Monitoring Tool. Annual Reports will be adopted by the Anti-Corruption Council and submitted to the Government of Georgia.

3) *Evaluation Report* – is elaborated once in two years by the Secretariat of the Anti-Corruption Council. The Report assesses achieved results and their effectiveness/efficiency, analyse existing situation, and identify gaps and challenges. It is based on Monitoring Reports as well as specific result-oriented indicators set out by the Action Plan. The Report takes into account international ratings, assessment of international and local organisations, publications and in-depth interviews/consultations with representatives from responsible agencies, NGOs or experts. The Report is adopted by the ACC and is submitted to the Government.

The first Progress Report and Monitoring Tool were developed by the Secretariat in June 2015. The second Progress Report, Monitoring Tool and first Monitoring report - in February 2016. NGOs noted that

the deadline for their comments was very short and they would appreciate more time for properly preparing their inputs to the Monitoring tool.

In 2016 the Secretariat updated the Anti-Corruption Strategy and Action Plan for 2015-2016 in cooperation with the responsible state agencies and civil sector, *e.g.* to include reform of Prosecution Service and the new developments in the public service. Some changes were made based on the results of the Monitoring Tool, *e.g.* changes in deadlines and technical adjustments requested by the responsible agencies. As mentioned earlier, a new Strategic Priority – “Prevention of Corruption in Local Governments” was included given high priority of cooperation with municipalities.

By the end of 2016, the Secretariat will initiate a revision of the Strategy and evaluation of the 2017-2018 Action Plan.

#### *Monitoring indicators*

The monitoring methodology for the new Anti-Corruption Strategy and Action Plan includes measurable indicators supported by timetable and assignment of responsibilities to implementing institutions, as was recommended by the ACN. The Action Plan includes several impact indicators, *e.g.* Outcome 8.6. "Transparency of customs and tax systems and public awareness is increased" includes the following Indicator "Perception of public including business sector representatives regarding low level of corruption in tax and customs system is increased". It will be possible to measure perception of the public and of the business people in this area, and special surveys and studies will need to be designed and conducted.

However, many indicators included in the Action Plan aim to assess the progress in implementing activities, and not the impact of these activities on the level of corruption. For example, Outcome 2.2 of the Action Plan is "Enforcement mechanism for ethics, conflict of interests and incompatibility of civil servants is improved", and the Indicators for this Outcome is "Code of Ethics for civil servants is developed; Number of identified violations of ethical principles, conflict of interest and incompatibility by civil servants is increased; Legislative provisions regulating procedure and grounds for disciplinary liability of civil servants are improved". While this indicator will allow tracking the implementation of the planned activities by the responsible agency, it will not show if this action had an impact on the integrity of civil service.

Assessing the impact of anti-corruption strategies and action plans is a challenge for all ACN countries. Such assessment should ideally link the actions implemented under the strategies and action plans to the level of corruption in the country. To establish such link, indicators should aim to measure the impact, such as perception of and experience with corruption, levels of trust and satisfaction in different parts of public administration, attitudes and tolerance of citizens towards corruption, ethical competence among civil servants. Development of such indicators is methodologically difficult; besides, impact of many anti-corruption actions can be measured on a longer-term, and measuring impact requires additional actions, such as regular surveys and studies.

#### **Conclusion**

The government actively used reports by NGOs and international partners for the development of the anti-corruption policy, but it did not commission its own surveys to identify corruption risks and to set the baseline that will allow measuring progress over time. New methodology for monitoring and evaluating is an important achievement that will allow tracking implementation actions by the responsible bodies, however majority of the indicators will now allow tracking the impact of these actions.

***Georgia is fully compliant with the previous recommendation 1.***

#### *Public participation*

**Recommendation 2 from the Third Monitoring Round report on Georgia:**

**2) Ensure meaningful and systematic participation of the civil society in anti-corruption policy development and implementation, in particular, by conducting public consultations on any significant anti-corruption measures planned.**

The process of development of the new Anti-Corruption Strategy was highly participatory. It involved active work of the Anti-Corruption Council and the working groups, and public consultations, which was a major improvement compared to the past practice, but led to important delays in the process. The government actively used reports and surveys prepared by NGOs during the development of the policy documents.

## **Conclusion**

Civil society provided an important input into shaping of the anti-corruption policy development. The monitoring and evaluation process provides for an important role for the civil society as well. However, it is necessary to provide all stakeholders, including NGOs, with sufficient time to properly prepare inputs.

*Georgia is largely compliant with this part of recommendation 2.*

### **New recommendation 1**

- 1. Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.**
- 2. Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation.**
- 3. Promote the development and implementation of an anti-corruption action plan for the local self-government level.**
- 4. Develop impact indicators for the monitoring of the next anti-corruption action plan.**
- 5. Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.**
- 6. Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.**

## **1.3. Public awareness and education in anti-corruption**

**Recommendation 2 from the Third Monitoring Round report on Georgia:**

**1) Make anti-corruption public information and education campaigns a part of the anti-corruption policy documents. Elaborate a media and public relations strategy for raising awareness about anti-corruption efforts of the government...**

Anti-corruption education and public awareness raising were included in the new Anti-Corruption Strategy and Action Plan as one of its strategic priorities. The long-term goal of this priority is to raise public awareness of corruption, to disseminate information about anticorruption reforms, achievements and challenges and to engage society. The Action Plan foresees four major activities in this area:

- Elaboration of public relations strategy on anticorruption issues;
- Planning and implementation of anticorruption public information campaign;
- Organizing round tables, seminars, competitions and other events on anticorruption issues;
- Development and implementation of anticorruption curriculum in educational institutions.

According to the Action Plan, the responsibility for the implementation of education and awareness raising activities is allocated to the ACC Secretariat. The budget estimate for these activities is small, and the amount of available funding is even smaller. However, the Secretariat noted that the responsibility for the implementation of the public relations strategy should be shared between different responsible bodies, and that they hope that donors would be willing to finance these activities.

A first draft of public relations strategy has been prepared with the assistance of the USAID in April 2016. But it was not yet discussed in the working groups or with any other stakeholders. The Secretariat of the Anti-Corruption Council was planning to finalise this strategy by the end of 2016, and to develop a budget estimate for its implementation starting in 2017. While the USAID is financing the preparation of the



strategy, financing of its implementation remains open. The Secretariat was planning to request donors to fund its implementation as well.

Anti-corruption educational activities implemented recently by the government had a clear target group of students; the activities were well designed and involved interactive and practical activities. However, these activities were very limited in time, including the following:

- On International Anti-Corruption Days (9 December), the ACC holds model sessions with participation of students and NGOs which provide a direct and interactive tool to educate the target group about anti-corruption policy-making;
- In 2016 in cooperation with the Civil Service Bureau, the ACC Secretariat, the Training Centre of Justice and other agencies have initiated anticorruption awareness raising campaign in 10 universities of Tbilisi, including 10 lectures on corruption and civil service reform.

According to the ACC Secretariat, lectures in universities were very well attended. They consisted of ex cathedra lecturing followed by questions and answers, and open debate. Students were particularly interested in Civil Service Law and asset declaration. This campaign continued till the end of the academic year in June. This project may continue in the future, it may also involve high schools.

### **Conclusions**

Anti-corruption education and awareness raising were included in the new Anti-Corruption Strategy and Action Plan as recommended. However, some of the activities that are included in the relevant action plan have not been implemented yet. The ACC Secretariat is responsible for the implementation of the action plan. It will be crucial to ensure that other responsible agencies provide education and awareness raising in their fields of competence.

The elaboration of the public relations strategy has started, but it was slow. It is important to finalise the strategy without further delay and to secure funding for its implementation, both from the state budget and from the donors.

On the positive side, educational activities were well designed and targeted for students, but limited. More educational activities need to be conducted for general public and for other target groups. Future education and awareness raising campaigns will need to tackle systemic, high level and complex corruption – issues that are not easily perceived and presented.

*Georgia is partially compliant this part of recommendation 2.*

Taking into account the compliance ratings for both parts of this recommendation, Georgia is *partially compliant* with recommendation 2 overall.

#### **New recommendation 2**

- 1. Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.**
- 2. Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.**

### **1.4. Corruption prevention and coordination institutions**

**Recommendation 3 from the Third Monitoring Round report on Georgia:**

**1) Ensure that the body responsible for anti-corruption policy co-ordination is provided with adequate powers, resources and secretariat, including permanent dedicated staff specialised only in anti-corruption work.**

The Anti-Corruption Council (ACC) was created by the Presidential Decree in 2008; in 2010 it was introduced to the Law on Conflict of Interests and Corruption in Public Service. After the presidential

elections in 2013, the ACC became accountable to the Government. The Statute and the membership of the ACC were adopted by the Government Decree in 2013, revised in 2014.

The ACC composition has been expanded several times to involve new state agencies, representatives from civil society, international organizations and business sector. Currently, the ACC consists of 48 members, 17 of which are representatives of NGOs, international organizations, donors and business sector. The ACC membership is open for any civil society, an official letter referring to the area of work and reason for the membership is sufficient to join; such requests have never been refused. Each ACC member nominates a contact person or persons with whom cooperation and constant exchange of information is ensured.

Key functions of the ACC include: development of anti-corruption strategy and Action Plan, their revision and monitoring; coordination of interagency activities facilitating the implementation of relevant measures in the process of drawing up the Strategy and Action Plan; ensuring the fulfilment of recommendations of international organizations, preparing a national report on their implementation. NGOs stress that the mandate of ACC is too narrow as it prohibits dealing with high level corruption and enforcement issues.

The ACC is not an independent institution but a coordination mechanism comprising of representatives of three branches of power, independent institution, non-governmental, international and business sector. The powers of the ACC are limited to coordination. ACC's decisions and recommendations are mandatory only for its members, who implement them on voluntary basis. There were no cases in the past when ACC members would not deliver on ACC's decisions or recommendations; however, the State Audit Institution refused to take part in the most recent session of the ACC.

The ACC is supported by Expert Level Anti-Corruption Working Group and Sub-groups. They work on wide array of corruption preventive measures according to the field of expertise of the members of Working Group.

The Secretariat for the Council is provided by the Analytical Department of the Ministry of Justice. The Analytical Department at the same time serves as a Secretariat of Criminal Justice Reform Council, Open Government Partnership (OGP) Initiative and is responsible for legal research on various issues for the Ministry of Justice. Already in 2010, 8 of 16 staff members of the Analytical Department worked on the anti-corruption among other issues.<sup>6</sup> Since 2013, 8 employees are working mostly/only on anticorruption. As a structural unit of the Ministry, the Secretariat does not have a separate budget, its resources are provided as a part of the annual budget for the Ministry, and can also include ad-hoc requests.

The ACC Secretariat believes that its human and financial resources, autonomy and rights are overall sufficient for proper implementation of their duties. The Secretariat only noted the lack of financial resources for increasing qualification of staff, international cooperation with similar agencies, and for ensuring access to necessary for research activities, such as LexisNexis, as main weaknesses.

## **Conclusions**

The ACC forms a strong coalition against corruption in Georgia. Its mandate is limited to policy coordination, but within this mandate it has proven to be an effective mechanism for the development and monitoring of anti-corruption policy. Invitation to the local self-governments to take part in the ACC will increase its role further.

Recognising that high-level corruption and enforcement issues are among the emerging anti-corruption priorities, the ACC should consider how to tackle these issues and whether its practice has to be changed accordingly. To address NGOs' standing demand to establish an independent anti-corruption body with broader powers, the ACC may also consider how anti-corruption functions and powers of other bodies, e.g. Civil Service Bureau, police, prosecutors office, may need to be strengthened to address weaknesses of the overall anti-corruption institutional set up in Georgia.

The ACC Secretariat has improved its human capacity over the past years; it now has 8 staff dedicated to anti-corruption. However, the Secretariat does not have sufficient financial resources, including for staff development and for implementation of its tasks under the anti-corruption action plan. It would be

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<sup>6</sup> See OECD/ACN Third Round Monitoring Report on Georgia, September 2013, <http://goo.gl/e3YPR6>.

important to develop a realistic estimate of the operational budget needs of the Secretariat and to design a mechanism for ensuring the allocation and autonomy of this budget.

***Georgia is largely compliant with this part of recommendation 3.***

**Recommendation 3 from the Third Monitoring Round report on Georgia:**

**2) Increase visibility of the anti-corruption policy co-ordination mechanism by preparing and publishing regular reports on its work and by reporting regularly to the Parliament.**

The ACC submits annual reports to the Government; reporting to the Parliament is not foreseen by the law. The possibility to submit reports to the Parliament to inform and involve them better in the anti-corruption work was not considered by the ACC, as in its view such reporting may entail the reorganisation and re-subordination of the ACC to the Parliament.

The ACC Secretariat publishes information about the ACC and its working groups on the web site of the Ministry of Justice, under a special anti-corruption banner. In 2015, the ACC had three sessions, and in 2016 – one session; minutes of the meetings and all decisions of ACC are available on-line. Besides, to involve citizens in anti-corruption reforms and to inform broad public about their results, in spring 2016 the ACC Secretariat has established a new consultative mechanism on the web-site. Through this website every interested person has an opportunity to leave comments on anti-corruption strategy and action plan and to share their views regarding the achieved results. The Secretariat intends to collect these comments and to present them for the discussion of the working groups and to reflect them in the new Strategy and Action Plan if necessary. However, to date, the website received only very few comments. The Secretariat hoped that the website will become more active after the public relations campaign is implemented.

Already during the previous round of monitoring, NGOs noted the low visibility of the ACC and its Secretariat. During this round, they confirmed that the web-site banner was not very effective and information about the Council is not well visible. The Secretariat of the Council noted that consultations have been initiated to develop a dedicated web-page in relation to fight against corruption and OGP, but the it was decided not to create the webpage, apparently due to limited financial resources. However, the Secretariat was not aware of the exact costs required for creation of a dedicated website.

The ACC did not consider any approaches for increasing the visibility of the Secretariat, e.g. by proposing to create an Anti-Corruption Unit within the Analytical Department of the Ministry that would better reflect its duties and improve visibility. NGOs stressed that involvement with the Parliament and visibility of the ACC and its Secretariat need to be strengthened.

### **Conclusion**

The ACC and its Secretariat did very little since the previous round of monitoring to increase the visibility of their activities. They did not take steps to ensure reporting by the ACC to the Parliament or to improve its visibility on the internet, while establishing a special web-site cannot entail prohibitive costs and should be considered again.

***Georgia is not compliant with this part of recommendation 3.***

Taking into account the compliance ratings for both parts of the recommendation, the overall rating for recommendation 3 is ***partially compliant***.

### **New recommendation 3**

- 1. Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.**
- 2. Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.**
- 3. Create a dedicated anti-corruption web-site of the Anti-Corruption Council.**
- 4. Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council's visibility.**
- 5. Consider establishing a dedicated anti-corruption unit in the Analytical Department of the**

**Ministry of Justice as a visible Secretariat to the Council.**

## *Chapter 2*

# PREVENTION OF CORRUPTION

### 2.1. Integrity in the civil service

#### *Policy framework for integrity in civil service*

The main policy directions regarding integrity in the civil service are provided in the section on prevention of corruption in civil service of the Anti-Corruption Strategy and Action Plan. The section focuses on the establishment of professional merit-based civil service, strengthening rules on ethics, conflict of interests and incompatibility, monitoring of asset declarations, upgrading of and training on the Code of Ethics, introducing a mechanism for disciplinary liability, promoting whistle-blower protection and strengthening the Civil Service Bureau (CSB).

These objectives are based on the analysis conducted by the ACC in the run-up to the preparation of the Strategy, and reflect the ACN and many other international recommendations. However, these objectives were not based on analysis of risks, that would allow identifying integrity risks for various civil service categories and institutions, ensuring targeted approach and establishing baseline and impact indicators that could be used for the future progress analysis. In fact, there is no risk assessment methodology in Georgia, and neither the CSB, nor the Ministry of Justice as secretariat of the Anti-Corruption Council are responsible for risk assessment in the civil service in general and various ministries, or for the development of the methodology.

According to the Government's answers to the questionnaire, ensuring integrity inside each ministry and state body is the responsibility of its leader: "the major role of leaders of public institutions in promoting integrity is to create an ethical and professional environment and provide proper ethical leadership". But there are no mechanisms to support this role in practice, e.g. there are no specific persons/divisions in the ministries and public institutions responsible for ensuring civil service integrity. Internal audit units have tasks related to public financial management and control, human resource units are busy with civil service reform issues, and contact points representing ministries in the Anti-Corruption Council are dealing with their own obligations under the Anti-Corruption Strategy and Action Plan. In some ministries, Inspector Generals also deal with conflict of interests rules and other anti-corruption issues. According to TI, "Georgia did not have an established mechanism for monitoring the application of integrity rules in practice",<sup>7</sup> responsibility for integrity promotion and monitoring of ethics standards is assigned to internal audit units in the majority of public agencies. However, the impact of this activity seems to be dubious, as it is rare for them to detect any violations of integrity rules".<sup>8</sup>

#### **Conclusion**

Civil service integrity was included in the National Anti-Corruption Strategy and Action Plan as one of policy priorities, which is a positive development. However, measures included in the Action Plan were not developed on the basis of risk assessment and there are no baseline or impact indicators for future tracking of progress. Besides, there is no clear allocation of integrity tasks on the central level and inside ministries and state bodies, and the leading role of the heads of institutions is only declared, but it is not yet supported by an operational internal mechanism. Integrity and anti-corruption training for public officials should be adapted to specific risks to help different groups of public officials to recognize corruption and conflict of interest in their workplace and to develop ethical and integrity skills.

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<sup>7</sup> Georgia National Integrity System Assessment, Transparency International Georgia, 2015, available at <http://goo.gl/WHPwZk>.

<sup>8</sup> Idem.

#### **New recommendation 4**

- 1. Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.**
- 2. Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.**
- 3. Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.**
- 4. Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.**

#### *Conceptual direction of civil service reform*

**Recommendation 3.2.-3.3. from the Second Monitoring Round report on Georgia and confirmed in the Third Round:**

- 1. Decide on the conceptual direction of the public service reform and review legal and institutional framework accordingly as soon as possible, while ensuring that impartiality, legality and political neutrality are integral principles of the reform;**

On 19 November 2014, the Government of Georgia approved the Civil Service Reform Concept, which identified conceptual directions for professional career-based civil service system and embraced principles of uniform civil service based on integrity, impartiality and political neutrality. The Concept established competitive and merit-based selection; rights, duties and protection of civil servants from unfair dismissal, transparent disciplinary process, transparent and proportionate remuneration, central management authority.

On the basis of the Concept, a new Law on Civil Service (CSL) was developed and adopted by the Parliament on 27 October 2015, to come into force on 1 January 2017. The law stipulates the principles and the scope of civil service, introduces a centralized civil service management, a new classification system, rules for appointment, career management, rights, guarantees and obligations of civil servants, regulates agreements under public and labour laws in the civil service, rules under dismissals, including on reorganization. The transitional provisions task the Government with the adoption of a large number of secondary legislation acts. The NGOs are concerned that the large number of secondary legislation acts may undermine the uniformity and the stability of civil service as they may be subject to frequent changes by the government.

Civil society organisations informed that they were consulted and actively involved in the civil service reform, at the conceptual basis. The EU/OECD Programme SIGMA carried out an assessment of the new Civil Service Law. The overall assessment of the new law is positive, in that it will contribute to enhancing professionalism of the civil service.

#### **Conclusion**

Conceptual direction of the civil service reform has been decided in line with principles of impartiality, legality and political neutrality. The new Civil Service Law has established the fundamental institutional and legislative framework for reform, and the capacity of the Civil Service Bureau is improving. However, to put the new CSL into practice, primary legislation, such as the laws on Legal Entities of Public Law and Remuneration, is yet to be developed, and the capacity of the Civil Service Bureau and HR units in the ministries and agencies must be boosted.

*Georgia is fully compliant with this part of the recommendation.*

#### **New recommendation 5**

- 1. Finalise the legislative framework for the civil service reform by adopting remuneration and**

**classification legislation without delay.**

**2. Ensure that all positions that perform core functions of the state fall under the civil service legislation.**

***Professionalism in the civil service***

The new Civil Service Law delineated political and executive functions and provided for a distinction between professional civil servants, who represent a core civil service, civil servants on administrative contracts responsible for policy advice and assistance to political appointees and civil servants under labour contracts providing support services:

a) state-political officials - the President, Members of Parliament, the Prime Minister and other members of the Government, members of the Supreme Representative Bodies and of the Governments of the Autonomous Republics of Abkhazia and Ajara;

b) political officials - Governors, officials of municipal assemblies, heads of local administration/mayors;

c) qualified public officers/public officers/officers - persons, who are appointed for an unspecified term to a full-time position of an officer in public service by the State, the autonomous republic, a municipality, or a legal entity under public law, and who exercise powers under public law as their principal professional activity, which guarantees the protection of public interests by them, and who receive relevant remuneration and social and legal security guarantees in return;

d) persons recruited on the basis of an employment agreement - persons who, for the performance of public service, are granted powers to fulfil support or non-permanent tasks in a public institution on the basis of an employment agreement;

e) persons recruited on the basis of an agreement under public law - persons who provide support to state-political officials for the exercise by the state-political officials of their powers by giving industry/sector-specific advice, rendering intellectual and technical assistance and/or performing organizational and managerial functions and who do not occupy a position provided for by this Law for an officer or a person recruited on the basis of an employment agreement.

The horizontal scope of professional civil service is rather wide; it includes employment on central level and local level. It will also bring the employees of legal entities of public law (LEPLs) that implement the state functions into the system of civil service. For the civil servants employed on administrative contracts and to some extent for civil servants on labour contracts, some provisions of civil service are applicable, which is beneficial for homogeneous legal regime among the three types of the civil service.

To ensure the autonomy of professional civil service from political influence, the new Civil Service Law provides a detailed definition of rights, responsibilities and guarantees. It describes the rights such as the right to leave, join professional unions, request working conditions corresponding to one's health condition, obtain and appeal information. A number of obligations arising from the status of professional civil servant are also formulated in details, for example: the obligation to perform official duties and observe legal acts; to fulfil orders; to observe the principle of transparency and openness; to keep secret information confidential, et cetera. A professional civil servant shall carry out his/her powers by observing the principle of political neutrality and is prohibited to use their official powers to favour partisan interests. Civil servants in principle can be members of political parties but there is an explicit prohibition to use administrative resources for the party purposes. Political neutrality is protected by obligation to refrain from political activities during the civil service employment.

The new CSL provides for some preventive mechanisms that could reduce political influence on the civil service, including competitive selection, possible engagement of CSB in the selection, clear criteria for appraisal, obligatory creation of human resource management units. Uniform standards for all civil servants and reduced discretion of managers with regard to employment, remuneration and dismissals are important safeguards. The law clearly defines the grounds for dismissal, *inter alia*, in Art. 98 of the Law

(dismissal due to disciplinary misconduct); Art. 107 (mandatory grounds for dismissal); Art. 108 (other grounds for dismissal); Art. 110 (dismissal due to the reorganization, liquidation or merger of institution). In the latter case, the law specifies that civil servants should be transferred rather than dismissed.

Despite the improvements provided by the new CSL regarding the legal basis for professionalism in civil service, there is a risk of political influence from political appointees on professional civil service. Ministers and heads of agencies are direct supervisors of civil servants, as there is no position of senior civil servant, such as a state secretary. Experience of many ACN countries shows that lack of clear decision-making autonomy of professional civil servants is an important weakness in the region that allows heads of state bodies to interfere in all activities of their subordinates.

Another more important risk that Georgian state institutions may face in practice is undue influence by the private sector. In an August 2014 opinion poll commissioned by TI, 50 per cent of the respondents agreed with the statement that former Prime Minister Ivanishvili “continues to be a decision-maker” in the government, while only 17 per cent agreed with the opposite.”<sup>9</sup> President Margvelashvili also stated that the “country should be run through strong institutions rather than from the behind the scene.”

## **Conclusion**

The new Law on Civil Service delineates political and professional civil service, and provides some guarantees for the protection of professional servants from undue influence of ministers and heads of agencies. However, these mechanisms are not sufficient to protect professional civil servants from undue political influence by political appointees in practice. Even more worrying is the influence of powerful private sector persons on the functioning of the state bodies. Such situation constitutes a threat of state capture and should be urgently addressed.

### **New recommendation 6**

**Consider introducing a top civil service post in public authorities (such as Secretary General) to prevent undue influence.**

### **Recommendation 3.2.-3.3. from the Second Monitoring Round report on Georgia and confirmed in the Third Round:**

#### **2. Further strengthen the system of merit-based employment and promotion, build capacity of the Public Service Bureau and individual institutions in the application of merit-based rules;**

Recruitment and selection under the new CSL will be based on merit. For professional civil servants competitive and merit based recruitment shall be applied for entry positions and for moving from one of the four categories to the next, now also for moving from a lower position to a higher position within one category, if the respective position cannot be filled by transfer of a professional civil servant with a corresponding pay grade. For civil servants employed on labour contract and policy advisers as well as heads of agencies employed on administrative contract a simplified competitive procedure is provided. The labour contract employees can compete for all positions on equal footing with professional civil servants, unlike candidates from outside of the civil service. The selection panel shall be chaired by professional civil servants nominated by heads of relevant ministries/agencies concerned. The selection panel is composed of a representative of HRM unit, a representative of structural unit where a vacancy is announced, a representative of trade union and an invited independent expert. The assessment of candidates will be done through several steps, including certification, testing and interviews. Only the best candidate is to be nominated for the appointment.

The CSB, with the support of GIZ, developed new regulations on competition, which were approved by the Governmental Decree №412 on in July 2014. It provides for increased role of the CSB during competitions, where the CSB has a function of monitoring competition process against any violations. In

<sup>9</sup> Georgia National Integrity System Assessment, Transparency International Georgia, 2015, available at <http://goo.gl/Vkcm55>.



addition, it verifies the compliance of job requirements for the announced vacancy. This regulation will not be applied after the entry into force of the Civil Service Law, and shall be replaced with a new regulation, currently being developed with involvement of SIGMA experts.

The new CSL provides for the annual compulsory performance appraisal using a unified methodology. All public institutions will implement it starting from 2017. Currently, remuneration is not linked to performance appraisal. The Law on the Remuneration in Civil Service still has to be adopted to establish a legal framework for efficiency of state spending and rewarding professionalism.

In 2014, steps were taken to improve CSB capabilities. The role of the CSB has been increased in human resources selection process. In 2014 additional funds were allocated for the CSB budget; the CSB budget doubled in 2015. The staff of the CSB increased from 22 in 2013 to 42 in 2016; 26 are in staff personnel while 16 are on labour contracts. A new organizational structure with two new departments and second deputy head of the CSB was introduced to lead the implementation of the civil service reform; the new CSL grants the CSB the power to issue recommendations. The Prime Minister will appoint the CSB Head for a 5-years-term. The Law provides an exhaustive list of conditions for early termination. However, CSB's mandate is blurred by the Civil Service Council, which oversees the human resource policies. The SIGMA/OECD recommended clarifying their mandates, and that only advisory role is assigned to the Council. Besides, the role of the CSB could be further strengthened vis-à-vis line ministries and its status could be enhanced from a LEPL to a separate ministry, a department in the Prime Minister's office or an agency closely associated with it.

To build capacity of public institutions to ensure merit-based civil service practice, the CSB periodically conducts trainings for the heads and employees of HR units (development of job descriptions, performance evaluation, etc.). To inform them about new CSL provisions, the CSB has established HR forum which takes place every month and brings together HR managers of central and local government agencies as well as LEPLs. CSB has published HR manual which is a practical guide for HR managers for planning and managing HR related matters.

To ensure merit based recruitment, the CSB may delegate its representative to attend an open or closed competition in any public institution. The system of appeals is to be established, in line with the law, whereby candidates can appeal against the decision of selection panel to the CSB or to the court.

At the time of the monitoring, the Government could not provide the monitoring team with any statistics about civil service, such as the total number of civil servants, or number of different categories, numbers of vacancies and dismissals. According to the CSB, this information was not centrally available, and was only collected in individual ministries. However, CSB collects this information for its annual report.<sup>10</sup> NGOs informed the monitoring team about recent numerous resignations of civil servants; however, the Government did not have supporting statistics and was not able to explain possible reasons for this phenomenon. It will be important to collect and analyse such data in the future to study trends. In 2015, the CSB worked towards the establishment of a unified HR Management System (e-HRMS). By the time of the monitoring, it was implemented in all ministries, 63 LEPLs under various ministries, 15 independent LEPLs, 28 authorities of Autonomous Republics of Adjara and Abkhazia and 120 municipal bodies. However, the data is still to be entered by these institutions, and unified database is not yet operational.

## **Conclusion**

The new Civil Service Law provides for sufficient conditions to ensure merit-based approach to employment and promotion of civil servants. However, as the new legislation will only enter into force as of 1 January 2017, it is impossible to assess practical implementation of this recommendation. The authority of the Civil Service Bureau has been strengthened to ensure oversight, but its role and status can be further strengthened vis-à-vis line ministries. Capacity of line ministries and other state bodies to apply the merit based principles in practice is not sufficient. It will be important to collect and analyse data on the application of the merit principle in practice, including in the appointments, performance appraisals, promotions and demotions.

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<sup>10</sup> CSB annual report for 2015 is available at <http://goo.gl/OL4TTh>.

*Georgia is partially compliant with this part of the previous recommendation.*

**New recommendation 7**

- 1. Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.**
- 2. Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules.**
- 3. Establish a human resource management information system to consolidate statistics.**

**Recommendation 3.2.-3.3. from the Second Monitoring Round report on Georgia and confirmed in the Third Round:**

**3. Ensure that remuneration of public officials is transparent and predictable;**

On 15 July 2014 the Government approved Resolution No. 449 on the procedure for determining amount of bonuses in public institutions, which defined the amount to be paid to individuals employed in public institutions and the rules and conditions for payment. This Resolution has set a limit on the amount of a single bonus issued to a person, as well as limitations on the periodicity of issuing a bonus. Moreover, persons authorized to issue a bonus were defined, and the goals and grounds of issuing a bonus have been elaborated. The Resolution does not affect additional pay, which is at the discretion of the head of the state institution.

The new CSL introduced new important principles regarding remuneration. It states that the system of remuneration of civil servants shall rest on principles of transparency and fairness which implies equal pay for equal job. However, the detailed procedures concerning remuneration system will be regulated through the new Law on Remuneration in Civil Service to be elaborated by the end of 2016 and applied from the 1 January 2017. The USAID through the Project Good Governance Initiative in Georgia provides support to the CSB for the drafting of the Law.

At the time of the monitoring, no assessment of the transparency of remuneration system could be made. It will depend on the roll out of comprehensive classification system, as a first step for determining the salaries of civil service. The Civil Service Bureau was not in a position to comment on the new remuneration law and/or budget law, as this is the sole competence of the Ministry of Finance. It may be advisable to strengthen the role of the CSB in this field, to safeguard the equal pay for equal job principle.

As in the case of civil service, the Government did not provide any statistics regarding the remuneration claiming the lack of centralisation of such data. However, some data was provided by TI "The average salary in the public sector has increased from GEL 589 in 2011 to GEL 738 (USD 269 to USD 337) in 2013, i.e. by 25%. The average salary in the private sector increased from GEL 670 to GEL 795 (USD 306 to USD 363), i.e. by 18%. The average salary for the 'public governance' category within the public sector increased from GEL 998 to GEL 1,152 (USD 456 to USD 527), i.e. by 15%. [...] The lack of job security remains a negative factor."<sup>11</sup> It would be important to collect and analyse statics on remuneration in the future, in order to assess the implementation of the new rules.

**Conclusion**

The new Civil Service Law states that the system of remuneration of civil servants shall rest on principles of transparency and fairness. However, the detailed procedures concerning remuneration system will be regulated in a separate new Law on Remuneration in Civil Service that has yet to be adopted. The draft of this law has not been available for analysis, therefore, it is not yet possible to draw any conclusions.

*Georgia is not compliant with this part of the recommendation.*

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<sup>11</sup> Georgia National Integrity System Assessment, Transparency International Georgia, 2015, available at <http://goo.gl/fflhqk>.

### **New recommendation 8**

- 1. Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.**
- 2. Consolidate statistics on payroll.**

### **Recommendation 3.2.-3.3. from the Second Monitoring Round report on Georgia and confirmed in the Third Round:**

**4. Ensure that the rules on conflicts of interest are enforced in practice and clarify the roles of different institutions; raise awareness and provide regular training on conflict of interests to civil servants and managers of individual institutions; consider verifying the information provided in the asset declarations of public officials.**

### ***Conflict of interest rules***

The Law on Conflict of Interest and Corruption in Public Service provides the definition and rules for managing conflicts of interests (CoI) and other restrictions. There were no major changes in this legislation since the last round of monitoring, apart from post-employment restrictions that were amended in 2013 to include restriction for former public officials to disclose secret and confidential information. Furthermore, rules on gifts were amended in 2015, mandating that all gifts above permitted value must be declared and transferred to a Legal Entity of Public Law – the Service Agency of the Ministry of Finance of Georgia:

1. ... a 'gift' is property transferred or services provided to a public servant or his/her family members free of charge or under beneficial conditions, partial or full release from obligations, which represents an exception from general rules.
2. The total value of gifts received by a public servant during a reporting year shall not exceed 15% of the amount of one year's salary, whereas the total value of a single gift received shall not exceed 5%, unless these gifts are received from the same source.
3. The total value of gifts received by each member of the public servant's family during a reporting year shall not exceed GEL 1 000, whereas the total value of a single gift received shall not exceed GEL 500, unless these gifts are received from the same source.

The CoI law distinguishes the terms “official” (includes state political officials, political officials, judges, prosecutors, top management of LEPLs, directors of divisions within law enforcement bodies), “public servant”, and employee on labour contract. Prior to 1 January 2017 (entry into force of the Civil Service Law), the CoI Law applied to a narrower scope of officials. The scope will broaden as of 2017, to include all public servants, which is a welcome development. But employees on labour contracts or majority of LEPLs employees will not be bound by the CoI rules.

The Civil Service Bureau is responsible for training regarding CoI and integrity, 4 staff members of CSB are responsible for this work together with 3 staff members from other ministries and 1 non-governmental organisation. The CSB, in consultations with a group of experts and with the support from GIZ, prepared a new Code of Ethics which should include a detailed regulation of conduct in the civil service. The draft Code should undergo public discussions prior to its adoption in 2016 and entry into force in 2017. In 2015 the CSB developed a manual “Ethics and General Rules of Conduct”, and provided 25 trainings on Ethics in Civil Service. Trainings were conducted for at least two representatives from central and local self-government institutions and the legal entities of public law (LEPLs). Trainings on ethics for civil servants were conducted by trainers, who undergone the ‘Training of Trainers’ programme organized by the German Academy for Civil Servants. In 2015, total of 455 civil servants were trained on Ethics in Civil Service. The main target audience was by the heads of HR and internal audit departments, as well as

representatives of procurement offices, heads of administration and legal departments. Trainings were funded by the NATO - Georgia Professional Development Programme, UNDP and GIZ.

The enforcement of CoI rules is decentralized. The CSB has no mandate regarding enforcement, internal audit units in line ministries and agencies are responsible for their implementation, but they appear to be ineffective as they have not identified a single violation of these rules in recent years. There are no centralised statistics about cases of conflict of interest or other violations of ethics rules that were detected and sanctioned, or any reports that would assess the enforcement.

Multiple cases of conflict of interest that have been detected by the media or NGOs. According to NGOs, several high-ranking officials had moved to the private sector immediately after leaving the government.<sup>12</sup>

But no cases were investigated and sanctioned, which is due to the fact that there is no effective mechanism for monitoring and enforcement of integrity rules in practice. The public perception is very worrying: according to a March 2016 public opinion survey by TI Georgia, 40 per cent of the respondents believe that it is common for public officials to abuse their power to achieve private goals, which is a significant increase from 25 per cent in 2015 and just 12 per cent in 2013.

Having clearly advanced on creating legal safeguards to prevent conflict of interest and promote ethics standards, Georgia has done little to ensure effective enforcement. An important step would be to assign clear roles regarding monitoring of ethics and conflict of interest rules, both on the central level, possibly to the CSB, and within line ministries and LEPLs in internal audit and/or HRM units or in special units in large state bodies and LEPLs.

### ***Asset declarations***

The system of asset declarations was introduced in Georgia in 2010. In 2016, 5,600 officials were required to submit declarations (of the total 40,000 of civil servants). These include the President, Prime Minister, members of Government and their deputies, members of Parliament, members of Supreme Representative Bodies of Autonomous Republics, Governors, mayors, heads of local administrations, members of municipalities, heads of state owned enterprises, heads of non-entrepreneurial legal entities founded by state or local self-government, heads of legal entities of public law and their deputies, judges, management posts in the prosecution service. However, the system does not cover all positions associated with high risk of corruption, such as prosecutors and investigators.

Asset declarations are publicly available online and maintained by the CSB. Eight persons employed in the Asset Declaration Department of the CSB issue personalized codes to all potential declarants, inform them on the obligation to file a declaration, collect and publish declarations. It is planned that the Department on Asset Declaration Monitoring will be established in the CSB that will initially have 5 additional staff members to deal with the verification.

Public officials can be sanctioned for the non-submission or failure to submit a completed asset declaration by a fixed fine in the amount of GEL 1000. Currently Civil Service Bureau is empowered to apply these fines. In 2013, 32 public officials were sanctioned, in 2014 – 10, in 2015 – 23 and in 2016 – 2.

Intentionally false information can result in a sanction of a fine in the amount of GEL 2000, prohibition from holding public service post and a criminal investigation possibly resulting in one year imprisonment.

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<sup>12</sup> For example, Transparency International – Georgia in its 2011 and 2013 reports noted that "several high-ranking officials had moved to the private sector immediately after leaving the government". Furthermore, "Nika Gilauri resigned as Georgia's prime minister in June 2012 and established a private company operating in the energy sector shortly afterwards; the government signed a memorandum of understanding with his company within a month of its establishment. In the new government that came to power after the October 2012 elections, Kakha Kaladze was appointed minister of energy. At the time of his nomination, Kaladze had a direct or indirect stake in at least three private companies operating in the energy sector. Several members of Prime Minister Bidzina Ivanishvili's cabinet formed in late 2012 had previously worked for his private company."

But these sanctions are not applied in practice due to the absence of the verification system. As a result, according to TI, "sanctioning of violations of requirements concerning assets and interests disclosure has been extremely poor. CSOs and the media have publicized multiple cases where public officials failed to disclose their connections with private sector companies but there has not been so far a single case where sanctions were applied."

To address this important shortcoming, the Parliament adopted amendments in the Law on Conflict of Interests and Corruption in Civil Service on 27 October 2015 and established a monitoring system of the asset declarations. The CSB was granted the authority to monitor declarations and to determine and verify accuracy of the information. The CSB will verify approximately 10% of all declarations, including 5% that will be randomly selected by the computer software, and 5% that will be selected by a Permanent Commission on the basis of specific risk factors.

The Permanent Commission will be set up by the CSB Head and composed of 5 representatives of the non-governmental sector, who will be selected on the 'first come principle', will work pro-bono and will rotate annually. While the monitoring team was not sure that the arrangement proposed for the Commission is effective, NGOs confirmed their agreement with the arrangement and confirmed high interest and engagement in the monitoring of asset declarations.

The risk factors that will be used for the selection of declaration for verification by the Permanent Commission include particular risk of corruption, high public interest and violations revealed as a result of the monitoring. The CSB will also verify declarations on the basis of complaints.

The results of the monitoring shall be proactively published at the end of each calendar year. If a violation is detected, such as wilful entry of incomplete or incorrect data into the official's asset declaration, and if there are essential elements of an offence, the CSB will forward the declaration and materials of the proceedings to the relevant law enforcement body. Asset declarations can be used in investigation of illicit enrichment or any other corruption-related offences.

The verification will enter into force in 2017. It remains to be seen whether the CSB's capacity will be sufficient to fully monitor approximately 560 declarations. In principle, CSB will have access to all public registers via Data Exchange agency, be able to check data against tax reports, property and other register. However, the CSB does not have access to bank data.

## **Conclusions**

The Law on Conflict of Interest and Corruption in Public Service is in place but practical enforcement is almost non-existent. The internal audit units have the duty to enforce, but no analysis of their effectiveness was done. The Civil Service Bureau provided trainings on conflict of interest but does not have a centralized role in guidance and/or prevention. The CoI Law does not cover all positions with high corruption risks.

Introduction of verification of asset declarations is an important step forward. It will be important to ensure its timely introduction in 2017, to provide necessary conditions for the NGOs to work effectively in the Permanent Commission selecting declarations for verification, and to build the capacity of the CSB necessary to conduct the verifications. It will also be important to collect and analyse data about the implementation of the verification and the impact of this mechanism on the spread of conflict of interest.

*Georgia is partially compliant with this part of the recommendation.*

### **New recommendation 9**

- 1. Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public Service to all posts performing core public functions, including prosecutors.**
- 2. Clarify the roles of different institutions in enforcement of conflict of interests and other anti-corruption restrictions, strengthen the capacity of internal audit or other units in line ministries and at the local level, consider designating special officers in large administrations and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.**
- 3. Monitor and evaluate effectiveness of the asset declaration verification system and impact of**

**the asset declarations on the spread of conflict of interest and illicit enrichment.**

- 4. Consider introducing effective penalties that would deter unexplained enrichment, conflict of interest and incompatibilities.**

### **Reporting and whistle-blower protection**

There are two types of channels for reporting about corruption-related offices, including internal and external. Internal channels include the body in charge of the review of whistle-blower's applications such as a division in charge of internal control, an investigator, a prosecutor and/or the Public Defender of Georgia. External reporting channels include the media and civil society. Reporting can be made in a written form, orally or through a web-site administered by the CSB (<https://mkhileba.gov.ge>).

Georgia was one of the first countries in the region to introduce legislation on whistle-blowing. Since the last monitoring round this legislation was further strengthened. Whistleblowing can now be made anonymously; the body that received the report is obliged to keep the whistle-blower's identity confidential unless the whistle-blower provides written express permission for disclosure. Protection provided for the whistle-blower is monitored by the general inspectorate that reports to the head of appropriate public institution, and includes prohibition of intimidation, oppression, coercion, humiliation, moral or material damage, use of violence or threat of violence, discriminatory or any other illegal act with regard to the whistleblowing incident against whistle-blower or his/her close relative. In addition, the whistle-blower may not be subject to administrative procedures, civil action, prosecution, and retaliatory measures or be held responsible otherwise for the circumstances related to the facts of whistleblowing.

The definition of a whistle-blower was broadened to include not only 'active or former public official' but 'any person'. Furthermore, a whistle-blower can now inform civil society or mass media about his or her case directly after the report was filed to the state body, and not to wait for two months as in the past. The CSB has developed an online tool, so called "red button". Through this electronic portal any individual may anonymously report on any kind of corruptive actions in civil service by filling out a special online application form.

In 2015, the CSB with the support of international partners launched the project "Strengthening the Whistle-blower Protection Institution in Georgia" to raise awareness of civil servants on the whistle-blower protection regulations and their rights. The CSB prepared a manual on "Whistle-blowers Protection" about practices in different countries, protection mechanisms and obstacles that may occur during and after reporting about the wrongdoings. During 2015, the CSB provided 20 trainings on whistle-blower protection for 363 civil servants. The effectiveness of these trainings is assessed via anonymous evaluations. The CSB plans to organise annual conference to discuss impact of the trainings.

Since December 2015, eight cases have been registered via electronic portal. There is no information yet about the outcomes of these reports.

### **Conclusions**

Since the last monitoring round, Georgia has further improved its legislation for the protection of whistle-blowers. The CSB prepared a manual, organised trainings and established a web-site for reporting. As a result of these efforts, first reports were filed. It is a good start, but much more should be done to promote and to improve the system. The role of the head of the agency in providing the protection can be removed, as it can prevent whistle-blowers from reporting about the wrongdoings of the head, and the progress of the system should be examined.

### **New recommendation 10**

- 1. Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.**
- 2. Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies**

**to identify the needs for further improvement.**

Based on the assessment of all parts of the previous monitoring round recommendation on civil service integrity, *Georgia is partially compliant with recommendation 3.2.-3.3 overall.*

## **2.2. Integrity of political public officials**

Priority XI of the National Anti-Corruption Action Plan is to prevent political corruption. This priority focuses only on two issues – legal framework for funding of political parties and election campaigns and transparency of political finances. Indicators that are provided for this priority include one impact indicator: "Perception of public regarding low level of corruption in activities of political parties is increased." While the focus on political finance is a positive development, it may not be sufficient alone to address political corruption as a whole. It is important to develop additional tools that will address integrity of political public officials.

In Georgia, there are no ethical rules applying to all political officials. The Parliament has its own Rules of Procedure<sup>13</sup> that contain some guidelines on behaviour and integrity, however they do not focus on these issues specifically. The only mechanism to prevent CoI among political officials is the obligation of submission of asset declarations that applies to all political officials. Articles 5, 51 and 52 (on gifts) and 13 (incompatibility with other paid jobs and business activities) of Law on Conflict of Interest and Corruption in Public Service also apply to political officials. There is no training for political officials on CoI and integrity.

There is no specific agency designated to enforce the above rules in relation to the political officials, and no sanctions for their violation. According to TI Georgia, "There is a major gap in terms of the enforcement of ethics rules (as well as conflict of interest regulations) among political officials. The Parliamentary Committee on Procedural Issues and Rules is responsible for enforcing these rules among the MPs but has repeatedly failed to act upon CSO and media reports concerning potentially serious violations. [...] For instance, nine MPs - seven of whom were from the ruling coalition - failed to include important information on their assets in their declarations, according to October 2013 data by TI Georgia. Parliament did not take any actions in response".

To address this challenge, in the framework of OGP as well as Open Parliament, a special working group comprising all factions of the parliament prepared a draft Code of Conduct for MPs. NDI and local NOGs provided assistance to the development of the Code. The Code should be adopted either by incumbent or by the next Parliament by the end of 2016. According to the Parliament, the Code will become an independent act, and will not be a part of the Parliamentary Rules of Procedure. Currently the draft of Code is a five-page document on general principles, safeguards of public interest, transparency, integrity, conflict of interest, incompatibility, gifts, personal or party interest and using public resources for campaigning, standards of behaviour, confidentiality, etc.

Regarding the governance of political parties, the 2011 TI NIS report noted that the political parties "were required to hold a general convention of their members every four years to elect their leadership. There are no provisions to ensure the selection of candidates of political parties for elections through a democratic and participatory process. [...] Parties continue to have a low degree of internal democratic governance which is due to the fact that they are heavily dependent on their leaders. [...]" TI NIS report refers to broader issues such as control of many MPs by the former PM and their submission to the executive. Recent removal of the obligation of MPs to have regular consultations with their constituencies was brought up as one example of weakening party governance.

As mentioned earlier, enforcement of integrity rules with regard to government ministers is equally poor (see section on conflict of interests in the previous chapter, footnote 12).

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<sup>13</sup> Available (in Georgian) at <http://goo.gl/vgjSfH>.

Lobbying in Georgia is regulated by the Law on Lobbying Activities. It was adopted in 1998 and was amended six times since its enactment. The last amendment was adopted in 2016.<sup>14</sup> The law on Lobbying Activities provides for the rules of registration of lobbyists, for their rights and obligations and legal guarantees, as well as deals with the cases of conflicts of interest, transparency and publicity of lobbying activity by establishing a mandatory disclosure of information on lobbyists and lobbying activities. However, in the light of the above, it appears that this law does not provide sufficient safeguards against undue influence of private sector interests on the political and professional civil servants.

### **Conclusion**

Integrity of MPs and other political officials is a concern in Georgia. There is a wide and strong public perception of high level of corruption among the politicians. There are no specific integrity rules for MPs or members of the Government, and general CoI and integrity rules that are applicable to them are not properly enforced, violations are not sanctioned.

#### **New recommendation 11**

- 1. Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.**
- 2. Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.**

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<sup>14</sup>Available at the Legislative Herald of Georgia at <https://goo.gl/1TnByx>.



## 2.3. Integrity in the judiciary and public prosecution service

### Judiciary

#### **Recommendation 12 from the Third Monitoring Round report on Georgia:**

**Ensure independence of the judiciary, in particular by considering extending life tenure to the current judges and judges of the Supreme Court, ensuring that res judicata principle is respected, reviewing grounds for dismissal of judges.**

**Introduce promotion of judges based on competitive procedure with open announcement of vacancies and based on clear criteria for promotion.**

#### *Judicial reform*

Since the previous monitoring round Georgia has implemented a new judicial reform in several phases. In May 2013, the first phase of institutional reforms was completed by the adoption of a wide range of legislative amendments in general endorsed by the Venice Commission. The second phase of judicial reform which was completed in August 2014 reflected the constitutional amendment introducing the principle of life tenure of judges. The new amendments to the Law on the Courts of General Jurisdiction set forth objective criteria for the appraisal of judges to be appointed for a three-year period before they would be appointed for life, as well as a procedure of appraisal, including a right of the appraised judges to appeal the negative appraisals.

In 2015, the third phase of reforms was launched. According to the authorities, the new set of legislative amendments is aimed at ensuring a greater degree of internal independence of individual judges and their more extensive involvement in the management of courts. The amendments proposed by the MoJ include but are not limited to: guarantees for non-interference with judicial decisions will be clearly articulated; judges will elect presidents of their courts by themselves; presidents of courts will no longer be authorised to initiate disciplinary proceedings against judges; a principle of automatic and electronic distribution of cases will be introduced to exclude any doubts about president's impartiality while assigning cases to individual judges; transfer of a judge to a different court will be strictly regulated (no judge may be moved without his/her consent); admissibility criteria for cassation appeals in the Supreme Court of Georgia will be amended by making an appeal admissible, inter alia, if the appealed decision contradicts the European Court of Human Rights case-law; every court decision will be published at the court's website; etc.<sup>15</sup>

The draft amendments were submitted to Parliament for adoption and their consideration is pending. On 31 May 2016, the civil society Coalition for an Independent and Transparent Justice issued a statement on the delay with adoption of the latest reform. The third reading of the "Third Wave Judicial Reform" bill was on the agenda of the May 25-27 plenary sessions at the Parliament of Georgia, but once again was postponed. "The delay of eight months and negotiations over the contents of the bill, which were taking place behind the closed doors, have significantly damaged the legislative process. The contents and quality of the package have also been affected. The reasons for postponing the third reading are unclear."<sup>16</sup>

*Legislation on the judiciary* in Georgia consists of: Constitution of Georgia, Organic Law on General Courts, Law on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts, Rules and Decisions of the High Council of Justice of Georgia.

#### *Judicial Council*

The Constitution of Georgia defines the functions of the High Council of Justice. Article 86<sup>1</sup> declares that "The High Council of Justice of Georgia shall be established in order to appoint and dismiss judges

<sup>15</sup> See position of the NGOs on the proposed reform: <http://goo.gl/LOUmJk>.

<sup>16</sup> Full text available at <https://goo.gl/ND3bq7>.

to/from office and to perform other tasks. More than half of the High Council of Justice of Georgia shall be composed of the members elected by a self-government body of judges of the courts of Georgia of general jurisdiction. Chairperson of the Supreme Court of Georgia shall chair the High Council of Justice of Georgia. The powers and the procedures for establishment of the High Council of Justice of Georgia shall be defined by organic law.” In accordance with Article 47 of the Organic Law on General Courts, the High Council of Justice of Georgia shall be established to ensure the independence of courts (judges) and the quality and effectiveness of justice, to appoint and dismiss judges, to organise judicial qualification examinations, to formulate proposals towards implementing a judicial reform, and to accomplish other objectives determined by law.

The High Council of Justice of Georgia consists of 15 members. Eight members of the Council are elected by a self-governing body of judges of general courts of Georgia according to the procedure prescribed by the Law, five members are elected by the Parliament of Georgia and one member is appointed by the President of Georgia. The law sets the criteria that should be followed by the institutions when electing members of the Council.<sup>17</sup> It is notable that the Parliament has to select its quota in the HCoJ from among civil society representatives nominated by NGOs.

A member of the High Council of Justice of Georgia appointed by the President of Georgia/elected by the Parliament of Georgia may not hold any other office in public service or in a local self-government body, engage in business, directly exercise the powers of a member of the permanent management, supervisory, controlling, audit or advisory body of such entity, or engage in any paid activity other than scientific, pedagogical or creative activity. He/she may not be a member of a political association and/or take part in political activity.<sup>18</sup>

The grounds for terminating the powers of a member of the High Council of Justice of Georgia among others include the reasons such as systematic non-fulfilment or improper fulfilment of duty; holding an incompatible office or engaging in an incompatible activity; being appointed or elected as a member by an unauthorised body or in violation of the procedure laid down by this Law, etc.<sup>19</sup>

The High Council of Justice of Georgia has powers to:

- appoint and dismiss Georgian general court judges (other than the chairperson and members of the Supreme Court);
- determine the composition of the Qualification Examination Commission;
- determine the specialisation of district (city) court judges;
- approve the staff list and structure of the personnel of the Office of the High Council of Justice of Georgia, the salary of a member of the High Council of Justice of Georgia, the salaries and job titles of the officials and auxiliary personnel of the High Council of Justice of Georgia, as well as the structure and staff size of the administrative office of Georgian general courts (other than the Supreme Court);
- lay down procedure for the payment of business trip expenses of the High Council of Justice members appointed by the President of Georgia/elected by the Parliament of Georgia;
- prepare and approve the procedure for the organisational work of Georgian general courts;
- approve the procedure for internship in the High Council of Justice of Georgia, district (city) courts and courts of appeals;
- approve the procedure for the appraisal of the staff of the offices the High Council of Justice of Georgia, district (city) courts and courts of appeal;

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<sup>17</sup> Art. 47(5-6) and Art. 47(11<sup>1</sup>) of the Organic Law on General Courts of Georgia.

<sup>18</sup> Article 47 (13) of the Organic Law on General Courts of Georgia.

<sup>19</sup> Art. 48 of the Organic Law on the General Courts of Georgia.

- [approve the procedure for the appraisal of employees of the offices of the High Council of Justice of Georgia, district (city) courts and courts of appeals; (*Shall become effective from 1 January 2017*)]
- review materials related to judicial statistics analysis;
- conduct disciplinary proceedings against Georgian general court judges in the prescribed manner and within the scope of its powers;
- hear the report of the chairperson of the Department of General Courts;
- make decisions on giving incentives to judges in the manner prescribed by law;
- formulate proposals for judicial reform;
- elect, under Article 10 of the Law of Georgia on Legal Aid, one member from among its non-judge members to nominate him/her to the Legal Aid Council;
- [elect, under Article 19(4) of the Law of Georgia on Public Service, two members of the Public Service Council from among the general court judges; (*Shall become effective from 1 January 2017*)]
- exercise any other powers provided by the legislation of Georgia.

According to NGOs, there are certain concerns related to the functioning of the HCoJ, in particular: procedures of its activities are not well determined, appeal of the HCoJ decisions is not guaranteed and the lack of transparency of the HCoJ remains a problem. The Georgian authorities noted in this regard that decisions of the HCoJ on the refusal of lifetime appointment of judges can be appealed in a special board set up within the Supreme Court of Georgia; other decisions of the HCoJ can also be appealed in common courts of Georgia according to general rules.

The HCoJ is chaired by the Chief Justice (Supreme Court Chairperson). The monitoring team notes that such arrangement when the Chief Justice is the HCoJ member may be problematic, as he/she can influence decisions of other Council members by his/her authority, even if it not based on the formal powers. Also judicial candidates have a right to appeal the decision of the HCoJ in a specially established body within the Supreme Court of Georgia. It means that Supreme Court judges are deciding on decisions of the body where their superior is the chair. The Georgian authorities strongly disagreed with such statement, in particular referring to other European countries where Chief Judge sits on the Judicial Council and/or chairs it.

### ***Appointment of judges***

The procedure on selection, appointment or promotion of judges is based on merit and on transparent criteria and is regulated by the Constitution of Georgia and the Organic Law on General Courts. The High Council of Justice of Georgia is responsible for the appointment, promotion, mobility and dismissal of judges of first and second instance courts. The chairperson and judges of the Supreme Court of Georgia are elected by the Parliament on the recommendation of the President of Georgia.<sup>20</sup> Judges of the general courts are appointed by the High Council of Justice.<sup>21</sup>

TI-Georgia criticised the fact that the Organic Law on General Courts establishes only minimum and general requirements for judicial candidates, and a general procedure for holding a position of judge. Law delegates the function of establishment of the conditions for the conduct of competitions and of the criteria for the judicial selection to the High Council of Judges of Georgia. Such regulation gives the Council broad discretionary power to adopt, amend regulations on the judicial appointment which could easily be abused.

TI-Georgia also believes that the existing legal regulation of the judicial appointments fails to ensure the impartiality and transparency of the process. The law does not determine detailed criteria for the selection of judges and does not oblige the HCoJ to justify its decisions with regard to the appointment of judges.

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<sup>20</sup> Art. 90(2) of the Constitution of Georgia.

<sup>21</sup> Art. 36(4) of the Organic law of Georgia on General Courts.

The General Administrative Code does not apply to the Council and the law does not define the principles that would guide the Council during the process of selecting/appointing judges. This leaves the Council without proper regulation and makes the Council dependent on self-regulation. As a result the HCoJ has been delegated a factually unlimited authority to determine conditions for the competition and judicial selection criteria. The final decision of the council on appointment is made through a secret ballot. Thus the process is not transparent and creates risks of impartiality and subjectivity.

While the HCoJ established the rules and criteria for the selection of judicial candidates, in particular the requirements for qualification, skills and personal characteristics of a candidate, there is no mechanism to assess if the Council's decision to appoint a judge was based on these criteria. There is no mechanism for monitoring the Council's decisions which would make it possible to assess the objectivity, fairness and impartiality of the decisions made by the Council.

The NGO Human Rights Education and Monitoring Centre concurred with such assessment. In its opinion, the current selection and appointment process has given rise to severe criticism, as it has been characterized by considerable deficiencies and decisions made by the High Council of Justice have lacked proper argumentation. Significant gaps were revealed during the interviews with judicial candidates. On the one hand, these gaps make the judicial selection process unreliable and, on the other hand, they raise important questions on whether the process is objective and free of political bias.

The Georgian authorities disagreed with such assessment, noting that representatives of NGOs and journalists have unlimited possibility to attend the HCoJ hearings, to monitor the selection process of judges, including interviews with candidates, the voting. The Council usually publishes candidates' list and the schedule of interviews on its website together with voting schedule, and invites all the interested parties, members of the civil society to monitor the process. The Law on General Courts determines that the voting process is confidential and is based on a secret ballot.

In December 2015, the Coalition for an Independent and Transparent Justice called for suspension of the on-going judicial selection/appointment process. It noted that the existing judicial appointment system could not ensure transparency of the process, accountability of the High Council of Justice, provision of well-justified decisions and appointment of the persons with outstanding qualification and non-disputable reputation. In its opinion, it was once again demonstrated that the procedure for the selection/appointment of the judicial candidates should be subject to statutory regulation, as in a democratic state the process of judicial independence cannot be dependent solely on unlimited discretion of the High Council of Justice and integrity of specific members of the Council. "The serious violations that occurred during the process of selection of judicial candidates have raised doubts concerning the legitimacy of the whole process and have posed a significant threat to staffing the judicial system with honourable judges with high qualification and genuine reputation. The deficiencies in the process are particularly risky considering the fact that a significant number of judges are appointed for life."<sup>22</sup>

According to the third wave of the reform of judiciary, the judicial selection process will be carried out based on two basic criteria – integrity and competence. Judicial position can be occupied through an open competition. Currently, according to the law, the candidates can be the graduates of the High School of Justice and persons released from studying at the HSJ (former judges, etc.). However, the latter category of candidates has a chance to be appointed as a judge only if the graduates of the High School of Justice have not applied for the vacancy. According to the authorities, the draft amendments make the procedure non-discriminatory. The graduates of the HSJ and persons released from studying at the HSJ will all participate in the open competition. Besides, currently the law is vague with regard to the procedure of the selection and appointment of the judges. The draft regulates the issue together with the procedure for the background check of the possible candidates for the office. The amendments also determine the procedure for appeal against the decision to refuse selection in a special board within the system of the Supreme Court of Georgia. In the latter case the candidate will have to prove that there was a violation of the procedure that affected the High Council of Justice decision.

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<sup>22</sup> See full statement at <http://goo.gl/xT6mD0>.

### *Tenure of judges*

Before the constitutional amendments, judges were appointed for a 10-year term. In 2013 the Constitution was amended to introduce life tenure for judges. However, the same amendments authorised the parliament to introduce a probation period. The Organic Law on General Courts of Georgia was amended to provide for appointment of judges for a 3-year probation period. According to Article 36 of the Organic Law, a judge of a district (city) court and court of appeals shall be appointed to the office for a term of three years (as a probationary period). Not earlier than two months before and not later than one month after this term expires, by analysing the results of judge's activity monitoring, the High Council of Justice of Georgia shall discuss and make a decision on whether to appoint the judge to office for life tenure. If the High Council of Justice of Georgia makes a decision to appoint a judge to office for life, the judge shall be appointed to office for life until he/she reaches the statutory age limit. The selection and appointment procedure of a judge is regulated by the Rules on Selection of Judicial Candidates approved by the HCJ Decision of 2009.

Unless the High Council of Justice of Georgia makes a decision to appoint a judge to office indefinitely, it shall announce, according to Article 36<sup>7</sup>(4) of this Law, a competition for the vacant position of a judge. Unless the High Council of Justice of Georgia makes a decision to appoint a judge to office indefinitely, the judge's powers shall be ceased after the three-year term of office expires as determined by this Law. The judge may not, within the next three years, participate in a competition for vacant position of a judge (Art. 36. 4<sup>3</sup> of the organic law).

According to Article 36<sup>4</sup> after one and two years of office, as well as four months before the expiration of the three-year term of office of the judge, the High Council of Justice of Georgia shall select, by lot, one judge member and one non-judge member of the High Council of Justice of Georgia (the evaluators) to assess the activity of the judge appointed to office for three years. The evaluators shall assess the activity of the judge for the given period within one month. The evaluators shall assess the activity of a judge concurrently and independently from each other. The evaluators may not disclose to each other the information and assessment results obtained during the assessment. After the drawing of lots, the judge to be assessed shall be immediately notified of the identity of the evaluators. The above six assessments shall be performed by different Evaluators. The Evaluators may examine cases, attend court hearings chaired by the judge to be assessed, upon request obtain audio and video recordings of the court hearings conducted both during and before the assessment period, search for necessary information in the manner prescribed by Law, apply to representatives of legal circles for legal consultation, personally meet the judge to be assessed, and other persons, and interview them in order to obtain information on specific issues. The evaluator may not ask the judge such questions that by their content can be considered as equivalent to requesting a report on an individual case. Information that is not related to the assessment of a judge based on the criteria under this Law may not be sought. The information obtained may be only used for the purposes of this Law. The method of obtaining information shall not interfere with the independence of the judge to be assessed. The judge to be assessed shall have access to the reports of each period of assessment as prescribed under Article 36<sup>4</sup>(9). These reports shall be submitted for examination to members of the High Council of Justice of Georgia within one month, three months before the three-year term of office of the judge expires. (Art. 36. 4<sup>4</sup> of the organic law).

A judge may request in a substantiated motion that the evaluator(s) tasked with the assessment of his/her activity for the given period be recused on the grounds of conflict of interest, in particular, if there are grounds for questioning the objectivity, independence and/or impartiality of this/these evaluator(s). The High Council of Justice of Georgia shall make a decision on the recusal of the evaluator by a majority of votes. The evaluator whose recusal is under discussion may not participate in the voting. If there is a conflict of interest, the evaluator shall be obliged to recuse himself/herself and shall not participate in the assessment. (Art. 36. 4<sup>5</sup> of the organic law).

The activity of a judge shall be assessed based on two main criteria – integrity and competence.

The refusal on appointment on lifetime period can be appealed to the Qualification Chamber of the Supreme Court. The legal grounds for appeal are: a) the evaluator, during the assessment, or a member (members) of the High Council of Justice of Georgia, during the interview, was (were) biased; b) the attitude of the evaluator during the assessment or of a member (members) of the High Council of Justice

of Georgia during the interview was discriminatory; c) the evaluator exceeded his/her powers granted under the legislation of Georgia that violated the rights of the judge to be assessed, or put the independence of the court at risk; d) the information upon which the assessment was based, is substantively wrong, which can be proven by appropriate evidence provided by the judge under evaluation; e) the assessment was not performed in compliance with the procedure determined by the legislation of Georgia, which could have substantively affected the final result.

The High Council of Justice of Georgia analyses the results of all assessments it has performed during the three-year term of office of a judge. To sum up the assessment points gained by a judge with respect to the competence criteria, calculation is made of the total sum of the points gained by the judge in the six evaluations held during three periods of assessment based on the characteristics of the competence criteria, after which a calculation shall be made of the percentage of this sum in relation to the maximum available points determined for the competence criteria.

If, when assessing a judge based on the honesty criteria, more than half of the evaluators consider that the judge fails to meet the honesty criteria, and/or the sum of the points gained by the judge based on competence criteria does not make up 70% of the maximally available points, the Chairperson of the High Council of Justice of Georgia shall issue a legal act on the refusal by the High Council of Justice of Georgia to review the indefinite appointment of the judge to office. This act may be appealed to the High Council of Justice of Georgia.

As regards enforcement, 22 judges on probation have been evaluated. 12 judges have already been evaluated twice, whereas 10 – for the first time.

Despite the intricate system of judicial evaluation before the decision on the life tenure of judges after probationary period is taken, the 3-year probationary period has been severely criticized by non-governmental organisations as it can have negative impact on independence of judges.

It should also be noted that judges who are currently serving their limited 10-year term of office (according to the law as it existed before 2013 constitutional amendment) cannot be appointed for the life tenure once their office expires but will have to complete the 3-year probationary period as well. Such situation can be seen as constituting a great danger to the independence of the judiciary and can become an effective political tool to “clean” judiciary from judges appointed during previous years. Furthermore, it produces inequality between judges appointed for the 3-year period with possibility to be life-time appointed and judges appointed for 10 years. Notably, there is a pending complaint in the Constitutional Court concerning this issue.

The Georgian authorities noted that in 2013 Georgia established a structured, transparent and objective mechanism for the appraisal of judges appointed for the three-year period. The Government’s position is that the decision to institute probationary period should not be revoked without even testing it over a certain period of time. Regarding the judges who are currently serving their limited 10-year term of office, the Georgian authorities believe that they should also fall under the system of probation as far as the mechanism for the appraisal of judges is applicable as well. Therefore, just the fact that the judge has served the 10-year term of office is not enough for testing their ability to be competent, impartial and objective adjudicators.

### ***Assessment and promotion of judges***

In accordance with article 36<sup>3</sup> of the Organic Law, assessment criteria of a judge’s activity are as follows:

1. Integrity criteria: a) personal honesty and professional integrity; b) independence, impartiality and fairness; c) personal and professional conduct; d) personal and professional reputation; e) financial obligations.
2. Competence criteria: a) knowledge of legal norms; b) ability and competence to provide legal arguments; c) writing skills; d) oral communication skills; e) professional qualities, including conduct in a courtroom; f) academic achievements and professional training; g) professional activities.

The requirements for promotion of judges according to the law are the following:

1. The judge of a district (city) court may be appointed in a court of appeals if he/she has served as a judge in the district (city) court for at least two years. The High Council of Justice of Georgia formulates the criteria for promotion of judges.
2. A judge may be promoted earlier than the term determined by the first paragraph of this article, if he/she has made a special contribution to the development of law, formulation of uniform judicial practice and fast and effective administration of justice, also if he/she demonstrated high judicial skills during the exercise of judicial power.
3. Judges shall be assessed against promotion criteria by the High Council of Justice of Georgia.

To this end the High Council of Justice of Georgia adopted amendments to the Rules of High Council of Justice of Georgia and determined the rule of appointment of a judge to another court (the same or upper instance) without competition. The new rule envisages interview with a candidate, where the Council takes into account a number of criteria: performance evaluation of a judge, authority of judge among colleagues, management skills, observation of ethical rules, pedagogical skills and experience etc.

According to TI-Georgia, the process of assessment by the HCoJ is confidential, which makes it impossible to monitor the Council's activities with regard to appointment of judges for a probation period. The Organic Law on General Courts determines the principles, the criteria and procedure for the assessment. Judges are evaluated by the HCoJ members concurrently and independently from each other. The evaluators may not disclose to each other the information and assessment results obtained during the assessment. The final report about assessment of a judge is published and can be obtained on request.

In November 2015, the Coalition for an Independent and Transparent Judiciary negatively assessed the High Council of Justice's decision of 16 November 2015 to appoint seven judges to Tbilisi Appellate Court based on a non-competitive process. The Coalition believed that the process did not promote public trust in the judiciary and raised questions regarding the objectives and motivation of the HCoJ and overall success of the on-going reforms in the judicial system.<sup>23</sup>

The Coalition criticized relevant legal provisions and practice: Article 37 of the Organic Law on Common Courts set very ambiguous rules for appointing judges without a competition. It does not set any procedure or criteria for the non-competitive appointment of judges and provides unlimited discretion to the HCoJ to transfer (promote) judges to a higher level, the same level or lower instance courts without any substantiation. During 2011-2015, the total of 115 judges have been transferred between courts on the basis of this rule. By comparison, there are 230 judges in the system.

The HCoJ has made a decision to promote judges to Tbilisi Appellate Court using Article 37 without preliminarily defining appropriate procedures or criteria. These procedures and criteria were developed by the HCoJ only after the judges wishing to be promoted had already submitted their applications to the HCoJ. The procedure and criteria were set in haste, and the interested parties were deprived of a real opportunity to participate.

Earlier, in October 2015, the Public Defender (Ombudsman) of Georgia negatively evaluated the appointment of judges through accelerated procedures, without competition, by the High Council of Justice. He stated that "there is no impression that the majority of the Council members are interested in the proper identification and assessment of the skills and abilities of the candidates. This is especially worrying when it comes to the promotion of judges to the Court of Appeal."<sup>24</sup>

The Government informed that, according the third wave of the judicial reform, a district (city) court judge can be promoted after 5 years of service, instead of current 2-year term. According to existing legislation, a judge may be promoted earlier than the term determined by the law, if he/she has made a special contribution to the development of law, formulation of uniform judicial practice and fast and effective administration of justice, also if he/she demonstrated high judicial skills during the exercise of judicial power. Under the third wave of the reform, currently existing exceptional grounds to promote a judge earlier than the term determined by law will be revoked.

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<sup>23</sup> See full statement at <http://goo.gl/cljtWA>.

<sup>24</sup> See statements of the Public Defender: <http://goo.gl/GTMwRU>, <http://goo.gl/IGLIUX>.

### ***Administrative positions in court***

In accordance with the Organic law on General Courts, each chamber and the Investigation Panel of the court of appeals shall have a chairperson who is appointed for a term of five years from among members of the relevant chamber and panel and who is discharged by the High Council of Justice of Georgia. Unless a judge is appointed indefinitely, he/she shall be appointed as the chairperson within his/her tenure but for not more than five years. The chairperson and the deputy chairperson of the court of appeals shall be appointed from among chamber and Investigation Panel chairpersons for the term of five years and discharged by the High Council of Justice of Georgia. Unless a judge is appointed indefinitely, he/she shall be appointed as chairperson or deputy chairperson within his/her tenure but for not more than five years”

The chairperson of a district (city) court is appointed from among the judges of the relevant court, and in a court having Panels – from among the chairpersons of such Panels for a term of five years and shall be discharged by the High Council of Justice of Georgia. Unless a judge is appointed indefinitely, he/she shall be appointed as chairperson or deputy chairperson within his/her tenure but for not more than five years.

According to the NGO Human Rights Education and Monitoring Centre, current procedure for appointment of chairpersons gives rise to undue influence on judiciary. In order to ensure impartial procedure and avoid undue influences, chairpersons should be directly elected by judges or should be appointed based on the sequence number.

The Government informed that according to the first version of the draft Organic Law prepared under the third wave of the reform, the chairpersons of the courts would be elected by the judges of the relevant court. But as there was no political consensus on this issue in the Parliament, the draft was amended to maintain the current legislation in terms of appointment of judges to administrative positions.

### ***Assignment of cases among judges***

Currently the distribution of cases to judges of district (city) and appeal courts is regulated by the Law on Distribution of Cases and Assignment of Authorities to Other Judges in General Courts. Cases in courts are distributed to judges in sequential order, while in district (city) courts they are distributed among magistrates based on location of a magistrate. Sequential order means assigning cases to judges based on case receipt order and sequence of judges. Under current legislation, the sequence of judges is defined by the chairperson of the respective court.

The Law of Georgia on Distribution of Cases does not apply to case distribution in the Supreme Court of Georgia. Claims and applications received by the Supreme Court’s Secretariat are recorded through card system and alphabetical order based on judges’ surnames. According to the Regulation of the Supreme Court Office of Georgia, the chancellery of the Supreme Court allocates cases; an allocated case is handed over to the assistant of the judge; the assistant has only a technical function to deliver already distributed case to the judge.

Case allocation and assignment criteria will be more precisely defined after the final adoption of the Third Wave Reform draft law by the Parliament. Article 58<sup>1</sup> of the draft law declares that applications at court system should be allocated randomly, electronically, through automated means. The further regulation on electronic case allocation will be adopted by the High Council of Justice. Article 58a exceptionally allows the chairperson to use the former system of case allocation, by the alphabetical order, to avoid the caseload at the court system. If enacted, the new rule of case distribution will come into force from 1 January 2017. As reported by the authorities, in June 2016 the Minister of Justice set up a working group to introduce the electronic case distribution system in general courts of Georgia. The draft regulation of the HCoJ on electronic case allocation system has been prepared with participation of all the relevant parties.

Case distribution system has been heavily criticized by the Georgian NGOs. According to TI-Georgia, the current system is predictable; the court chairpersons have powers to change the sequence and allocate cases to the judges they want. There have been reports on the abuse of the system by the chairpersons of the courts. The Human Rights Education and Monitoring Centre also noted that the current legislation provides the possibility to distribute cases without observance of sequential order of cases. In courts with more than two judges, it is allowed to distribute cases without sequential order due to accumulation of too



many cases with each of them or impossibility to review case due to any other reason. In such circumstances cases will be distributed by chairperson of respective court or his/her deputy based on chairperson's assignment or /and chairperson of the respective chamber or panel. The legislation does not provide for obligation to substantiate order issuance and decision in the event of allocation without sequential order. In addition, grounds for application of this mechanism are so general that they grant wide discretion to the court chairperson use.

Under the third wave of the judicial reform, based on the initiative of the Chairperson of the Supreme Court, the system of electronic distribution of cases was developed which, relies on random and equal distribution principle.

### ***Training***

Provision of the initial training for judicial candidates is the competence of the High School of Justice. The duration of the initial training is 10 months and is divided into three stages: 1) theoretical training; 2) practical training (internship); and 3) seminars (combination of both).

The 1<sup>st</sup> stage - theoretical part of initial training lasts for 5 months and focuses not only on deepening listeners' knowledge in law, but also equips them with skills necessary for a judge. The 2<sup>nd</sup> stage of the programme includes 4-month-long practical training (internship) at the Tbilisi City Court. During this stage, each Justice Listener is assigned to the sitting judge (so called Internship Coordinator) and according to his/her instructions analyses real-life court cases. The Justice Listeners prepare draft judicial decisions, analyse various court documents, provide their views on existing judicial decisions, etc. The 3<sup>rd</sup> stage of the program involves a 1-month-long seminar. At this stage, the Justice Listeners receive daily assignments of a hypothetical case on which they conduct mock trials and draft judicial decisions.

Teachers of the initial training program are the sitting judges of the Supreme Court and the Appellate Courts of Georgia as well as lawyers, psychologists and linguists. The teaching methods are lectures, discussions, case-studies, mock trials, drafting documents, working with an acting judge on real or theoretical cases, etc.

At the end of the initial training program the Justice Listeners are required to pass the final (graduation) exam, which is assessed by the Special Commission composed of judges, representative of academia nominated by the Ministry of Justice of Georgia, representative of the High Council of Justice and Director of the High School of Justice.

After the final exam, the Directorate of the High School of Justice prepares the Qualification List (the ranking of Justice Listeners), which is submitted to the Independent Board of the High School of Justice for approval. Besides this, the Independent Board elaborates its own narrative evaluation regarding each Justice Listener which, along with the ranking in the Qualification List, serves as a guiding document for the High Council of Justice to appoint the High School of Justice graduate to the judicial position.

### ***Transparency, access of the media***

Courts of General jurisdiction provide information on court hearings on their website and in the entrance of the courts, for the attendance of the public. According to the law, a court shall provide for audio and video recording of a trial. The court shall make audio, video records available to the parties upon request. If the court rules to close the session in part or in whole, the parties shall sign an undertaking of non-disclosure of the audio-, video-records. A public broadcaster may take photos, cinematographic, video and audio recording of a trial, without limitation, except where the court has ruled to close the session in part or in whole. The public broadcaster shall release the record to any other media upon request. If the public broadcaster fails to exercise the above right, such right may be exercised by another general over-the-air broadcaster by submitting a written application to a trial judge before the session. If such an application is submitted by more than one general over-the-air broadcaster, the judge shall select an authorised person by casting lots.

Taking of photos, cinematographic and video recording in a courtroom may be performed from a place designated in advance by the court. Any person present in the courtroom may perform the audio recording of a session from the place designated in advance by the court. In performing such acts, no one shall be permitted to move or make a noise in the courtroom or use lights or any other emission that may interrupt

the normal process of administration of justice. If this rule is violated, the judge (court) may take the actions provided in the criminal procedure and civil procedure legislation of Georgia.

If the session proceeds with participation of jurors, taking of photos, cinematographic, video and audio recording of a session shall be performed without photographing such jurors or disclosing their identity, appearance and/or other personal details.

If the interests of a victim and/or a witness so require, based on a substantiated motion of a party, the court may prohibit the photographing of the victim and/or the witness and the disclosure of their identity, appearance and/or other personal details.

Taking of photos, cinematographic, video and audio recording in a court yard and a building corridor may be performed and aired without any limitation. A person having entered the court building under procedures determined by the court shall not be deprived of his/her personal effects, including a mobile phone, a computer, a photo, cinematographic or video camera and/or an audio recording device.

By its decision of 2014 the High Council of Justice allowed NGO participation in the HCoJ meetings in order to strengthen transparency and increase the effectiveness of the HCoJ.

Currently, there is no central database of court decisions. In accordance with the draft amendments in Organic Law on General Courts, courts will have to ensure the proactive publication of court decisions. To this end the Chief Justice of the Supreme Court, in December 2015, established a working group on accessibility of court decisions to prepare rules on how the court decisions should be published online. The proposed draft of the working group will be discussed by the High Council of Justice which will adopt the final regulation. The group includes judges of the Tbilisi city court, appellate court and Supreme court, staff members of the first, second and the third instance courts, Personal data protection Inspector, NGOs and journalists working on accessibility court decisions.

### ***Ethics***

The rules of conduct or ethical rules that cover judges are the Code of Ethics and the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts of Georgia. The Judicial Ethics Code is adopted by the Conference of Judges of Georgia after an official submission by the High Council of Justice. The current Code was adopted in October 2007.

Judicial Ethics Code consists of 28 articles and sets a detailed regulation of judicial conduct, for example, a judge shall behave in a manner to prevent damage to the prestige of the judiciary and shall avoid any impropriety, both in court and outside the court; a judge shall neither publicly express any negative opinion or view regarding professionalism or personal attributes of other judges and colleagues, nor make any negative comments regarding judicial decisions made by other judges; a judge shall keep independence and impartiality; promote public trust towards judiciary; refrain from *ex parte* communications; fulfil judicial obligations honestly and with due care; respect the court participants; ensure the order in the courtroom, equality of parties and prevent discrimination; respect the court support staff and supervise their fulfilment of professional ethics; avoid disclosure or usage the official information acquired during his tenure in to other persons rights; continuously raise the professionalism and qualification; refrain giving comments about case to the media, (unless they are technical or organizational) or comments detrimental to the impartial consideration of the case; avoid humiliating or outrageous or politically motivated public statements; avoid engagement into activities incompatible with the position of the judge; avoid affiliation into the groups requiring oath of loyalty or questioning the reputation of the judge; refrain from engagement into political activity or expression of political opinions in public; not to engage in strike.

The High Council of Justice of Georgia is in charge of enforcing ethics rules for judges.

The High School of Justice of Georgia provides trainings on issues related to Judicial Ethics for Judicial Candidates (future judges) as well as sitting judges and other court staff under its In-service Training Programmes. The High School of Justice, in cooperation with USAID/JILEP, developed the curriculum on “Foundations of Judicial Ethics” based on which 17 trainings have already been conducted and almost all sitting judges trained. In addition, the High School of Justice provides at least one training on judicial ethics each year under its in-service training programme for judges. The duration of the training is 2 days

and covers the following issues: Global Perspectives on the Judicial Office; Independence; Impartiality and conflicts of interest; Integrity; Equal treatment; Diligence and Competence. Apart from theoretical issues the training also includes group discussion as well as case studies.

### ***Restrictions***

The position of a judge is incompatible with any other occupation and remunerated activity, except for pedagogical and scientific activities; a judge may not be a member of a political party or participate in a political activity. A judge is a subject of the Law of Georgia on Conflict of Interest and Corruption in Public Service, violation of which is one of the grounds for disciplinary proceeding of a judge.

The list of grounds for disciplinary liability of judges and types of a disciplinary misconduct is set by article 2 of the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of General courts of Georgia. Types of a disciplinary misconduct, *inter alia*, shall include: any activity incompatible with the position of a judge or conflicts of interest with duties of a judge, any action inappropriate for a judge that disgraces the reputation of or damages the confidence in a court.

According to the Code of Judicial Ethics a judge may engage in activities not related to his/her official duties providing they do not contradict the principle of independence of the judiciary and the judge, do not endanger authority of the judiciary, do not raise the suspicion of objectiveness and impartiality of a judge and is compatible with the Georgian legislation and the rules of conduct.

A judge cannot be engaged in any activity for pay unless these are activities assigned to him/her by the law, except for teaching, research or creative activities providing the proper performance of judicial duties. A judge is not allowed to participate in any agreement incompatible to his/her official status and duties. A judge is not allowed to join an organization that requires taking an oath and/or endangers reputation of a judge and damages the authority of the judiciary. A judge is not allowed to be engaged in a political activity; s/he should not be a member of any political organization or perform orders of a party or speak on behalf of a political organization.

As for the acceptance of gifts, the issue is regulated by the law on Conflict of Interest and Corruption in Public Service (see text of the law in separate document).

Case: Mr Levan Murusidze, the Secretary of the High Council of Justice who was a judicial candidate himself, attended several interviews with other candidates during selection process carried out by the High Council of Justice. According to the Coalition for an Independent and Transparent Justice, his presence during the interviews created unfair and unequal conditions for the other candidates. This conflict of interests has not been addressed. “This is the violation of the Law of Georgia on “Conflict of Interests and Corruption” that should be observed not only by a Council member with the conflict of interests, but also by the other members of the Council, that were obliged to raise the issue of conflict of interests at the Council session and make decision compliant to the law”.<sup>25</sup> The Georgian authorities noted that according to the Third Wave of the judicial reform, the rules regarding the conflict of interests, particularly, the provisions regulating recusal/self-recusal of the HCoJ members will be added to the Organic Law.

### ***Asset disclosure***

In accordance with Article 5.4 of the Rule of the selection of judicial candidates approved by the Decision of the High Council of Justice of Georgia of 2009 no. 1/308, judicial candidates are obliged to submit a certificate to the High Council of Justice of Georgia on submission of asset declaration to the Public Service Bureau within 7 days from application as a judicial candidate. In addition, in accordance with Article 22 of the Resolution of the Government of Georgia on public officials responsible for asset declaration of 2014, judges of general courts are responsible for submission of asset declarations.

### ***Disciplinary proceedings***

The grounds for initiating disciplinary proceedings against a judge may be:

- a) a complaint or application of any person, other than an anonymous complaint or application;

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<sup>25</sup> Source: <http://goo.gl/p4wb0W>.

- b) an explanatory note of another judge, an employee of a court or an officer of the High Council of Justice of Georgia with regard to committing disciplinary misconduct by a judge;
- c) a notification by an investigative body;
- d) information disseminated by mass media about an act committed by a judge that could be considered to be disciplinary misconduct;
- e) a recommendation of the Disciplinary Board to initiate disciplinary prosecution of a judge based on new grounds.

The complaint (application) referred to in paragraph (a) must comply with the sample form approved by the High Council of Justice of Georgia, and must be drafted in printed form, as a rule. It may also be submitted in electronic form. Investigation of complaints is carried out by the High Council of Justice of Georgia. Disciplinary Proceedings are conducted by the High Council of Justice, Disciplinary Board of General Courts of Georgia, Disciplinary Chamber of the Supreme Court of Georgia.

The High Council of Justice of Georgia is in charge of investigation of disciplinary misconduct committed by judges. Incorrect interpretation of the law based on a judge's personal interpretation shall not constitute disciplinary misconduct and disciplinary liability shall not be imposed. Such act shall not be a subject of criminal or civil liability either.

However, a judge can be held responsible for common “white collar crimes” committed by public officers, such as bribery (art. 338 of criminal code), abuse of power (art. 332), excess of power (art. 333), participation in illegal entrepreneurial activity (art. 337), accepting illegal gift (art. 340), falsification of official records (art. 341), official negligence (art. 342).

Before 2007, Criminal Code of Georgia contained an article called: “Rendering illegal judgment or other type of court ruling”. Even if this provision was rarely applied in practice, it made possible to prosecute a judge for any violation of law in the process of rendering the decision. In 2007, this article was deleted from the Criminal Code, as part of government initiative to reinforce judicial independence.

When it comes to civil liability for official conduct, Article 207 of General Administrative Code and Article 1005 of the Civil Code make such a liability theoretically possible, but so far no judge has been held civilly responsible for damage brought by a civil action.

Complaint procedure: within two months after receiving a complaint, application or other information on committing disciplinary misconduct by a judge, the secretary or other member of the High Council of Justice of Georgia (or an officer of the High Council of Justice by order of the secretary of the High Council of Justice) shall preliminarily examine the validity of the complaint, application or information. Based on the preliminary examination, the Secretary of the High Council of Justice of Georgia shall evaluate the validity of grounds for initiating disciplinary proceedings and decide either to terminate disciplinary proceedings or to take explanations from a judge. Examination of a disciplinary case must be completed within one month since the decision to take explanations from a judge was issued. Following a disciplinary case examination, as a result of examining the validity of the grounds for initiating disciplinary proceedings, the Secretary of the High Council of Justice of Georgia shall apply to the High Council of Justice of Georgia with a proposal to institute disciplinary proceedings or to terminate disciplinary proceedings against a judge. If the decision to institute disciplinary proceeding is made, the High Council of Justice of Georgia shall appoint its representative to the Disciplinary Board of Judges of General courts of Georgia to support the disciplinary accusation at the hearing. Decision on delivering disciplinary penalty/measure is made by the Board (art. 12-17, the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of General courts of Georgia). The decision of Disciplinary Board can be appealed before the Disciplinary Chamber of the Supreme Court of Georgia by High Council of Justice or by the judge concerned.

Decisions of the Disciplinary Board and the Disciplinary Chamber are published on an official website upon their entry into force.

The Georgian authorities informed that, under the third wave of the judicial reform, the procedure for disciplinary proceedings would be refined. In particular, the draft law optimises the stages of the

disciplinary proceedings. A standard of proof will be introduced in disciplinary proceedings. In addition, the draft requires that the Disciplinary Panel bears in mind that removal from the office as a disciplinary sanction is the last resort and will be used only in exceptional cases. The draft further increases the transparency of the disciplinary proceedings by allowing the judge to make the proceeding open to the public upon request. The court chairperson will no longer be authorised to initiate disciplinary proceedings against judges.<sup>26</sup> The function will be transferred to the independent inspector that is a new institution for the court system and is directed to strengthen the principle of equality between the judges and transparency of disciplinary proceedings. The independent inspector will assess the grounds of the disciplinary proceedings after the preliminary examination, though, the final decision concerning the beginning or the termination the disciplinary proceedings will be taken by the High Council of Justice of Georgia.

Regarding the grounds for disciplinary liability of judges, the Government noted that this issue will be a subject of the further judicial reform and will aim to remove any vaguely worded grounds for liability and to better separate judicial ethics and disciplinary liability of judges.

### ***Sanctions***

Sanctions for violating the above-mentioned restrictions by judges are formulated as disciplinary penalties and disciplinary measures. Disciplinary penalties include: a) rebuke; b) reprimand; c) severe reprimand; d) dismissal of a judge from the position; e) elimination of a judge from the reserve list of judges of General Courts.

Disciplinary measures include: a) giving a private recommendation letter to a judge; b) dismissal of a chairperson, first deputy or deputy chairperson of a court, a chairperson of a judicial panel or chamber.

Disciplinary proceedings against a judge may be initiated by:

- a) the Chairperson (or the acting chairperson) of the Supreme Court of Georgia – against judges of the Supreme Court of Georgia, the Court of Appeals and district (city) courts;
- b) the Chairperson (or the acting chairperson) of the Court of Appeals – against judges of a respective Court of Appeals, as well as against judges of the district (city) courts within the jurisdiction of the Court of Appeals;
- c) the High Council of Justice of Georgia – against all judges of General Courts of Georgia

For the past three years there has been no cases of application of relevant sanctions to judges.

The NGOs consider that the disciplinary proceedings against judges are not functioning properly, that grounds for disciplinary sanctions are vague and lack predictability. According to them, in 2013 there was only one case when a private recommendation letter was given to a judge, in 2014 and 2015 no disciplinary sanctions or measures were used.

### ***Dismissal***

The previous IAP monitoring report recommended Georgia to review grounds for dismissal of judges. No measures have been taken to implement this recommendation since September 2013.

Legal grounds for dismissal of judges are set by the Organic Law on General Courts (Article 43): a) a personal application; b) committing disciplinary misconduct; c) holding any office or engaging in any activity incompatible with the status of a judge; d) being recognised by court as having limited

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<sup>26</sup> In its 2014 opinion the Venice Commission welcomed the Georgian authorities' intention to exclude the power of court chairpersons initiate disciplinary proceedings against judges of general courts and identify the High Council of Justice as the unique body competent to initiate disciplinary proceedings against judges. Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts of Georgia, October 2014, available at <http://goo.gl/V4bxmF>.

competence or as a beneficiary of support, unless otherwise determined under court decision; e) termination of Georgian citizenship; f) entry into force of a final judgment of conviction against him/her; g) reaching the age of 65; h) committing a corruption offence as determined in Article 20(6) of the Law of Georgia on Conflict of Interests and Corruption in Public Service; i) death; j) liquidation of the court, redundancy of the judge's office; k) appointment (election) to another court; l) appointment (election) to another agency; m) expiration of tenure.

The recommendation of the Disciplinary Panel shall be necessary for a case under paragraph (b). The High Council of Justice of Georgia may dismiss a judge if he/she has been unable to discharge his/her duty for more than four months in the last 12 months and there is a relevant medical certificate showing that he/she won't be able to discharge his/her duties in the future, either.

**Table 3. Statistics on dismissals of judges**

Grounds	2013	2014	2015
Expiration of tenure	12	3	44
Struck from the reserve list based on personal application	2	-	-
Struck from the reserve list based on expiration of tenure	12	-	12
Appointment (election) to another agency	-	1	2

Source: Information provided by the Georgian authorities.

### **Remuneration**

Monthly salary for judges of the first instance court is GEL 4000, for judges of the appellate court – GEL 5000 and for judges of the Supreme Court – GEL 6000. Salary rates for judges are determined in the Law on the Compensation of Judges of General Courts of Georgia.

**Table 4. Gross annual salary of general court judges in Georgia**

	Gross annual salary in GEL
Chairperson of the Supreme Court	84,000
First Deputy Chairperson of the Supreme Court	78,000
Deputy Chairperson of the Supreme Court	75,600
Supreme Court judge	72,000
Chairman of the Court of Appeal	69,600
Deputy Chairman of the Court of Appeal	67,200
Head of Chamber of the Court of Appeal	63,600
Judge of the Court of Appeal	60,000
Chairman of the regional (city) court	55,200
Chairman of the Collegium of regional (city) court	51,600
Regional (city) court judge, magistrate judge	48,000
Judge in the reserve list	6m000

Source: Information provided by the Georgian authorities. Note: GEL 1 = EUR 0.38.

The High Council of Justice decides on the increments for judges of a court, or for individual judges. Salary increments of judges of the Supreme Court are defined by the Plenum of the Supreme Court. All salary increments are publicly available on High Council of Justice webpage.

Social guarantees and benefits for the Constitutional Court judges are regulated by the Law of Georgia on Social Protection and Guarantees of Members of Constitutional Court. Social guarantees and benefits for judges of general courts are regulated by the Organic Law on General Courts. According to Article 68(3) of the Organic Law, the State provides necessary living space or pay necessary housing expenses for a judge who has no living accommodation in a self-governing city (municipality) where s/he has to exercise judicial powers. The decision to provide the chairperson and members of the Supreme Court with living accommodations is made by the chairperson of the Supreme Court. The decision on providing judges of courts of appeals and district (city) courts with living accommodations is made by the High Council of Justice.

According to Article 12 of the Law of Georgia on State Compensation and State Academic Scholarship, a retired judge receives a compensation of 30-60 per cent (depending on the position of the judge) of retirement wage multiplied by number of years served as a judge, added to the State retirement wage.

If a judge dies while he is serving as a judge, his/her family is awarded a lump-sum compensation of GEL 25 000 from the State Budget of Georgia. If while serving as a judge a judge suffers severe injury, a bodily injury or any other aggravation of health as a result of which s/he is recognised as a person with a disability status, s/he will be awarded a lump-sum compensation of GEL 10 000 from the State Budget of Georgia. Insurance on a judge's life and health is mandatory.

NGOs criticised the procedure and grounds for payment of salary increments as being vague.

### ***Measures to strengthen integrity***

According to the Georgia authorities, the following measures should be taken to further strengthen integrity of Judges: training programs for increasing the number of well-founded judgements, which will raise the public trust of the judiciary; providing Human Rights based trainings and narrow specialization in civil and criminal matters, for example in anti-discrimination and gender equality law, protection of children's rights, etc.; implementation of disciplinary rules and detailed regulation of grounds of disciplinary liability, adoption of new ethical code and further development of electronic case management system at the general courts.

According to TI-Georgia, the main problem with ensuring integrity of judges is a weak system of judicial accountability. The disciplinary liability system at the institutional and legislative level is unstable, which results in inconsistency and biased practices towards judges. Another NGO, the Human Rights Education and Monitoring Centre, noted that the main problems with ensuring integrity of judges are: 1) a 3-year probationary period which has a negative impact on the judicial independence; 2) vague and unpredictable disciplinary proceedings and insufficient guarantees for judges in this process; 3) practice of re-appointment of a judge to another court without competition.

### **Conclusions**

Integrity and independence of the judiciary has remained one of the main challenges in the development of democratic governance and the rule of law in Georgia. Finding a right balance between independence and accountability of judges is a difficult task and Georgia is still struggling with it.

As with other institutions in Georgia, observers link reforms and the level of integrity in the judiciary with the governing coalitions. Before 2012, despite the reforms carried out by the President Saakashvili administration the public trust in the judiciary remained low. It was widely believed that the judiciary was clean in terms of bribery but at the same time was susceptible to political influence. It had also been heavily influenced by the prosecution service, which itself was not independent from the ruling politicians. Judges granted motions by the prosecution in almost all cases concerning plea agreements, pre-trial detention, etc. According to NGOs, about 98-99% of cases resulted in guilty verdicts and out of them about 80% were concluded through a plea agreement. Also in 85% of administrative appeals courts upheld position of the public authorities.<sup>27</sup>

There were structural issues too. For example, the process of judicial appointments was non-transparent; legislation in force allowed arbitrary use of disciplinary proceedings against judges; excessive powers were concentrated in the hands of the Supreme Court Chairperson; the High Council of Justice's composition was not line with international standards and was not politically neutral; the HCoJ's work was not transparent, its decisions lacked justification, etc.

The new government coalition that came into power in 2012 (the Georgian Dream coalition) made judicial and criminal justice system reforms one of its priorities. In few years several waves of the reform have been implemented and another one is pending (see description above in the chapter). These reforms are commendable and bring Georgian law and practice closer to the international standards. They have already resulted in the better statistics in terms administrative decisions overturned on appeal, number of guilty verdicts and endorsed plea bargains. The court proceedings also became more open, as the media and other persons were allowed to record court hearings

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<sup>27</sup> See, inter alia, Two Years In Government: Georgian Dream's Performance Review, May 2015, pages 19-20, available at <http://goo.gl/JiVXmE>.

At the same time the reforms have not resulted yet in irreversible changes in terms of integrity and independence of the judiciary. The monitoring team heard from several sources an opinion that the judiciary that was allegedly compliant to the previous Saakashvili government first became independent after the administration changes, but then found a tacit agreement with the new Government. The latter, in return, abandoned its initial plans to dismiss judges in bulk based on alleged miscarriages of justice.<sup>28</sup> Such allegations, if true, would confirm that the judiciary remains under political influence, even if not as tight as before. Also the monitoring team has heard allegations from several business sector representatives that there are cases of alleged bribery of judges, which did not exist before, in particular in cases between private commercial entities. This means that the accountability mechanism is also not functioning well, which is confirmed by the statistics that shows lack of corruption prosecutions against judges.

Despite recent positive reforms a number of structural deficiencies are still in place and should be addressed.

One of the issues criticised, which the previous monitoring report, as well as the civil society and the Venice Commission criticise, is the introduction of a probationary period for judges based on the 2013 constitutional amendment. While it is regrettable that such probationary period was introduced after all, the monitoring team welcomes adoption of detailed regulations in the law on the evaluation of temporary judges and clear criteria for not confirming their life tenure. Application of these rules should be closely monitored to see if the mechanism is properly functioning and whether its benefits outweigh the risk such probationary period creates for judicial independence. In case of negative conclusions, the law should be amended to remove the probationary judicial office. It is also important to follow what happens with the judges whose 10-year term of office expires within the next few months and whether they would be re-appointed and based on what procedure.

It is also of great concern, in the opinion of the monitoring experts that judges who were appointed under the previous legal framework and who are now serving their 10-year term office cannot be appointed to life tenure but will have to go through another competition and the 3-year probationary period. This could undermine their independence and allow removal of judges from office for political reasons. Limited tenure of judges of the Supreme Court (10 years) has been preserved in the Constitution and this affects their independence as well.

Another issue to be addressed is further increasing transparency of the High Council of Justice and ensuring that all of its decisions include justification. It would be beneficial to replace current secret vote in the HCoJ with an open one. The monitoring team is also concerned by the fact that the Supreme Court Chairperson is *ex officio* the chair of the High Council of Justice, which may create undue influence on other judicial members of the HCoJ. Such arrangement is fixed in the Constitution and would be difficult to amend, it is therefore important to monitor operation of the HCoJ and the role of the Supreme Court Chairperson in its work. The fact that civil society representatives also sit on the HCoJ is especially important in this regard. Membership of the Chief Justice in the HCoJ also results in a perceived conflict of interests when judicial candidates appeal HCoJ decisions in the special body established at the Supreme Court (Qualification Chamber comprising three SC Justices) and when Supreme Court judges have to decide on the cases considered by the body (HCoJ) where their Chief Justice is a chair.

It is clear that too many issues are delegated to the regulation by the HCoJ, which has created mistrust in the HCoJ work and allegations of abuse of authorities. The procedure for selection, appointment, promotion, transfer and dismissal of judges should be regulated in detail in law and not secondary legislation. The law should establish a merit-based and competitive procedure for promotion of judges without any exceptions. The HCoJ should also take additional measures to strengthen prevention and resolution of conflicts of interests in its activity, in particular by regulating relevant issues in its rules of the procedure and conducting training for the HCoJ members and staff.

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<sup>28</sup> See Third Round Monitoring Report on Georgia by the OECD/ACN for the description of plans to institute a Temporary State Commission to review miscarriages of justice, available at <http://goo.gl/2M6E6K>.



Two important issues to resolve during the next stage of the judicial reform are changing the procedure for appointing court chairpersons and case distribution among judges. It is unfortunate that the original proposal to elect court chairpersons by the judges of the respective court was not supported in the parliament. As to the case allocation, the monitoring team welcomes the planned introduction of the random case assignment through automated means. It is, however, important to remember that automated systems can also be manipulated and the future system should include safeguards against illegal interference and manipulation. It is also recommended that the protocol of automated case assignment is made public and available to the parties of the proceedings.

The disciplinary proceedings against judges should be streamlined and provide additional guarantee to protect the rights of the judges. Court chairpersons should not have a role in such proceedings. The function of disciplinary investigation and presenting the case to the HCoJ should be assigned to a separate unit (e.g. disciplinary inspectors as proposed by the pending draft judicial reform). Such unit should have sufficient powers and autonomy to conduct effective investigations. It is also important to review grounds for disciplinary liability to remove any vague provisions and ensure legal certainty in this regard as well.

To strengthen judicial independence, the judicial remuneration should not include any discretionary payments (e.g. bonuses). The salary rates can be raised in the law if not deemed sufficient. Only objective increments could be allowed (e.g. based on the number of years served, holding of an administrative position, etc.).

*Georgia is partially compliant with the previous recommendation.*

#### **New recommendation 12**

- 1. Increase transparency of the High Council of Justice activities, ensure that all Council's decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.**
- 2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.**
- 3. Introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.**
- 4. Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.**
- 5. Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.**
- 6. Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.**
- 7. Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.**

## **Prosecution service**

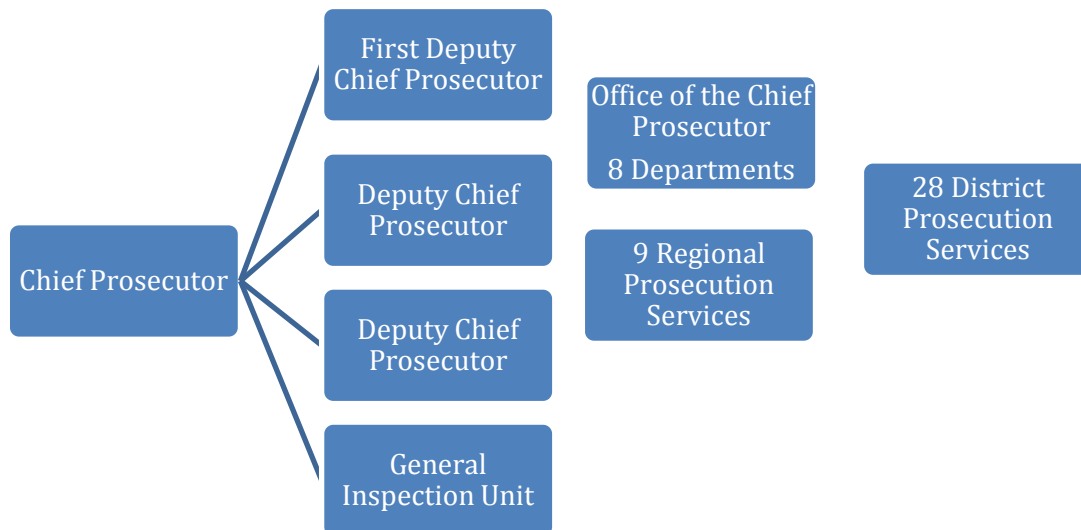
### **Previous recommendation 7**

**In order to ensure that the prosecution service can effectively and autonomously investigate and prosecute corruption cases, review procedures for appointment and dismissal of the Chief Prosecutor, as well as procedures for disciplining and dismissal of other prosecutors.**

The Prosecution Service of Georgia (PSG) is placed under the Ministry of Justice (MoJ). According to the Georgian authorities, the legislation ensures the autonomy of the PSG from the Ministry in individual investigations and prosecutions. The PSG proposes and the Minister of Justice approves criminal justice

policy guidelines. There are overall 447 prosecutors and 95 investigators in the Prosecution Service of Georgia.

Figure 7. Basic organisational chart of the PSG



The following PSG departments and offices are involved in the anti-corruption work:

- Anti-Corruption Unit, Office of the Chief Prosecutor: The most serious corruption cases.
- 8 Regional Prosecution Services: Less serious corruption crimes.
- Department for National Security and Public Corruption Crimes: Prosecution of corruption in the public sector.
- Financial Crimes Department: Prosecution of corruption in the private sector.

PSG has the following key functions: prosecution; supervision of criminal investigations; conducting its own investigations (crimes committed by law-enforcement officers; money laundering; serious corruption cases; corruption cases detected by PSG; or where conflicts of interests or other serious reasons prevent competent investigation agencies ensure independent investigations on their own); coordination in the implementation of criminal justice policy.

### ***Overview of recent reforms***

According to information provided by the Georgian government, to achieve greater independence and autonomy of the PSG, over the past three years, the Government of Georgia carried out two important reforms. In May 2013, the Parliament of Georgia adopted amendments to the Law on PSG, which entered into force in June 2013. According to the amendments, all prosecutorial powers vested in the Minister of Justice have been transferred to the Chief Prosecutor of Georgia and the power of the Minister of Justice to intervene in individual cases has been abolished.

In 2015, the parliament adopted new provisions on the appointment and dismissal of the Chief Prosecutor. The relevant amendments to the Law on PSG were adopted and entered into force in September 2015.

In addition, in January 2016, the Chief Prosecutor established the Consultation Council to deal with certain governance issues well as incentives, promotion and disciplinary liability of the PSG employees. In February 2016, the Consultation Council held its first meeting. These actions were taken in part to address the recommendations of international experts who reviewed the prosecutorial function at Georgia's invitation.

In its Joint Opinion in October 2015,<sup>29</sup> the Venice Commission, OSCE/ODIHR and the Consultative Council of European Prosecutors considered that the reform of the Prosecutor's Office in Georgia was moving in the right direction. However, it noted that the proposed reform did not yet fully achieve the stated goal of depoliticising the office of the Chief Prosecutor. To ensure this, the following key recommendations were made:

A. Nominations to the position of the Chief Prosecutor should be based on clear qualification/experience criteria set out in the Draft Law; it would be preferable if the Minister of Justice, following formal consultations with independent external actors, would propose several candidates to the Prosecutorial Council for approval;

B. Members of the Prosecutorial Council elected by the Parliament should be selected in a more transparent manner. One option is for certain office holders to gain membership of the Council automatically, *ex officio*. Another is to give the nominating power to one or several bodies outside of the Ministry of Justice or the Prosecutorial Council. The members elected by the Parliament should include either members elected by a qualified majority of the Parliament, or members appointed by the opposition (quota system). It is advisable to have the Chairperson of the Prosecutorial Council elected by the Council itself, instead of having the Minister of Justice automatically hold this position;

C. The power to nominate candidates for the prosecutorial component of the Prosecutorial Council should not belong exclusively to top officials of the prosecutorial system; instead, it is advisable to ensure that nominations are done either through an open selection procedure, or via some form of peer-to-peer nominations by prosecutors of all levels;

D. The Draft Law must include the necessary guarantees for the independence of the Prosecutorial Council; for example, it is recommended to provide the Prosecutorial Council with the power to decide on the early removal of its prosecutorial members;

E. The Draft Law should clearly define the status and any coercive powers that the Special Prosecutor has, and how the "investigation" conducted by him/her relates to any possible criminal proceedings which may be opened against the Chief Prosecutor under the Criminal Procedure Code; the appointment of the Special Prosecutor and the approval of his/her report should require a simple majority of votes of the Council, and the consent by the Government should not be needed to submit that report to the Parliament.

### ***Independence***

According to the Georgian Government replies, the legislation of Georgia safeguards the independence of the PSG by setting a clear mechanism for appointment, dismissal, promotion of the Chief Prosecutor and subordinated prosecutors, prohibiting the undue interference in the activities of PSG employees, protecting them and providing guarantees for proper logistic and financial support. Key legislative provisions and mechanisms under the PSG Law providing the above-mentioned safeguards are as follows:

- Any interference in the activity of PSG employee by officials, public and political parties, their representatives or other persons having no legal authorization to interfere in the activity of an employee of PSG or to exert any kind of influence on him/her, also to prevent a PSG employee from performing his/her activity is punishable by law (Article 36 of the PSG Law).
- PSG employees may not be removed or dismissed from the position held except for the cases envisaged by the PSG Law (Article 35 of the PSG Law).
- Hindering an employee of PSG from performing his/her official duties, degrading, threatening, resisting, or using violence against him/her is punishable by law (Article 35 of the PSG Law).

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<sup>29</sup> See Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), available at <http://goo.gl/UfW3IJ>.

- The Minister of Justice is prohibited from interfering in the actions performed and decisions made by the PSG concerning the investigation and prosecution of individual criminal cases (Article 8 of the PSG Law).
- New rules for appointment and dismissal of the Chief Prosecutor are included in PSG Law following its recent amendments. See the details below.
- The Consultation Council was established to deal with issues of PSG development as well as incentives, promotion and disciplinary liability of PSG employees. See the details below.
- The PSG is financed with appropriations allocated from the State Budget. Expenditures of PSG must be provided for in the State Budget using a separate organisational code. Reduction of sums allocated in the State Budget for PSG, compared to the budgetary funds of the previous year, may take place only by the consent of the Minister of Justice.
- The state provides the logistical support to PSG, including land, buildings, premises and equipment.

According to NGOs, despite recent changes, institutional independence of the prosecutor's office needs to be increased, it should be more distanced from the executive branch, and individual independence of prosecutors should be enhanced as well.

### **Recruitment**

The procedures for recruitment and appointment of prosecutors are governed by the Rule for Undergoing an Internship Program at the Agencies of the Prosecution Service of Georgia, adopted by the Decree of the Minister of Justice. The applicable procedures and criteria provided by the above-mentioned Rule are as follows:

The Commission for Undergoing an Internship Program at the Agencies of the Prosecution Service of Georgia (hereinafter – the Commission) is the body in charge of recruiting interns and supervising the internship process. Composition of the Commission is defined by the Chief Prosecutor of Georgia.

The Commission is comprised of the Chairman, Deputy Chairman and Members. Officials of the Ministry of Justice of Georgia (including the employees of PSG), non-governmental and other public organizations and other individuals may also be the members of the Commission.

Interns are recruited in PSG through a competitive process. Persons with higher education in the field of law and final-year university students are eligible for the contest.

The Secretariat of the Commission (hereinafter – the Secretariat) ensures the logistical support of the internship competition, *inter alia* receives the applications of the candidates, checks the provided documents and submits them to the Commission. The Chairman of the Commission determines the composition of the Secretariat as well as appoints its head.

In order to participate in the internship competition, the internship candidate must submit a relevant e-application and the documents required for the contest, *inter alia* copy of university diploma and transcript or a reference confirming the status of BA final-year student; certificate of health; certificate of drug test; copy of the certificate of the qualification exam for the employees of the prosecutor, certificate of judges' qualification exam or the bar exam certificate etc.

The internship competition may be conducted in several stages, including written exam (test and/or questionnaire) and verbal interview. Chief Prosecutor decides the number and type of the stages. The Chief Prosecutor also defines contest programme and the minimal threshold for test marks.

The competition process and related information is to be communicated to the public through media.

The date and time of the competition as well as the limit on the number of interns is defined by the Chief Prosecutor. The first stage of the contest is held after at least three weeks from the date of announcement of the contest, and the second stage – within a reasonable term after the completion of the first stage. The Commission administers the test process.

All internship candidates must be notified about the place and time of each stage of the contest in reasonable time. After the results of the written contest (test) are announced, the Commission reviews the claims and complaints of the internship candidates and notifies them the decision taken.

Interviews are to be held in a reasonable time after the finalization of previous stages of the contest with the view to assess the knowledge of the internship candidates and their fitness to the respective position.

According to the results of the competition, the Chairman of the Commission submits to the Chief Prosecutor the data of the internship candidates, which successfully passed all stages of the contest.

Following that, internship candidates attend training organized by the Human Resources Management and Development Department of the Office of the Chief Prosecutor of Georgia. Results of the training are taken into account at the time of appointing the intern at the PSG agencies.

Upon the recommendation of the Chairman of the Commission, pursuant to the needs of the agency and predefined limits, the Chief Prosecutor appoints the internship candidates nominated by the Commission as interns at the PSG agencies.

The Chief Prosecutor assigns as an internship manager the head of the agency (structural unit) of PSG, where the intern undergoes the internship. The internship manager exercises direct internship supervision and ensures the professional development of the intern. Upon the recommendation of the Human Resources Management and Development Department of PSG, the internship manager defines the type of work for the intern. The manager periodically provides intern with study topics, assigns tasks and controls the fulfilment of the work carried out by him/her.

The internship manager provides information concerning the results of the internship (assessment of the intern) to the Human Resources Management and Development Department of PSG once in each 3 months. The Head of the Human Resources Management and Development Department discusses the assessment of the intern provided by the internship manager in participation of the intern concerned.

The general internship term at PSG is one year. On special occasions, upon the recommendation of the Chairman of the Commission, the Chief Prosecutor may appoint the intern to the vacant position at PSG before the expiry of his/her internship term.

An intern who fails to meet the requirements established for an intern during his/her internship, may be removed from the internship based on the assessment of the internship manager and/or relevant testing, under the Order of the Chief Prosecutor. Interns who are being considered for removal is authorized to submit his/her opinion concerning his/her early removal from internship to the Human Resources Management and Development Department.

The internship is coordinated by the Human Resources Management and Development Department. After the manager of the internship presents the evaluation form of an intern, the Head of the Human Resources Management and Development Department submits the relevant data on fulfilment of the rights and obligations of the intern before the Head of the Commission and the Chief Prosecutor.

For the purpose of verifying the theoretical and practical knowledge in the course of internship, Human Resources Management and Development Department may organize trainings and relevant testing for interns. Final testing may be organized within reasonable terms for interns before the expiration of the internship term.

After expiration of the internship term, in consideration of the results gained through the internship period, the Commission interviews and evaluates interns.

The Commission may take one of the following decisions based on the results of final evaluation of interns:

- A person, with his/her qualification and skills gained through the internship term meets the requirements set for the PSG employees;
- A person, with his/her qualification and skills gained through the internship term does not meet the requirements set for the PSG employees.

The Head of the Commission submits to the Chief Prosecutor information on the persons who successfully underwent the internship. These individuals are appointed on the relevant vacant positions (if such exist) by the Chief Prosecutor.

### ***Tenure***

All prosecutors, except for the Chief Prosecutor, are appointed for a lifetime period. The Chief Prosecutor is elected for 6 years. The PSG Law ensures the secure tenure for prosecutors by clearly defining the grounds for dismissal of prosecutors as well as the mechanism for consideration of the disciplinary matters, including dismissal and related procedures for appeal.

According to the PSG Law the grounds for dismissal of prosecutors are as follows:

- his/her personal application;
- impairment of health, disability or chronic disease preventing him/her from performing his/her official duties;
- non-performance or improper performance of official duties;
- inaptitude to the position held;
- gross or systematic misconduct at work;
- staff reduction;
- being elected or appointed to legislative, executive, judicial, or local self-government bodies or in any other case of incompatibility to hold the position;
- due to breaking the oath, disclosing a professional secret or committing any other act unsuitable to an employee of the Prosecutor's Office;
- valid guilty verdict;
- prior criminal record;
- suffering from alcohol or narcotic drug addiction, toxic substance abuse, mental or other severe chronic disease;
- recognised by court as having limited legal capacity or as a beneficiary of support, unless otherwise determined under court decision;
- loss of the Georgian citizenship;
- due to the violation of the requirements for the appointment in PSG;
- reaching of the retirement age (60 years for women and 65 years for men).

### ***Consultation Council***

The Chief Prosecutor by his order of January 2016 established the Consultation Council to deal with issues of Prosecution Service development as well as incentives, promotion and disciplinary liability of PSG employees. It has no role in the selection of prosecutors which is handled by the Commission whose members are appointed by the Chief Prosecutor. It is also different from the Prosecutorial Council whose role is limited to issues involving the appointment, tenure and discipline of the Chief Prosecutor. In February 2016, the Consultation Council held its first meeting. The Council is not mentioned in the Law on the Prosecution Service, it was set up based on the decision of the Chief Prosecutor.

On 19 February 2016 the composition of the Consultation Council was changed. Currently the Consultation Council is composed of 16 members: Chief Prosecutor, his 3 deputies, 8 members of the Prosecutorial Council elected by prosecutors and investigators of the PSG sitting at the Prosecutors' Conference; the head of the General Inspection Unit of PSG; the head of the Human Resources Management and Development Department of PSG; the head of the Department for Supervision over Prosecutorial Activities and Strategic Development of PSG and the head of the Legal Unit of the Office of

the Chief Prosecutor of Georgia. While 8 members of the Prosecutorial Council who were elected by Prosecutors' Conference were also appointed by the Chief Prosecutor to sit on the Consultation Council, this is not provided in any law. The Chief Prosecutor can replace these members when he decides.

The Georgian authorities noted in this regard that the rationale behind the composition of the Consultation Council is based not on personalities but rather on the specific positions held by its members within the Prosecution Service:

- Out of the total 16 members of the Consultation Council 8 members are investigators and prosecutors elected by the Conference of Prosecutors to the Prosecutorial Council based on their reputation and skills. The fact that 8 peer prosecutors and investigators, who participate in consideration of disciplinary and other matters, enjoy high degree of trust among the colleagues provides additional safeguard and credibility to the activities of the Consultation Council.
- One member of the Council is the head of the General Inspection Unit of PSG. This unit is in charge of conducting disciplinary inquiries and drawing the conclusions about the results. Respectively, the head of the above-mentioned unit contributes to the activities of the Council by providing information on carried out inquiries and their outcomes.
- One member of the Council is the head of the Legal Unit of PSG. This unit is in charge of labour litigations in court on behalf of PSG. The head of the Legal Unit contributes to the discussions hold in the Consultation Council with his/her expertise in the area of labour litigation.
- One member of the Council is the head of the Human Resources Management and Development Department of PSG (HR Department). This department keeps and administers personal files of the PSG Employees. Respectively, the head of the HR Department provides the Council with general characteristics of the person under discussion, including information on any previous disciplinary records, compliance with internal rules and achievements.
- One member of the Council is the head of the Department for Supervision over Prosecutorial Activities and Strategic Development of PSG. This department monitors the workload and quality of work undertaken by the PSG employees. Thus, the head of the above-mentioned department contributes to the discussions in the Consultation Council by providing information on the workload of the employee under discussion, type of work carried out and its quality.
- The remaining four places in the Consultation Council are held by the Chief Prosecutor and his three deputies. Their participation in the activities of Consultation Council is particularly important considering their high role in the overall management of the Prosecution Service and ultimate responsibly in ensuring its proper functioning.

The monitoring team has no doubt that the current composition of the Consultation Council is adequate to its purposes and commends the Prosecutor General, in particular, for including in the Council prosecutors and investigators selected by the Conference of Prosecutors to the Prosecutorial Council. The concern rather lies with the fact that composition of the Consultative Council is within full discretion of the Prosecutor General and can be changed any moment. Georgian authorities believe that such composition of the Consultation Council minimizes the risk for any subjective replacement of its members.

### ***Chief Prosecutor***

To ensure better independence and autonomy of the PSG, the Prosecution Service reform was carried out in 2015. The relevant amendments to the PSG Law entered into force in September 2015. The new rules for appointment and dismissal of the Chief Prosecutor as well as three new institutions were introduced: the Prosecutorial Council, the Conference of Prosecutors and the Special (ad hoc) Prosecutor.

- Appointment of the Chief Prosecutor

The Chief Prosecutor is elected for six years term. No person may be elected as the Chief Prosecutor for a second consecutive term. To be eligible for appointment as the Chief Prosecutor, a person must be a citizen of Georgia, must have no criminal record and must have at least 5 years of working experience as a judge, a prosecutor, or a criminal defence attorney, or must be a recognized expert in criminal law with at

least 10 years of working experience as a legal professional. The candidate should be a person with high reputation due to his/her moral and professional qualities.

The appointment procedure consists of the following four phases:

1. The Minister of Justice consults with representatives of academia, civil society and law experts and based on those consultations proposes at least three candidates to the Prosecutorial Council. At least one of the three candidates must be a representative of a different gender. The decision of the Minister of Justice on selecting candidates must be a reasoned one.
2. The Prosecutorial Council described below holds separate voting procedures by secret ballot for the three candidates. To be further considered, the candidates must be the one receiving the most votes but the candidate must have received the support of not less than 2/3 of all members. If all the candidates fail to receive the required number of votes, the two candidates receiving the majority of the votes are to be nominated for the second round. If none of the candidates receive required votes in the second round then within one week the Minister of Justice nominates different candidates in the same manner.
3. The Minister of Justice, on behalf of the Prosecutorial Council, presents the successful candidate to the Government of Georgia to obtain the Government's consent. If the Government of Georgia does not give its consent the Minister of Justice presents to the Government another candidate approved by the Prosecutorial Council. If the Government of Georgia consents to the presented candidate he/she is presented to the Parliament for election.
4. The Parliament elects the Chief Prosecutor of Georgia by secret ballot with the majority of its members. If the Parliament does not support the candidate presented by the Government, the above procedures are repeated.

The new procedure has already been applied in practice. As described by the Georgian authorities, in October 2015, the Minister of Justice commenced intensive consultations with academic circles, civil society and legal experts to select candidates for the position of the Chief Prosecutor; they lasted for one month. Based on the consultations, the Minister selected and, in November 2015, presented for approval to the Prosecutorial Council three (two male and one female) candidates for the Chief Prosecutor's position. On 19 November 2015 the Prosecutorial Council at its meeting for the first time elected and approved the candidate for the position of the Chief Prosecutor. Despite the criticism from NGOs, the Government is confident that the whole process was transparent and in strict compliance with newly adopted rules of procedures. The records of the proceedings were posted on the MoJ/PC web-sites. Following the approval of the candidate by the Prosecutorial Council, the Minister of Justice presented the candidate to the Government of Georgia; the latter gave its consent to the approved candidate and presented him to the Parliament of Georgia for election. On 27 November 2015, the Parliament of Georgia elected the Chief Prosecutor of Georgia.

#### - Prosecutorial Council

As part of the reforms, a Prosecutorial Council has been created to participate in certain issues involving the Chief Prosecutor. It consists of fifteen members, including the Minister of Justice as a chairperson of the Council, eight prosecutors elected by the conference of all prosecutors (of whom at least 1/4 shall be of a different sex), two members of the Parliament (one from the parliamentary majority to be elected by the parliamentary majority and another from the members that do not belong to the parliamentary majority to be elected by such members), two judges of common courts to be elected by the High Council of Justice, and two members of the Prosecutorial Council who are elected by the Parliament from the candidates nominated by the higher educational institutions and civil society organizations.

Neither the Minister of Justice nor the Council have prosecutorial powers under this model.

#### - Special (ad hoc) Prosecutor

If there is a sufficient ground to believe that the Chief Prosecutor has committed a crime, the Prosecutorial Council, at the initiative of one or more Council members discusses the issue of appointing a special (ad hoc) prosecutor. The Prosecutorial Council may also discuss the appropriateness of the appointment of a special (ad hoc) prosecutor upon the petition of at least one-third of the full membership of the Parliament.



Any member of the Prosecutorial Council is entitled to nominate a candidate for the special (ad hoc) prosecutor. The Prosecutorial Council decides upon the appointment of an individual as a special (ad hoc) prosecutor by the majority of all of its members. If the Prosecutorial Council by the majority of its members considers that there is no sufficient ground to believe that the Chief Prosecutor has committed a crime, it shall refuse to appoint a special (ad hoc) prosecutor. The refusal must be justified. A person selected as a special (*ad hoc*) prosecutor must be a person with no criminal record, a former judge, former prosecutor, or a criminal defence attorney with higher legal education and with at least 5 years of relevant working experience. A candidate for the special (*ad hoc*) prosecutor may also be selected from the recognized criminal law experts and/or civil society organisations having at least 10 years of working experience as a legal professional. The candidate should have strong reputation due to his/her moral and professional qualities. A special (*ad hoc*) prosecutor's term of office shall be terminated upon the completion of his/her mission by a decision of the Prosecutorial Council.

- Procedures for removal from office of the Chief Prosecutor

Following the appointment of the special (ad hoc) prosecutor, he/she prepares a report as to whether or not there is a probable cause to believe that the Chief Prosecutor has committed a crime and submits it to the Prosecutorial Council. If the special (ad hoc) prosecutor finds that there is a probable cause that the Chief Prosecutor has committed a crime, the Prosecutorial Council, by two-thirds of its members approves the report of the special (ad hoc) prosecutor, following which it applies to the Parliament of Georgia to remove the Chief Prosecutor from his/her office. If the Prosecutorial Council, by two-thirds majority, refuses to approve the report, the matter is deemed to be removed from the Council's agenda; but if the report of the special (ad hoc) prosecutor does not confirm the probable cause that the Chief Prosecutor committed a crime, the Prosecutorial Council is still authorized, by two-thirds majority, to turn down the report. In such a case it is assumed that the probable cause to believe that the Chief Prosecutor has committed a crime exists and the Prosecutorial Council applies to the Parliament to remove the Chief Prosecutor from his/her office.

Finally, the Parliament discusses and votes for or against the removal of the Chief Prosecutor. The decision is deemed to be adopted if it is supported by the majority of all members of the Parliament. If the Parliament fails to adopt the decision on the removal of the Chief Prosecutor, the matter is removed from the Parliament's agenda.

The Chief Prosecutor is suspended from discharging his/her responsibilities immediately upon the appointment of the special (ad hoc) prosecutor and suspension is effective until the Prosecutorial Council and/or the Parliament makes a decision.

Furthermore, the Chief Prosecutor may also be dismissed from office if the Prosecutorial Council, after examination, by secret ballot by 2/3 of its membership, decides that he/she committed a disciplinary misconduct. In this case the decision by the Prosecutorial Council and the Parliament of Georgia respectively are made in accordance with the sequence and the rules stated above, except the appointment of a special (ad hoc) prosecutor. Instead, the rapporteur elected by two-third of the Prosecutorial Council performs the duties of the special (ad hoc) prosecutor.

- Conference of Prosecutors

The Conference of Prosecutors is a general meeting of all prosecutors and investigators of PSG. The main function of the Conference is to elect the members of the Prosecutorial Council. The Conference is a self-governing body of prosecutors and investigators of PSG throughout the country who are able to elect their 8 representatives to the Prosecutorial Council. The high managerial staff of PSG, such as the Chief Prosecutor, his/her deputies, the chiefs of departments and district prosecutor's offices are not eligible for sitting in the Prosecutorial Council.

Creation of the Prosecutorial Council and providing the prosecutors of Georgia the right of electing their representatives in that body received positive assessment from different experts. Namely, the Venice Commission and other international institutions have stated in their joint opinion that: "The main novelty... is the establishment of the Prosecutorial Council..., which is a very welcome step towards depoliticisation of the Prosecutor's Office. The Prosecutorial Council is conceived as a *pluralistic body*, which includes MPs, prosecutors, members of civil society and a Government official."

### ***Ethics***

The rules of ethical conduct for prosecutors are provided in the Code of Ethics for the PSG Employees. The General Inspection Unit of the Office of the Chief Prosecutor of Georgia with respective independence and impartiality safeguards in place (directly reporting to Chief Prosecutor, not subordinate to deputies) is in charge of enforcing the ethics rules for prosecutors.

To undertake this obligation:

- The General Inspection Unit has enhanced monitoring on cases that fall under the risk profiles;
- Every case where prosecutor enjoyed discretion are under the increased scrutiny;
- The General Inspection Unit has appropriate tool of “CrimCase” software that facilitates categorization of cases as per discretions employed;
- The General Inspection Unit starts formal inquiry where a discretion decision diverts from the established criteria;
- Inquiry also is launched where the discretionary decision met criteria but is attended by suspicious circumstances;
- The General Inspection Unit operates a hotline, which is an important tool for receiving complaints from citizens.

The following sanctions for violation of the ethics rules by the employees of PSG are envisaged by Article 38 of the PSG Law: reprimand; reproach; demotion; discharge from the position; dismissal from the Prosecutor’s Office. The application of the particular type of sanction depends on the nature and graveness of a violation.

In 2013-2015, 18 PSG employees were disciplined for various violations of ethics rules.

### ***Conflict of interests***

According to Article 20 of the PSG Ethics Code, the PSG employee shall follow the requirements of the Law of Georgia on Conflict of Interests and Corruption in Public Service. The Article also provides that “an employee of the Prosecution Service, who has the property or other personal interest towards the issue falling under the competence of the Prosecution Service of Georgia, is obliged to apply for self-recusal in accordance with the rule set by the law and not to participate in the process of discussing and taking decision on this issue.”

Under Article 59 of the Criminal Procedure Code of Georgia (CPCG), the following circumstances exclude the possibility of participation of a prosecutor in criminal proceedings:

- investigation on this specific case is carried out into the alleged commission of crime by him/her;
- she/he is a family member or a close relative of the defendant, lawyer, victim;
- he/she is family member or close relative of judge or investigator;
- there is another circumstance, which casts doubts over his/her objectiveness and impartiality.

According to Article 62 of the Criminal Procedure Code of Georgia, “if there is a circumstance excluding the participation of a prosecutor in criminal proceedings, the latter shall immediately apply for self-recusal”.

Prosecutor shall apply for self-recusal before the superior prosecutor, and at the stage of court proceedings – before the court.

Pursuant to Article 22 of the PSG Ethics Code, “violation of the requirements of this Code shall be considered as the behaviour inappropriate for the employee of the Prosecution Service, which entails the disciplinary liability prescribed by the Law of Georgia on Prosecution Service”.

In 2013-2015 there have been no incidents of violating the rules on conflict of interests by the PSG employees.

### ***Other restrictions***

Article 21 of the PSG Ethics Code and Article 340 of CC prohibit accepting of gifts. According to these provisions:

- Receipt of a gift prohibited by the law is criminalised in Georgia.
- PSG employees shall refrain from receiving a gift, if such action constitutes an attempt to influence him/her, or may influence him/her in future.
- In case of possible conflict of interests, the PSG employee shall refrain from receiving any kind of profit from an individual or a legal entity.

Pursuant to Article 30 of the PSG Law, the position of an employee of the Prosecution Service is inconsistent with any position at other state or local self-government authority, also with entrepreneurial or other paid activities, except scientific, creative or educational activities. The PSG employee is not allowed to be a member of a political union or to carry out political activities.

The competent body in charge of enforcing the above-mentioned restrictions with regard to prosecutors is General Inspection Unit of the Office of the Chief Prosecutor of Georgia.

Depending on the type and nature of violation, the sanctions for prosecutors could be either disciplinary or disciplinary and criminal. The applicable disciplinary sanctions are provided by Article 38 of the PSG Law. In case the violation amounts to a criminal offence, it is subject to the sanctions provided by the provisions of CC dealing with criminalization of corruption in public sector.

In 2013-2015, neither administrative nor criminal sanctions have been imposed against prosecutors for violation of the said restrictions.

There are no specific guidelines on anti-corruption restrictions for prosecutors.

### ***Asset disclosure***

Prosecutors are subject to the same asset disclosure rules that are envisaged by Article 14 of the Law of Georgia on Conflict of Interests and Corruption in relation to the public officials. The government reports that in 2013-2015, there have been no cases of violating asset disclosure obligation by prosecutors. Respectively, sanctions have not been applied in this regard.

### ***Training and advice***

The following mechanism is in place for Prosecution Service employees to obtain advice and guidance on the issues of conflicts of interests, restrictions, financial disclosure, ethics rules, etc.:

- PSG ensures that prosecutors are familiarized with the rules on conflicts of interests, restrictions, financial disclosure and ethics;
- Trainings on conflicts of interests, restrictions, financial disclosure and ethics are frequently provided to prosecutors (See the detailed information concerning the trainings below).
- Prosecutors can always freely address the General Inspection Unit of PSG either directly or through their managers with the request to obtain advice and guidance on the issues of conflicts of interests, restrictions, financial disclosure, ethics rules, etc. and receive such guidance in a timely manner.

In 2014 – 2015, 7 training activities were conducted covering the topics of anti-corruption restrictions and ethical rules for prosecutors (see the table below).

**Table 5. Training activities for prosecutors on anti-corruption restrictions and ethics**

Date	Training Activity	Topic	Audience
2014 November	Conference	Systemic approach to professional ethics for ensuring independent, competent and accountable justice	4 prosecutors
2014, July	Professional training course	Standards of professional ethics, covering anti-corruption restrictions	23 newly-appointed prosecutors
2014, October	Preparatory training course	Standards of professional ethics, including anti-corruption restrictions	57 intern-prosecutors
2015, April	Multilateral Meeting	Issues related to professional ethics and responsibilities	2 prosecutors
2015, January	Training	Dealing with the issues related to principles and standards of professional ethics, appointment, promotion, performance assessment and retirement of prosecutors	36 prosecutors
2015, March	Training of Trainers	Whistle-blower protection and ethical rules for prosecutors	1 prosecutor

Source: Information provided by the Georgian authorities.

### **Remuneration**

Information on average amount of monthly salaries for different levels of seniority of prosecutors is in the table below.

**Table 6. Level of remuneration of prosecutors**

Position	Net Salary
Chief Prosecutor	GEL 7824
Head of Department	GEL 5160
Regional Prosecutor	GEL 6104
District Prosecutor	GEL 2864
Head of Unit	GEL 2436
Investigators	GEL 2500
Prosecutors	GEL 1820
Legal advisors	GEL 1200

Source: Information provided by the Georgian authorities.

According to the authorities, the salaries of the PSG are among the most competitive salaries in the country. A bonus system is also in place. PSG employees are provided with medical insurance and retirement packages. PSG covers the housing costs for the employees having no living conditions near their working place. Daily allowances, including accommodation, meals and travel expenses, are provided to PSG employees when they are on official visits in the regions of Georgia or abroad.

### **Performance evaluation**

The main indicators taken into account during the performance evaluation of prosecutors are as follows:

- The average number and type of cases per prosecutor
- The number and type of cases completed per year per prosecutor
- The number and type of cases where a prosecution has been initiated
- The proportion and type of cases in a year in which the offenders pleaded guilty
- The proportion and type of cases in a year that went to trial
- The proportion and type of cases in a year where a conviction was obtained
- The proportion and type of cases that went to trial in which the offender was acquitted
- The proportion and type of cases where diversion was used

- Timeliness and quality of prosecution decisions and actions
- Amount of assets frozen and confiscated
- Amount of assets returned to victims.

The managers of structural units of PSG are responsible for monitoring and assessment of the compliance of subordinated prosecutors with the said indicators.

There is an on-going work within PSG on developing the performance appraisal system for prosecutors.

### ***Complaint and disciplinary proceedings***

The General Inspection Unit of PSG is in charge of the investigation of disciplinary, administrative and criminal offences committed by prosecutors other than the Chief Prosecutor.

Any individual or body may address the General Inspection Unit of PSG with a complaint against a prosecutor. Both written and oral forms of communication are acceptable for triggering the consideration of a complaint. Anonymous complaints are allowed as well. Notably, in order to facilitate the complaint procedure, the General Inspection Unit operates a hotline, which is an important tool for receiving the oral complaints from citizens.

The disciplinary procedures against prosecutors can be divided into the following stages:

- Commencing the inquiry by the General Inspection Unit of PSG regarding the alleged violation;
- Collection of information by the General Inspection Unit;
- Interview of a person subject to an inquiry and submission of a written explanation by him/her to the General Inspection Unit;
- Written Conclusion of the General Inspection Unit regarding the guilt of the person subject to disciplinary proceedings and applicable sanction;
- Submission of the Conclusion to the Chief Prosecutor;
- Hearing of the Conclusion in the framework of the Consultation Council;
- Recommendation of the Consultation Council to the Chief Prosecutor either on imposing disciplinary sanction or dismissing the allegation;
- Decision of the Chief Prosecutor either on imposing disciplinary sanction or dismissing allegation respectively;
- Labour litigation in the court, if person subject to disciplinary proceedings appeals the Chief Prosecutor's decision in the court.

The PSG stated that depersonified information about consideration of complaints and sanctions against prosecutors is available to the public on request. However, in its December 2015 report, the NGO IDFI noted that it was particularly problematic to receive statistical information on the number of complaints received by the Prosecutor's Office of Georgia as well as information on the results of investigations.<sup>30</sup> The Prosecution Service disagreed with such assessment and noted that following the 2012 parliamentary elections the PSG received about 52,000 complaints alleging the abuse of power by different officials. In 2015, the IDFI addressed PSG with numerous requests for information about investigations carried out regarding these complaints. Each request concerned different periods of time. The PSG prepared and provided the information as requested. Afterwards, the IDFI requested PSG to structure the above-mentioned information through the different parameters and to submit the summarised data. The PSG also complied with this request and submitted the information as requested. In view of the nature and complexity of the requested information, as well as the number of those requests, it took certain time for

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<sup>30</sup> Source: IDFI, Access to Public Information in Georgia, Report Summarizing 2010 – 2015, page 41, available at <https://goo.gl/0v2xdg>.

the PSG to prepare and submit the information per each of the filed request, especially the last one. However, despite this, all information was provided to the IDFI fully and within a reasonable time.

*Dismissal*

The government provided the following data about actions taken to ensure integrity and accountability of prosecutors.

**Table 7. Dismissal and disciplining of prosecutors**

	2014	2015
Prosecutors/investigators dismissed as a result of disciplinary proceedings	5	2
Prosecutors/investigators to whom various disciplinary measures were imposed	16	16
Prosecutors/investigators who were given recommendations on what to improve and/or how to improve in their work	32	4

Source: Information provided by the Georgian authorities.

*Civil society perspectives*

According to NGOs, the main problems with regard to integrity of prosecutors are the following: insufficient independence of prosecutor’s office from political leadership; and weakness of the role of individual prosecutor.

**Conclusions**

In past evaluations by civil society representatives and international evaluators and monitors, the chief concern was the insulation of the Chief Prosecutor from possible political interference. A secondary related concern was appropriately ensuring the independence and professionalism of the lower level prosecutors in the office. To the extent there were other concerns about the PSG’s role in corruption investigations and prosecutions, it was largely tied to these concerns. There was also a concern that while low-level corruption was generally well addressed, high level corruption was perceived by many members of the public to be ineffectively addressed.

The reforms in the law on the PSG and procedures announced by the Chief Prosecutor which are discussed above appear to be reasonably calculated to address many of the concerns about political interference and fair and effective self-governance procedures. With experience, it will be possible to evaluate if additional legislative or policy changes are necessary. Monitors have observed in other settings that maintaining the independent selection of representatives from all prosecutors as through a conference of prosecutors from undue management influence can present significant challenges. Georgia may want to consider a secret ballot process for selection of the members of the Prosecutorial Council by the Conference of Prosecutors.

While positively assessing the recent reforms in general the monitoring team is concerned by the limited role of the body of prosecutorial self-governance, namely the Prosecutorial Council that has been established under the amendments in Prosecution Service Law. The majority of members of the Prosecutorial Council is elected by the conference of prosecutors but the Council has limited powers that concern various stages in the appointment and dismissal of the Chief Prosecutor, disciplinary proceedings with regard to the Chief Prosecutor, hearing reports of the Chief Prosecutor/Deputy Chief Prosecutor on the PSG activities, criminal policy, protection of human rights in the course of legal proceedings and other issues. At the same time, the Chief Prosecutor determines who serves on the Commission responsible for the selection and recruitment of prosecutors. The Chief Prosecutor has also set up by his decision Consultative Council that plays an important role in the promotion, disciplining and dismissal of prosecutors. The Consultative Council’s composition is decided by the Chief Prosecutor and can be changed any moment. The Consultative Council is not a self-governance institution but an advisory body to the Chief Prosecutor. Such system may affect the independence of individual prosecutors and concentrate excessive powers in the hands of the Chief Prosecutor. Additionally, while the Chief Prosecutor has secure tenure, he is still appointed with decisive involvement of too many political bodies (Minister of Justice, Government, Parliament). It would serve well to further strengthening impartiality and independence of prosecutors, if the main role in the recruitment, promotion and dismissal of prosecutors was assigned to the Prosecutorial Council or another body of prosecutorial self-governance

which would ensure involvement of employees of the prosecution service in these key decisions and would strengthen the independence of prosecutors. This would also conform to the Council of Europe standards.<sup>31</sup>

In terms of the criteria for assessing the professional development and performance of prosecutors, the reforms do appear to strengthen the transparency with which these important decisions may be made. Georgia may wish to consider adding the option of having the prosecutors submit their own self-evaluations to be considered in the process. We also caution against creating an evaluation system that is too heavily weighted toward the number of investigations or cases resolved since this can create disincentives to prosecutors and investigators and their managers from undertaking difficult cases which may on balance present possibilities for greater harm to society and public's confidence in the ability of the PSG to enforce the law. Additionally, while the fact that a case resulted in an acquittal may be reflective of the inadequate preparation and skill of the prosecutors involved, the acquittal alone should not be used to assess performance since the decisions to charge cases is rarely made without consultation with supervisors and some difficult cases may result in acquittals but the merits of the cases warrant them being brought. The rate of acquittal as indicator of performance is especially problematic in view of the Soviet legacy of strong prosecution service to the detriment of the independent judiciary. With such indicators in place prosecutors may have an incentive to abuse their office, put pressure on judges, close their eyes to procedural violations of the defendant's rights, etc. This monitoring strongly recommends that the government remove or minimize the importance of such indicators and substitute them with an evaluation of adequacy of preparation for the assigned tasks and professionalism.

It should also be noted that while initial recruitment of prosecutors is based on competitive selection into internship, which in case of successful completion leads to appointment, the merit-based criteria are not used for promotion of prosecutors.

Regarding disciplinary proceedings, the possibility of involving the input of peer prosecutors through the Consultative Council could be a means of ensuring the impartiality of the process and objective nature of the basis for sanctions imposed.

The team also notes that the government advised that a bonus system is in place for prosecutors. The monitoring team had few details about the possible amounts and criteria, but would like to discourage Georgia from implementing a system where the bonuses can be a high percentage of the base salary of prosecutors and investigators given the sensitive nature of the work. Overall, it is recommended to revoke payment of any discretionary bonuses to prosecutors and raise their salary, if needed. If preserved, bonuses should be based on clear and transparent criteria and awarded through open and justified decision-making.

Georgia fully complied with the previous monitoring round recommendation to review procedures for appointment and dismissal of the Chief Prosecutor and, due to measures taken so far, largely implemented the recommendation to review procedures for disciplining and dismissal of other prosecutors. Overall rating for compliance with Recommendation 7 see in Chapter 3.4. of this report.

### **New recommendation 13**

- 1. To continue the reform aimed at further strengthening impartiality and independence of prosecutors, consider assigning the leading role in the recruitment, promotion, discipline and dismissal of prosecutors to the Prosecutorial Council or a similar body of prosecutorial self-governance independent from the Chief Prosecutor.**

<sup>31</sup> See, for example, Opinion No.9 (2014) of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors, December 2014, Explanatory note, §54: "Striving for impartiality, which in one form or another must govern the recruitment and career prospects of public prosecutors, may result in arrangements for a competitive system of entry to the profession and the establishment of High Councils either for the whole judiciary, or just for prosecutors". Available at <https://goo.gl/e7XF7p>.

2. **Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.**
3. **Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.**
4. **Consider revoking the payment of any discretionary bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.**

## 2.4. Accountability and transparency in the public sector

### **Recommendation 10 from the Third Monitoring Round report on Georgia:**

- 1) **Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test.**
- 2) **Ratify the Council of Europe Convention on Access to Official Documents.**
- 3) **Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.**
- 4) **Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.**
- 5) **Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.**

### *Access to information law*

According to the Government, a comprehensive revision of the access to information legal provisions and elaboration of a Freedom of Information Act (FOI Act) was initiated in 2014. The process was carried out in the framework of the Anti-Corruption Council (ACC); the Ministry of Justice led the process with the support of the Open Society Foundation Georgia. The Ministry presented the Work Plan on the FOI Act development at a public event in February 2014. The ACC established three working groups on the following topics: definition of public information, proactive disclosure and access to information (Group I); restrictions and limitations (Group II); public information disputes and oversight agency (Group III). While drafting relevant parts of the Freedom of Information Act, the WGs studied and took into account international standards and best practices, as well as relevant international recommendations and surveys. International experts also reviewed the draft law.

The draft law was a product of collaboration of NGOs and the Ministry of Justice and was finalised in mid-2015, but has yet to be submitted in the parliament. The Ministry of Justice explained the delay with submission by the scale of the freedom of information reform itself and the fact that it had to focus on other reforms (notably the judicial and criminal justice reform). The Ministry ensured that it still planned to send the draft law in the parliament in 2016.

The Ministry did not provide the text of the draft law to the monitoring team referring to the fact that it was still a working document. For the same reason, the NGOs have also not been able to review the final draft law. Although the Ministry promised that it would consult the NGOs before the submission. Overall, the NGOs acknowledged the participatory process when the draft law was originally developed but they were discontent and criticised the Ministry for the significant delay with the submission and lack of collaboration during the final stage of the draft law development. They believed that the draft law should have been sent to the parliament long time ago and that the lack of the FOI law was a serious obstacle for effective enforcement of the access to information right.



By failing to submit the draft law to the parliament until now the Government broke its own commitments stated in the Open Government Partnership Action Plan for 2014-2015 and in the Anti-Corruption Action Plan.

As described by the Ministry of Justice (without providing the text), the draft law appears to comply with the main international standards and best examples of access to information laws. In particular, the draft law sets the harm and public interests tests that should be used when limiting access to information, while also establishing a list of information where the prevalence of the public interest is presumed and that cannot be restricted in access as such.

The draft law provides that the FOI law should have supremacy over other laws in regulation of access to information. The Ministry of Justice also ensured that respective amendments will also be proposed in other laws, including the State Secrets Law, to ensure that FOI Law is overturned by other special laws. It is important to pass such amendments as in practice officials dealing with classified information usually rely solely on the special state secrets legislation and disregard other provisions. Lack of such amendments may undermine the effectiveness of the future law.

Georgia did not implement this part of the recommendation.

### ***Ratification of the Council of Europe Convention on Access to Official Documents***

In 2015, the Ministry of Foreign Affairs initiated consultations regarding the ratification of Council of Europe Convention on Access to Official Documents. Particularly, in February 2015 it sent out a letter to all ministries inquiring their position with regard to the ratification. Based on the letter the Ministry of Justice prepared an analysis of the existing legislation and its compliance with the Convention. Once the responses from other state agencies are submitted to the Ministry of Foreign Affairs, the latter will notify the Government of Georgia on the measures to be taken to ratify the Convention.

Georgia did not implement this part of the recommendation.

### ***Oversight authority***

According to the Georgian Ministry of Justice, the issue of establishing an independent public authority for the oversight of access to information right enforcement was thoroughly discussed during development of the FOI draft law. Three options were considered: 1) establishing an independent body with authority of overseeing access to information in public entities, 2) to assign oversight functions to the Public Defender's Office (Georgian Ombudsman), or 3) to merge access to information oversight body with the Data Protection Commissioner. Members of the WG discussed advantages and disadvantages of the options on the basis of the detailed research and decided to go forward with an independent authority. Such new authority would be independent from the Data Protection Commissioner, would be elected by the Parliament and have a high level of autonomy. Its powers would include access to any data (documents), including classified, issuing of recommendations non-compliance with which would result in an administrative sanction. The office will also raise awareness on the access to information.

The monitoring team welcomes the decision to set up an independent authority for access to information oversight. One could argue that the office should be merged with the data protection authority to avoid (or more efficiently solve) conflicts between enforcement of two rights, but arguments can be made also in favour of a separate entity solution. Both models are legitimate and exist in different countries. However, it is very important that the access to information oversight authority has powers that match those of the data protection agency. Such powers should include issuing of not just recommendations, but of binding orders on the disclosure or non-disclosure of information, on enforcement of other access to information regulations.

Georgia did not implement this part of the recommendation.

### ***Proactive publication***

The legal obligation of proactive publication of information entered into force in Georgia on 1 September 2013. The Government adopted Decree on the Proactive Publication of Public Information and Electronic Request to implement relevant amendments in the law, in particular to define the list of information subject to mandatory proactive publication (see Third Round Monitoring report on Georgia). However, the

Government Decree is mandatory only for agencies under the Government of Georgia; therefore, a number of other state agencies adopted specific orders/decrees regulating the issues of proactive publications and related procedures. In particular, the following public agencies adopted the procedure for publication and the list of information to be published proactively: the Parliament; the President; State Audit Office; Competition State Agency; State Protection Special Service; a number of Georgian municipalities.

It is therefore welcome that the draft FOI Law includes a separate chapter on proactive publication providing a universal regulation covering all public authorities. The oversight authority should also monitor and ensure compliance with the new regulations. The IDFI and GYLA noted that the proactive publication should also cover the publicly owned enterprises.

The IDFI monitored the practice of implementation of proactive publication provisions in 133 agencies in 2014. The study found that 35 public entities have either not developed public information web-page or failed to upload data on the web-page set up specifically for the purpose of proactively disclosing public information. Only 4 institutions published all information required by the regulations; 20 entities published about 50% of what was required.<sup>32</sup>

Georgia largely implemented this part of the recommendations.

### ***Information officers***

According to the Government, most public authorities have designated an information officer (usually, one official). According to the Supreme Court of Georgia, all courts have appointed an FOI officer or the person who carries out functions of the FOI officer. State Procurement Agency has two employees who perform the duties and responsibilities of information officer, namely PR manager and InfoSec Manager. In the Financial Monitoring Service (an FIU unit), Director of the Administrative Department is a designated information officer responsible for dealing with requests for public information. The IDFI compiled a database of information officer in 430 public agencies.<sup>33</sup>

The Ministry of Justice reported about a number of trainings conducted in several public institutions on access to information rules. In May and November 2014, meetings of the FOI Officers' Working Group took place to discuss issues of proactive disclosure and e-request. In July 2014, a three-day training on "Freedom of Information and Personal Data protection" was organized for the FOI Officers of the MoJ and its Legal Entities of Public Law by the Training Centre of the MoJ with the GIZ assistance.

It appears that several trainings for information officers have been organised. However, it is not clear if they covered local officials and if the trainings are held on a regular basis.

According to the FOI draft law information officers will be appointed by the head of the institutions and will be authorised to decide on the release of information in response to an information request. According to the Ministry of Justice of Georgia, this would explicitly confirm the existing practice under the Administrative Code of Georgia that information officers have the authority and independence in giving access to information upon the request. The monitoring team agrees that it would indeed be important to confirm this arrangement in the new law.

Georgia largely implemented this part of the recommendations.

### ***Review mechanism***

The denial in access to information can be appealed in the superior body of the responsible public agency or in the court. To appeal in court a person first has to go through an administrative appeal. The court fee constitutes GEL 100 (about EUR 38) for the first instance courts and GEL 150 (about EUR 57) for the courts of appeal. A person has the right to ask the court to cancel or reverse a decision of the public institution, state employee or public servant. He/she may also claim property and non-property damages.

A complaint about violation of access to information rights can be submitted also to the Ombudsman, but this mechanism does not appear effective in practice. For example, the IDFI has referred two cases to the

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<sup>32</sup> Source: <https://goo.gl/NcvK02>.

<sup>33</sup> Available at <https://goo.gl/dklGRz>.

Ombudsman of Georgia. In both cases the ombudsman found that the rights of IDFI to receive open public information were violated and recommended public authorities to disclose the data. Nevertheless the recommendations of the Ombudsman were not followed in both cases.

In 2015 IDFI filed 25 administrative appeals against the decisions of public institutions. In 12 cases the requested information was provided partially or completely, in 12 cases administrative appeals were left unanswered or public institutions refused to disclose information. Decision on one administrative appeal is still pending. Out of the 12 cases where administrative appeals of IDFI were not granted, the Institute referred three cases to the court. To date, decisions on four appeals have been delivered by the courts and in all cases IDFI claims were upheld.

In particular, the IDFI appealed in court several denials of information (e.g. Ministry of Defence, Ministry of Finance, Department of Corrections) with regard to publication and provision on request of information about bonuses and salary increments paid to officials. Courts supported IDFI claims and ordered publication of the requested information. The courts found that information on salary supplements and bonuses of high officials, representational expenses, costs of business trips abroad, information on simplified procurement as well as data on purchase of vehicles and IT equipment is open public information and should be disclosed by public institutions in complete form when referred with a FOI request. The courts also highlighted that an applicant had the right to choose the form of receipt of public information. Therefore, it is illegal for the administrative bodies to direct applicants to their web-pages instead of disclosing public information.<sup>34</sup>

The amount of court fee that has to be paid to appeal in court against denial of information was criticized by the civil society as too high and inhibiting access to court in such cases.

#### ***Proportionate and dissuasive sanctions***

No monetary sanctions are foreseen by the legislation of Georgia for violation of the access to information regulations. If the appeal is granted the public institution is obliged to disclose disputed information court.

#### ***Publication of court decisions***

According to the Georgian authorities, currently there is no central database to aggregate decisions of all courts. In accordance with the draft amendments in Organic Law on General Courts, courts will have to ensure the proactive publication of court decisions. In December 2015, the Chief Justice of the Supreme Court established a working group on accessibility of court decisions to prepare rules on how the court decisions should be published online. The proposed draft of the working group will be discussed by the High Council of Justice which will adopt the final regulation. The working group includes judges of the Tbilisi city court, appellate court and Supreme court, staff members of the first, second and the third instance courts, Personal data protection Inspector, NGOs and journalists working on accessibility court decisions.

Therefore, Georgia did not implement the previous monitoring round recommendation to ensure functioning and effective public access to a centralised system for publication of court decisions.

#### ***Transparency initiatives***

Georgia has implemented several important transparency initiatives aimed to provide better public access to information, for instance in the area of budgetary transparency and openness of information on public procurement.

The Open Data Portal was launched under the framework of OGP action plan for 2014-2015. Originally the portal contained only links to other official web-sites and could not be regarded as a proper open data portal that provides access to government datasets. A re-designed portal was launched in 2015 and as of mid 2015 included 95 datasets, mostly in the area of public finances and education.<sup>35</sup> Since August 2015,

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<sup>34</sup> Source: IDFI, Access to Public Information in Georgia, Report Summarizing 2010 – 2015, pages 37-39, available at <https://goo.gl/0v2xdg>.

<sup>35</sup> OGP Independent Reporting Mechanism, Progress Report on National Action Plan for 2014-2015, page 32, available at <http://goo.gl/CqDPh5>.

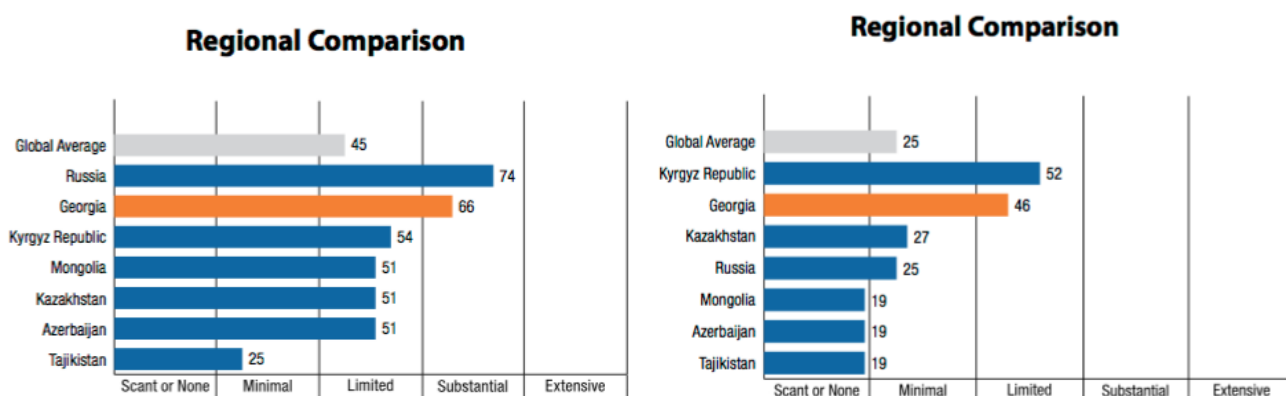
the Institute for Development of Freedom of Information has been implementing a project aimed at the development of the Open Data Portal. The USAID/Good Governance Initiative funded this project. As a result, the number of datasets published on the [www.data.gov.ge](http://www.data.gov.ge) has increased to 154 datasets as of the end of August 2016.

The main problem for the open data remains the lack of legal framework for public information publication in open data formats and its re-use. For example, there is no legal obligation to publish open data on the web-portal. So to obtain datasets that are published on the portal the Data Exchange Agency has to send regular requests to the agencies.<sup>36</sup>

The Georgian Data Exchange Agency runs so called Registry of registers based on the 2011 Law on the Unified Registry of Public Information. State organizations are obliged to register the following data in the unified registry: various data bases, registry, information system and e-services, as well as changes in the database operation. Under the Twinning project international experts developed for the Data Exchange Agency “e-Georgia Strategy and Action Plan 2014-2018: A Digital Georgia”.<sup>37</sup>

Budget related documents (Budget analytical data; Macroeconomic indicators; State budget; Government finance statistics; Budget legislation; Budgetary calendar; Citizens’ guide<sup>38</sup>) are published on the web-page of the Ministry of Finance. Citizens guide on state budget is also published on-line.<sup>39</sup> Interactive questionnaire “participate in planning the state budget and define your priority” is also published on the Ministry web-page. Georgia had the score of 66 (out of 100) in the Open Budget Index 2015 for transparency (by providing the public with “substantial” budget information) and the score of 46 for public participation (with “limited” opportunities to engage in the budget process). The transparency scope improved from 55 in 2010 and 2012.

Figure 8. Georgia in the Open Budget Index 2015: Transparency and Public Participation ratings



Source: <http://goo.gl/z56nrL>.

Georgia became one of the few countries to proactively publish statistics on the number of wiretap requests. In 2014, the Supreme Court of Georgia started publishing statistics on hearing the motions regarding operative investigative activities. Initially, the Supreme Court started producing statistics on phone tapping as a response to the high public interest on this issue. Later the Criminal Procedures Code was amended and this was mentioned as a commitment under the Georgia's OGP Action Plan 2014-15. The information published on the Court’s website includes the number of motions on phone tapping submitted by the prosecutors to the courts and the number of motions granted by the courts.<sup>40</sup>

Real estate registry as well as company registry and information on their shareholders is available online for anyone interested to view without any charge. Central Election Commission of Georgia allows at its

<sup>36</sup> Idem.

<sup>37</sup> Available at: <http://goo.gl/6FjPZY>.

<sup>38</sup> Available at <http://goo.gl/6EjBFF>.

<sup>39</sup> See Guide for 2016 State Budget at <http://goo.gl/Tcnk30>. Citizens’ Guide on the state budget has been developed with the support of the USAID project Good Governance Initiative in Georgia.

<sup>40</sup> Source: <http://goo.gl/tc9kz>.

web-page for anyone to see the list of people registered at a certain address for electoral purposes.

Georgia is not a member or candidate for the Extractive Industries Transparency Initiative or Construction Sector Transparency Initiative. The IDFI advocates Georgian accession to both initiatives.

Georgia is currently developing its third National Action Plan for 2016-2017 within the Open Government Partnership. As to the previous Action Plan covering 2014-2015, the Independent Reporting Mechanism interim report noted that Georgia has advanced significantly, especially in increasing access to information through open data and creating mechanisms for improving public participation in decision making. However, with two thirds of the current commitments focused on the delivery of public services and improvement of internal government systems, more could be done to build on first efforts to address open government values of transparency, public accountability, and civic participation. Out of 29 commitments 41% were completed, 24% has substantial completion and 31% - limited implementation and implementation of one commitment has not been started.<sup>41</sup>

Unlike in other countries, the Parliament of Georgia has actively participated in the OGP process. In close collaboration with NGOs the parliament developed a separate Open Parliament Georgia Action Plan and is implementing commitments for 2015-2016.<sup>42</sup>

**Table 8. Georgia’s rank in the UN E-Government Development Index and E-Participation Index**

	2016	2014	2012	2010	2008	2005
EGDI	61	56	72	100	90	82
E-Participation	76	49	66	127	135	129

Source: United Nations Public Administration Country Studies, <https://goo.gl/qzzW9H>.

Georgian position in another rating has deteriorated as well. According to the Global Open Data Index Georgia’s ranking was down from 35 in 2014 to 47 in 2015 (out of 122 countries).<sup>43</sup>

**Implementation and impact**

No aggregated statistics is available showing how public authorities reply to access to information requests. The Georgian authorities provided statistics for several institutions (Supreme Court, High Council of Justice, State Procurement Agency, Financial Monitoring Service) but they receive relatively small number of information requests.

The NGO Institute for Development of Freedom of Information carries out an independent compliance monitoring. In 2010-2015 the IDFI overall sent 30,152 FOI requests to public institutions and received replies in 24,438 cases, that is about 80%.<sup>44</sup> 20% of unanswered requests is quite high and proves poor implementation.

During 2010-2015, the highest number (90%) of responses received was observed in the period between July 2012 and June 2013. The indicator decreased to 82% during the period of October 2013 – December 2014. The lowest indicator of complete replies (33%) and the highest indicator (48%) of unanswered requests were observed in 2010.

IDFI monitoring shows that overall enforcement of the access to information has improved compared with 2010. According to the NGO, central and local elections and political will of high officials have major impact on the level of access to information in Georgia. The situation usually significantly improves after the elections (e.g. after the Parliamentary Elections of 2012), but then gradually deteriorates.

Based on the statistical data acquired through the IDFI project in 2010-2015, the most transparent public institutions were Office of Public Defender (Ombudsman) of Georgia and Municipal Council of Dmanisi. The most transparent public institutions in 2015 were the Ministry of Regional Development and

<sup>41</sup> Source: <http://goo.gl/WMsTmd>. Evaluations of the IDFI on the fulfillment of obligations of the 2014-2015 OGP National Action Plan can be found at <https://goo.gl/SCjex2>.

<sup>42</sup> Action Plan available at <https://goo.gl/injFmG>.

<sup>43</sup> Source: <http://goo.gl/KzD2wB>.

<sup>44</sup> Source: IDFI, Access to Public Information in Georgia, Report Summarizing 2010 – 2015, pages 37-39, available at <https://goo.gl/0v2xdg>.

Infrastructure, Ministry of Sport and Youth Affairs, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, Ministry of Environment and Natural Resources, Government of Autonomous Republic of Adjara and all the Ministries of Autonomous Republic of Adjara. In addition the IDFI awarded the National Security Council of Georgia and the State Audit Office for ensuring proactive disclosure of public information. The Ministry of Economy and Sustainable Development was named the most unresponsive institution. Notably, out of 286 administrative agencies eight institutions completely ignored all FOI requests, including seven sub-entities of the Ministry of Justice.<sup>45</sup>

According to the report prepared by civil society groups on the performance of the Georgian Dream coalition post 2012 general elections, prior to 2012, Georgia experienced serious problems in terms of open and accountable governance. There was a lack of transparency in state projects, and systemic limits on access to public information raised legitimate doubts among the public as to the development of democratic governance. After the 2012 elections several important reforms have been implemented, including: resolution on the Approval of Procedure and List of Public Information to be Published Proactively; the General Administrative Code of Georgia was amended to stipulate that public information can be requested electronically; the number of persons submitting property declarations was expanded and for the first time included heads of non-commercial legal entities and limited liability companies founded by the state; information on simplified procurement is published online; information on funds allocated from the reserve funds is proactively released as well. At the same time, in few years the track record of openness deteriorated and the Government denies access in more cases than before (see statistics above).<sup>46</sup>

Another problem is the lack of balance between conflicting rights of privacy and of access to information. Georgia passed a strong personal data protection law and established a powerful and independent institution of data protection authority. This skewed the balance in favour of privacy. As was noted by the Georgian Ombudsman, the public authorities are not taking into consideration the balance between the freedom of information and protection of personal information. The attitude is caused by the fact that despite repeated recommendations by the Public Defender, Georgian legislation does not provide sanctions for illegal denial of the public information access. At the same time relevant sanctions are established in the Personal Data Protection Law. Accordingly, the principle of proportionality is not used by public servants, as they are trying to avoid the sanctions stated in the law on “Personal Data Protection”.<sup>47</sup>

Public institutions also do not comply with the obligation under the law to submit annual reports on access to information practice to the parliament, the president and the prime minister. The Public Defender noted that due to the lack of sanctions for non-compliance and the lack of obligation of the recipients of these reports to examine their accuracy, relevant obligation was “merely formalistic”.<sup>48</sup>

Overall, despite improvement in the recent years the civil society considered that the level of access to information held by public agencies in Georgia remained low. This is attributed to the lack both of political will and awareness of the relevant regulations. According to Georgian experts, the shortcomings of the current access to information legislation in Georgia have resulted in an uneven application of the legal provisions in practice. Some public agencies have been significantly less responsive to requests for information than others in recent years, while the judiciary has not proven to be an effective means of challenging refusals to provide information.<sup>49</sup> NGOs continue to advocate for a separate FOI law and a dedicated institution in charge of its enforcement.

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<sup>45</sup> *Idem.*

<sup>46</sup> Source: Two years in government: Georgian Dream's performance review, May 2015, pages 99-100, available at <http://goo.gl/NCYEgg>.

<sup>47</sup> Public Defender of Georgia, Report on the Situation with Protection of Human Rights and Freedoms in Georgia, 2015, page 80, available at <http://goo.gl/y19I7U>.

<sup>48</sup> Public Defender of Georgia, Report on the Situation with Protection of Human Rights and Freedoms in Georgia, 2014, pages 301-302, available at <http://goo.gl/A0JRDP>.

<sup>49</sup> Erekle Urushadze, Reforming Georgia's Access to Information Law, Policy Brief, July 2016, available at <http://goo.gl/YF9eWI>.

## Conclusions

Georgia has basic legal provisions on access to information, but lacks a modern stand-alone right to information law. There is also no dedicated oversight authority that would ensure enforcement of the relevant provisions. This, together with lack of sufficient training and awareness raising, affects implementation of the right to information in Georgia, which remains low. Government efforts to draft a new FOI law and the substance of the draft law (as described) are very welcome, but it is unfortunate that after two years of work the draft has yet to reach the parliament.

Other problems that affect the level of enforcement is the lack of effective sanctions for violation of access to information provisions, ineffective appeal mechanism and an imbalance with the right to personal data protection. The latter has stronger enforcement through a dedicated authority and sanctions. A separate FOI law and enforcement mechanism would correct this, but it may also be needed to amend the data protection law to find a better balance between two important human rights.

Introduction of the system of proactive publication of information was an important reform. However, its implementation is uneven and many public authorities do not comply with the set standards. Proactive publication should be uniformly regulated in the FOI law and cover all public institutions.

Georgia launched an open data portal but lacks comprehensive legal framework to build an open data infrastructure and ensure that public authorities publish and regularly update high-value datasets in open format and under an open licence that allows free re-use. It is especially important to make it legally binding to publish in open data information of significant public interest that can be used to detect and prevent corruption, e.g. procurement data, budgetary information, including all transactions with public funds, company and real estate registers, data on political party finances, etc.

Georgia could also benefit from participation in the Extractive Industries Transparency Initiative and Construction Sector Transparency Initiative.

Georgia achieved commendable results in implementation of the OGP action plans by ensuring a genuine participatory process and extending the action plan to the parliament, which already became a model in the region.

**Georgia is partially compliant with the previous recommendation that remains valid and is considered new recommendation 14.**

## 2.5. Integrity in public procurement

**Recommendation 9 from the Third Monitoring Round report on Georgia:**

**1) Minimize the procurement that is excluded from the e-procurement system and review the list of exemptions from the Public Procurement Law, in particular with regard to the utilities sector, relating to state secrets, publicly owned companies.**

**Remove possibility for the President or the Government to qualify procurement as a simplified excluding it from the e-procurement, except for cases of natural disasters and other similar emergencies.**

**2) Formally initiate negotiations on Georgia's accession to the WTO Government Procurement Agreement.**

**3) Ensure that the current high level of transparency of procurement procedures is maintained and provide for publication of information, including on the awarded contracts, on the public procurement excluded from the PPL.**

**4) Review the complaint procedure to ensure independence of the review body from the Government and its capacity to effectively process complaints.**

**Consider replacing provisions on automatic suspension of procurement in case of appeal with the possibility to issue interim injunctions by the dispute resolution body.**

**Allow appeals against any procurement-related decisions.**

**5) Develop main rules on the debarment of entities from the public procurement in the law, introduce mandatory debarment for commission of a corruption-related offence by the company or its management and allow appeal against blacklisting of the entity.**

***Background***

Public contracting in Georgia accounts for about 40 per cent of all government spending and about 11 per cent of the country's Gross Domestic Product. In 2015 public entities in Georgia concluded 24,950 contracts.

The State Procurement Agency (SPA) maintains one of the highest levels of transparency and openness of the public procurement in the world through the use of total e-procurement platform. However, there are a number of exemptions and shortfalls in the overall procurement framework, which allow for contracts to be placed outside the electronic platform or through non-competitive processes.

**Table 9. Statistics on the total value (GEL) and number of public procurement in 2013-2015**

	<b>2013</b>	<b>2014</b>	<b>2015</b>
Value of goods contracts (awarded through electronic tenders)	416,672,890	478,011,901	537,918,938
Value of works contracts (awarded through electronic tenders)	743,751,211	918,627,950	1,144,773,383
Value of services contracts (awarded through electronic tenders)	267,406,752	307,244,303	310,250,656
Total value of contracts awarded through electronic tenders	1,427,839,853	1,703,884,154	1,992,942,977
Number of goods contracts (awarded through electronic tenders)	10,688	11,528	12,751
Number of works contracts (awarded through electronic tenders)	3,723	4,436	5,231
Number of services contracts (awarded through electronic tenders)	4,984	5,251	6,188
Total number of contracts awarded through electronic tenders	19,395	21,215	24,950
Total value of contracts awarded through direct contracting	1,080,441,672	915,742,211	1,079,094,935
Total number of contracts awarded through direct contracting	180,533	201,690	213,184
Total value of contracts awarded through design contests and consolidated tenders	282,803,914	227,315,892	127,680,622
Total number of contracts awarded through design contests and consolidated tenders	4,255	4,392	5,004
Total value of contracts	2,791,085,439	2,846,942,257	3,203,257,126
Total number of contracts	204,183	227,297	243,138

Source: Information provided by the Georgian authorities.

***Scope of the Public Procurement Law and exemptions***

Since September 2013 the Public Procurement Law (PPL; originally enacted in 2006) and secondary procurement regulations were amended to expand the number of procurement procedures and introduce black and white listing of companies. The expanded range of procurement procedures includes now revised direct contracting procedure, design contests, framework contract procurement (special orders are issued for procurement of oil products, tyres, mobile phone communication, office paper, standard IT hardware), which are conducted through e-procurement system.

Current text of the PPL and some other relevant Regulations related to public procurement are available in English online at <http://goo.gl/fpu111>.

In respect of improving corruption risk management the main change introduced to the PPL is the obligation for contracting authorities to obtain a prior approval from the SPA in order to further proceed with direct contracting (simplified procurement procedure) in four specific circumstances (see Art. (7)(b-1) and Art. 10-1 (3)(a-d) of the PPL of Georgia): in case of exclusive rights; urgent necessity; necessity to prevent the deterioration of the quality of an object and/or to ensure further operation thereof; necessity to implement an event of state and public importance without hindrance within the restricted timeframes.

The possibility for the President of Georgia to qualify procurement as a simplified (excluding it from the e-Procurement) was removed.



According to the SPA in 2015, 213,184 contracts (87.7%<sup>50</sup>) in the amount of GEL 1,079 million were awarded using simplified procurement, which is 33.7% of total procurements.

According to Transparency International reports of 2014 information on simplified procurements issued by the Ministry of Internal Affairs and its agencies is not accessible in the electronic system. Information on the simplified procurements of the Ministry of Defence and its agencies is also not accessible through the system.

In the same report the concern is raised that during 2013-2014 state owned enterprises were awarded GEL 188.6 million worth of contracts through simplified procurements, which may hinder competition.

It is positive that, according to NGOs, there was a substantial reduction in the contracts awarded to companies directly connected to Georgian Dream donors (directors, owners, board members) - GEL 5.6 million only. In the same period, United National Movement donor connected companies received contracts worth approximately GEL 140 000. The problem was more severe in 2011-2012. In 2012, the United National movement received GEL 6.6 million in donations from persons connected to companies which received GEL 160 million in contracts. The same companies received GEL 110 million through simplified procurements in 2011.<sup>51</sup>

Pursuant to Article 10-1 (3-3) of the PPL of Georgia, the decision on simplified procurement shall be agreed with the SPA through e-Procurement System. Applications of contracting authorities, submitted through this System, are public and any interested parties can express their opinions. When taking a decision, the Agency considers both the application of the contracting authority and the related opinions of the interested parties.

Despite substantial improvement through the above mentioned quality assurance, which reportedly led to a reduction of the use of direct contracting, the use of the direct contracting is still excessively high (33.7% by value), as compared to other countries, and can hardly be objectively justified. It shall be noted that the PPL does not allow the parties concerned to appeal against the selection of a procurement method (Article 9 (a)). In further development of the PPL, the SPA shall introduce a right of appeal against selection of non-competitive procurement methods, upon publication of either a procurement plan or an intent, in other form, to initiate such procurement (especially where direct contracting is involved).

It shall be noted that the direct contracting under the PPL is grouped with some competitive procedures under the heading of simplified procurement procedure. It is recommended that direct (single source) contracting will be qualified (legally and administratively) distinctly from competitive processes, even if the latter ones are simplified.

The PPL (Article 1 (3-1)) defines list of procurement exempted from the Law. The list of certain services and subject excluded does not appear to be justified and could have been covered by the Law (even if a direct contracting will have to be applied). The Georgian authorities should consider reducing the number of exemptions in further development of the law and regulations. Use of the PPL framework appears to provide for better oversight of public spending, rather than leaving it outside of a structured control and monitoring.

#### ***Procurement for PPP / concession-like projects***

One of the main remaining serious concerns is absence of appropriate regulations for procurement of Public-Private Partnership (PPP) or other concession like arrangements, where the public interests are at stake.

According to Gide Loyrette Nouel assessment of the quality of concession legislation in Georgia (a report commissioned by the EBRD, 2011), the law contains very few provisions regarding the selection of the concessionaire and provides for the adoption of regulations in this respect. No such regulations could be identified.

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<sup>50</sup> This figure includes all the contracts below the GEL 5,000 threshold.

<sup>51</sup> Source: TI-Georgia, Simplified procurement remains primary challenge for Georgia's public procurement system, July 2015, <http://goo.gl/YRWhzx>.

The Georgian authorities reported that the PPP law has been drafted and is planned for adoption in 2017.

### ***Utility sector procurement***

As a general rule the procurement by publicly owned enterprises is regulated by the PPL. In such cases, the general public procurement regulations apply.

There is an exception though where the enterprise follows special procedure established by the Government of Georgia. The decision is made by the Ministry of Economy and Sustainable Development of Georgia or the Ministry of Regional Development and Infrastructure of Georgia on the basis of suggestions from the relevant enterprises and/or local self-government bodies. Such exemptions are issued in cases of urgent and complex procurement for a limited time period (usually one year).

According to the report by Georgian Young Lawyers' Association (GYLA)<sup>52</sup> in 2013-2014, the Government of Georgia adopted 20 resolutions providing special regulations for state procurement for entities including Electro Systems of Georgia JSC, Georgian Foundation for Development of Energy JSC, Tbilaviamsheni Ltd, Georgian Post Ltd, Engurhesi Ltd., Georgian Lottery Company Ltd and others.

It was reported that as of 2016, 18 companies are covered by exemptions from the PPL.

Large part of the major infrastructure is controlled through Partnership Fund, where the natural monopolies appear to be excluded from the direct application of the PPL and are regulated by government decree on special procurement rules.

As can be seen from the above and taking into account the information on the concessions in the utility sector, it appears that a large part of the public infrastructure is in hands of companies, which are not obliged to follow the PPL and use the e-Procurement system. Given a short-term cost based principles of tariff setting system currently in place in Georgia, the use of a transparent, open and competitive procurement system to ensure the best value for money for public sector and minimal level of tariffs shall be mandated through covering the procurement in utility sector, as appropriate, by the PPL or via introduction of an additional law, encouraging competition and reducing potential for corruption in such utilities.

According to the obligations undertaken by the Government of Georgia under Association Agreement Roadmap, the Public procurement reforms in utilities sector will be implemented by 2020.

### ***State secret procurement***

This is one of the largest areas of exemptions from the PPL, which by its classified nature is justified. However, it appears to cover a large volume of procurement, which *de facto* does not represent classified products or services.

GYLA in their research on state secret procurement came to the following conclusions, that there is no regulation classification or limitations of objects and respective procurement procedures related to state secret. As a result the government agencies use secret contracts classification for ordinary public procurement. During 2010-2015 only seven government agencies concluded 2,752 contracts with the total value above GEL 747 million under the umbrella of secret procurement, which provides for a high risk of corruption and other violations of law and public interests.<sup>53</sup>

It shall be noted though that after 2012 parliamentary elections, the number and contract value of secret contracts on public procurements significantly decreased. However, the procedures for state secret procurement are still not regulated by the PPL, but by the government decree no. 321 of July 2016. This issue shall be further addressed.

### ***Openness of the procurement system***

The Georgian authorities have maintained a high level of transparency with publication of information on the public procurement.

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<sup>52</sup> Source: <https://goo.gl/5nXm27>.

<sup>53</sup> Source: <https://goo.gl/mhXT25>.

At the same time, information is not yet available open data format as datasets, providing for an efficient analysis by the third parties. At the same time, the list of the warned suppliers, as well as Blacklist and Whitelist are available in machine-readable format (though only in Georgian).

It shall be stated that within the framework of Open Government Partnership in 2016-2017 the SPA has undertaken an obligation to launch on Aggregated Information on Tenders, e-Plans, etc. which will be available in machine-readable data format. The mentioned innovation will include information on the suppliers and contracting authorities, procurement of goods, services and works, etc. It is important to implement this commitment.

As the SPA stated, information about public procurement, which is excluded from the PPL, is centrally collected, analysed and published, except for classified information.

Engagement of the civil society is one of the key factors in maintaining a high level the efficiency and transparency of public procurement. Use and further development of e-Procurement considerably increases transparency of public procurement and access to the data.

The SPA maintains public private dialogue with users and NGOs through presentations, meetings and publications. For example, since 2014 five editions of the online journals (e-Newsletter) were published. The e-newsletters were circulated to over 33,440 registered users of the system, embassies, international organizations, representatives of non-governmental sector, chambers of commerce, associations and media. It is also published on SPA official website and Facebook. Additionally, chairman and senior management team of the SPA conduct every second week public-private dialogue meetings with the representatives of different business sectors.

Several NGOs appear to be actively involved in monitoring the process of public procurement in Georgia and the activities of the SPA. These NGOs are Transparency International (TI) – Georgia<sup>54</sup>; Georgian Young Lawyers' Association (GYLA); Economic Policy Research Centre<sup>55</sup>.

At the same it shall be noted that despite considerable achievements in opening up the Georgian public procurement, the statistical data for 2015 show a very low level of participation and award of contracts by the companies from overseas (0.22% of the number of contract awarded, representing 2.8% of their total value).

Generally low level of participation, even by Georgian companies, was also reported at the regional level.

The risk of having low level of participation may pave the way for collusion of tenderers, reduction of real competition and inflation of tender prices, which is a fertile ground for corruption.

Such a situation, given the geographical location of Georgia and its regional economic environment, may be improved if not totally resolved by broader encouragement of foreign companies to participate in the tenders. The broader use of regional foreign languages, as well as languages widely used in international trade shall be further promoted and possibly mandated by the regulations, especially for certain type of procurements.

Another substantial step in increasing trust to and interest to the Georgian public procurement may be an accession to the WTO GPA, where Georgia holds an observer status since October 1999, as it was recommended to it in the previous round of the IAP monitoring. Currently, Georgia has an Observer Status in the WTO Government Procurement Agreement.

Other ways of promoting Georgian public procurement system abroad, especially at the regional level, shall be also pursued.

The key part of opening up the system is often the use of balanced and fair contract terms and conditions appropriate for the subject of procurement. Therefore, introduction internationally recognized contract terms and conditions, such as FIDIC, NEC3, etc. in construction, the Convention on Contracts for the

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<sup>54</sup> See, for example: Georgia's Public Procurement System, 2013, available at <http://goo.gl/7RcVvR>; Georgia, Public Procurement in 2013-2014: How Taxpayers' Money Got Spent, 2015, available at <http://goo.gl/wBMVYq>.

<sup>55</sup> Assessing Effectiveness and Efficiency of E-Services in Georgia, 2015, available at <http://goo.gl/j3I7g8>.

International Sale of Goods for goods supply contract and MDB harmonized consultancy contracts may benefit public sector of Georgian and its economy as a whole. Currently, the SPA works on adoption of the standard contract terms for procurement of goods, works and services.

With the same accord the procurement procedures and documentation shall be standardized to avoid manipulations with the outcome of tenders, as recommended in the State Audit Office reports.

### ***Planning***

Procurement is planned for one-year period through Module of Electronic Plan (e-Plan) in e-Procurement system. Contracting authorities prepare detailed annual procurement plans and are obliged to publish them in the e-Procurement system via the e-Plan module. Contracting authority cannot initiate a procurement process if the procurement object has not been included in the procurement plan. The e-Plan module is public and available to any interested person.

In view of the above, a factor, which may reduce the number of direct contracts and increase attractiveness and competitiveness of the public procurement, especially in infrastructure sector, is an extension of planning horizons from one year to a longer, e.g. three years period (which can be of indicative nature).

### ***Contract implementation***

The procurement system provides for a comprehensive monitoring of contract implementation, including the requirements for publication of the full text of contracts and any modifications thereof through the e-Procurement system within 10 days after signing. The existing level of transparency shall be praised and shall be maintained in future.

It shall be noted that the existing works supervision system in the construction sector does not seem to provide for an impartial quality assurance and monitoring of the contractor's performance, given the fact that the supervision engineers are paid their fees (a) by the contractors and (b) as a percentage of the contract price. This old fashioned system, inherited from the former Soviet Union, needs to be reformed and changed for an impartial and professional quality, price and time control to avoid risks of corruption in works contracts. However, this reform lies beyond direct public procurement regulations. The Government disputes this and states that contracting authorities are free to hire and pay supervision engineers directly.

As a general remark, the overall contract management system needs improvement in order to avoid unjustified amendments of contracts, especially in terms of contract price increase or time extension, as highlighted in the State Audit Office reports.

### ***Review system***

The Dispute Resolution Board (DRB) is set up in accordance with Article 23 (4) of the PPL of Georgia as an independent decision-making authority. Its decisions can only be repealed by the court.

The DRB was introduced in November 2010 and its rules of operation, as well as its composition, are determined by the SPA Chairman in a special order. In 2015, the new order regulating the DRB was issued by the SPA Chairman.

The DRB authority is focused on dispute resolution related to procurement up to the contract signature.

As a down side of the current DRB set up may be the fact that it is located in the SPA and therefore may be perceived as controlled by the SPA, who may be in certain cases an interested party. At the same time the DRB composition formally addresses this perception and provides for a balanced, fair and transparent system, involving fair number of civil society organisations/NGO representatives to balance the SPA employees.

According to the above mentioned Order the DRB is independent in its activities and/or is not subordinated to any other public body or an official.

The suppliers can submit appeals directly to the Dispute Resolution Board electronically, free of charge, or lodge an application with the court.

The DRB is supported by the secretariat, staffed with three lawyers.

The system appears to be trustworthy, as highlighted by the five year dynamic growth of the number of appeals before the DRB (from 68 in 2011 to 1,017 in 2015). Moreover, in 2015 only 30 decisions by the DRB (3%) were appealed in court, of which in 19 cases the court supported the DRB position and 11 cases are still under consideration.

**Table 10. Statistics on the Dispute Resolution Board work**

	2013	2014	2015
Number of complaints with breakdown according to decisions appealed	393	572	1017
Number of complaints accepted for review	311	466	813
Number of rejected/upheld complaints	172/139	240/226	357/456
Number of procurement contracts or decisions repealed	0	0	0
Average duration of complaint consideration (days)	10	10	10

Source: Information provided by the Georgian authorities.

In practice though, it was reported that a large number of appeals requires substantial work by the members of the DRB (up to three working days a week), which leads to the situation that NGO representatives, working pro bono, do not seem to participate in review, as envisaged by the statute of the DRB. This issue shall be monitored and possibly rectified by appropriate remuneration of the DRB members for the terms of their service and their rotation.

A formal separation of the DRB from the SPA may expedite resolving of the above issued to provide for a higher degree of the independence of the DRB.

Another issue, which needs attention, is professional qualification (as public procurement is concerned) of the NGO representatives. In order to ensure efficient balancing the public official position their level of understanding public procurement shall be, as minimum, comparable. That shall be ensured through appropriate selection criteria to be set out in the respective regulations.

Although any user of e-Procurement system has the right to complain to the DRB against any action or decision of the contracting authority within 10 days from the day the relevant decision is uploaded in the e-Procurement system or the action has taken place, some critical limitations to appeal exist.

As mentioned above one of such limitations is a lack of an opportunity to challenge the unjustified selection of the procurement method (especially non-competitive ones, such as direct contracts) as soon as procurement plans are published.

The other one appears to be a limitation in respect of challenges regarding scores awarded during evaluation of design proposals, quality evaluation criteria (types and weights) etc. Using such subjective evaluation criteria is very risky on its own (in many procurement systems this is the main backdoor for corrupt arrangements). Lack of an opportunity to challenge such criteria increases the risks of corruption dramatically.

Preserving the limitations on the grounds of appeal also contradicts the recommendation from the previous monitoring round.

### ***Suspension***

The interim injunctions are currently available in case of appeal to the court. A specific action to consider, as recommended by the IAP monitoring, replacing provisions on automatic suspension of procurement in case of appeal with possibility to issue interim injunctions by the DRB was not taken. At the same time the DRB secretariat within one working day makes an assessment of whether the appeal as such is admissible, therefore de facto resolving an issue of interim injunction versus the complete suspension of the procedure.

### ***Prevention of conflicts of interests in public procurement***

Although the PPL (Article 8) provides for a comprehensive range of the conditions to cover a conflict of interest in public procurement, it seems to cover the public authorities only, whilst the conflict of interest may occur on the participants' side too. For example, a company may be involved directly or through its affiliates in design or preparation of the tender documents, or a public company owned or controlled by the employer may act as a tenderer in the tender, arranged by the employer.

Therefore, the provisions of the law shall be enhanced in order to address the issue of the conflict of interests on the tenderers' side.

### **Debarment**

The rules on debarment of entities from public procurement seem to be limited to administrative breaches of the procurement process or the contracts, as provided in the respective regulations (Orders Nos. 9 and 19 of the SPA Chairman), which can also be demonstrated by the following statistical data.

**Table 11. Statistics on debarment**

	<b>2013</b>	<b>2014</b>	<b>2015</b>
Number of debarred companies and natural persons	156	122	316
Grounds for debarment:			
- Non-performance or unduly performance	107	101	271
- Refusal to sign a contract	47	18	22
- Unfair behaviour of a company in order to win a tender	2	3	23
Appeals against debarment decisions	7	5	55
Debarment decisions cancelled on appeal	0	0	4

Source: Information provided by the Georgian authorities.

Mandatory debarment for corruption/prohibited practices related offences by a company or its management has not yet been introduced. The approach shall be revisited and the corruption, collusion (one case of bid rigging was reported) and other similar practices should be appropriately punished through the public procurement debarment procedure. The text of Order 19 by the Chairman of the SPA also needs to be enhanced to provide for explicit description of dishonest activities.

### **Public procurement offences**

In 2015 in the course of monitoring public procurement process the SPA identified 101 administrative offences, they were referred to the court. In 97 cases the position of the SPA was accepted by the court and the persons concerned were qualified as offenders by the court, and in 4 cases the proceedings were dismissed.

The statistics on the criminal offences in public procurement is provided below in the table:

**Table 12. Number of criminal cases on corruption in public procurement**

	<b>2014</b>	<b>2015</b>
Investigation, number of cases	46	346
Number of persons prosecuted	44	48
- from them public officials	25	26
- from them representatives of private sector	19	21
Number of persons convicted	41	34
- from them public officials	20	16
- from them representatives of private sector	21	18

Source: Information provided by the Prosecution Service of Georgia.

Given the reported absence of corruption in public sector in the past, the emerging statistics shall be studied by the SPA and appropriate measures introduced in the law and relative regulations to reverse the situation.

Such measures, beyond blacklisting the companies and individuals for the prohibited practices, as discussed above, may include an introduction of the code of conduct/ethics for public authority representatives and respective declarations by tenderers may further enhance the anti-corruption measures.

Currently the SPA is working on adoption of the code of ethics for contracting authorities, members of tender committees and procurement officers.

At the mid-term horizons the Government of Georgia may wish to consider introduction of compliance mechanism in all public entities and/or ISO 37001 (anti-corruption) certification.

#### ***Further reforms***

The SPA is planning to undertake the next step in significant reforming the Georgian public procurement system in order to approximate it to the EU public procurement *acquis*, which will be accompanied by institutional and legislative reform. In March 2016 the Government of Georgia adopted “Roadmap and Action Plan for the Implementation of the Public Procurement Chapter of the EU-Georgia Association Agreement”.

*Georgia is partially compliant with the previous recommendation.*

#### **New recommendation 15**

- 1. Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.**
- 2. Formally initiate negotiations on Georgia’s accession to the WTO Government Procurement Agreement.**
- 3. Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.**
- 4. Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.**
- 5. Provide for a right to appeal against any procurement-related decisions.**
- 6. Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.**
- 7. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. Strengthen conflict of interest safeguards in the public procurement.**

## **2.6. Business integrity**

**Recommendation 13 from the Third Monitoring Round report on Georgia:**

- 1) Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.**
- 2) In co-operation with the business sector representatives, prepare and include in the national anti-corruption policy documents provisions on business integrity.**

**Develop capacity of the business ombudsman to promote business integrity measures.**

- 3) Implement integrity and anti-corruption plans for state-owned (state-controlled) enterprises.**
- 4) Explore the possibility of concluding integrity pacts in large publicly funded projects.**

5) Extend definition of the politically exposed persons to include Georgian nationals.

6) Ensure that information about ultimate beneficial owners of legal entities is obtained and disclosed through public registry.

Over the past 12 years, Georgia has improved significantly in the areas measured by Doing Business by making progress in all 10 areas through 39 regulatory reforms.<sup>56</sup> See below more details on Georgia's standing in the Doing Business and other business-related ratings.

Table 13. Georgia in global governance and doing business ratings

Index and organisation	Armenia	Azerbaijan	Georgia	Kazakhstan	Kyrgyzstan	Mongolia	Tajikistan	Ukraine	Uzbekistan
"Doing Business", 189 countries. Rank in 2016 (in 2013)	35 (32)	63 (67)	24 (9)	41 (49)	67 (70)	56 (76)	132 (141)	83 (137)	87 (154)
Economic Freedom Index, 178 countries. Rank in 2015 (in 2013)	52 (38)	85 (88)	22 (21)	69 (68)	82 (89)	96 (75)	140 (131)	162 (161)	160 (162)
Global Competitiveness Index, 144 countries. Rank in 2015-2016 ranking (in 2012-2013 ranking)	82 (82)	40 (46)	66 (77)	42 (51)	102 (127)	104 (93)	80 (100)	79 (73)	-
- Burden of government regulation	56 (41)	31 (29)	7 (9)	46 (52)	68 (92)	92 (102)	17 (22)	87 (135)	-
- Property rights	94 (64)	99 (87)	78 (131)	66 (77)	121 (142)	112 (118)	64 (94)	131 (134)	-
- Transparency of government policy making	51 (16)	55 (49)	31 (36)	30 (32)	95 (87)	69 (102)	65 (68)	98 (123)	-
- Irregular payments and bribes	73 (82)	87 (110)	23 (26)	64 (64)	130 (137)	77 (114)	69 (101)	122 (133)	-
- Judicial independence	106 (110)	101 (86)	56 (95)	72 (94)	109 (140)	102 (112)	58 (64)	132 (124)	-
- Favouritism in decisions of government officials	71 (75)	58 (43)	48 (51)	50 (91)	101 (136)	129 (130)	41 (40)	99 (119)	-
- Burden of customs procedures	105 (127)	122 (107)	9 (13)	55 (77)	97 (136)	86 (117)	73 (91)	113 (138)	-
- Ethical behaviour of firms	96 (91)	60 (69)	51 (55)	43 (70)	110 (141)	97 (121)	46 (78)	76 (124)	-

Source: Doing business, World Bank, [www.doingbusiness.org](http://www.doingbusiness.org); Economic Freedom Index, Heritage Foundation [www.heritage.org/index](http://www.heritage.org/index); Global Competitiveness Index, World Economic Forum, <http://goo.gl/GsYCOm>.

Prevention of Corruption in Private Sector was included as Priority IX of the Anti-Corruption Strategy and 2015-2016 Action Plan. This section was developed in consultations with the private sector that takes part in one of the Working Groups under the Anti-Corruption Council. The following goals are set out by the Strategy and Action Plan:

1. Study business integrity and integrity risks;
2. Raising public awareness of business integrity issues;
3. Institutionally strengthening the Competition Agency for the aim of preventing corruption;
4. Reducing inactive and unprofitable state-controlled enterprises;
5. Implementing integrity and anticorruption programs in state-controlled enterprises;
6. Increasing transparency and objectivity in the privatization process;
7. To study best international practices and if need be, draft regulatory norms to prevent conflict of interests of former public officials when moving to private sector

Regarding risk assessment, the Competition Agency, established in October 2014, started assessing business risks. However, these assessments focus on competition risks, such as general market risks and market concentration, entry barriers, behaviour of players, contracts and prices. The Agency has so far conducted two assessments, including in the fuel and coffee distribution markets. The studies have helped

<sup>56</sup> World Bank (2016), Doing Business, page 14, <http://goo.gl/kcmyUZ>.



to identify such risks as cartels in the car fuel stations market or non-competitive selection of fuel providers by municipalities. These studies, while very useful for protecting fair competition, did not cover and did not identify corruption risks related to business.

The development of the business integrity section of the Anti-Corruption Action Plan was in itself a useful start of awareness-raising for the government, companies and business associations about business integrity. The Competition Agency provided business integrity training to companies and government officials, but this was focused on the competition issues, rather than anti-corruption. No further activities to train companies and government officials about business integrity risks and prevention measures were conducted. One of the reasons for this can be the absence of the main implementing body in this area. The Competition Agency has its own specific tasks and is in the process of development. Business ombudsman that existed in Georgia since the previous monitoring round deals with the protection of rights of entrepreneurs in more general terms. While it provides a useful mechanism for resolution of disputes through legal means, identifying corruption risks in legislation and practice and proposing solutions, it does not directly cover corruption. Business associations involved in the Working Group did not take the leading role in this area either.

There has been some progress regarding the management of the state owned enterprises (SOEs) in Georgia since the last monitoring round. The government focused on the general governance of SOEs with the aim to shut down or privatise loss-making companies or companies in which the state has no interest, and to improve the management of the companies that remain in state ownership. At the time of establishment of the National Agency of State Property in 2012, its database included 490 SOEs. At the time of the monitoring this number dropped to 147 SOEs.

Out of 147 SOEs managed by the State Property Agency, only 48 are operating, where 15 mid-size SOEs in such areas such as navigation, post, broadcasting and hospitals that belong to the state (there are only several such hospitals, e.g. tuberculosis hospital, while other hospitals in Georgia are private and they are supervised by the Ministry of Health), and the remaining are small companies. The State Property Agency itself does not have a Supervisory Board, and only some of its largest companies have such boards. The Agency uses open procedures for hiring CEOs, there are no special rules for hiring employees. There are no rules for establishing the salary for CEOs. Their performance evaluation is based on the result of the financial operation of the company, salaries of managers depend on the company's financial condition and it demands the written agreement of the Agency. The SOEs under control of the Agency are functioning as ordinary enterprises; their CEOs decide what information will be disclosed. Through trainings and awareness raising activities they are encouraged to ensure availability of annual audited reports on their websites. Largest companies under this Agency have their internal audit services that report to the CEOs and the Supervisory boards; however little is known about the capacity of these committees. The Agency is planning to issue its first annual report in 2016. Like the Partnership Fund, the State Property Agency does not promote transparency or anti-corruption compliance in its companies.

In addition to the National Agency of State Property, there is also the Partnership Fund that manages largest companies of strategic importance.

The Partnership Fund is a state owned investment fund, established in 2011. The Fund provides asset management for Georgian Railway, Georgian Oil and Gas Corporation, Georgian State Electrosystem, Electricity System Commercial Operator, and Tbilisi electricity distribution company Telasi. To promote investment in Georgia, the Fund provides co-financing for investments projects in various sectors including energy, agriculture, manufacturing, real estate/tourism and logistics/infrastructure sectors. The supervisory board of the Fund is chaired by Prime Minister and includes Ministers of Economy and Sustainable development, Finance, Energy and Justice; CEOs of TBC Bank, Bank of Georgia and Liberty Bank. The Supervisory Board appoints the Management Board, including the CEO. The Law on Conflict of Interest and Corruption in Public Service applies to the CEO of the Partnership Fund and to the CEOs of subsidiaries where the state or local authority owns 100% of shares. According to one NGO representative interviewed during the on-site visit, the Fund has an image of providing co-financing to friends and relatives of the parliamentary majority. Poor transparency of the Fund and lack of information about final beneficial owners of legal entities does not help to refute such allegations.

The Chairman of the Supervisory Board annually submits Fund's report to the Government and publishes its financial statements every year. There are no further disclosure requirements or practices used by the Fund. According to the Fund "the Fund and companies where the Fund owns 100% of shares are using the Rules of the Law on State Procurement and sometimes they are also using Special Procurement Rules adopted by the Government ordinances", but no further information was available about the special ordinances. No further efforts to promote transparency and anti-corruption compliance were undertaken by the Fund so far either in its SOEs or in large state-funded projects, despite serious risks usually associated with such operations.

The on-going reconstruction of the railroad Baku-Tbilisi-Kars is one such project. Launched in 2008, it was originally supposed to finish by 2013, but is now extended till 2016. The original price of the works was EUR 200 million, it has increased by 575 million and has now reached EUR 775 million. While this project is implemented with the funding from Azerbaijan and is executed by Azerbaijani and Turkish companies, with technical supervision by a German company, the sheer scale of the operation calls for stronger transparency and anti-corruption provisions. The Georgian Railroads, owned by the Partnership Fund, is a partner to the project. At the time of the monitoring, the governance of this company was very vague, the company was responsible for setting its own tariffs without any involvement of a regulatory agency or any other state body, and it did not have any transparency or anti-corruption requirements.

The State Property Agency manages 15 mid-size SOEs in such areas such as navigation, post, broadcasting and hospitals that belong to the state (there are only several such hospitals, e.g. tuberculosis hospital, while other hospitals in Georgia are private and they are supervised by the Ministry of Health). The Supervisory Board of Agency Fund is composed of the representatives of the state and from citizens, but it has a limited role in management. The Agency uses open procedures for hiring CEOs, there are no special rules for hiring employees of SOEs. There are no rules for establishing the salary for CEOs. Their performance evaluation is based on the result of the financial operation of the company, salaries of managers depend on the company's financial condition and it demands the written agreement of the Agency. The SOEs under control of the Agency are functioning as ordinary enterprises; their CEOs decide what information will be disclosed. Through trainings and awareness raising activities they are encouraged to ensure availability of annual audited reports on their websites. All companies under this Agency have their audit committees that report to the CEOs and the boards; however little is known about the capacity of these committees. The Agency is planning to issue its first annual report in 2016. Like the Partnership Fund, the State Property Agency does not promote transparency or anti-corruption compliance in its companies.

In addition to the SOEs owned by the Partnership Fund and by the State Property Agency, there are also locally owned companies. These companies are established directly by municipalities, they do not have supervisory bodies and no disclosure requirements. No information is available on their number and performance at the national level.

The NGOs noted the recent media allegations that one of the companies associated with the former Prime Minister privatised a large piece of land close to the city of Tbilisi, and that the privatisation process was not transparent. Lack of convincing response from the government demonstrating the legality of the case further fuelled public perception of high-level corruption.<sup>57</sup>

So far, the government did not take any tangible measures to promote the development of self-regulation within the private sector, such as establishing the responsibility of boards and audit units for preventing and detecting of corruption, providing incentives for companies to develop codes of conduct, internal control and compliance programmes.

The government did not take measure to improve corporate transparency either; information about ultimate beneficial owners of legal entities is often hidden by offshore and shell companies. The public registry that contains information about companies only provides information about the founders, but not real owners. According to one business association interviewed during the on-site visit, the former Prime Minister Ivanishvili is the beneficial owner of many companies operating in Georgia, though officially he

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<sup>57</sup> Source: <http://goo.gl/pW55oV>.

does not own any companies. For example, Mr Ivanishvili is believed to be the main beneficial owner of the Georgian “Co-Investment Fund”.<sup>58</sup> According to the web-site of the fund, it is “a USD 6 billion private investment fund with the mandate to provide investors with unique access through a private equity structure to opportunities in Georgia’s fastest growing industries and sectors”, while no information is provided about “limited partners” who established the fund.<sup>59</sup> Lack of transparency of media companies' ownership is another important problem that may feed political corruption. Georgia’s commitments given at the May 2016 London Summit regarding disclosure of beneficial ownership is a good initiative and it needs to be implemented without delay.

In the absence of requirements or incentives from the government, the spread of compliance programmes among companies operating in Georgia remains limited; according to an IFC survey conducted in 2011 only 16 per cent of companies had internal codes of conduct regulating conflict of interest. Usually only subsidiaries of multi-national enterprises have compliance programmes that are required by their mother-companies. The UN Global Compact currently lists only five private sector participants from Georgia. At the same time, the ethical behaviour of Georgian firms was placed at 51 place out of 144, according to the 2015-2016 Global Competitiveness Report, while it held 78th place out of 139 back in 2011.

According to another business association interviewed during the on-site visit, there are more fundamental reasons for reluctance of the private sector to engage in public anti-corruption efforts. The alleged practice of taking away businesses by the government, or forcing companies to finance state projects escalated towards the end of Saakashvili's term in office, and spread fears among business people. Under the Ivanishvili's government this practice was largely stopped, but many former government members were allegedly forced to give away their businesses. According to the ICC Georgia, new forms of controlling businesses and revenues emerged, including the informal requirement for investors to involve Georgian Co-Investment Fund in their operation. For example, an investment in hydropower energy project in Svaneti has recently been blocked by an MP claiming a share in the operation; the investor filed an official complaint to the responsible authorities, but no actions were taken yet to address the case.

## Conclusions

In co-operation with the private sector, the government prepared and included a business integrity section in the Anti-Corruption Strategy and its Action plan, which should be welcomed. However, no study of business integrity risks was conducted, training was not provided to companies and government officials about business integrity risks and prevention measures. The mandate of the Business Ombudsman does not include anti-corruption, and there is no state entity that is responsible for this issue. While the government took some measures to improve the governance of SOEs, no efforts were made to implement integrity or anti-corruption measures in these companies. Similarly, no efforts were made to explore the possibility of concluding integrity pacts in large publicly funded projects. Corporate governance rules remain vague regarding disclosure and responsibility of boards for prevention of corruption. There are no requirements or mechanisms to disclose information about ultimate beneficial owners of legal entities.

*Georgia is partially compliant with the previous recommendation.*

**The following recommendations from the Third Monitoring Round remain valid and become new recommendation 16:**

### **New recommendation 16**

- 1. Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.**
- 2. Develop capacity of the business ombudsman to promote business integrity measures.**
- 3. Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.**

<sup>58</sup> Sources: <http://goo.gl/QR0UKy>; <http://goo.gl/BZjIYh>; <http://goo.gl/u2gk15>; <http://goo.gl/EKtWha>.

<sup>59</sup> Source: <http://www.gcfund.ge/en/overview>.

- 4. Explore the possibility of concluding integrity pacts in large publicly funded projects.**
- 5. Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.**

## Chapter 3

# ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

### 3.1. Criminal law against corruption

#### Criminalisation of corruption offences

- *Mandatory elements of bribery offences, application of bribery offences (verbal offer, bribe influencing official, proof intent, etc.) with examples of real cases*
- *Other offences: private sector bribery, trading in influence, illicit enrichment, abuse of office, money laundering, with examples of real cases*

The following offences in the Criminal Code of Georgia can be considered to be corruption or corruption-related offences: Article 164-1 -Vote buying; Article 182 - Misuse and embezzlement; Article 194 - Legalisation of illegal income (money laundering); Article 203 - Bribing a participant or organisation in a professional sports or commercial entertaining competition; Article 220 - Abuse of function/position in private sector; Article 221 - Commercial bribery; Article 332 – Abuse of official powers; Article 333 - Exceeding official powers; Article 338 - Bribe-taking; Article 339 - Bribe-giving; Article 339-1 - Influence peddling; Article 340 - Accepting gifts prohibited by law; Article 341 - Forgery by an official; Article 355 - Failure to submit a [personal] property declaration or entry of incomplete or incorrect information therein.

The Georgian Criminal Code under chapter XXXIX (“Official Misconduct”, Articles 332 et seq.) includes offences committed by an official and a person equal to an official. The following persons are regarded as subjects of these offences:

-employees of legal entities under public law (other than political and religious associations) that exercise public law powers, members and employees of provisional commissions of the Parliament of Georgia, electoral subjects (only for the purposes of the offence provided for by Article 338 of this Code),

-private enforcement officers, as well as any other persons who exercise public law powers based on the legislation of Georgia,

-a foreign official (including an employee of a public authority exercising legislative and/or administrative powers),

-any person performing any public duty for another state, an official of an international organisation or agency, or an employee hired on a contractual basis, as well as any seconded or non-seconded person performing the duties relevant to the duties of this official or employee, foreign jury members who perform their duties based on a foreign legislation, a member of the international parliamentary assembly, a representative of the International Criminal Court, a judge or official of the international court or judicial body, members of arbitration tribunals, jurors in case of specific crimes, etc.

The provisions of the Georgian law on corruption offences have been recognised to be, in general, in line with the international standards (see OECD/ACN report on Second Round of Monitoring, GRECO reports under the Third Round of Evaluation).

In line with international standards, according to the government, a verbal offer of a bribe, without the briber taking any further steps towards the completion of this act, constitutes a criminal offence according to Georgian jurisprudence. Article 338 of the Criminal Code defines bribe-giving as “promising, offering or granting.” However, no examples of cases were provided.

Again consistent with international standards, conviction for a bribery offence does not require proof that the bribe influenced the public official. Bribe-giving is considered completed at the moment when a person promised, offered or granted to an official or a person equal to an official money or other unlawful advantage for the benefit of the official or another person in order to take certain action during the exercise of official powers. The law does not require this action to actually take place. The crime is completed when a person makes an offer for the aforementioned purpose.

**Abuse of office/exceeding of powers.** The offense of abuse of authority under Article 332 provides that the violation is committed if an officer or a person equal thereto in contempt of public service requirements in order to gain any profit or privilege for oneself or others that has come as a substantial prejudice to the right of a natural or legal person, legal public or state interest. A violation of this section shall be punishable by fine or by imprisonment for a minimum of four months up to three years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

Section 2 punishes abuse of official authority committed by a state-political official with fine or imprisonment for up to five years and deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

The offense of exceeding official Powers under Article 333(1) provides that a violation is committed if an officer or a person equal thereto has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest. A violation is punishable by fine or by jail time up to four months in length or by imprisonment for up to three years in length, and by deprivation of the right to occupy a position or pursue a particular activity for a term of up to three years. Under section (2), the same conduct by a state-political official, is punishable by fine or by imprisonment for up to five years, and by deprivation of the right to occupy a position or pursue a particular activity for up to three years. The punishment for either section is enhanced if the action is “perpetrated: a) repeatedly; b) under violence or by application of arms; or c) by insulting a dignity of a victim”. The enhanced punishment includes a possible prison sentence ranging from three to eight years, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

The law provides no further definition of what constitutes sufficient “personal profit” or “substantial damage” to warrant prosecution under Article 332. Similarly, there is no further specificity for the interpretation of “substantial damage” to the right of a natural or legal person, legal public or state interest, or “injury to the dignity of a victim”, under Article 333. The government provided some legal commentaries and some examples, but these do not appear to provide sufficient guidance for uniform interpretation of these terms to prevent abuses or excessive authority or guidance for prosecutors on what the crime should cover. The case examples provided in the commentaries show that the statute has been applied to sanction what was termed the injury to the reputation of the Ministry of Interior by certain conduct of a senior official. Government representatives did advise the monitoring team that the prosecution guidelines they are developing would address these statutes. The Government disagrees that these vague terms can be used for abuse of office because they provide additional elements to be proven in the criminal case.

The investigation and case opening statistics the government provided, discussed below, show that a large number of investigations are opened under these two statutes, although the eventual number of prosecutions is much lower.

There is no crime of “**illicit enrichment**” in the Georgian Criminal Code. At the same time, its elements can be found in the money laundering offence (Article 194 CC). The money laundering is defined in Georgia as “the legalization of illicit income, *i.e.* giving a legal form to illegal and/or undocumented property (use, acquisition, possession, conversation, transfer or other action) for purposes of concealing its illegal and/or undocumented origin and/or helping any person to evade the legal consequences, as well as concealing or disguising its true nature, originating source, location, allotment, circulation, ownership and/or other related property right.” The “undocumented property” is defined as “property, also the income derived from that property, stocks (shares) [in relation to which] an offender, his/her family members, close relatives or the persons affiliated with him/her are unable to present a document certifying

that the property was obtained legally, or the property that was obtained by the monetary funds received from the realization of the illegal property.”

In line with international standards, under Georgian law, there is no legal requirement of proving the predicate criminal act to establish a violation of the money laundering law. According to comments by Georgian authorities to another monitoring mechanism, the offence can apply when the prosecutor is able to show that there is no evidence to establish the legitimate source of the property.<sup>60</sup>

### **Effective, proportionate and dissuasive sanctions**

#### **Previous recommendation 5**

##### **Ensure that criminal sanctions for passive bribery are proportionate and dissuasive.**

The OECD/ACN Second and Third Round Monitoring reports recommended Georgia to ensure that criminal sanctions for passive bribery are proportionate and dissuasive. It was based on the finding that the minimum sentence for passive bribery of “6 years of imprisonment” was disproportionate, not leaving room for an appropriate sanction for facilitation payments, for example. Reports stated that there was a risk that a case would not be brought to the attention of court because the minimal sentence was inappropriate.

In this round or previous rounds, the Government has not pointed to any studies conducted with regard to effectiveness of criminal sanctions for corruption or corruption-related offences which might explain why the risk is minimal. Article 338 CC (bribe-taking) has not been amended since 2008 and this *part of the recommendation remains not implemented*.

#### **Conclusions**

The sentencing provisions of Article 338 CC governing bribe-taking which the previous monitoring reports found to be excessive and disproportionate have not been amended since 2008. The Government has not referred to any studies conducted with regard to effectiveness of criminal sanctions for corruption or corruption-related offences.

As during the previous monitoring rounds, the Georgian authorities report that the relatively high criminal penalty for passive bribery of a minimum of six years’ imprisonment is not an obstacle to prosecutions because the penalties can be reduced through plea bargains. Some representatives estimated that the average sentence imposed for conviction of passive bribery is around two years. This potential for imposition of a relatively high statutory penalty can provide incentives for effective cooperation by insiders in complex cases committed in secret as corruption cases often are. But if that is the goal, prosecutorial discretion in the administration of the plea process must be fair and transparent in terms of the weight assigned to the cooperation. Previous reports have noted concern with regard to the abuse of the plea-bargaining procedure (see details below), but major strides appear to be undertaken to address those concerns. For now, the recommendation on proportionate sanctions for passive bribery remains not implemented.

As to abuse of office and exceeding one’s powers, the monitoring team observes that the violations under Articles 332 and 333 CC exist in many post-Soviet countries. Historically, in other countries the vague and broad terms have been used in prosecutions associated with rival political opponents where the merits of such cases were highly questioned by civil society. As is noted in the OECD/ACN Summary Report, unlike the UN Convention, offences of abuse of powers in the IAP countries include such element as causing substantial harm to rights and legitimate interests of citizens or organizations or protected by law interests of a society or state. There is also no clear link to the obtaining of an undue advantage – abuse of power is considered committed when it pursued private interests or interests of other persons. The report

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<sup>60</sup> MONEYVAL (2012), Anti-Money Laundering and Combating the Financing of Terrorism in Georgia, Report on Fourth Assessment Visit, page 50, <http://goo.gl/AQ07sd>.

noted that these additional elements might be seen as narrowing down incrimination contained in the UNCAC and also raise issue of legal certainty.<sup>61</sup>

#### **New recommendation 17**

- 1. Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.**
- 2. Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.**

### **Liability of legal persons for corruption**

#### **Recommendation 4 from the Third Monitoring Round report on Georgia**

- 1) Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.**
- 2) Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.**
- 3) Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.**
- 4) Consider introducing in the legislation an exemption (defence) from liability for companies with effective internal controls and compliance programmes.**

#### *Standard of liability*

The corporate liability provisions and related procedures are included in Chapter XVIII1 of the Criminal Code and Chapter XXIX of the Criminal Procedure Code of Georgia.

According to the Criminal Code, the following standard of liability is applied to legal persons: legal entity (entrepreneurial (commercial) or non-entrepreneurial (non-commercial) legal entity (its legal successor)) bears criminal liability for the designated crimes under CC, committed by a responsible person in the name of the legal entity or through (by using) it or/and in its favour. The Code defines a responsible person as a person having the right of management and representation of the entity, also a person authorized to make decision on behalf of the legal entity or/and the member of the supervisory, controlling, revision (audit) board of the legal entity.

#### *Autonomous liability*

A legal entity bears criminal liability when a crime is committed on behalf of the legal entity or through (by using) it and/or in favour of the legal entity, irrespective of the fact whether an individual committing a crime is identified or not. The criminal liability of a legal entity is also provided if the improper control and supervision by the responsible person enabled an individual – employed by the legal entity - to commit a crime in favour of the entity.

The Georgian authorities claim that the law ensures the autonomy of the corporate liability by not requiring the conviction of a human perpetrator as a prerequisite for imposing corporate liability as well as by allowing the investigation and trying of the legal person independently from the perpetrator in different proceedings. The CC provides that “a legal person shall be imposed criminal liability also in the case when a criminal offence is committed on behalf of the legal person or by means of a legal person and/or in

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<sup>61</sup> OECD/ACN (2016, upcoming), Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and challenges, 2013-2015. The Georgian authorities noted that there was a case where the court found that non-pecuniary damage, namely the reputational damage to a ministry, constituted the “substantial harm” to the state. In the authorities’ view, this example shows that in Georgia “substantial harm” element also covers non-pecuniary damage.



its favour, irrespective of whether a person having committed a criminal offence is identified or not.” According to the CC, if a responsible person is released from a criminal liability, it does not as such mean that the legal entity is also released from the liability. Criminal liability of a legal entity does not exclude that an individual will also face charges for the same crime.

The Georgian authorities claim that such prerequisites as detection of the natural person who committed offence (natural offender); starting of a criminal investigation against the natural offender; bringing of charges against the natural offender and conviction of the natural offender are not required by the legislation of Georgia for initiating the investigation against legal entity. This is based on Article 100 CPC that provides that when an investigator and/or prosecutor receive information about a crime, he/she is required to initiate investigation. The same rule applies in relation to the crime committed by a legal entity.

If the natural offender absconded, died, was exempted from liability, was granted amnesty or was found not guilty the case against legal person can be still pursued. The only exception is provided in relation to the release from criminal liability. Namely, pursuant to Article 107-1 §8 of CC, if the circumstances excluding guilt or wrongfulness of the action of an individual have been established a legal entity is to be released from a criminal liability as well. Examples of such circumstances are situations when the perpetrator is a minor not subject to criminal liability, mental insanity of the perpetrator, etc.

However, this latest element appears to be problematic from the point of view of the autonomous nature of the corporate liability. If the guilt of a natural perpetrator cannot be established, this should not lead to automatic release from liability of the legal person. It should be sufficient that the criminal act was committed and it was in favour of the legal person, unsuccessful prosecution of the natural perpetrator should not be an obstacle. The Government, however, believes that none of the exemptions mentioned above limit the autonomous liability of corporations unreasonably.

#### *Sanctions*

The applicable sanctions for corporate liability are: liquidation, deprivation of the right to pursue an activity, a fine (minimum of about EUR 44,000) and deprivation of property. There is no maximum limit for the fine that can be imposed on a legal entity.

There are no provisions in the legislation of Georgia explicitly stipulating that if there are sufficient internal controls and compliance programmes, the legal person is exempted from the liability. However, the government contends that this factor can be taken into account when evaluating whether or not inadequate control and supervision by the responsible person enabled an individual – employed by the legal entity – to commit a crime in favour of this legal entity.

During sanctioning of the legal persons, the following main factors are considered: the nature and graveness of the criminal conduct, the amount of inflicted damages, previous criminal records, the main activity and capacity of a legal entity, the level of internal control and compliance, and the quality of cooperation.

#### Enforcement

In 2015, one legal entity was convicted for crime other than corruption. There have been no convictions of companies for corruption offences. There is an on-going investigation carried out by the Investigation Service of the Ministry of Finance in relation to the corruption related offence, where the legal entity is being investigated without the prosecution of a natural person perpetrating the offence. There were no cases against legal persons for lack of supervision that resulted in the corruption-related offence. Overall, in 2013-2015, only one legal entity was prosecuted for a corruption related offence.

Examples of real cases:

##### Case No. 1. Illicit Entrepreneurial Activity

The Investigation Service of the Ministry of Finance is currently conducting an investigation into the alleged fact of illicit entrepreneurial activity of Company A. According to the materials of the case, Company A was obtaining minerals and avoiding the construction of the sediment basins in violation of

the terms of the license. Prosecution for the above-mentioned offence was initiated against Company A in 2016.

#### Case No. 2. Money Laundering Case

The Investigation Service of the Ministry of Finance has completed the investigation into the alleged money laundering activity of Company B. The said company was subsequently charged with money laundering generating an income in a large quantity. For the purpose of concealing the illicit origin of the property, in January-June 2009, Company B used this property for purchasing various assets abroad in the total value of 2 737 028 GEL and importing into Georgia. The case is currently awaiting trial.

#### Case No. 3. Illegal Production and Sale of Pornographic Material

In December 2015, Tbilisi City Court found Company C guilty for the illegal production and sale of pornographic material, a violation under Article 255 §1 of CC. According to the case files, in November 2014, the employees of Company C illegally disseminated pornographic material through the internet on behalf of the company for the purpose of attracting a large number of visitors to the Company C’s website. Tbilisi City Court imposed a fine in the amount of 20 000 GEL as a penalty against Company C.

According to the Government, the main obstacle that was identified in the area of corporate liability was related to the insufficient awareness of practitioners. The Office of the Chief Prosecutor of Georgia is drafting a manual on effective investigation and prosecution of cases involving legal entities, including the cases of corruption. Once the manual is adopted, intensive trainings on liability of legal persons, including the cases of corruption, if planned for all prosecutors and investigators of the PSG.

The Government also noted that enforcement of the liability of legal persons, in particular, for corruption offences, was included in the Prosecution Service’s Draft Strategy as a part of the policy priorities. The Strategy is expected to be adopted shortly.

#### Training and awareness-raising activities

According to the authorities, the annual training curriculum of the Prosecution Service of Georgia (PSG) for internship candidates to be appointed as investigators and prosecutors as well as in-service training of investigators and prosecutors dealing with offenses involving corporate liability includes training exercises focusing specifically on liability of legal persons, inter alia, for corruption offences.

In 2014-2015, prosecutors and investigators of the PSG attended 2 trainings on criminal proceedings related to legal persons for corruption offences:

Date	Topic	Number of Participants	Trainers	Hosting Institution	Funding Sources
2014 September	Liability of legal persons for corruption cases	6 investigators and prosecutors	Council of Europe experts	Professional Development and Career Management Centre of PSG	CoE
2015 November	Investigation and criminal prosecution of economic crimes committed by legal persons (covered corruption in private sector and money laundering).	14 investigators and prosecutors	Council of Europe experts	Academy of the Ministry of Internal Affairs of Georgia	CoE <sup>62</sup>

<sup>62</sup> The training was carried out in the framework of CoE/EU Eastern Partnership Programmatic Cooperation Framework (PCF) Thematic Programme: “Fight against Corruption and Fostering Good Governance-Fight against Money Laundering”, based on the Special request of the Chief Prosecutor’s Office of Georgia. Together with the investigators and prosecutions of PSG the investigators of the State Security Service and Investigation Service of the Ministry of Finance also attended the training.

In April 2016, two prosecutors and one representative of the Ministry of Justice of Georgia attended the regional Council of Europe training on drafting the Manual on Corporate Liability for Economic Crimes.

## **Conclusions**

As previous monitoring reports have recognized, Georgia was a leader in the region in establishing the criminal liability of legal entities under its laws. The legal framework established by Georgia is overall compliant with international standards. While there is no statutory provision for exempting corporations from liability where the entity has sufficient internal controls and appropriate standards of conduct for its officers and employees, previous monitoring teams have found that the government represented that prosecutors exercised discretion to reflect those conditions. Specific legislation or fair and transparent prosecution guidelines could be adopted to prevent abuse of such discretion and to ensure uniformity. Government representatives advise that the guidelines will address this issue.

An additional issue that was disclosed in this round of monitoring involves the autonomous nature of the corporate liability. In view of the monitoring team, it is problematic that a company will be released from liability if, under Article 107-1 §8 of CC, the circumstances excluding guilt or wrongfulness of the action of an individual have been established. Georgian authorities should review relevant provisions and revise them, if needed, to ensure truly autonomous nature of the corporate liability.

Of continuing concern is an apparent lack of understanding of the possible use of this tool for prosecutors in fighting corruption. As noted, at least some of the anti-corruption investigators and prosecutors saw no benefits to prosecution of legal entities where the corporations, their responsible officers and beneficial owners could face significant collateral consequences provided for in the law including preventing them from participating in public procurements upon conviction of the legal entity. This reinforces the need identified previously for training in this area that is systematic. Enforcement of debarment consequences for the officers and beneficial owners of convicted legal entities could reduce some of the negative perceptions and cynicism the monitoring team heard about the integrity of the procurement process.

Government representatives advised that newly hired prosecutors and investigators receive training on legal entity liability, and that in April 2016 efforts began in earnest to prepare a manual that will serve as the basis for further and more specific training on this topic. No information was provided about specific plans for including judges in the training or access to the manuals developed which we recommend. Overall progress is being made but more work is necessary and could be effective in addressing corruption crimes.

***Georgia has partially implemented previous recommendation 4 that remains valid and is considered new recommendation 18.***

## **Foreign bribery**

Georgia has legislation that makes it an offense for a company organized under Georgia laws to engage in bribery of foreign officials. Georgia is not a big exporting country, however it attracts non-residents and promotes business registration and investment in Georgia due to simplified procedures and business-friendly regulation. Entities registered in Georgia should fall under its foreign bribery statutes.

However, according to the authorities, no cases of foreign bribery were investigated and prosecuted in 2013-2015. Representatives of the specialized anti-corruption prosecution and investigation bodies were not aware of any pattern of Georgia companies paying bribes to foreign officials nor did they see a need to devote resources to investigating such conduct in Georgia.

Detecting these crimes is difficult where the conduct occurs largely outside of Georgia. There could also be situations where competitors disadvantaged due to contract corruption by Georgian legal entities might not be from Georgia and so are not bringing their claims or suspicions to the attention of Georgian law enforcement authorities.

## **Conclusion**

The lack of investigation of foreign bribery could indicate the need for further training and greater awareness of the foreign bribery crime. The monitoring team encourages Georgian authorities to consider expanding awareness in the business community as well as among investigators and prosecutors, and other

public officials of the need to report information of suspected foreign bribery engaged in by Georgian firms or by other foreign firms to the detriment of Georgian firms. In such cases, Georgia appears to have in place mechanisms for international cooperation that could be used to further address the allegations. Such education and awareness programs should include the message that the vigorous investigation and prosecution of such offenses involving businesses in Georgia either as victims or offenders is important to ensure a level playing field for other Georgian and foreign legal entities trying to operate in an increasingly global marketplace.

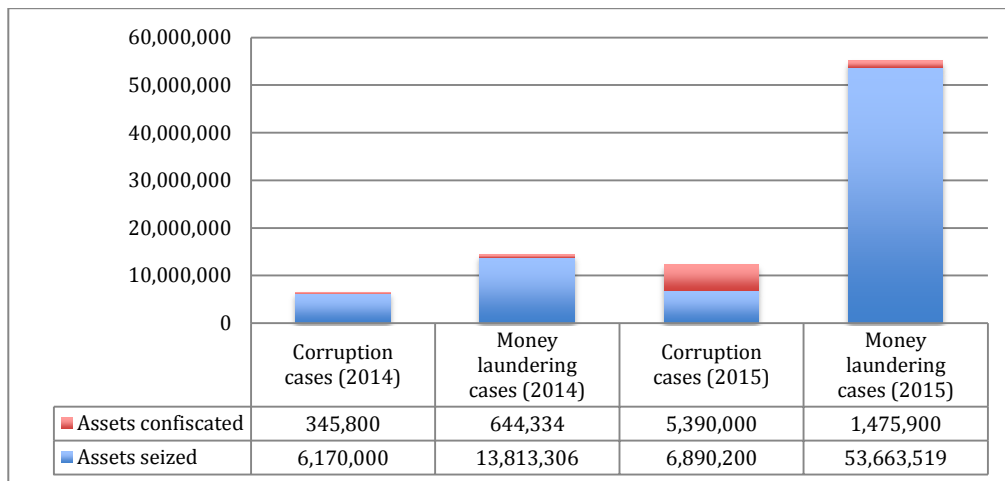
**New recommendation 19**

- 1. Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.**
- 2. Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.**

**Confiscation**

*Criminal confiscation.* Georgian law provides for confiscation of assets in connection with all offences which are predicate offences for money laundering, as well as all instrumentalities of crime.

**Figure 9. Statistics on criminal seizure and confiscation in corruption and money laundering cases**



Source: Information of the Georgian authorities.

*Civil confiscation.* Since 2007 the legislation of Georgia includes a form of civil confiscation, i.e. extended confiscation of illicit and undocumented property, including income received from such property. Civil confiscation procedures are provided for by the Civil Procedure Code of Georgia (Chapter XLIV<sup>1</sup> of the Civil Procedure Code). Pursuant to the Civil Procedure Code of Georgia, the racketeering property as well as illicit or undocumented property owned by person convicted of (1) malfeasance, (2) membership in thieves’ brotherhood, (3) trafficking in human beings, (4) drug trafficking, (5) money laundering or (6) terrorist financing, is subject to confiscation.

The proceedings are initiated by the prosecutor’s motion filed in the civil court with the request for confiscation of racketeering, illicit or undocumented property owned by person convicted of the designated offences as well as his/ her family member, close relative or associated person. The civil procedures of confiscation provide for the reversal of burden of proof: it is up to the respondent to demonstrate before the court that the property in question was obtained by legal means.

Assets of about EUR 21,5 million value have been confiscated through civil asset recovery following the introduction of extended asset recovery laws in 2006. In 2015, one real estate unit in the value of EUR 19,500 was confiscated from the thief-in-law using civil confiscation measures.

*Non-conviction based confiscation.* The legislation of Georgia does not provide non-conviction based confiscation mechanism.

*Confiscation Guidelines.* According to the Georgian authorities, to reinforce the effectiveness of criminal asset confiscation in Georgia, in June 2015, the Office of the Chief Prosecutor prepared Recommendations for prosecutors and investigators on asset confiscation matters. In July 2015, the Chief Prosecutor's Office organized discussion roundtables and presented the draft Recommendation to 275 prosecutors and investigators throughout Georgia, to 124 prosecutors and investigators of the Prosecution Service; 122 investigators of the Ministry of Internal Affairs; and 29 investigators of the Investigation Service of the Ministry of Finance. During the discussions, the attendees were informed about the purpose and substance of the Recommendation and were provided with an opportunity to raise practical issues on asset confiscation matters.

Following the meetings, in August 2015, the Chief Prosecutor of Georgia issued the Recommendation on Certain Measures to be Implemented in the Course of Criminal Proceedings, and designated the General Inspection Unit of the Office of the Chief Prosecutor as a monitoring body for its proper implementation.

The Recommendation sets mandatory requirements for practitioners aiming to ensure that prosecutors and investigators routinely trace the proceeds of crime in all investigations and undertake necessary measures for its confiscation. Seeking confiscation is also mandatory in all corruption cases.

### **Conclusion**

While the use of confiscation in the past has been relatively weak, the monitoring team notes that robust efforts appear to be being taken in terms of the August 2015 Recommendation to prosecutors requiring tracing of proceeds of crime and requiring that confiscation be used in corruption cases. Appointing the general Inspection Unit to ensure that the recommendation is followed should lead to effective monitoring and implementation. If properly trained, requiring financial tracing in every case should lead both to appropriate use of confiscation authorities to disgorge illegal profits and to evidence that provides strong corroboration of witness testimony and documents in cases.

### **Statute of limitations**

Georgia applies a special approach to corruption offences: regardless of the sanction, the statute of limitations for bribery and some other corruption offences (excess and abuse of official power, active and passive bribery, trading in influence and illegal gifts) is 15 years; unless it is an especially grave crime, i.e. when the maximum sanction is more than 10 years of imprisonment, then the limitations period is 25 years.

The statute of limitations for prosecution is calculated starting from the day when the crime is committed up to the day when charges are brought against the person. If a new crime is committed, the statute of limitations is calculated for each individual crime. The statute of limitations is suspended if the offender has absconded. In this case, the duration of the statute of limitations is resumed upon the detention of an offender or his/her appearance with a guilty plea.

The statute of limitations is suspended for the period during which the person is protected by immunity. The statute of limitations is also suspended during the time when the prosecution may not be initiated against a person for the offence (committed before his/her extradition) other than the one for the commission of which he/she was extradited to Georgia.

According to the authorities, in 2013-2015 no prosecution has been terminated because of the expiry of limitation period.

### **Immunities**

The list of public officials enjoying immunities as well as related basic rules and procedures are provided in the Constitution, Criminal Code and Civil Procedure Code of Georgia. The immunity from prosecution is granted to the President of Georgia, Auditor General, Public Defender, Data Protection Inspector and Judges. The immunity provides that, as long as the said officials are holding the office or there is no special consent of the competent body (except in relation to the President), the prosecution against them shall not be started or shall be delayed.

The procedures for lifting the immunity from prosecution are as follows:

- Procedures related to the President of Georgia

According to Article 75 of the Constitution of Georgia, it is prohibited to arrest or prosecute the President of Georgia while he/she is holding the office. Unlike any other officials enjoying immunity from prosecution, no one is entitled to give the consent on prosecution of the President. The only mechanism allowing the prosecution to be carried out against the President is his/her impeachment by the Parliament. The relevant rules and procedures for impeachment are provided in the Constitution of Georgia.

- Procedures related to Judges

According to Article 87 of the Constitution of Georgia, no one can arrest, detain or bring criminal proceedings against a judge without the consent of the Chairman of the Supreme Court of Georgia, except when the judge is caught at the scene of crime, in which case the Chairman of the Supreme Court of Georgia shall immediately be notified. If the Chairman of the Supreme Court of Georgia does not give his/her consent, the arrested or detained judge shall be immediately released.

Pursuant to Article 88 of the Constitution of Georgia, no one can arrest, detain or bring criminal proceeding against a member of the Constitutional Court without the consent of the Constitutional Court, except when he/she is caught at the crime scene, in which case the Constitutional Court of Georgia shall immediately be notified. If the Constitutional Court does not give its consent, the arrested or detained member of the Constitutional Court shall be immediately released.

Article 90 of the Constitution of Georgia provides that no one has the right to arrest, detain, or bring criminal proceeding against the Chairman and members of the Supreme Court without the consent of the Parliament, except when he/she is caught at the scene of crime, in which case the Parliament of Georgia shall immediately be notified. If the Parliament of Georgia does not give its consent, the arrested or detained person shall be immediately released.

Pursuant to Article 167 of the CPC, prosecution shall not be commenced or shall be suspended, if the Parliament of Georgia, Constitutional Court of Georgia, and/or the Chairman of the Supreme Court of Georgia do not approve the prosecution of a judge, for the term, during which these individuals are protected by immunity.

- Procedures related to the Auditor General, Public Defender and the Data Protection Officer

According to Article 167 of the CPC, prosecution shall not be commenced or shall be suspended, if the Parliament of Georgia does not approve the prosecution of a Public Defender, Auditor General and Data Protection officer, for the term, during which these individuals are protected by immunity.

In order to carry out prosecution against a judge, Auditor General, Public Defender and the Data Protection Officer, it is necessary for prosecutor to address the relevant competent body with the request for giving the consent on prosecution. The exception from this rule is provided in the situation when the official is caught at the commission of a crime or immediately thereafter. In this case, the official can be arrested, which according to CPC equals to initiation of the prosecution. As mentioned earlier, in such cases the competent body in charge of giving the consent on prosecution should be notified immediately.

- Members of the Parliament

The Georgian legislation does not provide MPs with the immunity from prosecution, meaning that MPs can be subject to prosecution without the need for permission or consent from any institution.

The existing immunity of MPs prohibits the arrest of MP without the consent of the Parliament. The exception from this rule is when he/she is caught at the scene of crime. In the latter case, the Parliament of Georgia shall be immediately notified; if the Parliament of Georgia does not give its consent, the arrested person shall be immediately released. For lifting the immunity from arrest, the Chief Prosecutor of Georgia applies to the Parliament of Georgia with the respective proposal. Within 5 days, the Parliamentary Committee for Procedural Issues and Rules examines the proposal and presents a written conclusion to the Parliamentary Bureau. Then, the Bureau submits the issue for discussion at the next plenary meeting. At the plenary meeting, the decision on lifting the immunity is deemed to be adopted if it is supported by the majority of MPs present, but no less than one-third of the total membership of the Parliament.

According to Article 71 of the Criminal Code, the duration of the statute of limitations for prosecution is suspended during the time a person is protected by immunity.

The investigation in relation to the officials enjoying immunity from prosecution can be carried out in full extent, but with the following particularities:

- Measures related to searches

Pursuant to Article 87 of the Constitution of Georgia, it is prohibited to search the apartment, car and workplace of a judge or carry out his/her personal search without the consent of the Chairman of the Supreme Court of Georgia, except when he/she is caught at the crime scene, in which case the Chairperson of the Supreme Court of Georgia shall be immediately notified. The similar procedure applies to judges of the Constitutional Court and members of the Supreme Court, except that the relevant authorising authority is respectively the Constitutional Court and the Parliament.

- Measures related to covert investigative actions

Pursuant to Article 143<sup>3</sup> § of CPC, the covert investigative action in relation to state-political official (the President of Georgia, Members of the Parliament of Georgia, Prime Minister, other members of the Government of Georgia and their deputies, members of the Supreme Representative Bodies of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara, members of the Governments of the Autonomous Republic of Abkhazia and the Autonomous Republic of Adjara and their deputies), Judges and persons with an immunity can be carried out based on the Order of the Supreme Court Judge issued upon the motivated request of the Chief Prosecutor or Deputy Chief Prosecutor.

No immunity from prosecution was lifted in 2013-2015. Georgian authorities represented that there were no obstacles to prosecution based on the restrictions involving lifting of official immunity to permit investigations, including covert investigations or prosecution.

### **Effective regret**

In Georgia, for active bribery in private and public sectors, as well as for the active side of trading in influence, the perpetrator is exempted from liability, if he voluntarily informs law enforcement authorities. Such denunciation must happen before authorities become aware of the offence. Another requirement is that the facts reported by the briber must be sufficient to build a *'prima facie'* case of bribery.<sup>63</sup>

The Criminal Code provisions on effective regret were amended in November 2011 to accommodate concerns expressed in the GRECO report.<sup>64</sup> Namely, a provision was added that the decision to exempt a person from the criminal liability is made by the prosecuting body. According to Georgian authorities, this means that the prosecutor is given discretion whether or not to apply effective regret exemption making it no longer automatic. Later the Ministry of Justice also prepared mandatory guidelines for prosecutors for the application of provisions on effective regret. These guidelines are supposed to prescribe that the decision on the release from criminal liability in cases of effective regret will depend in each case on assessment of all of the ensuing criteria: the offender shall report voluntarily, admit his or her guilt and regret committing the offence; the offence must be reported immediately or in a reasonable time; the offence is to be reported before it is discovered or the offender has to believe that the offence has not been discovered; the facts reported must be sufficient to start a prosecution; the offender must reimburse the proceeds, etc. The law enforcement agency will also need to assess whether the offender is the instigator of the crime. The benefit obtained through the offence will not be retained by the bribe-giver unless this benefit is "legitimate".<sup>65</sup>

According to the authorities' replies to the OECD/ACN monitoring questionnaire, the main guarantees that are in place against the abuse of effective regret provisions are the following:

- Existence of the criteria for the use of effective regret as a defence;

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<sup>63</sup> GRECO (2011), Third Round Evaluation report on Georgia, §80, <http://goo.gl/frHv2w>.

<sup>64</sup> OECD/ACN (2010), Second Monitoring Round report on Georgia, page 18, <http://goo.gl/4iT5N2>.

<sup>65</sup> GRECO (2015), Second Compliance report on Georgia, Third Round of Evaluation, §13, <http://goo.gl/SyDFoU>.

- Existence of the mechanism for monitoring the compliance with the criteria (the General Inspection Unit of the PSG and its functions);
- Applicable disciplinary sanctions and related procedures.

In 2013 – 2015 there were no corruption cases where effective regret was invoked successfully. Specialized anti-corruption prosecutors and investigators expressed no particular concerns about this statistic. They did not see its use as due to a lack of awareness by the public, and said they were obtaining cooperation in corruption investigations and prosecutors through plea agreements.

### 3.2. Procedures for investigation and prosecution of corruption offences

#### Effective/proactive detection

According to the Georgian authorities, the CPC does not set any restrictions on the sources of information that can be used for triggering a criminal investigation. Thus, essentially any information from any source, including anonymous sources, can be used to commence a criminal investigation. The said rules apply in relation to the investigation of corruption offences as well. Georgian authorities provided the following information about the sources of information used to initiate criminal investigations in Georgia in 2014.

**Table 14. Sources for launching investigations, corruption crimes, 2014**

Source	Number of investigations launched
Criminal intelligence	163
Crime report (victims, etc.)	151
Analyses of risk profiles (analyses carried out by the State Audit or other government agencies)	48
Spontaneously revealed information in existing investigations	31
Other (grounds not apparent from the data entered in the database)	8

Source: Information provided by the Chief Prosecution’s Office of Georgia.

*Financial Intelligence Unit.* The Financial Monitoring Service (FMS) receives suspicious transaction reports on potential money laundering and related predicate offences, including possible cases of corruption, as well as threshold transaction reports from reporting entities (financial institutions and designated non-financial businesses and professions). The FMS can also request and obtain any additional information including confidential data from reporting entities and public agencies to inform its operational analysis. Moreover, the FMS has direct access to various government databases including those of law enforcement agencies and tax authorities.

The FMS disseminates the results of its analysis to law enforcement authorities spontaneously when there are reasonable grounds to believe that money laundering, terrorism financing or related predicate offences are taking place. The FMS also sends any additional information obtained from reporting entities to law enforcements in relation to prior disseminations.

FMS can freeze assets for 72 hours if the transaction is deemed suspicious, while immediately informing a prosecutor about it. The prosecution service has 48 hours to request a court to freeze such assets (in exigent circumstances funds can be frozen without court order for limited amount of time). The prosecution can use FMS information in court to justify the freezing order, without getting bank records.

The FMS opened two corruption related cases in 2015 and forwarded all case materials to competent law enforcement authorities.



**Table 15. Statistics on the investigations launched based on the FMS reports and outcomes of such investigations**

	Investigations launched based on the FMS reports	Related judicial proceedings in reference year – number of persons			
		Prosecution (based on FIU disseminated cases)		Convictions	
	ML/ Other criminal offences	ML	Other criminal offences	ML	Other criminal offences
2012	4	-	-	-	-
2013	20	-	13	-	10
2014	37	2	14	-	18
2015	83 <sup>66</sup>	3	5	3	7

Source: Information by Georgian authorities.

**Table 16. Statistics on the money laundering investigations and prosecutions in which corruption crime was a predicate offence (for 2013-2015)**

	Investigations	Prosecutions (number of persons)
2013	2	13
2014	1	1
2015	3	5

Source: Information by Georgian authorities.

*Political Exposed Persons.* The current definition of politically exposed persons covers high-ranking foreign officials, their family members and related persons. However, the FMS developed draft amendments to Georgia’s AML/CFT Law that extend the definition to relevant Georgian officials as provided for by the FATF recommendations.

*Trainings.* Trainings and seminars are conducted which are jointly attended by FMS and law enforcement officials. For the period 2013-2015 these included the following:

- The seminar on Counteracting Money Laundering Stemming from Corruption organized by the Government of Poland on 17-18 November 2015;
- The seminar on Criminal and Financial Investigation organized by the Technical Assistance and Information Exchange instrument of the European Commission (TAIEX) on 29-30 June 2015 in Tbilisi, Georgia;
- The seminar on Practices of Informal and Formal Cooperation for the Purpose of Recovery of Proceeds from Organized Crime organized by UNODC on 23-25 June 2015 in Yerevan, Armenia;
- The training-seminar on the Identification and Investigation of Money Laundering through Electronic Money and Virtual Currency organized by UNODC on 31 March - 1 April 2015 in Ashgabat, Turkmenistan;
- The training on the Investigation and Prosecution of Money Laundering Offence organized by the US Embassy in Georgia on 9-13 March 2015 in Kvareli, Georgia;
- Regional Seminar on the Prevention of Corruption organized by the Office of the Coordinator of OSCE Economic and Environmental Activities on 15-18 December 2014 in Batumi, Georgia;
- Regional Workshop on Supporting the Prevention of Abuse of Non-Profit Organizations for Financing of Terrorism organized jointly by the OSCE Global Centre on Cooperative Security, UN Counter-Terrorism Committee Executive Directorate, and the Ministry of Foreign and European Affairs of the Slovak Republic on 27-31 October 2014 in Bratislava, Slovakia;
- The third regional conference on the Typology and Analysis of Legalization of Corruption Income in Transitional Economies on 27 November 2013 in Minsk, Belarus;

<sup>66</sup> 27 investigations were launched on the alleged facts of ML and 56 investigations - in relation to other offences.

- The working meeting organized by the UNODC and GUAM on Improving Mutual Legal Assistance in Money Laundering Investigation and Location of Property on 25-27 June 2013 in Batumi, Georgia;
- The seminar on Combating Illicit Income Legalization and Terrorism Financing, and International Sanctions organized by the FMS and the EBRD on 4-6 June 2013 in Tbilisi, Georgia.

### **Access to bank, financial, commercial records**

According to information provided by Georgian authorities, law enforcement authorities have available four main procedures for obtaining access to bank, financial or commercial records from Georgian businesses and institutions:

- The Disclosures of the Financial Monitoring Service of Georgia

Based on the Law of Georgia on Prevention of Money Laundering, the Financial Monitoring Service of Georgia disseminates the results of its analysis to law enforcement authorities whenever there are grounds to believe that money laundering, terrorism financing or predicate offences, i.e. corruption, are taking place. FMS has bilateral agreements with the law enforcement authorities establishing direct channels of communication and facilitating the coordination of joint efforts. The underlying bank, financial or commercial records which are the subjects of their reports are normally included in the FMS disclosures.

- Search and seizure of information and documents based on the court order

The law enforcement authorities can also gain access to bank, financial or commercial records through search and seizure carried out in the respective institutions keeping these records. Articles 112, 119-124 of the CPC provide the mechanism for application of search and seizure. According to Article 119 of the CPC, search and seizure shall aim at uncovering and seizure of any object, document, substance, or other item that contains information related to the case. Paragraph 3 of Article 119 provides that an object, document, or other item including information relevant to the case may be seized if there is a probable cause that the object, document, or other item is kept in a certain place, with a certain person, and if it is not necessary to conduct a search for it. According to paragraph 4 of the same Article, a search may be conducted for a seizure of an object, document, or other item including information relevant to a certain case, if there is a probable cause, that it is kept in a certain place, with a certain person, and if a search is necessary to discover it.

In ordinary circumstances, when there is no need for urgent actions to be taken, search and seizure should be preceded by a court order. The court order is issued upon the prosecutor's motion. The judge is supposed to make decisions on the prosecutor's motion within 24 hours from the moment of receiving it. If the motion is granted, the court order is immediately provided to the prosecutor.

On the basis of a court order authorizing search and/or seizure, an investigator has a right to immediately enter an institution keeping the confidential financial information for its discovery and seizure. Prior to starting the search and/or seizure, the investigator should present the court order authorizing such action to a competent representative of an institution or company subject to search and/or seizure. The investigator should first offer the representative the opportunity to voluntarily turn over the requested information. In case of refusal to do so voluntarily, the search and seizure is carried out using proportional coercion.

- Search and seizure of information and documents based on the investigator's decree

Search and/or seizure referred to above may be conducted without a court order, upon an investigator's decision, in case of urgency, where delay may cause the destruction of factual data essential for the case or will make it impossible to obtain such data, or when an object, document, substance or any other object containing information is discovered during another investigative action.

The urgent search and/or seizure should be later validated by the court. In this case a prosecutor should notify a judge within 24 hours from the moment of starting search and/or seizure of the circumstances that justified the necessity of taking urgent investigative actions. The judge then makes a decision on a motion without an oral hearing within 24 hours from receiving the basis for the justification. If the court rejects the basis asserted by the prosecutors, the evidence obtained may not be used by the investigators.

- Monitoring of bank accounts

According to Article 124<sup>1</sup> of the CPC, a court may issue an order authorizing the monitoring of bank accounts by investigators if there is probable cause to believe that a person is conducting a criminal act by using a bank account and/or for information necessary to trace the property subject to confiscation. To obtain such an order, a prosecutor with the approval of the Chief Prosecutor or Deputy Chief Prosecutor is authorized to submit a motion to a court according to the investigative jurisdiction. Based on the court decision, the bank is obliged to cooperate with investigation and to provide to provide the information concerning transactions on one or more bank accounts to investigators in accordance with the order immediately after the transaction is completed. Information concerning transfer and/or withdrawal of money from bank account should be provided to the investigating authority prior to the completion of the banking operation.

There is no **central register of bank accounts** in Georgia. To obtain information from all banks registered in Georgia about the existence of bank accounts of certain persons/entities a court order has to be obtained. Once information is received in which banks a person/entity holds account(s), another court order must be obtained to get information on the activity in such accounts. Georgian law enforcement authorities interviewed considered having a central register of bank accounts to be useful, but did not express a strong need for such a registry.

Law enforcement agencies in Georgia have direct access to databases on tax payments and customs clearance. Such information is exchanged through electronic means.

### **Prosecutorial discretion**

According to Article 16 CPC, in exercising prosecutorial discretion, the prosecutor should be guided by the public interest. The factors which are to be taken into account in that regard, inter alia the criteria for assessing the public interest are provided by the Criminal Justice Policy Guidelines adopted by the Decree of the Minister of Justice of Georgia in October 2010. No prosecution should be initiated or continued if it is inconsistent with the Justice Policy Guidelines.

Notably, the Criminal Justice Policy Guidelines include corruption in the list of serious offences in relation to which these Guidelines explicitly recommend that prosecutors carry out prosecutions.

The grounds for termination of a criminal case are provided in Article 105 CPC. Article 105 provides that an investigation shall be terminated and criminal prosecution shall not be commenced or shall be terminated if: 1) the act envisaged by the criminal law does not exist; 2) the act committed is not unlawful; 3) a new law abrogates the criminality of an action; 4) the law which served as a ground for the charges is recognized unconstitutional; 5) the statute of limitations for criminal prosecution has expired; 6) a legal basis for amnesty act applies, releasing a person from criminal liability and punishment for the committed act; 7) a court judgment on the same charges was rendered and/or a court ruling terminating a criminal prosecution on the same charges exists; 8) a prosecutor's decree on terminating criminal prosecution and/or investigation exists; 9) prosecutorial discretion is applied to terminate an investigation or a prosecution; 10) a person voluntarily abandons the commission of a crime under Article 21 of the Criminal Code; 11) effective regret was invoked; or 12) circumstances have changed.

In addition to the circumstances described above, criminal prosecution shall not be commenced, or if already initiated, shall be terminated if: 1) a person has not attained the age of criminal responsibility; 2) a person was mentally incompetent by the time of committing the crime, which is confirmed by a forensic psychiatric report; 3) the defendant is deceased; and 4) for offences stipulated by Articles 322<sup>1</sup> (Breach of the procedure for entry into the occupied territories), 344 (Illegal crossing of the state border of Georgia), or Article 362 (Production, sale or use of a forged document, seal, stamp or blank forms) of the CC, if the person was compelled to commit such crimes as a direct consequence of being a victim of crimes under Articles 143<sup>1</sup> (Human trafficking) and/or 143<sup>2</sup> (Child trafficking).

According to Georgian authorities, corruption offences are always pursued and cannot be dropped due to the insignificance of the offence. There were no cases when corruption cases where investigation has been started were dismissed through prosecutorial discretion.

Guidelines for withdrawing criminal cases from one investigative agency and referring them to another were approved by an Order of the Chief Prosecutor of Georgia "On the Determination of the Basis for

Referring Criminal Cases to Another Investigative Agency, Regardless of the Investigative Jurisdiction,” dated 7 September 2015.

## **Plea bargaining**

### **Recommendation 5 from the Third Monitoring Round report on Georgia**

**“... 2) Review current system of plea bargaining to prevent abuse of prosecutorial powers, in particular by increasing the role of judge in the proceedings, adopting and making public guidelines for prosecutors on application of plea bargaining provisions.”**

According to the Government replies, in order to improve the safeguards in application of the plea bargain agreements, the Ministry of Justice of Georgia, in close cooperation with international experts, prepared analysis and drafted respective legislative amendments in the CPC. The amendments were approved by the Government of Georgia in April 2014 and adopted by the Parliament of Georgia in July 2014; they entered into force in August 2014.

The amendments in the CPC expanded the procedural safeguards for defendants in connection with plea agreements. These include the following:

- Empowering judges with additional powers of scrutiny over the possible use of undue influence by prosecution in plea bargain procedures;
- Raising the standard of proof of the offense to be established by the prosecution;
- Making the plea-bargaining process transparent by requiring the prosecutor to draft the record on bargaining and obtaining the defendant’s and his/her attorney’s signature on it;
- Raising victim’s role in the plea bargain procedures;
- Empowering judges to refer the case back to the superior prosecutor if he/she believes that the plea agreement was concluded under duress or to assess the fairness of the penalty proposed under plea bargain.

According to Articles 212, 213 and 215 of CPC, the role of the judge in approving or rejecting plea agreements has been clarified and to some degree expanded. The law is clear that the competent authority for adopting the plea agreement is the court. Pursuant to Article 212 §2 CPC, before approving a plea agreement the court must be satisfied that:

- The plea agreement is not a result of torture, maltreatment, coercion, intimidation or illegal promise to a defendant;
- The plea agreement is voluntary concluded by the defendant and he/she is pleading guilty voluntarily;
- The defendant fully acknowledges the legal consequences of the plea agreement, including the consequences of a conviction;
- The defendant had an opportunity to get qualified legal advice;
- The defendant fully understands the nature of the crime he is charged with;
- The defendant fully understands the possible sentence for the crime to which he/she pleads guilty;
- The defendant is aware of all requirements and consequences of the law for the guilty plea in connection with the plea agreement;
- The defendant understands that if the court does not approve the plea agreement, the government is prohibited from using information provided by the defendant under the plea agreement against him in future;
- The defendant understands that he/she has the defence right, the right to reject a plea agreement and to have the case examined in a substantial hearing by the court, if there is no plea;
- The defendant agrees with the factual grounds of the guilty plea;
- All terms agreed upon by the defendant and the prosecutor, are reflected in writing in the plea agreement; and
- The defendant and defence counsel are fully familiar with the case materials.

The judge, in addition, informs the defendant that if the defendant decided to file a complaint about being subjected to torture, inhuman or degrading treatment, this will not hold up the plea agreement which was concluded in compliance with the law.

The judge decides whether or not to accept the plea agreement based on the law and is not required to approve the agreement reached by the prosecutor and the defendant. After examining the motion to approve a plea agreement, the court may decide to render judgment without substantial consideration of a case, may return the case back to the prosecutor, or may decide to render judgment after substantial consideration of a case in accordance with the rules established by the law.

Based on the case materials and the defendant’s guilty plea, the court shall examine if the charges are substantiated, if the circumstances determined by CPC exist and if the sentence requested in the plea agreement motion is legitimate and fair. The court should not approve the plea agreement, if it considers that a sufficient basis is not received to establish the circumstances provided for under Article 212 § 2 of CPC.

The court may render a decision to accept the plea agreement, if the court decides that sufficient evidence is presented in accordance with evidentiary standard set by Article 111 of CPC. Article 111 requires evidence that would convince an objective person that the defendant has committed a crime, the defendant does not challenge the evidence presented by the prosecution side and waives his/her right to substantial hearing of his/her case by the court, that sufficient answers were received for the circumstances provided for in Article 212 §2 of CC and the sentence requested is legitimate and fair, the court renders judgment without substantial consideration of a case. The court should enter its judgment shall be rendered within 15 days from receipt of the prosecutor’s motion.

If before pre-trial hearing, the court examines a proposed plea agreement and decides that the plea agreement is reached with torture, inhuman or degrading treatment or violence, coercion, deception or upon other illegal promise, the court transfers the case to a supervising prosecutor. The supervising prosecutor assigns the other prosecutor to carry out prosecutorial activities.

If the court finds that the presented evidence is not sufficient according to evidentiary standard under Article 111 of CPC for a decision to approve a plea agreement, or the prosecutor’s motion is submitted in violation of the requirements stipulated by CPC, the court should return the case to the prosecutor. During examination of the motion, instead of returning the case to the prosecutor, the court should first offer the parties the opportunity to change the terms of the agreement, which should be confirmed by the supervising prosecutor. If the changed terms do not satisfy the court, then it returns the case to the prosecutor.

The independent trial monitoring conducted by Georgian Young Lawyers Association showed that the fairness of plea-bargaining procedures has gradually improved. In its latest available report<sup>67</sup> (issued in March 2016, for the period of February-October 2015) GYLA noted that judges seemed more active than before and did not automatically approve prosecution’s motions on plea agreements. However, GYLA found only 2 cases when judges rejected plea agreements proposed by prosecutors out of 113 cases; also only on 3 occasions judges asked additional questions to examine whether proposed punishment was fair. The number of plea agreements which provided for a fine as a sanction declined from 68% in 2012 to 39% in 2015. The use of community labour as a sanction increased from 1% in 2012 to 15% in 2015.

Formal *guidelines for prosecutors* on application of plea bargain provisions were adopted in 2015.

**Table 17. Number of defendants subject to plea bargains in corruption cases**

	2013	2014	2015
Number of defendants	146	140	238

Source: Information provided by the Georgian authorities.

**Conclusions.** The Government appears to have taken major steps to improve the legal structure under which plea agreements can be used to ensure fairness, transparency and efficiency in resolving cases. The initial results appear to be promising. Monitoring team will be interested in the results over the next

<sup>67</sup> Available at <http://goo.gl/DD1cku>.

monitoring period to see if further refinements are necessary. Especially in the context of plea agreements in corruption cases, the monitoring team will be interested to see if plea agreements with cooperation provisions are being used to further investigations and prosecutions of corruption high level and complex offenses which many countries have found are a critically important to these difficult areas. Georgia is fully compliant with this part of the recommendation.

Taking into implementation of two parts of the previous recommendation, *Georgia is largely compliant with the previous recommendation 5.*

#### **Previous recommendation 6**

**Review Criminal Procedure Code provisions limiting duration of time a person can be considered a defendant after charges have been brought against him and, if necessary, amend them to allow flexibility in the post-indictment prosecution.**

It appears that no specific action was taken since the previous monitoring round to review Criminal Procedure Code provisions limiting duration of time a person can be considered a defendant after charges have been brought against him. According to Article 169 of the CPC, before the start of the pre-trial hearing, a defendant shall not be prosecuted longer than 9 months for one offence, unless prior to the expiry of the said term, he/she is not charged with another offence.

The previous monitoring report noted that any fixed terms for procedural actions that do not take into account specific circumstances of the case raise concern. This may be seen as a guarantee of defendant's rights, but may also serve as an obstacle for effective prosecution. There also seems to be a contradiction in the intent of the relevant provisions – from the moment of indictment person receives a new procedural status with different scope of rights. Limit on prosecution after the indictment results in prosecutors extending the investigation stage, possibly in an artificial way. This did not seem to be a satisfactory arrangement.

At the same time, the Georgian authorities assured that taking into account the considerable time limits for investigation and prosecution of corruption offences, the rules for their interruption, as well as the relevant practice, the existing time limits do not constitute an obstacle for the effective investigation or prosecution of corruption offences.

*Georgia is not compliant with the previous recommendation 6 that is no longer valid.*

#### **Joint investigative teams**

In order to facilitate cooperation, including information sharing and coordination between FMS, law enforcement and intelligence agencies in charge of countering serious crimes, including corruption, as well as border and customs authorities, in May 2013, the Chief Prosecutor, Minister of Internal Affairs, Minister of Justice, Minister of Finance and Head of the Financial Monitoring Service of Georgia signed an MoU. The MoU was later substituted by the MoU of September 2015, in order to extend the MoU provisions to the newly created State Security Service.

On the basis of the above-mentioned MoUs, a special Inter-Agency Cooperation Council was created, which is composed of the representatives of the Office of the Chief Prosecutor, Ministry of Internal Affairs, Ministry of Justice, Ministry of Finance, State Security Service and Financial Monitoring Service respectively. Inter-Agency Cooperation Council provides mechanism for cooperation, including exchanging information and coordination between its member agencies. Inter-Agency Cooperation Council meetings are held when required, but at least once in every three months.

The law enforcement authorities of Georgia use joint investigative teams when necessary. Overall, 42 joint investigative teams have been established in the course of 2014.

## **International cooperation**

### **Previous recommendation 2.7.**

- **Ensure effective international mutual legal assistance in the investigation and prosecution of corruption cases, in particular by providing for the use of video cameras during depositions, mandated confidentiality of a request, formation of joint investigative groups.**
- **Sign and ratify Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.**

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters was signed by Georgia in March 2013 and ratified by the Parliament of Georgia in January 2014. The Protocol entered into force for Georgia on 1 May 2014.

In May 2013 the Parliament of Georgia amended the Law on International Cooperation in Criminal Matters, which entered into force in June 2013. Following these amendments, the Law defines detailed procedures related to compliance with the confidentiality requirement as well as the creation of joint investigation teams and holding video and audio conferences. During the past years Georgia received a number of MLA requests where compliance with the confidentiality requirement was requested by the respective foreign states. In all these cases, Georgia complied with the confidentiality requirement.

The International Cooperation Unit of the Chief Prosecutor's Office under the Ministry of Justice of Georgia is the central authority in international judicial cooperation matters. It is actively engaged in training of practitioners in the area of international judicial cooperation as well as providing them with guidance per necessity. Information on new possibilities under the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, in particular on setting up joint investigative teams with foreign countries, arrangement of the video conferences together with other outstanding judicial cooperation matters was provided to practitioners in the framework of training activities. One hundred sixty three prosecutors and investigators were trained in international judicial cooperation matters in 2014. Each Prosecution Service staff member participated in 2 training programs in the said area or other similar events throughout 2015.

#### *Examples of cases*

Case 1 (Videoconference). In 2014 the Office of the State Attorney, Ministry of Justice of the State of Israel addressed the Office of the Chief Prosecutor, Ministry of Justice of Georgia with a request for legal assistance into the criminal investigation against T.N. for pornographic offences against a minor from Georgia. According to the case files, T.N possessed and disseminated pornographic material of the victim taken in Georgia. In addition, it appeared that these materials had been produced with the cooperation of the victim's mother. In the framework of the said request the Israeli authorities asked for the testimony of the offence perpetrator (victim's mother) through a videoconference. In line with the said request, in July 2014, the victim's mother gave testimony in Tbilisi City Court for the Tel Aviv District Court through the video conference.

Case 2 (Videoconference). In connection with investigation of corruption offences, in October 2015 the UK Authorities requested the Office of the Chief Prosecutor of Georgia to interrogate the witnesses G.U. and A.N. (who were serving sentence in a Georgian penitentiary establishment) through the videoconference. In line with the said request, two witnesses testified in the framework of the videoconference.

#### *Statistics on MLA*

**Table 18. Statistics on MLA in corruption cases**

	2013	2014	2015
<b>Outgoing MLA requests in corruption cases</b>			
<b>Total number of MLA requests sent</b>	7	9	6
of those requests executed	4	6	3
of those requests still pending	3	3	3
of those requests rejected	0	0	0
<b>Incoming MLA requests in corruption cases</b>			
Total number of MLA requests received	5	8	5
of those requests executed	5	8	5
of those requests still pending	0	0	0
of those requests rejected	0	0	0
<b>Outgoing extradition requests in corruption cases</b>			
Total number of extradition requests sent	3	5	1
of those requests granted	3	4	0
<b>Incoming extradition requests in corruption cases</b>			
Total number of extradition requests received	0	0	1
of those requests granted	0	0	0

Source: Information provided by the Georgian authorities.

### Box 1. Case study of anti-corruption investigation involving MLA

In 2013, the Office of the Chief Prosecutor addressed the Ministry of Justice of the Kingdom of Spain with a request for legal assistance concerning the investigation of alleged facts of aggravated misappropriation of funds and aggravated legalization of illicit income, allegedly committed by Georgian government officials.

Summary of facts of the case: In 2009-2012, Georgian government agencies and various government-associated enterprises entered into numerous contracts with Spanish Company A and its representative office in Georgia - Company B. The said companies were working in the fields of engineering, architecture, landscape and urban design. Companies A and B accomplished various projects in Georgia, in particular:

- Contract worth of EUR 16,000,000 (GEL 36,000,000) was concluded with Company B. According to the financial documentation obtained by the investigation, Company B expended GEL 12,780,570 on the construction of building, but failed to document that the remaining GEL 23,129,110 was also expended for the purposes of the contract.

- Contract worth of EUR 250,000 was concluded with Company A. Contrary to the terms of the contract, Company A delivered the sculpture in month later than agreed in advance under the contract. Nevertheless, the value of the contract was transferred to the account of the Company A without imposing penalties.

- Contract worth of EUR 1,550,000 was concluded with Company A. The value of the contract was transferred to the bank account of Company A in advance. The manager of the government-associated company, party of the above contact, testified that considering the market prices back in 2010, the project would have actually cost no more than EUR 300,000. This project has never been accomplished.

- Contract worth of EUR 210,000 was concluded with Company A. The value of the contract was transferred in advance to the account of Company A in Spain. As in several previous occasions, the contract was concluded contrary to the rules of the state procurement. The above said led the investigation to a conclusion that certain officials in Georgia lobbied for the Company A.

Besides the above-listed projects, companies A and B accomplished other projects in Georgia. The investigation determined that throughout 2009-2012 the Georgian side transferred EUR 46,129,483 in total to the accounts of the Company A in Spain.

Based on the facts cited above, the investigation authority assumed that certain Georgian government officials misappropriated the funds from the state budget and concealed their illicit origin via transferring them to the account of Company A in Spain. The investigation also believed that later on part of the funds was transferred back to various banks in Georgia and other countries.

In connection with the investigation, the competent authorities of the Kingdom of Spain were requested to carry out seizures of bank, financial and commercial records of company A and its senior officials from the banks of Spain and the premises of Company A as well as interrogation of 5 persons residing in Spain.

The request was fully executed by the Spanish Authorities in a qualitative and timely manner.



Source: Information provided by the Georgian authorities.

**Conclusions.** Georgia has complied with the recommendation that it adopt the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters as of May 2014. Georgia also appears to have begun incorporating the range of options available through international cooperation and to have met the requests for confidentiality. While the numbers of requests for foreign assistance in corruption cases are low in absolute terms, the record reflects that Georgia is providing and receiving effective assistance when requested. *Georgia is fully compliant with the previous recommendation 2.7.*

#### New recommendation 20

1. *Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.*
2. *Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.*
3. *Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.*

### 3.3. Enforcement of corruption offences

The Government of Georgia provided the following statistics regarding the investigation, prosecution, adjudication and sanctioning of corruption criminal offences for the period from 2013 through 2015.

**Table 19. Investigation, prosecution, adjudication and sanctioning of corruption criminal offences (2013-2015)**

Article CC <sup>68</sup>	Investigation (Number of persons)			Prosecution (Number of persons)			Terminated by the prosecutor (Number of persons)		
	2013	2014	2015	2013	2014	2015	2013	2014	2015
164 <sup>1</sup>	0	1	0	2	0	0	0	0	0
182	61	81	96	123	179	182	1	19	3
192	19	27	28	38	68	78	18	1	4
194	31	45	35	39 <sup>69</sup>	12	10	0	6	0
194 <sup>1</sup>	0	0	0	0	0	0	0	0	0
203	0	1	2	0	0	8	0	0	0
220	1	9	8	8	1	18	2	0	2

<sup>68</sup> Statistical data is provided for the following articles of the Criminal Code of Georgia: Article 164<sup>1</sup> – Vote Buying; Article 182 - Misappropriation or Embezzlement; Article 192 - Illicit Entrepreneurial Activity; Article 194 - Money Laundering; Article 194<sup>1</sup> - Usage, Purchase, Possession or Selling the Property Acquired through Money Laundering; Article 203 - Bribing a participant or organisation in a professional sports or commercial entertaining competition; Article 220 - Abuse of Authority (in commercial sector); Article 221 - Commercial Bribery; Article 332 - Abuse of Official Authority; Article 333 - Exceeding Official Powers; Article 337 - Illicit Participation in the Entrepreneurial Activity; Article 338 - Passive Bribery; Article 339 – Active Bribery; 339<sup>1</sup> - Trading in Influence; Article 340 - Accepting Illegal Presents; Article 341 – Forgery in Service; Article 355 - Failure to submit a [personal] property declaration or entry of incomplete or incorrect information therein.

<sup>69</sup> Including one legal person

221	4	6	7	1	4	9	0	0	0
332	302	101	64	97	4	16	6	0	0
333	291	182	300	67	6	24	6	0	9
337	0	0	1	5	2	0	0	0	0
338	85	87	129	75	70	79	0	0	1
339	21	7	7	10	6	1	0	1	0
339 <sup>1</sup>	3	1	1	1	2	3	0	0	0
340	0	0	0	5	1	0	5	0	0
341	27	10	24	57	22	39	1	1	2
355	0	1	0	0	0	0	0	0	0

Table 20. Statistics on sanctions applied for corruption-related offences in 2013

2013							
Article CC	Ended with conviction		Average term of imprisonment	Number of imprisonment sentences	Number of fines	Average amount of fines	Number of persons released conditionally from serving the punishment
	case	person					
194	3	5	11	2	2	15000	0
203	0	0	-	-	-	-	-
220	1	4	0	0	4	2000	0
332	18	24	22	6	22	3159	1
333	6	10	18	5	5	2600	1
338	40	48	14	19	40	5912	2
339	8	9	3	1	9	6111	0
341	20	24	12	1	17	1676	7
182 §2 (d)	29	33	35	9	21	3690	4
341-333 (Multiplicity of charges)	1	1	0	0	0	0	1
341-338 (Multiplicity of charges)	4	6	8	3	4	4750	0
355	0	0	-	-	-	-	-

Table 21. Statistics on sanctions applied for corruption-related offences in 2014

2014							
Article CC	Ended with conviction		Average term of imprisonment	Number of imprisonment sentences	Number of fines	Average amount of fines	Number of persons released conditionally from serving the punishment
	case	person					
194	4	5	48	3	2	22500	0
203	0	0	-	-	-	-	-
220	2	3	0	0	3	5000	0
221	4	5	22	2	4	3500	0
332	14	17	56	7	12	6250	0
333	6	15	58	13	2	4000	0
338	22	28	24	21	26	8461	0

339	5	8	23	5	7	20214	0
341	5	8	18	2	8	3937	0
182 §2 (d)	62	74	45	17	43	3686	18
182 §2 (d) – 332 (Multiplicity of charges)	3	3	24	1	3	19000	0
182 §2 (d) – 341 (Multiplicity of charges)	2	3	36	1	2	7000	0
182 §2 (d) - 341-332 (Multiplicity of charges)	1	3	42	2	1	1000	0
332-341 (Multiplicity of charges)	2	7	42	1	6	3083	0
338-341 (Multiplicity of charges)	4	7	41	6	7	10714	0
339 <sup>1</sup>	2	3	18	1	3	6666	0
355	0	0	-	-	-	-	-

**Table 22. Statistics on sanctions applied for corruption-related offences in 2015**

2015							
Article CC	Ended with conviction		Average term of imprisonment	Number of imprisonment sentences	Number of fines	Average amount of fine	Number of persons released conditionally from serving the punishment
	case	person					
194	2	4	114	2	1	5000	1
203	0	0	-	-	-	-	-
220	3	3	0	0	3	7333	0
221	12	22	10	8	20	5000	2
332	14	16	18	3	11	4909	4
333	4	5	54	2	4	3500	0
338	39	51	25	44	39	11230	1
339	1	1	0	0	0	0	1
341	14	17	27	4	12	3335	0
220 <sup>1</sup>	5	21	0	0	4	2000	17
332 <sup>1</sup>	1	1	0	0	1	2000	0
332-338 (Multiplicity of charges)	1	1	0	0	1	100000	0
332-341 (Multiplicity of charges)	1	2	24	1	1	10000	0
333-341 (Multiplicity of charges)	1	1	0	0	1	3000	0
338-341 (Multiplicity of charges)	6	7	33	4	6	11666	0
339 <sup>1</sup>	2	2	0	0	1	3000	1
182 §2 (d)	108	127	44	37	72	7027	21
182 §2 (d) -341 (Multiplicity of charges)	1	1	32	1	0	0	0
182 §2 (d) -220 (Multiplicity of charges)	1	1	0	0	1	50000	0
355	0	0	-	-	-	-	-

**Table 23. Number of convictions of high-level officials (2013-2014)**

Article CC	Ministers, heads of government agencies			Deputy ministers, deputy heads of government agencies			Members of parliament			Judges			Prosecutors			Mayors			Other high level public officials		
	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015
182	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
332	1	3	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	3	4	4
333	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
338	2	2	0	5	3	3	0	0	0	0	0	0	0	0	0	0	0	0	6	6	13
339	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
341	15	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
338-341 (Multiplicity of charges)	3	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
182 §2 (d) (Multiplicity of charges)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
182 §2 (d)-332 (Multiplicity of charges)	0	2	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
182 §2 (d) - 341-332 (Multiplicity of charges)	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
332-341 (Multiplicity of charges)	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0

**Table 24. Examples of cases investigated by Anti-Corruption Agency (Department) of the State Security Agency**

Year	Case	Monetary Value
2013	Bribery in Regional Service Centre of LEPL ‘National Agency of State Property’	- Actual Transfer USD 70 000 - Overall promised amount USD 600 000
2013	Bribery – by Main Specialist of Education, Culture, Sport and Youth Affairs of Tsalka Municipality and Chairman of Procedural, Mandate and Ethics Commission of Tsalka Municipality City Council	- GEL 11 000
2013	Bribery in Tbilisi Service Centre of LEPL ‘National Agency of State Property’	- USD 10 000
2014	Bribery in Khelvachauri Municipality City Council	- Actual Transfer - USD 50 000 - Overall promised amount - USD 1 600 000
2014	Bribery in Public Relations Unit of Information Management Department of LEPL Architecture Service of Tbilisi City Hall	- USD 10 000
2014	Case of Referees	- USD 28 850
2014	The fact of proposing Bribery to Deputy Head of Adjara Main Division of Anti-Corruption Agency	- USD 19 900
2015	Bribery - by Head of Adjara Bureau of Revenue Service	- Actual Transfer – 30 000 GEL - Overall promised amount – 15 000 GEL
2015	Bribery – by Deputy Governor of Vake Municipality	- Actual Transfer – EUR 3 000 - Overall promised amount - EUR 3 000
2015	Commercial Bribery - National category referees of Georgian Football Federation and arbitrator of FIFA category	- Preliminary agreements with citizens in amount of 2500-5000 USD - Overall taken amount – 28 850 GEL
2015	Bribery by Deputy Governor of Aspindza Municipality	- Actual Transfer – USD 21 000 - Overall promised amount USD 50 000

### **Public access to criminal statistics**

The Prosecution Service submits monthly statistics to the National Statistics Office of Georgia (GEOSTAT) on number of prosecutions, broken down per types of offences, including corruption, as well as statistics on identified victims. GEOSTAT ensures the publishing of the provided statistics on its website.

### **Allegations of abuse of power to investigate corruption offences**

As a result of the October 2012 general elections in Georgia, the political coalition Georgian Dream came to power replacing the United National Movement (UNM) led by Mikheil Saakashvili. This was followed by a surge of allegations of criminal conduct committed by the outgoing UNM and a wave of criminal prosecutions taking place from 2013 through 2015, some of which were allegedly politically motivated or abused for ulterior motives – according to some international organisations.<sup>70</sup>

<sup>70</sup> One of the examples of such allegations is the European Court of Human Rights judgment in the case of *Merabishvili v. Georgia*, delivered on 14 June 2016 (the judgment is not final yet; the Government intends

At the same time, in its written comments to the draft report the Georgian authorities disagreed with allegations of politically motivated prosecutions. They noted that during the recent years there were a number of criminal investigations and prosecutions against those who served at various government or civil service posts during the previous political administrations (2003-2012). However, such cases are not an indication of political persecution but could be explained by the response of the PSG to the widespread practices of “elite corruption”, a large number of systematic violations of fundamental rights including but not limited to the freedom from torture, inhuman and degrading treatment or punishment, freedom of assembly and association, freedom of expression and right to peaceful enjoyment of possessions. According to the authorities, the rampant existence of the said notorious practices in 2003-2012 is reflected not only in the multiplicity of criminal cases at the PSG but also in the reports of local and international NGOs. Furthermore, it is not only the desire of Georgian authorities to investigate and where applicable prosecute the above allegations but it is also recommended by various international actors, including the ECHR. Another argument against allegation of the political persecution is the fact that the PSG has extended its intolerance against corruption and gross human rights violations equally to those who serve under the current political administration.

## **Conclusions**

It is not uncommon for allegations of misconduct involving former officials to come to light after they leave office. While in power, corrupt officials have the opportunities and influence to commit offenses and their positions of power can inhibit persons with knowledge and information from coming forward for fear of economic if not legal retribution. Nevertheless, the facts uncovered and the concerns noted about actions taken against former officials must be addressed. In brief, the government has responded that the Chief Prosecutor and others whose conduct was criticized specifically are no longer in office. The government has also responded with legislation and official policies which are intended to and should go a long way to insulate the use of the power of the prosecution service for personal political purposes. The reforms proposed which are discussed in more detail in other sections of this report were the result of government representatives working closely with international experts and accepting many of their recommendations which is how democracies should respond to lapses in their legal systems and in their political leaders.

The government provided statistics regarding corruption prosecutions from 2012 through 2015 that are noted above and discussed in various parts of this report. For example, the report discusses the issue of the widespread use of offences of abuse of authority and excessive authority. The report also finds that these offences have broad and vague language as a basis for opening criminal investigations. It is noted many fewer cases are brought under those statutes.

Civil society representatives advised the monitoring team that they believe that the government has done an effective job in controlling low-level corruption through a variety of means including legislative and structural changes in procurement, and civil service employment conditions. At the same time, they note that corruption among local officials is not adequately addressed. Additionally, the monitors heard from a variety of sources that there is a perception that not enough effort is being made to address what they perceive to be a significant amount of high-level corruption. Also, as the monitoring heard from NGOs and international representatives, some former high-ranking officials seem to be participating economically in large private and public contracts which is perceived to be the result of illegal activity.

The monitoring team notes that it is difficult from statistics of open cases and prosecutions of people holding various positions to confirm the allegations by civil society that more crime is occurring at high levels. Georgian anti-corruption prosecutors and investigators expressed their disagreement with this criticism and referenced the considerable number of convictions against high-level officials as the best

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to request referral of the case to the Grand Chamber of the Court). Other references to the allegations: Resolution adopted by the Parliamentary Assembly of the Council of Europe (PACE) on 1 October 2014; May 2014 report of the Commissioner for Human Rights of the Council of Europe; December 2014 Resolution of the European Parliament on the endorsement of the Association Agreement between the European Union and Georgia; October 2015 PACE “Resolution on Abuse of Pre-trial Detention in States Parties to the European Convention on Human Rights”.

argument against this claim. Furthermore, the Government of Georgia reported that its anti-corruption policy (both to prevent and combat corruption) covers all levels of corruption, including the high-level corruption. Nevertheless, all anti-corruption prosecutors struggle with the need to assure the public that they are competently doing their jobs in accordance with fundamental legal principles. The monitoring team suggests the government, perhaps through anti-corruption policy bodies, consider a series of open forums to try to identify the patterns of conduct the informed members of society see to try to identify if this conduct, if it is happening, is indeed a violation of criminal statutes or represents some lax enforcement of post-employment restrictions, some form of private extortion based on the appearance of official influence, or other issues which could be addressed through changes in procurement policies.

### 3.4. Anti-corruption criminal justice bodies

#### Previous recommendation 7

- **Consider excluding investigation function from the prosecution service and approve guidelines for withdrawing/referring criminal cases from/to an investigative agency.**
- **Establish specialisation of prosecutors (units or persons) in prosecution of corruption-related offences.**

#### System of investigative agencies

The competent investigative agencies of Georgia are the following:

- Investigation units of the Prosecution Service (PSG);
- Anti-Corruption Agency of the State Security Service (SSS);
- Financial Investigation Service (FIS) of the Ministry of Finance (MoF);
- General Inspection of the Ministry of Justice (MoJ);
- Investigation Unit of the Ministry of Penitentiary and Probation;
- Investigation Unit of the Ministry of Defence;
- Investigation units of the Ministry of Internal Affairs.

Investigative competence of the above-mentioned agencies is determined by the CPC (mandates the Minister of Justice to determine investigation competence) and Decree on Investigative Competences of the Minister of Justice.

The investigation units of PSG, Anti-Corruption Agency of SSS, Financial Investigation Service of MoF and General Inspection of the MoJ are competent to investigate corruption related offences.

Investigation units of the Ministry of Internal Affairs are responsible to investigate all offences that are not under the investigative competence of other investigative agencies, e.g. trafficking in human beings.

#### Specialised anti-corruption investigative agencies

The following specialized investigation authorities are responsible for investigating corruption crimes: Investigation units of the Prosecution Service; Anti-Corruption Agency of the State Security Service; Financial Investigation Service of the Ministry of Finance; General Inspection of the Ministry of Justice.

In January 2015, the Anti-Corruption Unit was established within the Chief Prosecutor's Office of Georgia. Creation of a special division on corruption related crimes and ensuring specialization of prosecutors is also included as one of the elements of the Strategic Priority 5 of the Anti-Corruption Strategy and Action Plan (2015-2016).

In order to ensure specialisation of prosecutors in corruption-related offences, the trainings in this area are included in the annual training plans of the PSG.

### *PSG competence*

The PSG is competent to investigate all corruption crimes, unless committed by Ministry of Justice officials or detected by SSS or FIS. Regardless of the body detecting a crime, the PSG is competent to investigate all corruption crimes involving the following designated officials: President of Georgia; Member of the Parliament; Member of the Government; Judge; Public Defender; Auditor General; Member of the Board of the National Bank; Ambassador; PSG employee; Police officer; High ranking military or public official.

The Anti-Corruption Unit of the PSG was established in January 2015 and started operations in March 2015. The Unit is set up within the Investigation Department of the Office of the Chief Prosecutor along with other three units.

The basic functions of the Anti-corruption Unit of the PSG are as follows: Investigation and prosecution of the most serious corruption crimes (both in private and public sector); Analysis of corruption cases nationwide; Standard setting and elaboration of policy recommendations for corruption crimes; Elaborating prosecution specific prevention policies.

The following four criteria, as agreed by the inter-agency law enforcement council, are to be used for the selection of cases to be investigated by the Unit: 1) ranks of officials (no lower than the heads of departments but most usually deputy ministers, ministers and comparable level); 2) value of crime (damages, amount of bribe, etc.); 3) complexity of case; 4) unique cases.

The Unit uses the following means for case selection: monitoring via CrimCase - Electronic Case Management Software; coordination and reporting from other corruption crimes prosecutors; the PSG's own sources and crime reports.

The composition of the Unit is: Head of the Unit; senior investigators (7); prosecutors (3); analysts (3 - external staff attached to the unit); financial audit expert (1).

According to the Georgian authorities, the current composition of the Unit and available resources are considered to be adequate for undertaking its functions properly. As a part of the Investigation Department of the Chief Prosecutor's Office, the Anti-Corruption Unit has a possibility to receive, if necessary, additional human and material resources of the Department in addition to its own.

The Unit is engaged in active cooperation with Anti-Corruption Agency of the State Security Service; Financial Investigation Service of the Ministry of Finance; Criminal Intelligence and Technical Units of the State Security Service; Procurement Agency; Civil Service Bureau; National Audit Service; Internal Audit Services of the government agencies (referrals of crime reports); Revenue Service, Financial Audit Service and National Forensics Bureau.

The same specialised investigative bodies of PSG are responsible for prosecution of corruption offences. In order to carry out prosecutorial functions all these units are also staffed with specialised anti-corruption prosecutors. Prosecution in relation to the investigations conducted by SSS, FIS and MoJ are carried out by the specialised prosecutors of PSG.

According to the Georgian authorities, the Anti-Corruption Unit had 49 pending investigations as of mid 2016. Among them: 18 investigations were started by the Anti-Corruption Unit, 31 investigations were transferred from other agencies.

*SSS, Conditional Competence.* The SSS has competence to investigate, if it detects: Bribery of voters (Article 164<sup>1</sup> CC); Abuse of functions (Article 332 CC); Abuse of position (Article 333 CC); Illicit involvement in commerce (Article 337 CC); Active Bribery (Article 338 CC); Passive Bribery (Article 339 CC); Trading in Influence (Article 339<sup>1</sup> CC); Accepting Unlawful Gifts (Article 340 CC); Forgery in Public Office (Article 341 CC).

The Anti-Corruption Agency of the SSS was set up in August 2015 by detaching a similar unit that existed in the Ministry of Interior. The intention in removing it from the Ministry, was to remove what were considered excessive powers from the Ministry of Interior and to depoliticise its activities. Georgian authorities also explained the existence of the SSS unit by the fact that corruption is considered a national security issue. Authorities also noted that the head of the Security Service is more independent than a



minister, as he is appointed by the Parliament for 6 years.

*FIS, Conditional Competence.* The FIS is competent to investigate, if it detects: abuse of power in private sector (Article 220 CC), bribery in private sector (Article 221 CCG), misuse and embezzlement, committed through the abuse of position (Article 182 §2 d of CC).

*Ministry of Justice competence.* The General Inspection Unit of the Ministry of Justice is competent to investigate corruption offences committed by the Ministry's employees, except for prosecutors.

*Transfer of Competence/Ad Hoc Competence.* The investigative competence can be transferred (*ad hoc* competence) upon the motivated decision of the Chief Prosecutor/Deputy Chief Prosecutor according to the criteria approved by the Chief Prosecutor of Georgia. The Guidelines for withdrawing criminal cases from one investigative agency and referring them to another were approved by the Order of the Chief Prosecutor of Georgia in September 2015.

Grounds for withdrawing/referring criminal cases from/to an investigative agency irrespective of its investigative jurisdiction:

- The majority of the participants of criminal proceedings live on the territory over which another investigative agency has jurisdiction and referring case to this investigative authority facilitates the participation of the mentioned persons in investigation/procedural actions;
- Most of investigation/procedural actions are expected to be conducted on the territory over which another investigative agency has jurisdiction;
- Other investigation authority conducted urgent investigative actions on the criminal case and transfer of the case as per its investigative jurisdiction will result in delay of rendering a final decision or/and will otherwise hinder the interests of the investigation;
- The crime was detected by another investigative agency;
- The transfer of the case to another investigative agency will significantly reduce the procedural expenses;
- The transfer of the case to another investigative agency will promote thorough and objective investigation.

## Conclusions

Georgia has set up several specialised units to investigate and prosecute corruption which is a welcome step. However, in the monitoring team's opinion, placement of an anti-corruption agency within the Security Service is dubious. According to the Council of Europe standards, internal security services should not be allowed to run criminal investigations.<sup>71</sup> Civil society representatives expressed concern that the work of the SSS is not transparent. The Government believes that the Security Service has sufficient control mechanism that prevent any abuse of anti-corruption investigative powers and that the Council of Europe standards are fully implemented in Georgian legislation in terms of ensuring effective democratic oversight of security agency by all three branches of power.

An issue of concern can be raised with regard to concentrating both investigation and prosecution within the prosecution service (Anti-Corruption Unit of the PSG). The recent reforms enacted do not include separating the prosecutorial functions from the investigative functions in the PSG. This could lead to conflicts of interests, as prosecutors are supposed to ensure that the investigation was conducted properly and with legitimate means.<sup>72</sup> Co-locating investigators and prosecutors can also undermine the checks and

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<sup>71</sup> See, for example, Parliamentary Assembly of Council of Europe, Recommendation 1402 (1999), Control of internal security services in council of Europe member states, available at <http://goo.gl/1G6fUW>.

<sup>72</sup> See Parliamentary Assembly of Council of Europe, Recommendation 1604 (2003), Role of the public prosecutor's office in a democratic society governed by the rule of law, available at <http://goo.gl/6NQmL4>. According to subparagraph 7.5.c., "it is essential ... that the powers and responsibilities of prosecutors are limited to the prosecution of criminal offences".

balances on the exercise of power which should exist as a safeguard against improperly motivated investigations and cases and failures to take action where merited. It can also strengthen the perception that high-level corruption is not being effectively addressed. It appears that Georgia did not consider the possibility of excluding the investigation function from the prosecution service.

Georgia did establish a unit with prosecutors specialised in corruption cases, as was recommended. However, the autonomy that is afforded to the Anti-Corruption Unit of the PSG should be strengthened (it is now a part of the Investigation Department of the Office of the Chief Prosecutor along with other units).

Georgia has also approved guidelines for withdrawing/referring criminal cases from/to an investigative agency. Although, the ground for removal of case from one investigative authority to another – “to promote thorough and objective investigation” – is quite vague and can as such be subject to abuse. The Government of Georgia disagrees that it is vague and interprets the guidelines to mean that cases are removed only when conflict of interests take place and “thorough” investigation means that the investigation is removed to a more specialised body.

Regarding the referral of investigations to other investigative bodies, if the guidelines do not require it, the monitoring team recommends an amendment which requires consultation with the investigative body that may lose jurisdiction as a safeguard from the appearance that a matter is being moved for some improper and non-transparent reason.

*Georgia is largely compliant with the previous recommendation 7.*

#### **New recommendation 21**

- 1. Consider removing anti-corruption investigative powers from the Security Service and the Prosecution Service.**
- 2. Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.**
- 3. Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.**
- 4. As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.**

## *Chapter 4*

# **PREVENTION AND PROSECUTION OF CORRUPTION IN A SELECTED SECTOR - PROCUREMENT FOR INFRASTRUCTURE PROJECTS**

### **Procurement for infrastructure projects at the national and local level in Georgia**

The infrastructure sector is characterised by a large number of complex engineering high value contracts, usually used for development or substantial modernisation of existing infrastructure largely in municipal, energy and transport sector, as well as routine contracts to maintain the existing facilities and equipment. In certain cases there are hybrid contracts, which involve elements of both approaches.

In view of the above specifics the procurement arrangements in infrastructure sector tend to provide conventional tendering for maintenance and more complex multi-stage procedures for development of the infrastructure.

The major investments in the above sectors are often undertaken through PPP arrangements, which require even more complex interactive procurement processes.

Public procurement for infrastructure projects in Georgia is regulated by the Public Procurement Law (PPL). With the purpose of administration of the funds at the local level, in 2013 the Government of Georgia adopted decree on “Selection procedures and criteria of local self-regulated governments and regional projects to be financed from the fund of the projects to be implemented in the regions of Georgia, prescribed by the state budget of Georgia”.

In this respect it shall be noted that the legal procurement framework for concession/PPP and turn-key contracts in Georgia is at its development stage. The existing e-Tendering covers well the conventional routine maintenance contracts as well as small-scale development projects in infrastructure, based on standard separation of design and construction activities. In this respect a well-developed and transparent existing e-tendering process serves relatively well for selection of the contractors to perform such works. The process seems to provide for very high level of corruption risk mitigation measures. At the same time, the State Audit Office 2014 report suggests a number of shortfalls in the system, for example inaccurate identification or formulation of needs in the tender documents, often as a result of lack of appropriate market research by procuring entities. The tender processes are occasionally unjustifiably terminated. These shortfalls bear the corruption risks.

The designer selection process is done through a special module in the e-Procurement system, which provide for a high transparency on the one hand, on the other seems to be based on merit point evaluation system. Such systems are subjective and, as a result, are prone to corruption. Moreover, the PPL prohibits challenges on the scores awarded during evaluation of design proposals, quality evaluation criteria (types and weights), etc. Lack of an opportunity to challenge such criteria and evaluation result increases the risks of corruption dramatically. The Government stated that a high level of transparency itself mitigates the risk of corruption, as any interested person can view and monitor the relevant details.

Beyond conventional contracting, the infrastructure sector requires the use of turnkey/design and build approaches, where the contract arrangements provide for a single point responsibility of the contractors and timely delivery of performing facilities within the agreed price. Such contracts require the processes based on a dialogue with the industry, which provides for a competition of ideas and technologies rather than prices. Unfortunately, the PPL does not provide for it and even explicitly prohibits such approach.

Similar competitive dialogue is required for concessions/PPP projects in infrastructure. The 2014 EIU Asia-Pacific Infrascope placed Georgia last in the PPP readiness in the region.<sup>73</sup> According to the assessment carried out by Gide Loyrette Nouel<sup>74</sup>, the Law of Georgia "On the Procedure for Granting Concessions to Foreign Countries and Companies" needs to be improved regarding the scope of application, contains very few provisions regarding the selection of the concessionaire (although it provides for the adoption of regulations in this respect, no such regulations could be identified), refers to the establishment of a special register of concession agreements (no such register could be identified). Thus, the selection procedure is insufficiently regulated. As a result in practice a certain proportion of PPP/concession like contracts are awarded directly. An absence of transparency and competition in the process highlights the high risk of corruption. The Government informed that Georgia has already taken an obligation by "EU-Georgia Association Agreement" to introduce Competitive Dialogue. The new procurement procedures will be enacted by the revised Law.

The success of the infrastructure projects as well as minimisation of corruption heavily depends on the contract terms and conditions.

No information has been provided in this respect. Given the information provided during the meetings, the supervision system and supposedly contracting or the works is based on the approach inherited from the centrally planned economy, where supervision engineers are paid for their services by contractors, as a set percentage of the contract price. This old fashioned system needs to be reformed and changed for an impartial and professional quality, price and time control to avoid risks of corruption in works contracts. However, this reform lies beyond direct public procurement regulations.

The report by the State Audit Office noted that contract management system needed improvement in order to avoid unjustified amendments of contracts, especially in terms of price increase and extension of time for completion.

As PPP contracts are concerned, the law contains very few elements regarding the project agreement, government support and financial securities. The possibility of international arbitration is not clearly provided for. Thus, despite the existence of numerous positive elements, the law does not seem to constitute a sufficiently solid legal basis for the development of PPP.

In 2013-2015 the value of works contracts, albeit not all of them in the infrastructure sector, procured through the e-Procurement system represented GEL 2,807 million (or 55% of all tendered contracts value, or 31% of all public procurement volume), which correlates with the statistics on disbursement provided by the Ministry of the Regional Development, which for the same period was about GEL 2.6 billion.

At the same time a large portion of the contracting activities is carried out either through direct contracts or outside of the e-Procurement system.

According to the State Audit Office report, simplified procurement is often carried out on the basis of unjustified urgency with the amount of contracts signed in 2011-2012 for more than GEL 2 billion (40% of the value of all public procurement). The Government responded that, since 2013, according to the Law and practice every contract signed by means of simplified procurement (also urgent necessity) must be uploaded in the e-Procurement system and any interested party can view it, which facilitates monitoring procedures for appropriate state authorities and other interested parties. Furthermore, as of November 2015, a procuring entity must receive consent from the State Procurement Agency in order to conduct procurement through simplified procurement (also in case of urgent necessity).

According to Transparency International, in 2013-2014, construction works worth GEL 605 million were procured through a simplified procedure. Construction works have made up the largest share of simplified procurements in recent years, and their share should clearly decrease. There are a fairly large number of companies in the construction sector in Georgia, and it is unlikely that only a few companies have the specific skills and competences needed for a given project. Moreover, construction works require an extended period of time, and hence the motivation to save time by using a simplified procurement instead

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<sup>73</sup> Source: The Economist Intelligence Unit, The 2014 Infrascope: Evaluating the environment for public private partnerships in Asia-Pacific, available at <http://goo.gl/DEG1PO>.

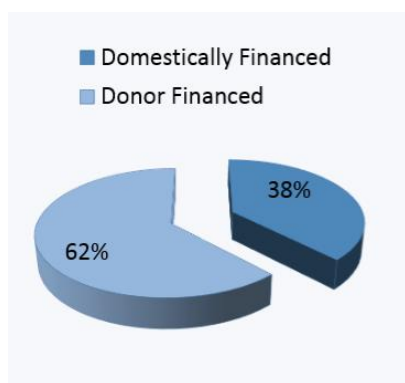
<sup>74</sup> EBRD, Concession / PPP Laws Assessment 2011, May 2012, available at <http://goo.gl/UIE86n>.

of a competitive tender strains credulity. If the share of competitive tenders in this sector increases, given the high level of competition, the Government will be able to direct savings towards more projects, leaving aside that the corruption risk associated with a direct contracting will substantially decrease.

In 2013-2014, state owned enterprises and Legal Entities of Public Law (LEPLs) did the largest part of procurement. The largest value was contracted by Gardabani Power plant Ltd. Over the course of two years, it awarded more than GEL 275 million through simplified procurement, which largely was covering one contract, namely the construction of the Gardabani combined cycle power plant.

It shall be noted that some major infrastructure development projects are financed through the loans and grants of multilateral development banks and bilateral arrangements with foreign governments/agencies. A large part of these projects is implemented under administration of the Municipal Development Fund<sup>75</sup> (MDF) following the procurement rules of the funding institutions. In 2013-2015, the MDF was administering projects for a total value of about GEL 2.8 billion, of which GEL 1.9 billion was under internationally funded projects. Given that the procurement for these contracts is arranged and monitored differently from the regular framework and the general contract conditions are imposed by financing organisations, this report do not analyse the integrity risks of these contracts, as non-representative for the country. The rest of the projects (GEL 884 million) administered by the MDF that are funded from the state or regional budgets follow the general requirements of the Georgia PPL.

**Figure 10. Sources of infrastructure projects funding**



In 2015, the Transparency International – Georgia reported on Local Integrity Systems Assessment covering three self-governing cities - Tbilisi, Kutaisi, and Zugdidi.<sup>76</sup>

The report highlighted several important shortcomings relevant to the subject of review:

- The City Council is a weak supervisory body in all three municipalities; therefore, important steps need to be taken in order to increase its independence. The majority of respondents interviewed for the study stated that City Councils mostly focus on discussing initiatives coming from the local executive and ignore other issues of local importance.
- All three municipalities were evaluated very low regarding an independence of local public officers, since their independence from political processes is not ensured.
- The study found that transfers from the central budget comprise a significant portion of the local budget, which reduces the local government's financial independence.
- The study found that the local governments in all three municipalities are inactive in terms of raising public awareness of corruption risks.
- Social accountability initiatives originating in the public sector are largely ineffective, especially when it comes to important issues of public or urban policy.

<sup>75</sup> The MDF was established in 1997 and is accountable to the Ministry of Regional Development and Infrastructure of Georgia and Supervisory Board established under the Governmental Decree. The MDF has supervisory board, which is composed of the Cabinet members, as well as members of the parliament.

<sup>76</sup> Available at <http://goo.gl/XMxRIR>.

The Government disagreed with the assessment of TI and underlined that from the legal point of view councils have full range of control mechanisms: submission of report, question of the member of the Council, dismissal of Mayor/Governor, etc.

According to the laws of Georgia internal audit functions are performed by Internal Audit Departments/Units of the public entities. The audit reports are usually published on their web sites. The MDF audit statements can be found on their web-site ([www.mdf.org.ge](http://www.mdf.org.ge)). In order to monitor the progress of infrastructure projects the Ministry of Regional Development and Infrastructure incorporates an Internal Audit office. On annual basis, the office conducts an audit of all Ministry's project implementation units and reports its results directly to the Minister.

Generally, the public entities, both at local and national level must comply with the requirements of the Law of Georgia on Public Internal Financial Control. Each entity, therefore, must develop a system of financial management and control, in accordance with this law as well as other regulatory requirements with regard to the Financial Management and Control System, developed by the Central Harmonization Unit and approved by the Government of Georgia.

The key parts of regulations have been drafted, but not yet approved by the Government. Central Harmonization Unit is testing the regulations at four pilot ministries: Ministry of Finance, Ministry of Economy and Sustainable Development, Ministry of Energy and Ministry for Reconciliation and Civic Equality. In May 2016, another four ministries were added to the testing process, while from 2017 another eight ministries will be included in the tests. It is planned to finish the tests by the end of 2017. The Central Harmonization Unit is developing plans on inclusion of local level public entities in the testing.

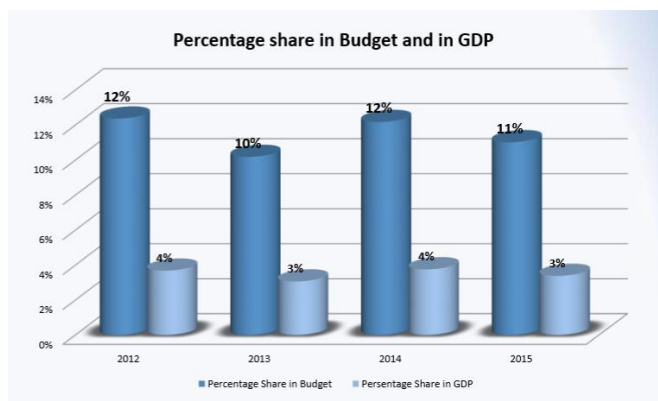
Given that the Ministry of Regional Development and Infrastructure carries out a large number of infrastructure projects through the MDF, and taking into account that a significant numbers of projects are done by the municipalities in cooperation with the MDF, or by Tbilisi City Hall via its own municipal development fund, the Central Harmonization Unit plans to start with the Ministry the test implementation of the Financial Management and Control System regulations in 2016 or 2017.

In addition to the above, the State Audit Office, conducts external annual audit of all or selected Ministries and their project implementation units ([www.sao.ge](http://www.sao.ge)).

In 2016 the State Audit Office conducted performance audit of infrastructure projects, the objective of which was to evaluate the management system of domestically financed infrastructure projects by assessing each step of the projects life cycle. For this purpose, audit team analysed 23 projects, which were implemented by the Ministry of Regional Development and Infrastructure, Ministry of Labour, Health and Social Affairs, Ministry of Education and Science. Moreover, audit covered the Ministry of Finance, which is responsible for the development of the programme budget methodology and for allocating budgetary resources effectively.

In 2012-2015 years, the percentage of funds spent on infrastructure projects (roads, schools, hospitals, irrigation systems, energy infrastructure etc.) amounted to 10-12% of the approved annual budget. During this period, the total resources allocated to the infrastructure projects comprised GEL 4 billion.

Figure 11. Amount of funds spent on infrastructure projects



In Georgia, the line ministries carry out the planning and implementation processes. The Ministry of Finance is responsible for the allocation of budgetary resources among the infrastructure projects implementing agencies and also for the accumulation and presentation of the financial and general information of infrastructure projects on the country level.

The following issues with regard to management and reporting practices of the infrastructure projects were identified: (a) level of information in investment decision making is insufficient for the Government, the Parliament, as well as investors to make informed investment decisions; (b) the capital investment strategies do not exist on the country- or sector levels; (c) sectoral ministries do not have methodology for prioritisation and selection of projects. All this raises the risk of subjective selection of the projects, which do not support sustainable development of the country and increase corruption risks.

At implementation level lack of appropriate planning and poor project preparation lead to cost and time overruns during contract implementation (57% of the studied projects were affected).

Absence of fair and balanced contract terms and conditions templates provide a large room for manipulation with the allocation of rights and obligations of the parties in the contracts that may provide fertile ground for inappropriate practices and favouritism at both the selection of the contractors and contract implementation phase.

Absence of a comprehensive quality control mechanism in decision making paves the way for unsubstantiated substantial modifications of the contacts, which affects project sustainability and compliance.

There is no knowledge sharing and best practice dissemination system in place.

An important role in monitoring the infrastructure projects is played by the civil society and NGOs, most notably Transparency International.

In 2014 the TI published a report<sup>77</sup> stating that the Ministry of Regional Development and Infrastructure is one of the largest procuring organizations in the country, while a vast portion of their contracts covers for construction works. Transparency International Georgia thoroughly studied the implementation of works contracts under auspices of the Ministry, carried out in 2013-2014. The study has identified the following facts and trends:

- construction works are mainly procured by the Ministry's Roads Agency, which spent on works contracts about GEL 347 million;
- majority of contracts were procured through competitive tendering;

<sup>77</sup> Procurement trends of the Ministry of Infrastructure, December 2014, available at <http://goo.gl/on57Cj>. See also statements by TI-Georgia: <http://goo.gl/rWzYYg>, <http://goo.gl/UVMLWm>, <http://goo.gl/4clSfi>, <http://goo.gl/JDJ98v>.

- out of 400 tenders carried out in 2013-2014, one company participated in 126 tenders;<sup>78</sup>
- in 2014, state owned companies State Construction Company and Tushetgza won several tenders;<sup>79</sup>
- around 100 out of over 300 contracts were amended in order to extend the time for completion. Frequent amendments of the time for completion raise doubts about the extent of bona fide performance of duties by contractors and/or adequate contract management by the employers;<sup>80</sup>
- several contracts were amended more than once. The most (11) amendments were made to the contract executed in 2013 by the Black Sea Group, with the value of amendments exceeding GEL 8 million;
- out of all companies, which won state procurement contracts, only one was associated with a political party. The owner of Kavkasenergo LLC Mr Zviad Meskhi has donated to the Georgian Dream GEL 30,000;
- there are few companies, which won the contracts, owned by the public officials, such as Deputy Minister of Agriculture Mr Davit Galegashvili and the member of the Parliament Mr Sergo Khabuliani.<sup>81</sup>

The above findings once again highlight the importance of resolving an issue of a potential conflict of interest, which may occur on the participants' side (as discussed in the Section 2.4 of this report).

The contract conditions and associated contract management shall be comprehensively reviewed to establish the areas requiring attention in order to minimise the risks of the cost and time overruns, which reduce the efficiency of the public spending and provide opportunities for corrupt practices.

The Georgian authorities stated that they disagreed with the data and assessment provided by NGOs cited in this chapter.

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<sup>78</sup> The Government noted that the Ministry was not aware if such data and that participation indicator in the tenders has no value. A company may take part in every tender, especially if this is one ministry announcing tenders in the similar spheres. Participation does not mean winning the tender.

<sup>79</sup> According to the Government, the policy of the Ministry is that the companies owned by the Ministry do not participate in the tenders announced by the Ministry. Such companies are involved in works only in the cases of emergency/natural disasters.

<sup>80</sup> The Government noted that often amendments to the long-term contracts are made due to the problems related to the weather, which cannot be forecasted due to the long time frame. Every amendment to the contracts in the system of the Ministry is justified with the relevant evidence.

<sup>81</sup> The Government stated that according to the Georgian legislation (Article 10, paragraph 2, the Rules of Procedure of Parliament; Article 13, paragraphs 4 and 5, the Law of Georgia on Entrepreneurs) public officials may hold shares and stocks.



#### **New recommendation 22**

- 1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.**
- 2. Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.**
- 3. Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.**
- 4. Introduce a comprehensive quality control systems for contract management critical decision making and overall supervision of works.**
- 5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.**

## ANNEX. FOURTH MONITORING ROUND RECOMMENDATIONS TO GEORGIA

### CHAPTER 1: ANTI-CORRUPTION POLICY

#### **Recommendation 1: Anti-corruption action plans**

- 1. Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.**
- 2. Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation.**
- 3. Promote the development and implementation of an anti-corruption action plan for the local self-government level.**
- 4. Develop impact indicators for the monitoring of the next anti-corruption action plan.**
- 5. Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.**
- 6. Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.**

#### **Recommendation 2: Anti-corruption awareness raising and education**

- 1. Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.**
- 2. Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.**

#### **Recommendation 3: Anti-corruption policy co-ordination institution**

- 1. Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.**
- 2. Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.**
- 3. Create a dedicated anti-corruption web-site of the Anti-Corruption Council.**
- 4. Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council's visibility.**
- 5. Consider establishing a dedicated anti-corruption unit in the Analytical Department of the Ministry of Justice as a visible Secretariat to the Council.**

## CHAPTER 2: PREVENTION OF CORRUPTION

### **Recommendation 4: Policy framework for integrity in the civil service**

1. **Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.**
2. **Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.**
3. **Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.**
4. **Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.**

### **Recommendation 5: Legal framework for the civil service reform**

1. **Finalise the legislative framework for the civil service reform by adopting remuneration and classification legislation without delay.**
2. **Ensure that all positions that perform core functions of the state fall under the civil service legislation.**

### **Recommendation 6: Professionalism in the civil service**

**Consider introducing a top civil service post in public authorities (such as Secretary General) to prevent undue influence.**

### **Recommendation 7: Merit-based recruitment and promotion**

1. **Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.**
2. **Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules.**
3. **Establish a human resource management information system to consolidate statistics.**

### **Recommendation 8: Remuneration of civil servants**

1. **Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.**
2. **Consolidate statistics on payroll.**

#### **Recommendation 9: Conflict of interest, asset declarations and other anti-corruption requirements**

- 1. Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public Service to all posts performing core public functions, including prosecutors.**
- 2. Clarify the roles of different institutions in enforcement of conflict of interests and other anti-corruption restrictions, strengthen the capacity of internal audit or other units in line ministries and at the local level, consider designating special officers in large administrations and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.**
- 3. Monitor and evaluate effectiveness of the asset declaration verification system and impact of the asset declarations on the spread of conflict of interest and illicit enrichment.**
- 4. Consider introducing effective penalties that would deter unexplained enrichment, conflict of interest and incompatibilities.**

#### **Recommendation 10: Protection of whistle-blowers**

- 1. Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.**
- 2. Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies to identify the needs for further improvement.**

#### **Recommendation 11: Integrity of political public officials**

- 1. Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.**
- 2. Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.**

#### **Recommendation 12: Integrity in the judiciary**

- 1. Increase transparency of the High Council of Justice activities, ensure that all Council’s decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.**
- 2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.**
- 3. Introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.**
- 4. Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.**
- 5. Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.**

6. Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.
7. Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

#### **Recommendation 13: Integrity in the public prosecution service**

1. To continue the reform aimed at further strengthening impartiality and independence of prosecutors, consider assigning the leading role in the recruitment, promotion, discipline and dismissal of prosecutors to the Prosecutorial Council or a similar body of prosecutorial self-governance independent from the Chief Prosecutor.
2. Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.
3. Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.
4. Consider revoking the payment of any discretionary bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.

#### **Recommendation 14: Transparency in the public administration**

1. Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test.
2. Ratify the Council of Europe Convention on Access to Official Documents.
3. Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.
4. Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.
5. Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.

#### **Recommendation 15: Integrity in the public procurement**

- 1. Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.**
- 2. Formally initiate negotiations on Georgia's accession to the WTO Government Procurement Agreement.**
- 3. Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.**
- 4. Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.**
- 5. Provide for a right to appeal against any procurement-related decisions.**
- 6. Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.**
- 7. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. Strengthen conflict of interests safeguards in the public procurement.**

#### **Recommendation 16: Business integrity**

- 1. Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.**
- 2. Develop capacity of the business ombudsman to promote business integrity measures.**
- 3. Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.**
- 4. Explore the possibility of concluding integrity pacts in large publicly funded projects.**
- 5. Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.**

## **CHAPTER 3: ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION**

### **Recommendation 17: Criminal law against corruption**

- 1. Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.**
- 2. Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.**

### **Recommendation 18: Liability of legal persons**

- 1. Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.**
- 2. Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.**
- 3. Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.**
- 4. Consider introducing in the legislation an exemption (defence) from liability for companies with effective internal controls and compliance programmes.**

### **Recommendation 19: Foreign bribery**

- 1. Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.**
- 2. Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.**

### **Recommendation 20: Procedures for investigation and prosecution of corruption offences**

- 1. Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.**
- 2. Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.**
- 3. Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.**

### **Recommendation 21: Anti-corruption criminal justice bodies**

- 1. Consider removing anti-corruption investigative powers from the Security Service and the Prosecution Service.**

- 2. Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.**
- 3. Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.**
- 4. As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.**



## **CHAPTER 4: PROCUREMENT FOR INFRASTRUCTURE PROJECTS AT THE NATIONAL AND LOCAL LEVEL IN GEORGIA**

### **Recommendation 22: Procurement for infrastructure projects**

- 1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.**
- 2. Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.**
- 3. Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.**
- 4. Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works.**
- 5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.**

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