



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA
ISTANBUL ANTI-CORRUPTION ACTION PLAN

Third Round of Monitoring

GEORGIA

Monitoring Report

The report was adopted at the Istanbul Anti-Corruption Action Plan plenary meeting on 25 September 2013 at the OECD Headquarters in Paris.

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Executive summary

This report analyses progress made by Georgia in carrying out anti-corruption reforms and implementing recommendations received under the Istanbul Anti-Corruption Action Plan since the second monitoring round in 2010. The report also analyses recent developments and provides new recommendations in three areas: anti-corruption policy and institutions, criminalisation and prevention of corruption.

Anti-corruption policy

Georgia has achieved significant progress in reducing corruption which is reflected in various perception surveys and international ratings. In 2010-2013 Government of Georgia continued implementation of important reforms aimed at further decreasing level of corruption.

In 2010, shortly after adoption of the IAP Second Round Monitoring report, Georgia passed important anti-corruption policy documents – a strategy and an action plan. However, they were not based on a detailed analysis of implementation of the previous policy documents and on relevant surveys. The 2010 action plan contained indicators for evaluation of its implementation, but many of them were flawed and not properly measurable. Mechanism for monitoring of implementation of these documents was not sufficiently robust; while mentioning of the Anti-Corruption Council was included in the law, its effectiveness remained low and its support secretariat did not possess necessary resources.

The Government, starting from 2013, have been addressing these issues and launched revision of the anti-corruption strategy and action plan with active and meaningful involvement of the civil society. The monitoring report welcomes this and recommends also raising the capacity of the co-ordination body – the Anti-Corruption Council by considering different reform options and by reinforcing its secretariat.

Monitoring report also finds that there were no systematic anti-corruption information and awareness raising campaigns by the government targeting Georgian population. It is true that in Georgia people can directly feel tangible results of the anti-corruption measures, but a regular awareness raising about specific benefits and achievements would be useful.

Criminalisation of corruption

Georgian legislation has mostly been aligned with international standards with regard to corruption incriminations. Georgia was the first IAP country to introduce liability of legal persons for corruption in 2006; however, there has been a total lack of enforcement of relevant provisions, which may be attributed to conservative practice of prosecutors, lack of awareness and targeted training.

Previous monitoring report recommended Georgia to reduce minimum level of sanction for passive bribery, which was not accomplished and has been compensated in practice by extensive use of plea bargaining. The latter, however, raises concerns as it allows wide prosecutorial discretion, which, taken together with insufficient judicial control and high rate of pre-trial detention, creates risks of abuse of power and forced self-incrimination.

An important reform was implemented in May 2013 to ensure autonomy of criminal prosecutions – the Law on Prosecution Service was amended to exclude minister of justice

from the prosecutorial hierarchy and eliminate possibilities of his direct interference in criminal cases. Some issues remain though: report recommends reviewing procedures for appointment and dismissal of the Chief Prosecutor, as well as procedures and grounds for disciplining and dismissal of other prosecutors – it is necessary to ensure autonomy and effectiveness of prosecution in corruption cases. It also recommends considering removal of investigation function from the prosecution service to avoid conflict of interests.

Prevention of corruption

In the area of civil service a number of legislative amendments were introduced during the last three years; albeit important and positive, they did not represent a systemic reform based on a clear vision of the future of the civil service in Georgia. Therefore, the conceptual direction of the civil service reform is yet to be determined in an inclusive manner and implemented by the government – this process has been started in 2013. In practice civil service has been affected by political influence and its neutrality and impartiality were not ensured – including after October 2012 elections.

Transparency and predictability of the remuneration of civil servants still remains a serious concern as the procedure for determining the salary, bonus and additional pay is not unified in the civil service, being highly discretionary. A general legal framework on conflicts of interest is in place, but the clear mechanisms for the enforcement of conflict of interest rules are lacking since there is no central authority to enforce and monitor the conflict of interest legislation. The Government has started analysing possibilities for introducing asset declarations verification mechanisms and taken initial steps to introduce such mechanism.

The legislative framework for the system of internal audit in the public sector was established by adoption of the Public Internal Financial Control Law and internal audit standards and guidelines. The central harmonization unit was set up. The internal audit units have been established in all but four ministries; no such units have been established in the state-owned or state-controlled companies; internal audit units have not been established in most of the Georgian municipalities. Overall, while the law has mostly clarified different roles, in practice there is still a lot to be done to effectively differentiate the financial inspection function from that of the internal audit. Many IAUs still function as inspection units. The State Audit Office of Georgia has been effectively conducting external audits in the public sector. However, the December 2012 legislative amendments allow the excessive interference of the Parliament in its activities; this may undermine independence of the SAO.

Since the previous round of monitoring Georgia has implemented a significant reform of its procurement legislation, first of all with regard to the introduction of the electronic procurement system. It is important to maintain the existing very high level of transparency at all stages of procurement process and ensure further development of the existing e-procurement platform. A number of significant exemptions from the public procurement law and from the e-procurement remain an issue, which reflects on the overall success of the new system. Some procurement-related decisions remain not subject to appeal, despite the relevant recommendation of the previous monitoring round. The new innovative arrangement for review of complaints allowed raising the number of complaints compared with the previous system, but still lacks capacity to be an efficient instrument. It also has a number of deficiencies, in particular the lack of independence of the Dispute Resolution Board. Georgia is also recommended to start the negotiating process for adhering to the WTO Agreement on Government Procurement.

Access to information right has been poorly enforced in Georgia. Until recently, besides some efforts within the Open Government Partnership and a number of training on freedom of

information issues, no new measures were undertaken to promote enforcement and improve state oversight in this area. However, the situation appears to be changing and major reforms have started or are being planned in 2013. Mandatory proactive publication of information and electronic information requests were introduced in 2012 and came into force on 1 September 2013. Government should also pursue further reforms under discussion, including adoption of a stand-alone access to information law and establishment of a supervisory authority.

Georgia took important steps to align its legislation on political financing with the European standards. Significant amendments were introduced in 2011 and 2012; new substantive changes were initiated by the new Government and have already been adopted in July and August 2013. The State Audit Office was authorised to monitor and supervise party financing within and outside of electoral campaigns. The SAO approved and implemented a unified form for political parties to submit annual financials declarations; the form provides detailed data on income, expenditure and assets of political parties. Monitoring and supervision of donations and expenditures from election campaign funds was strengthened - though a uniform and impartial enforcement during the 2012 parliamentary elections was not ensured. Amended legislation introduced regular reporting by election subjects on their election funds during election campaign and immediately after it.

There were some positive developments in terms of ensuring transparency of the judiciary, in particular legislative amendment requiring publication of disciplinary decisions concerning judges. The latter, however, does not seem to be properly implemented and such decisions in any case do not include name of the judge. Basic criteria for promotion of judges are set in the law and they appear to be too wide and open for subjective assessment. In line with the IAP monitoring recommendation jury trials were extended to criminal cases, including those related to corruption, against former and current high-level public officials. Georgia also complied with the IAP second monitoring round recommendation to consider replacing fixed term tenure of judges with a permanent tenure – relevant constitutional amendments were prepared and even adopted by the parliament (will come into force in October 2013). However, the reform itself appears to be incomplete, since judges of the Supreme Court will still be appointed for a 10-year tenure and the possibility of probationary period was introduced.

Since the previous monitoring round Georgian Government has not introduced any measures to encourage business integrity, as was recommended. Georgia is therefore recommended, in co-operation with the business sector representatives, to prepare and include in the national anti-corruption policy documents provisions on business integrity; study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures. The report also recommends extending definition of the politically exposed persons to include Georgian nationals and ensuring that information about ultimate beneficial owners of all legal entities is obtained and disclosed through public registry.

Third round of monitoring

The Istanbul Anti-Corruption Action Plan 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; other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes systematic and regular peer review of legal and institutional framework for fighting corruption in the covered countries.

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 June 2006. The second monitoring round report was adopted in March 2010 and included updated compliance ratings of Georgia with regard to its initial recommendations, as well as new recommendations. In between of the monitoring rounds Georgia had provided updates about national actions to implement the recommendations at all IAP monitoring meetings. Georgia has also actively participated and supported other activities of the ACN. All reports and updates are available at the ACN website at: www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

The third round of monitoring under the Istanbul Action Plan was endorsed by the participating countries in December 2012. Georgia is one of the first two countries to undergo the new round of monitoring. Georgian Government provided replies to the third round country-specific questionnaire in April and May 2013. Also, according to the methodology of the third round, feedback to the questionnaire was obtained from non-governmental partners, namely such Georgian NGOs as Transparency International Georgia, Georgian Young Lawyers Association and Institute for Development of Freedom of Information, and GIZ Private Sector Development Programme in Georgia.

The country visit to Tbilisi took place on 20-24 May 2013. The aim of the on-site visit was to meet with relevant public institutions, civil society, business representatives and foreign missions to discuss progress made in Georgia in implementation of the previous IAP recommendations and identify issues for further improvement in the areas of anti-corruption policy and institutions, criminalisation and prevention of corruption. Georgian authorities organized 10 thematic sessions with relevant public institutions, including Ministry of Justice, Civil Service Bureau, Ministry of Finance, Competition and State Procurement Agency, State Audit Office, Supreme Court, High Council of Justice, Tbilisi City Court, High School of Justice, Financial Monitoring Service, Public Defender's Office, Central Election Commission, Ministry of Interior, General Prosecutor's Office, Business Ombudsman, Parliament and National Bank of Georgia. In co-operation with TI Georgia, the ACN Secretariat organized special monitoring sessions with civil society and business (hosted by TI Georgia); a session for international organizations, donors and foreign missions was organized in co-operation with and hosted by the US Embassy in Georgia. Georgian Government provided additional materials after the on-site visit as requested by the monitoring team.

The third round examination of Georgia was led by the team leader Mr Dmytro Kotlyar (ACN Secretariat). The monitoring team included also Mrs Donata Costa (prosecutor, Italy), Mrs

Airi Alakivi (senior expert, OECD/SIGMA Programme, Estonia), Mr Davor Dubravica (judge, Croatia), Mr Oleksiy Feshchenko (First Deputy Head, State Service for Financial Monitoring, Ukraine), Mr Karen Brutyan (procurement expert, Armenia), Mrs Olga Savran (ACN manager, OECD secretariat). The co-ordination on behalf of Georgia was ensured by the National Co-ordinator Mrs Rusudan Mikhelidze, Head of Analytical Department of the Ministry of Justice of Georgia, and by Mrs Nino Sarishvili, Deputy Head of the Analytical Department, Mrs Natalia Baratashvili, Adviser at the Analytical Department.

The monitoring team would like to thank the Government of Georgia for excellent co-operation during the third round of monitoring, notably representatives of the Analytical Department of the Ministry of Justice of Georgia Mrs Rusudan Mikhelidze, Mrs Nino Sarishvili, Mr Zurab Sanikidze, Mrs Nataliya Baratashvili, Mrs Guranda Khokhobashvili; non-governmental partners who contributed to the monitoring process in various forms, in particular Mr Erekle Urushadze (TI Georgia), Mrs Ekaterine Popkhadze (GYLA), Mr Giorgi Kldiashvili (IDFI), Mrs Johanna Wohlmeyer (GIZ); Mr Aaron Fishman, INL Program Director, US Embassy in Georgia, for helping to organise and hosting meeting with international representatives; experts from SIGMA Programme Mr Joop Vrolijk, Mr Olivier Moreau and Mr Daniel Ivarsson who provided valuable comments on some sections of the report. The monitoring team is also grateful to Georgian authorities and non-governmental representatives for open and constructive discussions during the on-site visit.

This report was prepared on the basis of answers to the questionnaire and findings of 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.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 25 September 2013. It contains the following compliance ratings with regard to recommendations of the second round of monitoring: **out of 17 previous recommendations Georgia was found to be fully compliant with 3 recommendations, largely compliant with 7 recommendations, partially compliant with 6 recommendations and not compliant with 1 recommendation. 13 new recommendations were made as a result of the third monitoring round; 2 previous recommendations were recognised to be still valid.**

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

Third round of monitoring under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out with the financial support of the United States, Switzerland and the United Kingdom.

Country background information

Economic and social situation¹

Georgia covers an area of 69,700 square kilometres; 20% of its territory is not under government control. The population is 4.5 million. Georgia's GDP in 2012 was estimated at USD 26.6 billion or USD 5,929 per capita (in PPP). The national resources include forests, hydropower, metals, fruits, tea and wine. According to EU statistics, the main trade partners are the EU (26.6% in 2012), Turkey (11.8%), Azerbaijan (8.1%), Ukraine (7.4%), China (6.5%), Russia (6.3%), and the United States (6.2%). In July 2013 Georgia and EU concluded negotiations on a Deep and Comprehensive Free Trade Agreement which will be a part of the Association Agreement with the EU.

The dual shocks of the August 2008 armed conflict with Russia and the global economic downturn led to a reversal of Georgia's strong and steady growth (real GDP growth of 12% in 2007). GDP decreased by 3.8% in 2009, but then skyrocketed to 6.3 and 7.2% respectively in 2010 and 2011. GDP growth slowed down at the end of 2012 due to post-election uncertainty and exhaustion of the post 2008 financial assistance provided by international donors. The authorities have demonstrated the adaptability of their policies in the face of new challenges, as well as a solid track record of structural and market reforms. However, the share of population under poverty threshold rose from 6.4% in 2007 to 9.2% in 2011 (9.9% in 2009); unemployment rate, due to 2008 events, increased up to 16.9% in 2009 (from 13.3% in 2007), but has been decreasing since then - to 15% in 2012.

Customs and trade regulations have been reformed significantly. The authorities have radically simplified administrative procedures which, in the past, were widely seen as a source of abuse and corruption. Progress has also been made in improving the business climate. A new Tax Code entered into force in 2011. It incorporated provisions on tax and customs administration, reduced the number of taxes (only 6 taxes left) and tax rates, streamlined tax and customs procedures. Special incentives for micro and small businesses were introduced as well.

The new licensing regime reduced the number of permits drastically and also provided for a "one-stop-shop" and "silence-is-consent" principles for issuing licences. A number of e-governance initiatives have been implemented (from on-line registration of tax-payers and payments to electronic public procurement). 13 Public Service Halls were opened throughout the country to provide various public services at one spot. These activities were essential elements of the Government's strategy to reduce corruption.

Political system

In April 1991, the Republic of Georgia declared independence from the Soviet Union. Georgia began to stabilize in 1995 after an ethnic and civil strife from independence in 1991. Peace remains fragile in the separatist areas of Abkhazia and South Ossetia. An armed

¹ International Monetary Fund, World Economic Outlook Database, April 2013; EU Statistics, DG Trade, July 2013 (source: trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113383.pdf); EBRD, Regional Economic Prospects, May 2013; Ministry of Economy of Georgia, Georgian Economic Outlook, 2012.

conflict with Russia over these territories erupted in 2008. The Georgian state is centralized, except for the autonomous regions of Abkhazia and Ajara.

Georgia is a democratic presidential republic. In 2004-2013 Mr Mikheil Saakashvili has been the President of Georgia. Next presidential elections are scheduled for October 2013. After the October 2013 elections, according to 2010 constitutional amendments, governance system will change with more powers being shifted from the President to the Government.

The last parliamentary elections in October 2012 resulted in the loss of the then governing party (United National Movement/“UNM”) to the “Georgian Dream” coalition (“GD”) led by Mr Bidzina Ivanishvili who became Prime of Minister of Georgia. Mandates in the parliament post 2012 elections are distributed in the following way: UNM – 65, GD – 85 mandates.

The OSCE/ODIHR international election observation mission noted that October 2012 parliamentary elections marked an important step in consolidating the conduct of democratic elections in line with OSCE and Council of Europe commitments, although certain key issues remained to be addressed. The elections were competitive with active citizen participation throughout the campaign, including in peaceful mass rallies. The environment, however, was polarized and tense, characterized by the frequent use of harsh rhetoric and a few instances of violence. The campaign often centred on the advantages of incumbency, on the one hand, and private financial assets, on the other, rather than on concrete political platforms and programs.

Civil society in Georgia is vibrant and politically influential. Legislation provides for easy registration procedure and freedom of operations.

Georgian media has been traditionally free and active. The 2004 Law on Freedom of Speech and Expression took libel off the criminal code and relieved journalists of criminal responsibility for revealing state secrets. However, lack of transparency in ownership structure and political influence over broadcasting media remain a concern.²

Trends in corruption

Corruption in Georgia has been a significant obstacle to economic development since the country gained independence. Its pervasive nature and high visibility had seriously undermined the credibility of the government. However, the new Georgian government in 2004, which came to power after the ‘Rose Revolution’, committed to tackle corruption and achieved impressive results in eradicating administrative corruption.

Georgia’s Transparency International Corruption Perception Index score increased from 1.8 in 2003 to 5.2 in 2012; Georgia is ranked 51st out of 174 countries (leader in the region of Eastern Europe and Central Asia). This is by far the most significant increase for all Istanbul Action Plan countries. Georgia is now ranking higher than a number of EU member countries (Bulgaria, Croatia, Czech Republic, Greece, Italy, Latvia, Slovakia and Romania). While all studies confirm that corruption has been widely eradicated from the citizens’ daily life, many civil society representatives and representatives of international organisations believed that

² “The Georgian television landscape is largely dominated by politics. Both the government and the opposition seek to keep a number of TV stations, as well as key intermediary companies that broadcasters need to reach their audience, in their sphere of influence. Most viewers perceive all TV channels as either pro-government or pro-opposition, not a single station that airs daily news coverage is seen as politically independent by a significant share of the audience”. TI Georgia, Georgia’s Television Landscape, August 2012, p. 3, available at: <http://transparency.ge/en/node/2258>.

high-level corruption persisted. It is considered to be one of the reasons for the previous governing party's loss at the October 2012 parliamentary elections.

Progress in anti-corruption efforts has made the most significant impact on investment and business climate. In the latest World Bank's Doing Business report (2013) Georgia moved up to 9th spot globally (from 112th in 2006) with the nearest country from the region being Armenia (32nd) and average regional rank of 73. Georgia was the top improving country since 2005 both in the Eastern Europe and Central Asia and globally with 35 institutional and regulatory reforms carried out.

According to the 2013 Global Corruption Barometer by Transparency International, only 4% of Georgians paid a bribe when they came into contact with the main public services.³ For more anti-corruption and governance related indicators on Georgia see OECD IAP Summary Report for 2009-2013.⁴

³ Education, judiciary, health sector, police, registry and permit services, utilities, tax revenue and customs, land service. Report available at: www.transparency.org/gcb2013.

⁴ Available at: www.oecd.org/corruption/acn/istanbulactionplan/anti-corruption-reforms-eastern-europe-central-asia-2013.htm.

Acronyms

ACC	Anti-Corruption Council
AmCham	American Chamber of Commerce
AML/CTF Law	Anti-Money Laundering and Counter-Terrorism Financing Law
CEC	Central Election Commission
CC	Criminal Code
CHU	Central Harmonisation Unit
CoI	conflict of interests
CPC	Criminal Procedure Code
CPI	Corruption Perception Index
CPV	Common Procurement Vocabulary
CSB	Civil Service Bureau
CSPA	Competition and State Procurement Agency
CSR	corporate social responsibility
DRB	Dispute Resolution Board
EBRD	European Bank of Reconstruction and Development
EOM	Election Observation Mission
EU	European Union
FOI	freedom of information
FIU	financial intelligence unit
FMC	financial management and control
FMS	Financial Monitoring Service
GEL	Georgian Lari (Georgian currency)
GEPAC	“Support to the Anti-corruption strategy of Georgia”, Council of Europe Project
GRECO	Council of Europe Group of States against Corruption
GIZ	German Society for International Co-operation (<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>)
GPA	Government Procurement Agreement
GYLA	Georgian Young Lawyers Association
HCJ	High Council of Justice
HRM	human resources management
IAP	Istanbul Anti-Corruption Action Plan
IAU	internal audit unit
IDFI	Institute for Development of Freedom of Information
IFC	International Financial Corporation
IFI	international financial institution
IG	inspectorate general
IMF	International Monetary Fund
INTOSAI	International Organization of Supreme Audit Institutions

IPO	initial public offering
JSC	joint stock company
LEPL	legal entity of public law
LPUC	Law on Political Unions of Citizens
MLA	mutual legal assistance
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoF	Ministry of Finance
MoU	memorandum of understanding
MP	member of parliament
NAPR	National Agency of Public Registry
NATO	North Atlantic Treaty Organisation
NGO	non-governmental organisation
NIS	National Integrity System
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OSCE/ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe
PEP	politically exposed person
PIFC	public internal financial control
PPL	Public Procurement Law
PPP	public-private partnership
SAO	State Audit Office
SME	small and medium enterprise
SOE	state-owned enterprise
SPA	State Procurement Agency
STR	suspicious transaction report
TI	Transparency International
UNODC	United Nations Office on Drugs and Crime
US	United States
USD	United States dollars
USAID	United States Agency for International Development
WB	World Bank
WG	working group
WTO	World Trade Organisation

1. Anti-corruption policy

Anti-corruption policy documents and surveys

Previous recommendation 1.3.

- ***The new Anti-Corruption Strategy and Action Plan should be based on a detailed analysis of the implementation of previous ones and on the studies that reveal the corruption risk areas.***
- ***The Action Plan should contain indicators for evaluation of its implementation.***

Since the previous IAP monitoring report (March 2010), Georgia adopted a new Anti-Corruption Strategy on 3 June 2010 and a 2010-2013 Anti-Corruption Action Plan – on 14 September 2010. Both documents were approved by the President’s Decree and have not been changed since then. The recommendation of the second round of monitoring concerned the 2010 policy documents; the assessment of its implementation will therefore be based on how it was complied with in preparation of the 2010 strategy and action plan, but also during the new cycle of anti-corruption policy planning which was launched in the beginning of 2013.

Anti-corruption strategy and action plan of 2010

No information about analysis of implementation of previous strategy was provided by the Government. NGOs could also not indicate any such analyses. The 2010 Anti-Corruption Strategy does mention that the first anti-corruption strategy of Georgia was adopted in 2005 and that experience of past years demonstrated that “*development of anti-corruption strategy significantly increases effectiveness of combating corruption, serving as guidance for responsible and concerned parties. Anti-corruption strategy served as a basis for numerous reforms. As a result, institutional corruption is essentially defeated in the country. This is the result of the activities planned and implemented on the basis of anticorruption strategy.*” But there is no explanation on what is the basis for such conclusions.

With regard to “studies that reveal corruption risk areas” the Government of Georgia reported that two surveys were conducted in 2009 (with support of the joint Council of Europe/EU GEPAC project) among (i) the general public and (ii) the public officials and that they addressed the perception of corruption in Georgia. The first survey⁵ assessed the degree of integrity of various service providers, the existing corruption reporting system, prevailing attitudes and the role of the Georgian legal system. The second survey⁶ covered perceptions and experience of public officials of various aspects of the institutions in which they work and also about officials’ perception of corruption. The surveys provided a detailed picture of how corrupt various areas of government services and different public institutions were perceived to be.

While results of the 2009 surveys provided a solid basis for analysis it is not clear how they influenced the anti-corruption strategy and action plan. This conclusion is supported by the

⁵ Available at: www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/gepac/779-Georgia%20General%20Public%20Survey-2009.pdf.

⁶ Available at: www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/gepac/779-Georgia%20Public%20official%20survey-2009.pdf.

opinion of Georgian NGOs, who believed that the 2010 Strategy followed the line of planned reforms and initiatives of the Government, rather than existing problems and corruption risk areas. In other words, anti-corruption activities were not driven by meticulously designed anti-corruption policy strategy, but the other way round. Overall the 2010 anti-corruption strategy, while providing some basic overview of the current situation at the time of adoption, failed to justify why this or that area was determined as a priority one calling for special attention and specific measures.

Second monitoring round report also recommended that the anti-corruption action plan contain indicators for evaluation of its implementation. The September 2010 Anti-Corruption Action Plan (Action Plan) did contain indicators for assessing implementation of the set objectives. However, the Government itself (namely Analytical Department of the Ministry of Justice serving as the secretariat of the Anti-Corruption Council – “ACC”) was critical of the quality of indicators and noted that for the future policy documents it aimed to have “*more outcome/output oriented rather than process/input oriented indicators which are prevalent in the current action plan*”.

Georgian NGOs concurred, e.g. GYLA noted that many indicators did not fully address the problems and therefore their execution was not sufficient to reach the Action Plan objectives. TI Georgia criticized the Action Plan as well, in particular due to the following: some of the goals and activities are too broadly defined; time-frames are too broad and there is no year-by-year list of activities; some of the activities in the Action Plan (for example, in section on the judiciary) are not directly linked to the fight against corruption; quantitative indicators usually do not contain specific target numbers; connection between some of the goals in the Action Plan (privatization, deregulation, “liberalization”, etc.) and the fight against corruption is not clear.

In addition to the above comments by NGOs, it can be noted that the Action Plan indicators are general, hardly measurable and difficult to monitor. Time frame for implementation of the measures is not precise. Too many “permanently“ or similar non-measurable time frames make the Action Plan ineffective in controlling its implementation and success rate. Government provided example of the matrix which tracks implementation of the Action Plan, but it is very difficult to assess from it the quality of implementation. Ministry of Justice stated that around 70% of measures of the Action Plan have been implemented but it is not clear who decides whether a measure has been successfully implemented or not. There also appears to be no mechanism for bringing to responsibility authorities that fail to properly implement the measures (not clear who decides on the responsibility; who exactly in such authorities is responsible for non-fulfilment of obligations; what type of liability/sanctions exist; and so on).

As to assessment of the Action Plan implementation overall the Government of Georgia described it as following: the Secretariat of the Anti-Corruption Council under the Ministry of Justice prepares implementation reports twice a year - the report for the entire previous year and the report for a 6-month period for the current year; each implementing agency is requested to submit its part of the report; the Secretariat consults with the implementing agencies when necessary and/or holds individual meetings to ensure that provided information is clear and accurate; Secretariat compiles the full report, assessing the implementation of indicators for the period in question. In assessing progress in the fight against corruption and impact of the Government’s anti-corruption efforts over time, the Secretariat and the Anti-Corruption Council are also using the international rankings and survey results – TI CPI, WB Doing Business, IFC and EBRD surveys, Eurobarometer Study of 2012, etc.

TI Georgia was critical of the reporting/assessment mechanism used by the Government and the quality of the implementation reports.⁷ It believed that the report should be the Anti-Corruption Council's own analysis of the situation with the Action Plan implementation. Instead, it appeared that the Secretariat had simply copy-pasted the information provided by different agencies regarding their own activities. The entire report looked like a list of accomplishments with little or no analysis of the challenges and problems encountered in the process of implementation. Certain activities from the Action Plan were sometimes simply omitted in the implementation report.

The sections devoted to the implementation of certain activities from the Action Plan only provided information from some agencies, while information on activities of other agencies that were also listed as responsible for the implementation of those activities in the Action Plan was missing. Some sections of the reports lacked the quantitative information that the corresponding indicators required (*e.g.* the number of training sessions held or the number of employees trained). Some parts of reports were too short or too general and provided insufficient information to determine whether or not any real progress was made toward reaching relevant goals. Many of the activities listed in the Action Plan were, in fact, implemented. For example, considerable changes had been made in the country's legal framework. However, the implementation reports provided little information on the application of those legal provisions in practice, making it difficult to evaluate the actual progress in achieving goals of the anti-corruption strategy.

However NGOs also note, as a positive development, that at a meeting in March 2013 the Anti-Corruption Council offered civil society organisations to become involved in the monitoring of implementation and to provide 'shadow' reports. This is a welcome step that could help improve the evaluation process in the future.

Preparation of a new Action Plan

Government reported that in January 2013 the Anti-Corruption Council launched revision process of the existing Anti-Corruption Action Plan and started working on the 2014-2016 Action Plan. The declared intention is to bring the strategic planning to more sophisticated level building on the past experience and taking into account recommendations of international partners. Government stated that the process had already started and includes meaningful participation of civil society, fresh and critical look at the action plan, the lessons learned from the previous efforts, deeper analysis of the implementation of the current action plan, identification of existing anti-corruption challenges in the country and elaboration of a good-quality strategic document.

Reportedly at its January 2013 session the ACC discussed potential priority areas for the next Action Plan and requested written suggestions from members of the renewed ACC. The Secretariat of the ACC collected comments and suggestions for revising existing action plan from NGOs, international organisations and business representatives. The feedback was analysed by the Secretariat and presented to the Expert-Level Working Group of the Anti-Corruption Council (ACC WG) in February 2013. ACC WG in co-operation with the ACC Secretariat was tasked with preparing the draft strategic documents for discussion and approval by the ACC.

⁷ The following remarks concern implementation report for 2011 – the latest annual report available.

Government informed the monitoring team that the ACC Secretariat prepared “Strategic Priorities of 2014-2016” that were then discussed in detail and approved by the ACC on 5 July 2013 and are as follows:

1. Efficient interagency co-ordination in the fight against corruption.
2. Prevention of corruption in public sector.
3. Openness, access to public information and civic engagement in anti-corruption activities.
4. Anti-corruption education and public awareness raising.
5. Prevention of corruption in law-enforcement bodies, effective detection and prosecution of corruption-related crime.
6. Prevention of corruption in judiciary.
7. Transparency and reduction of corruption-related risks in public finance and public procurement.
8. Prevention of corruption in customs and tax systems.
9. Prevention of corruption in relation to private sector.
10. Prevention of corruption in health and social sector.
11. Prevention of political corruption.

At its July meeting the ACC set up nine thematic working groups covering above strategic priority areas. The final draft of the new Action Plan is planned to be submitted to the Anti-Corruption Council by the end of 2013.

In the process of development of the new Action Plan, in partnership with the UNODC, the ACC Secretariat organised a strategic planning workshop for the ACC WG in March 2013 (“The Development of a National Anti-Corruption Strategy and Action Plan for Georgia”).

Within the framework of the Eastern Partnership - Council of Europe Facility, Georgia participates in the Good Governance and Fight Against Corruption Project. Risk assessment in one specific area is one of the project activities to be carried out in 2013. Additionally, as part of the Action Plan revision process, studies by NGOs (TI Georgia and Georgian Young Lawyers’ Association) about most vulnerable to corruption areas will be taken into consideration (among them, the 2011 TI National Integrity System report).

NGOs found these developments positive. In particular, TI Georgia noted that following the October 2012 parliamentary elections the Anti-Corruption Council initiated an inclusive process of amending the Action Plan for 2010-2013, as well as drafting an entirely new Action Plan for 2014-2016 by holding consultations with a wide circle of stakeholders. In stark contrast to how the process was conducted in 2010, the Council began the work well in advance of the planned adoption of the Action Plan, making sure that all relevant stakeholders were given an opportunity and sufficient time to provide input.

The process to revise current Action Plan launched in 2013 with active and seemingly meaningful involvement of the civil society and other counterparts is a welcome step. However, the revision should not be limited to the Action Plan and should also address the main policy document (2010 Strategy), which, as appears from Government comments to the draft report, is to be reviewed in 2013.

The strategic planning workshop held in March 2013 is a very useful exercise. However it cannot substitute a thorough analysis of the state of play with the anti-corruption policy and its implementation, notably analysis of the impact specific anti-corruption measures have had on the situation and targeted areas. It goes without saying that only an efficient system of implementation monitoring and evaluation will result in the successful implementation of the

strategy and the action plan. Good quality analysis of the implemented decisions is vital for strategic planning of future activities and a new Action Plan (and, possibly, anti-corruption strategy).

One more aspect that needs to be looked at is involvement of the parliament in the anti-corruption policy planning and implementation. Parliament has not been sufficiently involved in designing, implementation and monitoring of the current anti-corruption policy documents; representatives of the parliament, however, take active part in the revision process launched in 2013. Being the highest representative and a legislative body parliament has to be involved in a meaningful form in the process of formulation of the anti-corruption public policy. It will add legitimacy to the process and will contribute to the coherence of the public authorities' policy.

Conclusions

The 2010 anti-corruption strategy and action plan were not based on a detailed analysis of implementation of the previous policy documents. Two comprehensive surveys, which among others issues addressed corruption risk areas, were conducted with donor support in 2009, but they were not reflected and linked in the 2010 anti-corruption policy directions. 2010 Anti-Corruption Action Plan did contain indicators for evaluation of its implementation, but many of them were flawed and not properly measurable.

The Government of Georgia acknowledges shortcomings of the existing anti-corruption policy documents and in the process of tracking and evaluating its implementation. It is commendable that the Government has started addressing some of the said issues during revision of the Action Plan started in January 2013. While initial steps of this process are encouraging it is too early to assess their success. It is recommended to set a clear timetable for revision process.

It also appears that a proper policy revision process should have started with review of the existing anti-corruption strategy, not the action plan – to see whether the main strategic document is still relevant and, if not, what adjustments (or major changes) are required. Revision of the action plan should follow once the overall strategic policy directions are adjusted (or re-confirmed). Analysis of the corruption risks in different areas is still missing; it should become the basis for a meaningful policy review process and could be based on Government or NGOs research/surveys. Government commented that the ACC approved strategic directions for 2014-2016 in July 2013 and that both the strategy and the action plan are being reviewed.

Georgia is partially compliant with the recommendation 1.3.

New Recommendation 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.***
- ***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.***

Public participation, awareness raising and public education

Previous recommendations 1.4. - 1.5.

- ***The Government should provide more information to the civil society and general public about the development and implementation of the anti-corruption strategy and action plans.***
- ***The Government should promote civil society's participation in the development and evaluation of the implementation of the Anti-Corruption Strategy and Action Plans.***
- ***Any significant anti-corruption measures before their adoption should be extensively discussed with the civil society and this discussion should be taken into account.***

Public information and education

While the 2010 Anti-Corruption Strategy does not identify public information and education, or the civil society's involvement, as separate or primary goals of the government's anti-corruption policy, the 2010 Action Plan does list them among the expected policy outcomes. The current Action Plan covers public awareness in the following sections: 1.4.1. and 1.4.3 of the Action Plan – under “Modernizing public service” chapter; 3.2.5 – under “Fine-tuning state procurement process”; 4.2.3 – under “Reforming state finance system; 6.8.6 – under “Increasing competition in the private sector and supporting the prevention of corruption”; 7.3.1, 7.3.2, 7.4.1 and 7.4.4. – under “Fine-tuning functioning of the judiciary”; 8.2.1 and 8.2.4. – under “Interagency coordination for corruption prevention”.

According to the Government of Georgia, information about initiatives and developments in the anti-corruption area is available to the public through such means:

- A separate section⁸ on the web-site of the Ministry of Justice is dedicated to the fight against corruption.
- Information on the National Anti-Corruption Strategy and Action Plan, reports on their implementation, minutes of the ACC meetings and other related information are available on the web-page. According to the Government, the web-page is updated on a regular basis.
- Anti-corruption news also appear on the Ministry's official Facebook page.

Nine civil society organisations are currently represented in the Anti-Corruption Council and the ACC WG. NGOs also make part of the Open Government Partnership (OGP) NGO Forum⁹ that meets once a month. Public discussions and one-to-one meetings with civil society are very common too, according to the Government replies. The Anti-Corruption days were organised in partnership with NGOs, starting from designing the activity through its implementation.

Georgian NGOs noted that provision of information to general public about anti-corruption efforts is limited to media coverage of the ACC activities and publication of materials on the official web-page of the Ministry of Justice of Georgia.

In terms of public education, according to the Government report, activities are focused primarily on students. For example, in 2012 the Secretariat of the ACC organised the Anti-

⁸ See www.justice.gov.ge/aboutus/Council/224.

⁹ More information is available at: www.justice.gov.ge/Ministry/Department/283.

Corruption Day, aimed at raising awareness among students. Georgia's Open Government Partnership Action Plan was presented to students and they were asked to submit their feedback about the planned reforms or suggest new ideas. The competition commission comprised of OGP NGO Forum members and the ACC Secretariat selected five best student proposals; the winner was then selected via an open online voting. In addition, in 2012, during the OGP consultation process, representatives of the ACC Secretariat and the Ministry of Justice met students in five Georgian regions and the capital. Anti-corruption achievement and future measures were presented and debated during these meetings. The Secretary of the ACC also meets with students of various educational centres from time to time to promote anti-corruption agenda. For example, in spring 2012 meetings were held with Tbilisi State University law students and GYLA's Legal Education Centre students.

The results of the campaign as such have not been measured separately, however, campaign and generally the measures against corruption were measured by public opinion survey (reference to 2009 surveys – see above). In addition, Crime and Security Survey of Georgia, funded by the European Union, included components related to corruption.

NGOs noted that they were not aware of any notable public education campaigns on anti-corruption issues conducted either by the ACC or other government agencies in recent years. The most recent annual report on the Action Plan implementation (2011) contained no references to such campaigns either.

Civil society participation

Government described involvement of the civil society in the development and evaluation of implementation of the Anti-Corruption Strategy and Action Plans through NGOs participation in the ACC. According to the Government, NGOs took part in designing 2010-2013 Anti-Corruption Action Plan. Currently, they are one of the key players in the revision process of the current plan and in the process of developing 2014-2016 Action Plan. During the workshop in mid-March 2013, mentioned above, one of the topics discussed was greater NGO involvement in the evaluation of the Action Plan implementation. The ACC Secretariat offered NGOs to regularly prepare 'shadow' reports on the implementation of the Action Plan. In the process of strategic planning the modalities for deeper involvement of NGOs in the process of monitoring will be explored. At the same time Government believes that the level of involvement of NGOs in the evaluation of implementation of the Action Plan could be "improved in the future and be given more structured or systemic character".

Georgian NGOs criticised government efforts to involve civil society in the designing and implementation of anti-corruption policies until 2013, when situation did improve. As described by TI Georgia, following the establishment of the Anti-Corruption Council, the government invited several NGOs to participate in its meetings. While this was a positive step, the government did not make sufficient efforts to obtain meaningful input from the civil society during the drafting of the anti-corruption strategy and action plan. NGOs were not involved in the preparation of first drafts but were rather asked to provide comments on the drafts prepared by the Council's secretariat. Although this procedure may have been generally reasonable, the extremely short period of time allocated for providing comments made it effectively impossible for NGOs to offer an in-depth assessment of the drafts. The on-going process of drafting the 2014-2016 Action Plan has been a major improvement compared to the type of collaboration described above. This time, the Council has sought civil society input from a very early stage of drafting and promised also to provide sufficient time for subsequent comments and amendments.

Discussion of significant anti-corruption measures with the civil society

As an example of such discussion Government referred to the drafting of Georgia's Open Government Partnership Action Plan¹⁰ (see also description of the consultation process¹¹). The discussion concerned NGOs' recommendations about reflection of various priorities and activities in the Action Plan. Majority of NGO recommendations "were taken into consideration". As examples of ideas taken on board in the OGP Action Plan Government mentioned: the unified public information portal Data.gov.ge (available in test version); amendments about the obligation to disclose public information proactively were introduced in Georgia's analogue of Freedom of Information Act; the obligation to monitor asset declarations of senior public officials and fine-tune state procurement system.

NGOs also noted other examples of civil society involvement in the discussion of major anti-corruption measures. TI Georgia mentioned that, while no such discussions were held within the ACC during 2010-2012, some government agencies, which implemented important anti-corruption measures, were relatively open to communication with the civil society. The launch of an e-procurement platform by the State Procurement Agency and of the electronic asset disclosure system by the Civil Service Bureau were positive examples of such interaction.

GYLA referred to pro-active publication of public information on the web-sites of state bodies as a significant anti-corruption measure which was discussed with the civil society. For example, GYLA provided a list of information to be included in the scope of proactive publication obligation and it became subject of discussion between the Government and civil society and later reflected in the respective legal amendments (see relevant section of this report).

NGOs agreed that while it is debatable whether the level of discussion was sufficient, the fact that some discussion did take place was a welcome development and helped the civil society gain a better knowledge of these important activities.

Conclusions

Some information about government anti-corruption efforts has been distributed via internet during past three years. A separate anti-corruption portal on the Ministry of Justice web-site is a positive step. However, there were no systematic information and awareness raising campaigns by the government targeting Georgian population. Public information was mainly limited to informing about ACC work. It is true that in Georgia people can directly feel tangible results of the anti-corruption measures, but a regular awareness raising about specific benefits and achievements would have been useful anyway. Awareness raising and education activities conducted with students are welcome, but they cannot be sufficient - other population groups have to be covered as well.

Overall it is clear that during preparation of the 2010 policy documents (strategy and action plan) and their implementation in 2010-2012 interaction with the civil society was not seen as a priority or something to put much effort in. Civil society involvement was mainly superficial and pro forma. It is a very welcome sign that this attitude seems to be changing, as both the Government and NGOs refer to a new modality of co-operation within the framework of the ACC starting from 2013 and notably within the revision process of the anti-

¹⁰ Available at: www.justice.gov.ge/files/Departments/Analytical/OGP_AP_Final_eng.pdf.

¹¹ See: www.justice.gov.ge/index.php?lang_id=ENG&sec_id=795.

corruption policy documents. It has to be seen whether this new attitude will be sustained and become a norm.

It is encouraging that NGOs mention several important anti-corruption initiatives that were designed and implemented by the Government agencies in discussion with the civil society. But this seemed to be a result of individual agencies' efforts, not a part of the Government policy overall. The Government states that this issue is being addressed and public discussion of important anti-corruption measures has become a part of the Government policy.

Georgia is largely compliant with the recommendations 1.4. - 1.5.

New Recommendation 2

- *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.*
- *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.*

Specialised anti-corruption policy and co-ordination institutions

Previous recommendation 1.6.1.

In order to ensure sustainability and effective work of the Interagency Anti-Corruption Council and to raise public awareness of its activities:

- i. Increase analytical and organisational capacity of the Council by appointing permanent dedicated staff and ensuring necessary resources;***
- ii. Establish reporting obligations to the Government or Parliament and ensure regular publication of the Council's objectives and activities (reports, minutes of the meeting, etc.).***

Analytical and organisational capacity of the Anti-Corruption Council

ACC mandate and powers. ACC was originally created in 2008 by a presidential decree; in July 2010 provisions on the ACC were introduced in the Law on Conflict of Interest and Corruption in Public Service (Article 12-1). Functions of the Council include: co-ordination of anti-corruption activities, update of anti-corruption action plans and strategy, supervision of their implementation, ensuring implementation of recommendations by international organizations, reporting and providing information to the public.

The Council decisions are usually reflected in the minutes of its meetings and points of action circulated by the Secretariat. They are not mandatory, unless reflected in Governmental/Presidential decree or other normative acts (*e.g.* minister's order). A decision by the Council can be addressed to a specific institution: for example, at the January 2013 meeting the Council asked the Civil Service Bureau to conduct research on various models of monitoring of public officials' asset declarations (such research, according to the Government, was then presented by the Bureau to the ACC at its July 2013 meeting).

According to the Law on Conflict of Interest and Corruption in Public Service, the Council's powers are to be detailed in secondary legislation. According to relevant regulations approved by the President, the Council is authorized to: obtain information that is necessary for its work from state institutions and bodies; develop proposals and recommendations concerning the anti-corruption strategy and action plan; obtain information concerning implementation of the anti-corruption strategy and action plan and of the international organizations' recommendations from the relevant state bodies and institutions.

Role of the ACC is described by the Government in the following way: The Council, with support of the Secretariat, has led Georgia's preventive policies and work against corruption. It has been in charge of developing new policies, co-ordinating inter-agency efforts, supervising the implementation, communicating with NGOs, international organisations, media, and broader public and representing Georgia internationally. According to the Government, the interagency character of the ACC guarantees its efficiency. The anti-corruption policies and measures are determined jointly by the responsible agencies influenced by the strong voice of civil society, business and international partners involved. The measures are not imposed on state agencies from the outside but rather are undertaken as a careful choice with full understanding of their relevance. Such an approach ensures that developed policies do not simply remain as a declaration of good will, but are fully enforced and implemented. NGOs, business and international involvement on early stages of shaping anti-corruption policies guarantees that measures are comprehensive and

relevant. The Government of Georgia believes that such approach, when implemented properly, is a good model in the Georgian context and has proved to be successful in different areas (e.g. in the areas of criminal justice reform, fight against trafficking). After October 2012 parliamentary elections, the role of the ACC has been increased, its composition was expanded, NGOs take part in the process more actively. In addition, introduction of the reporting obligation of the ACC to the Parliament is being discussed.

TI Georgia noted that the role of the Council in the development and implementation of anti-corruption measures in Georgia in 2010-2012 was limited, primarily because of its insufficient organizational capacity. While the Council may have been a useful venue for discussion of some legislative changes (although even this is questionable, given the fact that it met only five times over the period of three years and these meetings were usually short), it did little in terms of monitoring the implementation of these legal provisions in practice or in terms of assessing the general situation in the field of combating corruption. This is likely to have largely been the result of the Council's lack of strong organizational structure and dedicated staff. GYLA agreed that the Council should become more active and its involvement in the anti-corruption policy should be increased, in particular, by monitoring different institutions and assessing their compliance with the strategy and action plan developed by the Council.

TI Georgia has proposed a major reform of the Anti-Corruption Council and the establishment of an entirely different type of anti-corruption agency, namely an independent anti-corruption body whose responsibilities would include investigation, prevention, and education. The agency would have an independent staff and budget and would be directly accountable to the legislature. The procedure of appointment of the agency chief would be designed in a way that would reduce the ruling party's influence over the agency as much as possible. It would also be necessary to ensure sufficient level of transparency and accountability of such agency. Another NGO – GYLA – proposed to establish the Council as an autonomous body and provide necessary resources for its proper functioning; this would increase its independence and operational capacity.

ACC composition. According to the Government, during past three years the number of governmental agencies, NGOs and international organisations has increased in the composition of the ACC. The reason was the expansion of issues, the political will for the ACC to be far more inclusive and the emergence of new NGOs working on anti-corruption. Earlier in 2012 and then in January 2013 the membership of the ACC was expanded to increase representation of civil society organisations (9 new organisations included), international agencies (4 new agencies) and to include business representatives (1 local and 2 international) for the first time. Following the most recent January 2013 amendments, the ACC consists of 38 members, of which 17 are high-level governmental representatives, 2 members are from the Parliament and 1 from the judiciary; 18 observers represent local and international NGOs, international organisations, donors and business associations.¹² Further changes are planned (to add representatives of the Ministry of Defence, Ministry of Social Affairs, Business Ombudsman).

Government stated that the Council is always open for NGOs. They can become members by sending a request to the Secretariat and the latter informs the Council about a new candidate. Sometimes the Secretariat itself suggests to the Council to invite certain NGOs to the ACC.

¹² The Council originally had 18 members (14 representatives of different state institutions and 4 representatives of the civil society). Its composition was later increased to 23 members as several government and CSO representatives were added.

Following ACC's approval, the Secretariat prepares amendments to the Presidential Decree about Council membership and submits them to the President. Alterations to the Council membership are suggested either by the ACC itself or the Government. There are no formally established criteria to select NGOs. However, decision is made taking into account role of the organisation in fighting corruption and experience in the anti-corruption field. For example, for January 2013 changes in the ACC composition, the Government consulted NGOs – members of the ACC and based on that proactively invited some other NGOs to participate in the Anti-Corruption Council. Some NGOs sent letters of request to the Head of the Council – the Minister of Justice of Georgia. As a result, the Government discussed this issue at the Cabinet meeting and it was decided to increase the membership of the ACC. Respective suggestion was sent to the President who formally signed it into Decree.

This position of openness to new civil society members was confirmed by GYLA, which noted that during recent meeting between the civil society and Ministry of Justice, the Minister declared that the Council was open for new members and encouraged the civil society to actively engage in the work of the Council.

Functioning of the ACC. Under the ACC Regulations, regular sessions of the ACC are held quarterly. The ACC WG usually meets to prepare ACC meetings or *ad hoc*, upon Secretariat or member's initiative/request. There are also sub-working groups – political party financing sub-working group (no other specific groups were named). According to the Government, there were so far overall 8 meetings of the ACC, of which 2 were held in 2012. After the 2012 elections the ACC with its renewed composition met in January 2013. Next meeting was planned for April 2013 but later postponed for June and then July. NGOs, however, reported that only 5 meetings of the ACC were held between 2010 and 2012, of which only one took place in 2012.

Since 2013 ACC Secretariat used a standard form for recording attendance of the ACC meetings (Government provided record of attendance for the January 2013 meeting). Attendance statistics, however, is not published.

In 2012 the Council approved 2011 anti-corruption report and report for the first half of 2012. The Council also approved Georgia's Open Government Partnership Action Plan for 2012-2013 and discussed the OGP implementation progress during first 5 months at its August 2012 meeting. Other issues considered by the ACC included: progress in implementation of political party financing regulations and regulations against misuse of administrative resources during electoral campaign, issues related to the unified public information portal – Data.gov.ge and Georgia's international anti-corruption rankings.

The expanded Council first met in January 2013. The issues discussed included: election of the Deputy Chairperson of the Council, implementation of the OGP Action Plan and activities to be carried out in the near future, creation of political party financing working group, OECD/ACN Third Round Monitoring process, anti-corruption activities to be carried out under Eastern Partnership - Council of Europe Facility, the revision of the existing Anti-Corruption Action Plan and elaboration of a new Plan for 2014-2016, civil service reform and - particularly - monitoring mechanism for asset declarations of senior public officials, fine-tuning state procurement system.

TI Georgia's assessment is that the Council's work has largely been limited to plenary meetings. The secretariat (the Ministry of Justice's Analytical Department) was responsible for the Council's operations in between these meetings.

Funding of the ACC. The main source of funding for the ACC is Georgia's state budget. Neither ACC, nor its secretariat have a separate budget funding, its expenses are covered from the general budget of the Ministry of Justice. Other sources of funding for individual activities came from donors: UNODC, USAID – under its G3 (Good Governance in Georgia) Program, the Council of Europe Eastern Partnership Facility, the OECD, mainly as a support to participation in international events or organisation of workshops locally.

ACC Secretariat. Analytical Department of the Ministry of Justice of Georgia serves as a Secretariat for the ACC. Government reported that the ACC Secretariat, which provides analytical and organizational support to the ACC, has been strengthened. New staff members have been added. Since 2010 number of staff members working on the anti-corruption issues increased to 8 (overall 16 person work in the Department)¹³. There are 8 staff members working on anti-corruption issues: the Secretary of the ACC – the Head of the Department, the Deputy Head of the Department, four senior legal advisers (including an anti-corruption co-ordinator and a sociologist who works on the analysis of anti-corruption surveys and evaluations/rankings), one administrative assistant and one intern. The membership of the ACC became attached to a position (*ex officio* membership), as opposed to a particular person. Government noted, however, that although the ACC Secretariat has been strengthened since the last monitoring round, further increase in its capacity would be desirable.

NGOs noted that there has been no notable increase in the analytical and organizational capacity of the Council. The Council still has no independent organizational structure and the Justice Ministry's Analytical Department acts as the Council's secretariat, which raises concerns over the degree of the Council's independence from the executive branch. Staff members, working at the Analytical Department of the Ministry of Justice, have other tasks as well. Consequently, their involvement in the anti-corruption activity is limited.

Reporting obligations and transparency of the ACC

In terms of reporting Government referred to reports on the implementation of the Action Plan which are supposed to be prepared twice a year (and issued in July/August - for the first 6 months of that year and in March/April – for the entire previous year). Implementation reports are submitted to the President and Government. Introduction of the reporting obligation of the ACC to the Parliament is being discussed. TI Georgia noted that, in practice, as of March 2013, the Council has published a total of three reports (one for 2010 and two for 2011). The implementation report for 2012 is yet to be published (no report was published for the first half of 2012 either).

As to achieving public visibility of the ACC Government mentioned the following means: a separate portal on the web-site of Ministry of Justice dedicated to the fight against corruption; information on the Anti-Corruption Strategy and Action Plan, comprehensive reports on their implementation, minutes of the ACC meetings are available on the web-page, which is updated on a regular basis; Facebook page of the Ministry is also publishing news about the Council's work. Decisions of the ACC are included in the minutes of its meetings and the documents the ACC approves. They are available online at www.justice.gov.ge.

NGOs remarked that, as demonstrated by the practice of publication of the Action Plan implementation reports, information regarding the Council's activities is not released regularly. Beyond the website, little work has been done to promote public awareness of the

¹³ It should be said that for Georgia this is a relatively high number, *e.g.* the whole Civil Service Bureau has 18 staff members.

Council's activities.

Conclusions

Capacity of the anti-corruption policy co-ordination body remains an issue. ACC has been a leading body in co-ordinating the formulation and implementation of the anti-corruption policy, but its efficiency appears to be low. It has held only few meetings and lacks any real powers to influence the policy and to effectively monitor implementation of the anti-corruption strategy and action plans. It can be explained by the relatively low-profile status of the ACC (inter-agency body composed of representatives of various institutions and non-governmental partners) and lack of resources of the secretariat. At the same time, it is a positive development that the ACC is now directly mentioned and regulated in the Law on the Conflicts of Interests and Corruption in Public Service (although main provisions regulating composition and functioning of the Council are included in the President's decree).

Analytical Department of the Ministry of Justice includes qualified staff, but they remain responsible for various other tasks (which include such important and comprehensive areas as criminal justice sector reform) and cannot always be fully dedicated to the ACC work. It is estimated that only 50% of Department staff's work time is spent on anti-corruption. It is clear that in a country where fighting corruption remains government's priority the anti-corruption policy co-ordination mechanism requires dedicated personnel, that is staff members who specialise and deal exclusively with the anti-corruption work. It would also allow the ACC secretariat to be more proactive in its work.

There have been positive developments in the Council's operation after the October 2012 elections, but it remains to be seen if it results in higher effectiveness of its work. Therefore, the issue of institutional reform in this area should be raised. This is also suggested by the NGOs, which propose a separate institution with broader powers and increased capacity. While the current co-ordination mechanism has participatory and consensus-building nature, idea of a separate institution is worth discussing at least. This monitoring report will not impose any specific model or example of anti-corruption policy co-ordination institution, but it is recommended to look at different available solutions in order to raise effectiveness of the ACC and its secretariat.

Basic information on ACC functioning is published on-line; it is recommended that statistics on attendance of the relevant web-pages is measured and analysed. However, overall reporting mechanism of the ACC is not satisfactory: reports on implementation of the Anti-Corruption Action Plan are formalistic and not regular in reality (while implementing agencies routinely submit every six months their reports, only three general reports on the Action Plan implementation have been approved and published so far); there is no reporting on activity of the ACC as such, which significantly lowers its efficiency and public visibility. Reporting to the parliament would increase ACC democratic legitimacy and accountability and help raise awareness of its work and public visibility.

Georgia is partially compliant with the recommendations 1.6.1.

New Recommendation 3

- ***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.***
- ***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.***

Previous recommendations 1.6.2. - 1.6.3.: see at the end of Chapter 2.

2. Criminalisation of corruption

Previous recommendation 2.1. - 2.2.

Train prosecutors and investigators in the application of the provision of criminal responsibility for legal entities.

Training of prosecutors and investigators

Government reported that the Training Centre of the Ministry of Justice of Georgia developed annual training curriculum for prosecutors based on the need assessment and international recommendations pertinent to the prosecution service. Among other topics the curriculum includes the issue of liability of legal persons.

In January-March 2010, 440 prosecutors were trained on the Criminal Code of Georgia, including on liability of legal persons. Reportedly, the purpose of these trainings was to familiarize prosecutors and judges with legislation on liability of legal persons; to analyse the practice and legislation; and to discuss future possible changes in the Criminal Code. Also in 2010, within CoE/EU project GEPAC, a two-day training programme was delivered at the Ministry of Justice's Training Centre. It included issues of liability of legal persons: together with theoretical presentations on the topic, practical case studies were included in the training module. 25 prosecutors and investigators were trained. The same training module was revised and added to the prosecutor's internship training course later on.

Government also reported about a number of other trainings implemented by the Academy of the Ministry of Internal Affairs concerning combatting corruption and money laundering, but they do not appear to have specifically been focused on the corporate liability.

Prosecutors met during the on-site visit could remember only one seminar, which included issue of legal persons liability and was conducted immediately after relevant amendments were passed. The seminar provided information on the new provisions, but did not provide guidance on practical implementation.

Enforcement of corporate liability

Georgia was the first country in the region (and from the IAP countries) to introduce liability of legal persons in 2006; relevant provisions of the Criminal Code were amended in 2008 and since then are generally in line with international standards.

According to the governmental statistics for the past three years (2010-2012), prosecution was initiated against only 2 legal persons under Article 194 of the Criminal Code (money laundering). Both cases were decided by court in 2011 and ended with conviction; sanctions applied to legal persons were deprivation of the right to pursue a particular activity. In both cases legal persons were held liable after conviction of natural persons.

Government claimed that there were no obstacles for investigation of the cases involving legal persons for investigators and prosecutors. But lack of any cases against legal persons concerning corruption offences attests to the opposite, especially against the background of numerous prosecutions against natural persons.

Prosecutors met during the on-site visit confirmed that corporate liability provisions remain unfamiliar for prosecutors who are reluctant to apply them. They believed that it would be difficult to prove elements required by the standard of corporate liability, *e.g.* that offence was committed for the benefit of a company, that relevant responsible person was involved, notably because intermediaries are usually involved in the crime. It also often happens that fake (shell) companies participate in the corruption scheme, which makes their prosecution futile. Prosecutors can initiate prosecution against a legal person separately from the natural person, but they are still not sure how to properly charge a legal person and therefore would rather pursue the case against the direct perpetrator.

Conclusions

While certain amount of trainings have been conducted and corporate liability was included in the training curriculum for prosecutors, it seems that there were no targeted trainings for investigators and/or prosecutors focusing specifically on the liability of legal persons. Corporate liability was among many other issues covered by the reported trainings, which may have been reflected in the effectiveness of the training exercises.

Despite the fact that criminal liability of legal persons for corruption offences existed on the books in Georgia since 2006, a total lack of enforcement raises concern. This fact confirms that trainings provided to law enforcement practitioners were insufficient and that also additional guidance is required.

Lack of enforcement may also have negative consequences for promotion of business integrity measures in the private sector. Liability of legal persons, when effectively enforced, is a powerful tool to encourage companies to build robust internal controls, ethics and compliance programmes. To further encourage such measures it is recommended to use good practice of other countries and introduce for companies, which are liable for an offence committed in their interest, an exemption from liability if they implemented such programmes and it can be shown that perpetrator acted in violation of such measures.¹⁴ (See also section of this report on business integrity).

Georgia is partially compliant with the recommendation 2.1. - 2.2.

New Recommendation 4

- ***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.***
- ***Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.***
- ***Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.***

¹⁴ See, for example, OECD/ACN Summary Report on the second round of IAP monitoring (“Anti-corruption reforms in Eastern Europe and Central Asia. Progress and Challenges, 2009-2013”), p. 64-65, available at: www.oecd.org/corruption/acn/istanbulactionplan/anti-corruption-reforms-eastern-europe-central-asia-2013.htm.

- **Consider introducing in the legislation an exemption (defence) from liability for companies with effective internal controls and compliance programmes.**

Previous Recommendation 2.3.

Include candidates for political offices and staff members of the Parliament's ad hoc commissions in the definition of "public official or a person with equal status" for the purposes of the Criminal Code.

Government reported that in November 2011 the Criminal Code of Georgia was amended, *inter alia*, in order to expand the subjects of bribery offences in line with the OECD recommendation and international standards.

Bribery offences in the Georgian Criminal Code (*e.g.* Article 338 on passive bribery¹⁵) refer to "a public official or a person with an equal status" (translation from GRECO report). In translation of the Criminal Code provided by the Georgian authorities "public official" is called "officer". IAP Second Monitoring Round report on Georgia (as well as GRECO report) refers to the Civil Service Law for definition of the "public official" / "officer" - a person, who, according to the rules set forth by this law, serves in a remunerated position in a state or local self-government authority.

Article 2 of the Law on Civil Service lists state agencies, work at which is considered civil service: (1) the Parliament of Georgia, except factions and offices of *ad hoc* investigative commissions or other kinds of commissions of the Parliament; (2) administration of the President; (3) the State Chancellery of the Government of Georgia, the Office of the State Minister, ministries, and state subordinated agencies; (4) the Council of Justice of Georgia; (5) the Constitutional Court, common courts, prosecution service of Georgia; (6) the National Bank of Georgia; (7) the Chamber of Control of Georgia; (8) the Office and agencies of the Public Defender of Georgia and the (9) Governor and his/her administration. State agencies of the autonomous republics of Abkhazia and Adjara are: (1) Highest representative agencies of autonomous republics of Abkhazia and Adjara; and (2) Agencies of executive authorities of autonomous republics of Abkhazia and Adjara. Local self-governing agencies are: (1) Sakrebulo (regional councils), (2) city halls and (3) municipalities.

¹⁵ Text taken from GRECO Third Round report on Georgia:

"Article 338. Passive Bribery

Receipt or request by a public official or a person with an equal status directly or indirectly of money, securities, property, material benefit or any other undue advantage, or acceptance of an offer or a promise of such an advantage, for himself or herself or for anyone else, to act or refrain from acting in the course of carrying out his/her official rights and duties, in favour of the bribe-giver or other person, as well as use his or her official position for that end or to exercise official patronage, shall be punished by the deprivation of liberty from six to nine years.

2. The same act committed:

a) by a state official with political status;
 b) in respect of a large amount;
 c) by a group, due to an agreement in advance,
 shall be punished by the deprivation of liberty for a term from seven to eleven years.

3. The conduct defined in paragraphs 1 and 2 of the present Article, committed:

a) by the person previously convicted for bribery;
 b) repeatedly;
 c) through extortion;
 d) by an organised criminal group;
 e) in respect of an especially large amount ,
 shall be punished by the deprivation of liberty for a term from eleven to fifteen years."

To cover other officials, who do not formally have the status of a civil servant, a note was added to Article 332 CC (Abuse of office) that covers all corruption-related offences. The note currently reads:

“1. Subjects of the offences foreseen by the present Chapter (Chapter XXXIX - Offences in relation to Exercising Public Service) also include staff members of the Legal Entities of Public Law (except political and religious unions), who exercise public authority, members and personnel of ad hoc commissions of the Parliament, electoral subjects (only for the purposes of Article 338 (passive bribery) of the present Code), members of the arbitration courts, private enforcers, as well as any other person, who pursuant to legislation of Georgia conducts public authority.

2. For the purposes of this Chapter, persons with an equal status to a public official also include a foreign public officials (including member of legislative bodies and/or agencies exercising administrative authority), as well as any person who performs any public function for another state, an official or contracted staff member of an international organization or agency, as well as any designated or non-designated person who performs functions equal to such official or staff member, foreign arbitrators or jurors, who exercise their functions based on the legislation of foreign state, member of international parliamentary assemblies, representative of international criminal court, judge or official of international court or judicial body.”

According to the Election Code of Georgia (Article 2), election subject is a party, election bloc or initiative group of voters, or a candidate for membership in a representative body of public authority or public office, registered by the respective election commission.

Conclusions

It appears that staff members of the *ad hoc* parliament commissions and candidates for political offices are covered by the current definition of persons subject to corruption offences in the Criminal Code of Georgia, as amended in November 2011.

Georgia is fully compliant with the recommendation 2.3.

Previous recommendation 2.4.

Reduce the current minimum sentences for money laundering and passive bribery and make them proportionate in cases where the damage is not significant.

IAP Second Monitoring Round report on Georgia¹⁶ found it striking that the minimum sentence for passive bribery and for money laundering was “6 years” of imprisonment. This was found to be not proportionate, not leaving room for an appropriate sanction for facilitation payments, for example. Report stated that there was a risk that a case would not be brought to the attention of court because the minimal sentence was inappropriate.

¹⁶ Available at: www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

It should be noted that the Second Round report (pages 21-22) provided a table of sanctions for various offences, where minimum sanction for passive bribery was correctly indicated as 6 years of imprisonment and minimum sanction for money laundering was also correctly indicated as 3 years of imprisonment. In the next paragraph, however, minimum sanction of 6 years was mistakenly mentioned for money laundering offence.

Currently Criminal Code of Georgia provides that basic offence of money laundering is punishable “*by fine or deprivation of liberty from 3 to 6 years*”. Basic offence of passive bribery is still punishable “*by imprisonment from 6 to 9 years*”. This report will further focus on the disproportionate sanction for passive bribery, as sanctions for money laundering offence appear to be proportionate and sufficiently dissuasive at the same time.

Government reported that the Ministry of Justice initiated a revision of the Criminal Code of Georgia. Main goal of the revision is to enhance criminal legislation and bring it in compliance with international standards, to eradicate inaccuracies and gaps as well as to reflect “modern crime trends” in the Criminal Code. The process is divided in two parts: at the first stage, General Part of the Code will be revised, while at the second stage focus will be made on the Special Part dealing with particular offences. When dealing with the Special Part of the Code reduction of current minimum sentences will be considered as well.

Government also noted that currently it is possible to render lighter sentence than the minimum one foreseen by a Criminal Code article if a plea agreement is concluded between prosecutor and defendant and the defendant agrees to co-operate with law-enforcement authorities.

Plea agreements system in Georgia has been criticised by NGOs for vesting too much discretionary power in prosecutors. While plea agreement has to be ultimately approved by the court, it is believed that judges are not sufficiently independent and in most cases follow submissions by prosecutors.¹⁷ This undermines the effectiveness of judicial control over plea bargaining and may result in abuse of prosecutorial authority. Also regulations on application of plea agreements by prosecutors are supposedly not public. It is worrisome that reportedly 95% of defendants in passive bribery cases are taken in custody pending trial, which puts them under enormous pressure to reach a plea agreement with the prosecution and agree to relatively small imprisonment term and a fine.

Limited role of judge in the plea bargaining scheme is also confirmed by the following. According to the statistics provided by the Government during on-site visit, 4,400 proposals of plea agreements in all criminal cases were presented to courts in 2010 and only 18 agreements were refused (16 and 19 refusals accordingly in 2011 and 2012). Courts cannot review the substance of a plea agreement and, for instance, cannot refuse it if the agreed sanction appears too low.

It is also confirmed by other reports. For instance, March 2013 European Commission Staff Working Document accompanying Progress report on implementation of European Neighbourhood Policy in Georgia in 2012 states that the high likelihood of being convicted if a case goes to trial has led to the excessive use of plea bargaining. In the first nine months of 2012, 88% of all criminal cases were resolved through plea bargaining. Severe punishments for petty crimes and consecutive sentencing are other reasons for the frequent use of plea

¹⁷ See, for example, National Integrity System report by TI Georgia, 2011, chapter on Judiciary, available at: <http://transparency.ge/nis>.

bargaining. Polls show that the public sees plea bargaining as an unjust way of getting additional money for the budget.¹⁸

Ministry of Justice officials noted that the planned revision of the criminal law would aim, *inter alia*, at raising the role of the judge and of crime victims in the plea agreement proceedings. One of the issues to be addressed is to exclude possibility for buying one's way out of justice where the more is paid as part of plea agreement the less severe punishment is given.

With regard to minimum threshold for starting prosecution of a bribery offence Government stated that Georgian legislation does not provide for the minimum amount of undue advantage that triggers criminal liability for corruption-related offence. Under the Criminal Code of Georgia, offence is committed once the elements of the crime foreseen by respective articles are met. Consequently, the mere existence of undue advantage is enough to qualify act as an offence notwithstanding the value of the advantage. At the same time the Criminal Code includes provision (Article 7.2) according to which an act that caused insignificant damage shall not be regarded as a crime, even if it includes elements of the offence.

Under the Guidelines on Criminal Justice Policy prosecutor has the right not to initiate or to terminate criminal prosecution if requirements of public interest are not met. The prosecutor while deciding on prosecution of a person shall analyse whether and to what extent the initiation of prosecution serves public interest and shall not initiate the prosecution when public interest towards not initiating prosecution obviously overrides interest to punish a person. Public interest is defined through consideration of different relevant factors including but not limited to state priorities, nature and gravity of crime, preventive influence of prosecution, personal characteristics of defendant, willingness to co-operate with law-enforcement bodies, expected sanction, etc. Accordingly, the prosecutor can decide on the termination of prosecution if the public interest test is not satisfied. However, as the prosecution of corruption related crimes is criminal justice policy priority for Georgia discretionary power is less likely to be used in such cases.

The Guidelines on the Criminal Justice Policy are adopted by the decree of the Minister of Justice and are binding for prosecutors. The document is public and available on the web-site of the Ministry of Justice.

Statistics. Statistical data provided by the Government shows that the number of persons convicted to imprisonment under Article 338 CC (Passive Bribery) has dropped from 120 in 2010 to 71 in 2011 and 37 in 2012.

Interestingly, most persons convicted under this Article received sentences of less than 6 years of imprisonment. In 2010, 81% of convicted received imprisonment sentences of less than 6 years, in 2011 – 79%, in 2012 – 76%. This is explained by the reduced sentences due to plea agreements reached between prosecution and defendants.

Conclusions

Minimum imprisonment sanction for passive bribery remains unchanged, thus making Georgia formally non-compliant with the recommendation. In practice, however, actual punishment given is in most cases below the minimum 6-year term, which is explained by the

¹⁸ Available at http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_georgia_en.pdf (pages 5-6).

extensive use of plea bargaining provisions. Such arrangement does alleviate to some extent the problem of disproportionate sanctions for passive bribery, but does not eliminate it. Putting too much emphasis on plea bargaining creates other risks, e.g. abuse of powers by prosecutors, detention of defendants to put pressure on them to reach an agreement and to self-incriminate, and so on. It also diminishes the role of the judge, who has to deal with a seemingly mutual agreement of the defendant and prosecutor and except for controlling legality of such agreement has no role in bringing corrupt officials to liability.

The high minimum sentence for passive bribery, the unlimited discretion of public prosecutor in plea-bargaining and the lack of substantive judicial control may undermine legal certainty, allow for serious disparity in the treatment of similar cases and create “fertile ground” for corruption.

Georgia is not compliant with the recommendation 2.4.

New Recommendation 5

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

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.***

Effective mutual legal assistance

Government reported that the Law of Georgia on International Co-operation in Criminal Matters (not available in English) covers all international co-operation related issues, including mutual legal assistance. The law has been drafted taking into consideration Georgia’s obligations stemming from international and regional conventions. According to the Government, one of the advantages of the above-mentioned law is that it established an effective mechanism for co-operation with regard to all types of procedural actions. It means that even if the law on international co-operation in criminal matters does not contain provisions regarding the conduct of certain types of procedural actions, Georgia nevertheless is able to conclude *ad hoc* agreements with the appropriate foreign authorities and provide them with the required assistance measures.

Therefore, Government argued that despite the fact that the Law did not contain provisions on the use of video conferences, mandated confidentiality of a request and formation of joint investigative groups, the competent Georgian authorities were still able to conclude *ad hoc* agreements with their foreign counterparts and in this way afford them such legal assistance.

During previous years, Georgia has received several MLA requests from foreign states on the basis of which it was requested to comply with the confidentiality requirement when executing such requests. In all cases Georgia fully executed such requests and during their execution the confidentiality requirement was always observed. Georgia has never received requests for the use of video conference or creation of joint investigative teams. However, should such requests be submitted to the Ministry of Justice of Georgia, they would be executed without any impediments, the Government claims.

The Law on International Co-operation in Criminal Matters was adopted in 2010 and entered into force together with the new Criminal Procedure Code of Georgia. The Law covers reportedly all international co-operation related issues, such as mutual legal assistance, extradition, transfer of proceedings, transfer of sentenced persons and enforcement of foreign criminal judgments. According to the Government, on 30 May 2013 the Law on International Co-operation in Criminal Matters was amended to ensure full compliance with the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. These amendments implemented provisions on the use of videoconferences, mandated confidentiality of a request and formation of joint investigative groups.

Government submitted that in 2010 Georgia received two MLA requests and sent nine MLA requests regarding corruption-related cases; in 2011 – three and seven MLA requests accordingly; and in 2012 - six and nine MLA requests were received and sent by Georgia in relevant cases.

According to UNCAC Review Summary Report of May 2012¹⁹, Georgia has never received or sent an MLA request on the basis of the UN Convention against Corruption, but has received and sent several requests in regard to corruption offences based on other multi- or bilateral treaties. The average time needed for execution was 2-3 months. MLA requests can be transmitted through any communication.

Second Additional Protocol to European Convention on Mutual Assistance in Criminal Matters

According to the Government, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters was signed by Georgia on 25 March 2013 during the official visit of the Minister of Internal Affairs of Georgia to Strasbourg.

Ministry of Internal Affairs prepared a draft Law of Georgia on International Law Enforcement Co-operation (“police-to-police” co-operation) in order to ensure full compliance with the Second Additional Protocol. In particular, the draft Law implements Articles 11, 17, 18, 19, 20 and 23 of the Second Additional Protocol. It was planned to present the draft Law to the Parliament in 2013.

Conclusions

From the available information it appears that there are no obstacles for effective mutual legal assistance in corruption cases according to Georgian law and practice. The Law on International Co-operation in Criminal Matters allows certain flexibility, in particular through *ad hoc* bilateral agreements on co-operation. Ratification of the Second Additional Protocol to

¹⁹ Available at: www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253862e.pdf.

the European Convention on Mutual Assistance in Criminal Matters and subsequent alignment with it of the relevant legislation will allow Georgian authorities to use new co-operation tools and bring its law in line with international standards.

Georgia is largely compliant with the recommendation 2.7.

No new recommendation is made under this section; previous recommendation remains valid.

Previous recommendation 2.8.

Ensure flexibility in time-limits of complex anti-corruption prosecutions, in particular in cases involving mutual legal assistance.

Government reported that Georgian legislation does not provide for the exact time limits of the pre-trial investigation. According to Article 103 of the new Criminal Procedure Code, investigation shall be conducted in reasonable time not exceeding statute of limitations foreseen for specific offence investigated. Accordingly, a strict deadline has been abolished and current provisions ensure reasonable time limit for conducting investigation in complex cases.

As for the terms prescribed by the statute of limitations, the latter is dependent on the category of the crime. There are three categories of crime: less grave, grave and especially grave. Since corruption offences are not grouped in a separate chapter of the Criminal Code, various offences attract various statutes of limitation according to gravity (six years for less serious offences, ten years for serious offences and twenty-five – for especially serious offences). However, some of the most common corruption offences committed by public officials (excess and abuse of duty, active and passive bribery, trading in influence and illegal gifts) have an extended statute of limitation – 15 years instead of 10, if the crime is not of especially serious nature when a general limitation of 25 years applies (Article 71 of the Criminal Code).

Article 71 of the Criminal Code of Georgia:

- “1. The person shall be released from criminal liability if:*
- a) two years have passed since the perpetration of the crime for which the maximum sentence prescribed by the article or part of the article of the Special Part of this Code does not exceed two years of imprisonment;*
 - b) six years have passed since the perpetration of any other less serious crime;*
 - c) ten years have passed since the perpetration of any grave crime;*
 - c¹) fifteen years have passed since the perpetration of crimes under Article 332-342¹ of this Code, if these do not fall under the category of especially grave crimes;*
 - d) twenty-five years have passed since the perpetration of any especially grave offense.*
- 2. The term of limitation shall cover the period from the day of wrongdoing before the conviction of perpetrator. In case of committing another crime, the term of limitation shall be computed for each particular crime.*

²⁰ Articles 332-341¹ of the Criminal Code of Georgia envisage the crimes committed by public officials.

3. *The flow of the limitation shall be suspended if the criminal escapes from the investigation or the court. On such occasion, the limitation shall be resumed upon the apprehension of the perpetrator or his appearance with the confession of guilt.*
4. *The question whether to apply the limitation or not to the person convicted of life imprisonment, shall be settled by the court. If the court rules that it is impossible to apply the limitation, life imprisonment shall be commuted to imprisonment for the particular term.*
5. *The limitation shall not be applied in cases provided by the international treaty of Georgia.*
6. *The flow of the limitation shall be suspended as long as the person is protected by immunity.”*

Government informed that criminal prosecution was terminated only in one case due to lapse of statute of limitation; it was a case under Article 333 of the Criminal Code of Georgia – Exceeding of official powers.

However, the Criminal Procedure Code of Georgia sets a time limit for a person to have the status of defendant after indictment. Article 169.8 provides that *“a person shall not bear status of a defendant for the same crime for more than 9 months unless he/she was charged for the commission of another crime prior to the expiration of this term. ... Criminal prosecution of the person terminates upon expiration of this term. If criminal prosecution of a person is terminated in the case described by this provision, bringing same charges against this person in the future is inadmissible.”*

Prosecutors met during the on-site visit explained that this time limit is usually sidestepped and does not constitute a problem for effective investigation in practice, because prosecutors do not bring charges until they have collected enough evidence. At the same time there seems to be a contradiction with another CPC provision (Article 169), which requires that a prosecutor decide whether to indict a person or not when he has a reasonable cause to believe person committed the crime, not when he has collected enough evidence to submit the case to court. As to MLA prosecutors claimed that reply to a request can be received even during trial and would be used.

Conclusions

New CPC did eliminate fixed terms for pre-trial investigation limiting it only by duration of the statute of limitation for the relevant crime. Statute of limitations for corruption offences appears to be sufficient, especially since for corruption-related offences there is an exceptional minimum limitations period of 15 years.

However, CPC limits duration of time a person can be considered a defendant after charges have been brought against him. 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 does not seem to be a satisfactory arrangement.

Georgia is largely compliant with the recommendation 2.8.

New 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.

Previous recommendation 1.6.2.

Ensure that the Prosecutor's Office can autonomously investigate and prosecute corruption cases. To this end, reduce the potential influence of the Ministry of Justice on operational decisions of prosecutors in individual corruption cases, in particular to exclude direct prosecutorial authority of the minister and the minister's power to abolish prosecutor's acts in such criminal investigations.

Role of the Minister of Justice in criminal prosecutions

Previous IAP monitoring report on Georgia criticised the fact that under Georgian legislation Minister of Justice had the power to intervene in prosecution of individual cases under Article 8 of the Law on Prosecution Service of Georgia.²¹

After the third monitoring round was launched, Government of Georgia initiated amendments in the Law of Georgia on Prosecution Service, in particular, in order to abolish the power of the Minister to interfere in individual cases and conduct other reforms of the Prosecution Service in line with European standards. The amendments were passed by the Parliament on 30 May 2013 (entered into force on 24 June 2013) and transferred prosecutorial powers of the Minister of Justice to the Chief Prosecutor of Georgia. As a result, the Minister of Justice will only have the authority to define general criminal justice policy and issue respective guidelines.

Article 8 of the Law of Georgia on Prosecution Service, as amended, reads as follows:

“Article 8. The competence of the Ministry of Justice

1. The Minister of Justice for the purposes of this Law:

- a) Upon the proposal of the Chief Prosecutor creates and abolishes bodies of the prosecution service, determines territory of their activity and defines competencies of the structural units;*
- b) Based on the Law and for its implementation issues the normative and individual legal acts – orders, instructions and directives;*
- c) With regard to priority of the human rights and freedoms, upon the proposal of the Chief Prosecutor, approves the guideline principles of the criminal policy;*
- d) Upon the proposal of the Chief Prosecutor approves the regulations of the bodies of the prosecution service and their structural units and the rule of internship in the bodies of prosecution service;*
- e) Upon the proposal of the Chief Prosecutor approves the Code of Ethics for the employees of the prosecution service;*

²¹ It included such relevant powers of the Minister of Justice:

“...c) In case of commitment of a crime, according to the rules prescribed by law conducts criminal prosecution of the President of Georgia, member of the Parliament of Georgia, Chairman of the Supreme Court of Georgia, Judges of the Common Courts of Georgia, Chairman and member of the Constitutional Court of Georgia, Member of the Government, Public Defender of Georgia, the Auditor General, Chairman and the Member of the Board of the National Bank of Georgia, Ambassador of Georgia and envoy, high ranking military official or an official with a special rank or a person with an equal status; ...

k) abolishes unlawful orders, instructions and directives issued by the subordinate prosecutors; ...”.

- f) Upon the proposal of the Chief Prosecutor approves the amount of remuneration of the employees of the prosecution service, within the framework of the allocated salary fund;
 - g) Upon the proposal of the Chief Prosecutor elaborates the proposals for the financing and material -technical maintenance of the prosecution service;
 - h) Requests the materials of respective criminal case from the body of the Prosecution Service at the European Court of Human rights and at other international courts, tribunals and arbitrages, within the limits of the State Representation of Georgia;
 - i) Considers within its competence the complaints and applications of physical and legal entities;
 - j) Fulfils other authorities assigned to him/her in accordance with the legislation of Georgia;
2. The Minister of Justice does not interfere in the decisions made and actions performed by the Prosecution Service related to certain criminal cases investigations and / or criminal prosecution. ...”

Amendments also excluded Minister of Justice from the definition of “prosecutor”, thus excluding him from the prosecutorial hierarchy, which is important because according to the Criminal Procedure Code a superior prosecutor may overrule decisions of subordinate prosecutors.

Amendments preserve highly hierarchical system of public prosecutors and provisions on appointment and dismissal of the Chief Prosecutor – by the President upon proposal of the Ministry of Justice. No grounds for dismissal of the Chief Prosecutor are provided in the law. It should be said that procedure for appointment and dismissal of the Chief Prosecutor and subordinate prosecutors was criticised by the Venice Commission in its 2009 Opinion on four constitutional laws.²²

Venice Commission recommended in this regard: *“There needs to be an independent input into the appointment procedure for all prosecutors from the Chief Prosecutor down to ensure that only properly qualified persons are appointed. The Georgian legislation needs also ensure, in respect of the discipline and removal of office of all prosecutors, including the Chief Prosecutor and his Deputies: (a) that the grounds on which prosecutors may be disciplined or removed from office are clearly provided for in law (b) that in each case a prosecutor is fully informed of the grounds on which it is proposed to discipline or remove him or her from office (c) that the prosecutor is entitled to be represented and heard on the issue before an independent body (d) that the prosecutor has a right of appeal to a court of law against any decision to discipline or dismiss him or her.”*

Minister of Justice also retains extensive powers with regard to internal structure, budgeting and remuneration of the prosecutor’s office and prosecutors. While most of relevant powers are to be executed in co-ordination with the Chief Prosecutor, they still indirectly provide for significant influence of the Minister on the prosecution service. Overall, it can be recommended that most of these issues should be decided not by a politically appointed member of the Government, but by a body of prosecutors’ self-governance, similar to the one for judges.²³

Government commented that Article 38 of the Law on Prosecution Service provides that if an employee of the Prosecution Service breaches his oath, violates working discipline, commits an act improper for an employee of the Prosecution Service and/or fails to perform or executes improperly his duties the Chief Prosecutor is authorized to impose one of the

²² Available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)017rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)017rev-e).

²³ See Venice Commission Report on European Standards as the regards the Independence of the Judicial System: Part II – The Prosecution Service. Available at: [www.venice.coe.int/webforms/documents/CDL-AD\(2010\)040.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2010)040.aspx).

following disciplinary measures: remark; rebuke; demotion in position; dismissal from the position; dismissal from the Prosecution Service. Decision on disciplinary sanction against the employee of the Prosecution Service may be appealed to the supervising prosecutor or to court within 30 days.

It should be noted in this regard that grounds for disciplinary measures, which include dismissal, are extremely broad and allow unfettered discretion. Also there seem to be no guarantee of proportionality of the sanction – if read literally, for any, even minor misdeed, a prosecutor may be demoted or even dismissed. A possibility of court appeal in this case would not be an effective remedy, because the court may not be able to review discretionary decision of the Chief Prosecutor if procedural rules were complied with. It is also not clear who would act as a “supervising prosecutor” if decision on disciplinary sanction is made by the Chief Prosecutor.

Corruption investigations and prosecutions

Government reported that in December 2012 the Anti-Corruption Agency (Department) was formed within the Ministry of Internal Affairs of Georgia. According to information provided after the on-site visit, functions of the Anti-Corruption Agency include: fight against malfeasance in office and corruption-related crimes; conduct measures to prevent, detect and suppress conflict of interests and corruption in the public service; take measures to bring to liability perpetrators of corruption-related crimes.

In the light of creation of a special anti-corruption department within the Ministry of Internal Affairs and recent amendments in the Law on Prosecution Service, decree of the Minister of Justice separating jurisdiction among different law-enforcement agencies was amended. Under the revised Decree the separation of jurisdiction is reportedly the following:

- (i) In general, criminal offences are investigated by the Ministry of Internal Affairs with some exceptions;
- (ii) If an offence (including corruption-related crime) is perpetrated by the President, Parliament’s member, member of the Government, judge, Public defender, Auditor General, member of the Council of the National Bank of Georgia, extraordinary and plenipotentiary ambassador or envoy, prosecutor, investigator, advisor to the prosecutor, advisor at the Prosecution Service, policeman, high-ranking military officer or an officer of special high office or person of equivalent position, the case is investigated by the Prosecution Service;
- (iii) Corruption-related offences (Articles 332-335, 337-342 CC), as well as money laundering (Article 194, 194¹ CC) are investigated by the Prosecution Service (except in cases provided in paragraphs *iv* and *v*);
- (iv) Corruption-related offences (Articles 332-335, 337-342 CC) are investigated by the Ministry of Internal Affairs if they were detected by the Ministry (except in cases provided in paragraphs *ii* and *v*);
- (v) Investigators of the Ministry of Justice investigate corruption-related offences committed by employees of the Ministry of Justice (with exception of employees of the Prosecution Service) (in particular, under Articles 332, 333, 335, 337-342 CC);

In case of concurrent jurisdiction between the law-enforcement agencies, the investigation is carried out by the Prosecution Service.

Along with the Ministry of Internal Affairs and Prosecution Service, the Investigation Service under the Ministry of Finance investigates corruption-related offences envisaged by several Criminal Code articles, but only if they are not perpetrated by a public official (Article 182 CC – Misappropriation or Embezzlement; Article 221 CC – Commercial Bribe).

Departments at the Prosecution Service are responsible for monitoring the investigation of cases by the relevant agencies of the Ministry of Internal Affairs and Ministry of Finance.

Under Georgian legislation (Article 33 of the Criminal Procedure Code) the role of prosecutor in investigation can be as follows: close supervision over investigator conducting investigation and endorsement of procedural documents prepared by the investigator; direct investigation of the case.

There are no specific regulations in terms of anti-corruption investigations. In corruption cases the prosecutor is either directly investigating corruption-related offences or is closely supervising an investigator who conducts the investigation.

There is a potential problem in such combination of functions, because the same office both conducts investigations and supervises them. This leads to a conflict of interests when prosecutors from the prosecution service supervise investigators working in the same prosecutor's office and – indirectly – prosecutors who lead respective investigations (authorise investigative actions, bring charges, etc.). This is exacerbated by the strict hierarchical nature of the prosecution service, where a superior prosecutor may, in principle, be in charge of the unit conducting investigations and of the unit supervising them. This may affect integrity of anti-corruption investigations.

There is no specialized anti-corruption unit of prosecutors or specialised prosecutors in Georgia. Generally, investigation of corruption-related offences is initiated by the investigative units of the Prosecution Service staffed by investigators of respective offices and their supervising prosecutors (the investigative unit of the Chief Prosecutor's Office, Investigative Unit of the Prosecutor's Office of Tbilisi and investigative units of regional prosecutor's offices). Usually cases of corruption as well as other criminal cases are investigated by relevant territorial bodies of the Prosecution Service. The cases of high importance, among them related to corruption, may be investigated by the Investigative Department of the Chief Prosecutor's Office which was set up in December 2012 and replaced the Anti-Corruption Department (existed since December 2010). It should be noted that there is a specialised unit in the prosecutor's office on money laundering cases.

Government provided statistics for 2010-2012 on the number of investigations, prosecutions, cases sent to court and convictions with regard to various corruption-related offences (see Annex to this report).

Conclusions

The recent amendments in the Law of Georgia on Prosecution Service are a very welcome development which go in line with the OECD and other international organisations recommendations. They eliminate the direct prosecutorial powers of the Minister of Justice and remove him from the hierarchy of public prosecutors. These amendments successfully address the main points of the previous recommendation by the IAP monitoring. However, there remain several issues which still cause concern: role of the Minister of Justice in appointment and dismissal of the Chief Prosecutor; vague and too broadly formulated grounds for disciplinary liability and dismissal of prosecutors; insufficient guarantees of

rights of individual prosecutors during the disciplinary and dismissal proceedings. These issues may undermine Prosecutor's Office capacity to autonomously investigate and prosecute corruption cases. They should be addressed in line with Council of Europe standards, notably Venice Commission's documents.

There are several agencies that are authorised to conduct pre-trial investigation of corruption cases, including investigators of the prosecution office. Prosecution service is allowed to take over any corruption investigation and there are no guidelines for withdrawing a case from an investigatory authority and referring it for investigation by the prosecutor's office. No anti-corruption specialisation of prosecutors is provided.

Georgia is fully compliant with the recommendation 1.6.2.

New 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.***
- ***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.***

Previous Recommendation 1.6.3.

Establish permanent mechanisms of co-operation among law enforcement agencies and with the Financial Monitoring Service (e.g. through written procedures, protocols, joint meetings).

Co-operation among law enforcement agencies

On 16 May 2013 several agencies signed Memorandum of Understanding on the Improvement of Effectiveness of Inter-agency Co-operation in the Law Enforcement Field, translation of which was provided to the monitoring team. Draft was prepared by the Ministry of Internal Affairs and signed by the Minister of Internal Affairs, Head of Financial Monitoring Service, Minister of Finance, Chief Prosecutor, Minister of Justice.

The MoU aims to improve effectiveness of the fight against crime, including corruption, through co-ordinated, fast and flexible inter-agency co-operation. The MoU provides, *inter alia*, that parties shall:

- ensure mutual access to databases and to databases of legal entities of public law operating under their governance;
- use secure e-mail communication for exchange of personal, commercial, professional data and information containing state secrets;
- designate contact persons and communicate their contact information;
- if necessary, form *ad hoc* joint investigative teams for effective and prompt investigation and/or suppression of various crimes;

- upon request or automatically, provide the other respective parties with available information on the facts of various crimes in the shortest possible time;
- at least once in six months, as well as upon request, provide each other in writing with information on the measures taken as a result of already communicated reports related to the facts of various crimes (the number of cases subjected to the preliminary investigations and criminal proceedings, the number of cases on which the court rendered final decision, the number of cases with the terminated preliminary investigation and criminal prosecution);
- if necessary, conduct joint trainings for the capacity building of personnel in the field of crime combating.

No information on the actual practice of using joint investigative teams for investigation of corruption cases was provided.

Co-operation with the FIU

Government reported that the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization (AML/CFT Law of Georgia) provides the appropriate legal basis for co-operation between law enforcement agencies and the Georgian FIU - Financial Monitoring Service (FMS). Namely, according to Article 13.1: *“Georgian bodies authorized to work on issues related to legalization of illicit income and terrorism financing, shall cooperate, within their competence, with domestic and foreign competent agencies and international organizations, in affairs such as receipt of information, preliminary investigation, court hearing and execution of resolutions”*.

Besides the AML/CFT Law of Georgia, such co-operation is also ensured and formalized through Memorandums of Understanding concluded by the FMS with law enforcement agencies. More precisely, the FMS signed such MoUs with the Ministry of Internal Affairs (June 2008), the Ministry of Justice including the Prosecutor’s Office (January 2009), the Ministry of Finance (January 2009) and the Revenue Service including Customs (February 2011). MoUs determine information that should be exchanged between the FMS and concerned authorities and require strict confidentiality and protection of the information. MoUs include obligation of law enforcement agencies to provide case-by-case feedback to the FMS. They also allow the FMS to access directly some administrative and law enforcement databases held by the Ministry of Justice and the Ministry of Internal Affairs. As regards other administrative and law enforcement information, it is also mainly accessed directly by the FMS. It enables the analysts to conduct preliminary analysis by matching the collected information to the one contained in suspicious transaction reports (STRs) and cash transaction reports. Government stated that, consequently, there is an established permanent mechanism for co-operation between the Georgian law enforcement agencies and the FMS.

According to Article 10.5(b) of the AML/CFT Law of Georgia, in case of a grounded supposition, based on analysis of the relevant information, that a transaction is suspicious and is carried out for legalization of illicit income or terrorism financing or for the purpose to commit other criminal act, the FMS is authorized to forward immediately this information (including confidential information) and the available relevant materials to the corresponding authority of the Prosecutor’s Office and the Ministry of Internal Affairs, without any permission from any organ or person. In addition, the FMS is also authorized to provide competent authorities (law enforcement agencies) with any updates related to cases already forwarded to such agencies.

Statistics on the number of criminal cases opened based on information received from the FMS was not available. Although representatives of the agencies met during the on-site visit stated that there were no criminal cases on corruption offences opened based on STRs.

Government provided a list of trainings and seminars organized for representatives of the FMS and law enforcement bodies, where among other topics issues related to corruption (national and foreign legislation and practice as well as international standards and experience) have been discussed, as well as the mechanism of co-operation between the mentioned agencies.

Conclusions

By signing in May 2013 a Memorandum of Understanding among various law enforcement agencies Georgia effectively complied with the recommendation to establish a permanent mechanism for co-operation among law enforcement agencies. There is also no information that in practice such co-operation is not effective, although no information on practice of using joint investigative teams was available.

It also appears that there are sufficient and effective mechanisms for co-operation between the Georgian FIU and law enforcement agencies based on legislative provisions and MoUs.

Georgia is fully compliant with the recommendation 1.6.3.

3. Prevention of corruption

Integrity of public service and promoting transparency and reducing discretion in public administration

Previous recommendation 3.2.-3.3.

In order to ensure integrity and consistent development of public service it is necessary to:

- i. 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;***
- ii. 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;***
- iii. Ensure that remuneration of public officials is transparent and predictable;***
- iv. 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.***

Direction of civil service reform defined and implemented

The most important laws regarding the integrity in civil service are the Law on Civil Service (1997) and Law on Conflict of Interests and Corruption in the Civil Service (1997). Both laws have been amended extensively, but taking into account the major transformation of the society during the last 10 years and recent constitutional reform the civil service legal framework needs to be further adjusted to reflect changes in the governance system as well as to give a clear assurance that:

- the civil service is organised and functions on the basis of the rule of law;
- the administration and politics is separated;
- the civil service values are reinforced to ensure legitimacy of the service, especially its impartiality and integrity;
- the professional quality standards based on merit principle are established and implemented with regard to recruitment and performance of civil servants;
- the clearly defined rights and duties of civil servants are established and implemented, including job protection and stability of employment;
- the personal accountability of civil servants is established and followed.

The debate about the civil service reform has been on-going since the first round of the IAP monitoring. Until the last parliamentary elections (1 October 2012) it promoted the new public management as the main ideological direction and rejecting the so-called old-fashioned bureaucracy. Unlike the previous government, the new Government, in its program “For Strong, Democratic, United Georgia” is committed to a more classical, career-based civil service. The program mentions the following particular elements of the civil service concept: appointment for an unlimited period, career based system, political neutrality and integrity, protection and social guarantees, dismissals only in cases explicitly covered by the law. The merit principle is not mentioned explicitly; however, merit based employment is an implicit element of any professional civil service.

On 24 July 2013, the Government established a co-ordination council to ensure elaboration of the civil service reform concept and action plan. The Co-ordination Council includes deputy ministers, the Head of the Civil Service Bureau, representatives of the State Chancellery and Parliament of Georgia. At its first meeting, on 14 August 2013, the Co-ordination Council created an intergovernmental working group, mainly at the level of HR managers of line ministries, to carry out a comprehensive analysis of the civil service in terms of legal framework, administration, procedures and institutions. The working group had a 5-day long workshop in the beginning of September 2013 and is supposed to report back to the Co-ordination Council on the outcomes of this workshop. The activities of the working group are facilitated by the USAID Good Governance in Georgia (G3) Programme. Next key stages in developing the Civil Service Concept reportedly are the consideration of policy options for the civil service and finalization of the draft concept with its action plan. The draft Civil Service Concept and action plan for 2014 are intended to be presented to the Co-ordination Council by the end of 2013. In addition to USAID G3 Programme, other international organisations are providing expert assistance to develop the civil service concept of Georgia, *e.g.* OECD/SIGMA, NATO, Transparency International. These are encouraging developments.

The Government reported that the civil service development in Georgia had significant progress in 2010–2012 and aimed at creating politically neutral, impartial, effective civil service with high level of integrity, although no comprehensive civil service reform was implemented. As a part of this development process, various e-governance projects were launched, *e.g.* the on-line civil service recruitment portal, on-line asset declaration system and minimum standards of electronic Human Resources Management and document-flow system for administrative bodies.

The amendments in the main laws on civil service introduced during the past three year were the following:

The Law on Civil Service:

- Amendments abolished the reserve system of civil servants except when directly stipulated by the legislation (11.07.2010);
- Public competition in order to fill a vacant position of a civil servant should be announced through the web-page administered by the Civil Service Bureau - www.hr.gov.ge (17.05.2011);
- The period for application submission was reduced from two weeks to ten days. Also, the three week period that was determined as the minimum time frame to convene the competitive selection committee's meeting was reduced to a minimum of ten days (17.05.2011);
- It was determined that a person can be appointed to a position only based on the results of the competition (29.06.2012);
- The amendment established a limitation on the appointment of acting officials. Namely, the position of ranking officials (determined by Article 2 of the Law on Conflict of Interests and Corruption in Civil Service) may be subject to acting appointments for no longer than one year, while other vacant positions – for no longer than three months (29.06.2012, in force from 01.07.2013);
- Announcement of vacancies and conducting of competition through www.hr.gov.ge according to the Law on Civil Service was made applicable to legal entities of public law

(LEPL) as well, with the exception of LEPLs established for religious, educational and cultural purposes (29.06.2012);

- Applications for competitions to be submitted only electronically through a web-site administered by the Civil Service Bureau (www.hg.gov.ge) (29.06.2012).

The Law on Conflict of Interests and Corruption in Civil Service:

- The law determined that officials submit declaration only once in a year (21.07.2010);
- Non-submission of appointment or dismissal orders of officials within the time prescribed by law to the Civil Service Bureau causes disciplinary action against the responsible human resource manager (21.07.2010);
- The Anti-Corruption Council was established by law in order to ensure an effective and co-ordinated fight against corruption (21.07.2010);
- The following persons were added to the definition of high-level officials (who, accordingly, are obliged to submit asset declarations) (29.06.2012):
 - Deputy heads of structural sub-divisions of ministries and their equal officials;
 - Head of the Administrative Department of the Parliament of Georgia, his/her deputy, Heads of the Departments and their equal officials;
 - Deputy heads of the City Councils, Heads of the Council Commission and Secretaries;
 - Deputy Mayors;
 - Deputy Governors of municipalities and city districts.

During the period covered by the third round of monitoring, the main institution responsible for civil service development was the Civil Service Bureau (CSB). The CSB is established under the Law on Civil Service as a legal entity of public law, having a quasi autonomous status: the head of the CSB is appointed directly by the President; the staff, including head of the CSB, is not covered by the Law on Civil Service. The responsibilities of the CSB cover primarily two areas: co-ordination of civil service management and tasks with regard to management of the integrity system. However, the CSB does not have powers to draft the primary and secondary legislation of civil service, to enforce various legal requirements and apply disciplinary sanctions, except for those related to non-submission of asset declarations. This limited set of responsibilities does not enable the CSB to ensure the policy making, horizontal co-ordination and coherence of the civil service management across the central and local administration.

The new Constitution's provisions, entering into force later in 2013, require a comprehensive review of the organisational set-up of public administration because managing civil service under the parliamentary system is a government responsibility. The CSB could be attached either to the Chancellery of the Government or to a line ministry, with the necessary instruments to develop, implement and enforce the civil service policy, and primary and secondary legislation according to the conceptual direction that still needs to be decided by the government.

According to the non-governmental organisations (*e.g.* TI Georgia, GYLA), there was a general lack of political will to establish an impartial and independent civil service in 2010–2012 and carry out a complete civil service reform. While some changes were made to the Law on Civil Service and accordingly implemented (introduction of the web-portal for announcing vacancies, attaching the job descriptions to the vacancy announcements,

limitation of the period when civil servant can be appointed as an acting official and other - see above), the work on the new civil service law was stalled, largely due to the failure to determine the conceptual direction of the civil service reform. The CSB, as any individual administrative body, was not able to ensure the impartiality and integrity of civil servants in practice as the discretionary appointments and salary setting of civil servants was widely applied throughout the administration (see also more in the next sub-sections).

Concerns over independence, sustainability and professionalism of the civil service have remained valid since the October 2012 parliamentary elections. The new government has dismissed a large number of civil servants from different administrative bodies and replaced them with acting civil servants mainly without carrying out open competitions which heavily affects (or at least seems to affect) the neutrality and impartiality of the civil service. For example, NGOs reported that only two months after the new government took office, 493 civil servants from the Ministry of Interior, 284 from Ministry of Finance, 104 from Ministry of Justice, 81 from Ministry of Sports and Youth Affairs were released from the service either by dismissal or submitted resignation letters of the civil servants. Although the results of parliamentary elections should be reflected only on the central government, significant number of civil servants was dismissed from the regional or local self-government levels as well, according to the information analysed and provided by the NGOs.²⁴ Since July 2013 all new recruitment has to be carried out through competitive procedure; it also means that all those previously recruited outside of the competitive system have to undergo the competitive selection.

The recent report by the Transparency International on dismissals after the parliamentary election is even more striking. A total of at least 5,149 employees have been dismissed from public institutions, including 3,301 from central state authorities and 1,869 from local self government bodies, of which 2,330 (45%) have resigned by submitting their own application. From 6,557 of newly hired public employees, only 257 (4%) went through an open competition.²⁵

Strengthen merit-based employment and promotion, build capacity of the Civil Service Bureau and individual institutions in this regard

In addition to the legislative amendments referred in the previous sub-section, the Government also reported of the following measures:

- In 2010 the Civil Service Bureau developed an electronic system for tracking asset declarations (www.declaration.gov.ge). This on-line system considerably improved and simplified the completion and submission process of asset declarations by officials.
- Throughout 2012, with the support of USAID G3 program, the CSB organised training sessions for about 200 civil servants. Sessions were focused on the following priority topics flagged for improvement: human resources management (HRM), leadership skills, project management, integrity and ethics.
- The CSB implemented the Knowledge Transfer Campaign with the support of the NATO Professional Development Program aiming to reflect on the development of HRM

²⁴ TI Georgia, 17 January 2013, Statement concerning the dismissal of employees from public institutions after parliamentary elections, available at: www.transparency.ge/en/post/general-announcement/statement-concerning-dismissal-employees-public-institutions-after-parliam.

²⁵ TI Georgia, 12 August 2013, Report on the changes in the civil service after 2012 parliamentary elections, available at: <http://transparency.ge/en/post/press-release/ti-georgia-releases-new-report-changes-civil-service-after-2012-parliamentary-elections>.

instruments in Georgian public institutions by establishing professional links, as well as sharing domestic knowledge and experience.

- According to the recent amendment to the Law on Civil Service, all vacancies in the civil service should be filled through the process of competition (Art. 29). Moreover, the amendment sets forth new rules and procedures for vacancy announcements in the civil service, specifically that all civil service vacancies (both at the central and the local government level) should be announced via the online recruitment web-portal – www.hr.gov.ge. The Legal Entities of Public Law are also obliged to announce any vacancies on the above mentioned web-portal. This amendment simplifies not only the placement of job announcements, but also participation in the selection process, thus increasing transparency and competitive selection during recruitment. Due to the current changes, limitation on the appointment of acting officials (without competition) was introduced. This amendment discourages appointments without competition by limiting the opportunity to make temporary appointments. According to the amendment, high-ranking officials may be appointed as acting officials for no longer than one year, while public servants may be subject to acting appointments for no longer than three months. Furthermore, both senior officials and public servants cannot be re-appointed to the same acting position for more than one term and there can be no further temporary appointments made on the same position once the 3- or 12-month period has passed (Art. 30). This amendment was to enter into force on 1 July 2013. The Ministry of Justice has already launched recruitment procedures to comply with the Law.
- In 2011, the CSB developed the Minimum Standards for Human Resources Management Software, which was approved in February 2012 by the Government of Georgia. It obliges state institutions to introduce the new Human Resources management software throughout all public agencies. The development of the standard is important for ensuring both transparency and effectiveness of human resources management in the civil service. The CSB coordinates and monitors the implementation process of the standard.
- In order to further develop HRM systems and introduce efficient and modern practices in public institutions, the CSB finalised in 2013 the first HRM Manual with the support of NATO Professional Development Program and USAID's Good Governance Program. The manual covers issues related to recruitment, job descriptions, orientation and structure of human resource departments. In 2011 the CSB also developed Minimum Technical Standards for Document Flow Software. This standard was approved by the Government of Georgia and by the end of 2013 has to be introduced in all agencies funded by the state budget.
- According to the Law of Georgia on Civil Service, every state agency is responsible for merit-based recruitment (II Chapter) and promotion (Art. 76) of public officials. The Civil Service Bureau intends to implement the assessment and appraisal systems in all state agencies. To this end an amendment to the Law on Civil Service regarding the assessment and appraisal system was prepared and will be sent to the Parliament of Georgia in the near future.

The above listed developments are highly welcome, especially the requirement that all vacancies should be filled through open competitions and that appointment as acting officials (*i.e.* recruitment without open competition) can last no longer than three months.

In reality, Articles 29 and 31 of the Law on Civil Service have not been fully implemented yet in order to ensure the free, fair and merit-based appointment to the civil service. As an example, according to the NGOs, only during the period of two months in the end of 2012, 235 persons were appointed as acting officials in the Ministry of Finance. Overall about 50-

90% of all civil servants working in ministries have been appointed as acting officials (this is an estimation of the percentage of acting officials currently in the civil service presented by the HR managers of the ministries at the event organised by OECD/SIGMA in April 2013). By the end of 30 October 2013 all acting civil servants have to undergo an open competition. Several ministries have already launched the open competitions, using the online recruitment web-portal – www.hr.gov.ge.

Considering that only about 45% of Georgia's population use internet regularly, the vacancies announced only through the internet, both at the central and local government level, will not create equal opportunities for all potential candidates to enter into the civil service. Another constraint that might not allow targeting all potential candidates is the legal requirement of 10 days from the date of publishing of the vacancy announcement to submit all relevant documents. Yet another risk that may hinder the transparent and merit-based recruitment process is the three-month period provided in Article 30, *i.e.* the requirement that open competitions have to be carried out for all positions held currently by acting officials during three months from the enforcement date of this Article. Without proper methodological guidelines and previous experience of carrying out open competition in the civil service, the recruitment process might not be as transparent, fair and meritocratic as it is the meaning of the Law.

Transparent and predictable remuneration of civil servants

Government noted that remuneration principles of civil servants are determined by the Law of Georgia on Civil Service, specifically Article 9 which clearly defines who is authorised to make decisions regarding the remuneration system in each administrative body. The minimum and maximum levels of base salary for civil servants are adopted by the Presidential Decree. Moreover, law on budget annually sets some limitations with regards to the remuneration system. For example, the Law of Georgia on State Budget for 2013 determined that the total salary for freelance servants shall not exceed the average amount of salary of the whole staff.

According to Article 37 of the Law on Civil Service, the remuneration (salary) of the civil servant includes wage (base salary), bonuses and additional payments envisaged by the law. Bonuses and additional payments shall be made within the limits of assignments set by the budget law for spending agencies. Furthermore, the law states that the head of the administrative body has the right to determine any additional pay during the fiscal year, taking into consideration the overtime or workload of a civil servant, within the limits of the salary fund and pursuant to the rules.

According to the Government, in some administrative bodies (for example in the Ministry of Justice) bonus system is dependent on the assessment and appraisal results of the civil servants. The assessments are carried out every three months. The civil servants are assessed based on their performance related to personal action plans and evaluations received for each project. The criteria are pre-defined and can be easily calculated. During the monitoring mission, the Ministry of Justice explained that the bonus system was not functioning as it was in the process of revision.

Georgian law does not clearly determine the average proportions of bonuses in the overall remuneration of public servant. There is only one provision in the Law of Georgia on State Budget for 2013 regarding the legal entities of public law that stipulates that the amount of bonuses shall not exceed 20% of the salary.

Comparative information on civil service salaries in different administrative bodies and different levels of civil service positions on monthly or yearly basis is not available.

Georgian NGOs reported to the monitoring mission that while the remuneration of higher public officials, *i.e.* about 2,800 persons, is generally transparent (in a sense that the amount of money paid is indicated in the annual asset declarations), the criteria for determining the different parts of the total salary remain opaque. For example, there are no unified regulations on bonuses for civil servants and the relevant decisions are generally made discretionarily by the heads of various agencies. The proportion of bonuses in the overall pay of civil servants has varied greatly between different agencies and officials. There have been frequent and documented cases where bonuses were paid on a monthly basis and made up half of a public official's annual income or more.

Of particular concern is that heads of public agencies, *e.g.* the ministers, decide on the size of their own bonuses. As a result, these tend to be paid on a monthly basis, while the criteria remain obscure and the amount paid in bonuses tends to exceed that paid in salaries. According to the analysis carried out by the Institute for the Development of Freedom of Information, ministers received more money in bonuses in 2011 than they did in salaries.

Conflicts of interest

Previous IAP monitoring report recommended Georgia to ensure that the rules on conflict of interest are enforced in practice, to clarify the roles of different institutions in this regard, raise awareness and provide regular training on conflicts of interest to civil servants and managers of individual institutions.

Government informed that there is no separate state institution responsible for the enforcement of conflict of interest rules in civil service. Civil servants have an obligation to disclose information regarding their own conflict of interest and state agencies should take appropriate measures based on this disclosure. Inspectorates General (IGs) of the Ministry of Justice and Ministry of Interior, and Internal Audit Units of other ministries, have been established to verify legal compliance, detect fraud and investigate unethical behaviour.

Declarations of conflict of interests do not exist separately in Georgia. However, asset declarations of higher public officials include some fields in which they must submit information regarding their interests. There is no institution responsible for the control or verification of asset declarations. Declarations are published and made available for public. However, it is planned to introduce a monitoring mechanism for scrutinising them, according to the Government.

There is no secondary legislation or guidelines regarding the prevention and resolution of conflicts of interests to elaborate on the Law on Civil Service and the Law on Conflict of Interests and Corruption in the Civil Service.

Regarding the so-called revolving doors mechanism, there is a provision in Article 65 of the Law on Civil Service: *“A civil servant dismissed from the service may not serve in the agency or start working in the enterprise he/she has been systematically supervising for the last three years - for three years from the day of the dismissal. He/she may not receive any income from such agency or enterprise during those three years”*.

According to TI Georgia, this provision has caused some confusion in practice, as some have interpreted it as implying that the restriction only applies to the officials who supervised a

particular area/enterprise *continuously* for a period of three years. Others have argued that it should apply to anyone who exercised such supervision for *any period of time* during the preceding three years. The former interpretation would make relevant rule much less effective, therefore the latter interpretation is preferable. It is necessary to make the provision sufficiently clear to exclude any confusion. An additional shortcoming in this area is that no agency is monitoring the enforcement of this provision in practice.

Rules concerning receiving of gifts are determined by the Law on Conflict of Interests and Corruption in the Civil Service (Articles 5, 5¹ and 5²). Under Georgian law, a present is considered free or privileged property or service given, in part or full to a public official or his/her family members, which appears as an exception to the general rule. Throughout the whole year, the sum of the received presents shall not exceed 15% of the whole year's wages, if these presents are not received from the same source. A one-off present received shall not exceed 5% of the annual salary. In addition, through the course of the year, the sum of the received presents (gifts) shall not exceed GEL 1,000 (about USD 600) by each member of the public official's family. A one-off present (gift) received shall not exceed GEL 500 (about USD 300). Article 5¹ determines presents that shall not be considered as a gift (for example: grants, scholarships, diplomatic presents and etc.).

In 2012 training sessions were held for the civil servants on integrity and ethics in the civil service of Georgia – in total about 200 civil servants were covered by this training program, organised with the assistance of USAID. However, the support received from this organisation was only for short term development (ad hoc) and therefore not a regular program. During training sessions participants were acquainted with ethical norms and standards of conduct in the Georgian public service, the fundamental principles of ethical behaviour. The sessions were held in the format of interactive discussion among participants, where trainees were given an opportunity to examine cases concerning the incompatibilities with official duties and responsibilities, restrictions on acceptance of gifts and other relevant issues of ethical standards. The participants of the training sessions were heads of internal audit units, as well as other relevant civil servants.

NGOs stated to the monitoring team that there are no clear mechanisms for the enforcement of conflict of interest rules. While the relevant legal provisions can be described as insufficient, there are even bigger problems in terms of their application in practice. For example, a considerable number of members of parliament and local self-government councils have links with business and there is presently no sound mechanism for ensuring that these links do not affect the legislature's work negatively. Public officials are required to disclose their business interests in their annual asset declarations, although there is no verification procedure. With regard to post-employment restrictions, TI Georgia stated that relevant regulations are weak. While the Law on Conflict of Interest and Corruption does establish some rules, they are weak and there is no enforcement/monitoring mechanism or procedures. There have been cases where former public officials directly abused these flaws and moved to firms or sectors which they directly dealt with in their official capacity. Enforcement of gift restrictions is also poor, according to the NGOs.

Asset declarations

IAP monitoring recommended Georgia to “consider verifying the information provided in the asset declarations of public officials”.

As reported above, only senior officials are obliged to submit asset declarations. On 1 February 2010, an Online Asset Declaration System was launched and replaced the paper

declaration system. Public officials fill in declarations on-line, using their unique username/password. Officials are required to submit the following information regarding both themselves and their immediate family members: real estate, movable property (including cars, jewellery, and other expensive belongings valued over GEL 10,000 (approximately USD 6,200)), bank accounts, cash, gifts, contracts, expenditures and shares.

At present, there are about 2,800 senior officials who are obliged to submit on-line asset declarations; about 43,500 uploaded declarations are available and more than 250,000 copies of on-line declarations have been downloaded from the website. Submitted declarations are public and are available on the web-site declaration.gov.ge. However, many important public decision-makers at the local level are presently exempt from the asset disclosure requirement. These include city council members and heads of municipal services (who supervise spending of large amounts of public money).

Government reported that introduction of the asset declaration monitoring system is one of the primary issues for the Civil Service Bureau and is an essential element of the Anti-Corruption and Open Government Partnership Action Plans of Georgia. At present, the CSB has completed its research of declaration verification systems in the world's leading countries in terms of anti-corruption and monitoring systems. Moreover, on 16 July 2013, the CSB organised a round table discussion on the development of an asset declaration monitoring system in Georgia. The event was attended by international and local experts, representatives from different governmental institutions, who shared their knowledge and experience concerning monitoring systems of asset declarations. This research is supposed to help to select and develop an effective system tailored to Georgia specific needs. As reported by the Government, in July 2013 the CSB launched a broad consultation with stakeholders on the topic (Ministry of Justice, Revenue Service, State Audit Office, Data Protection Inspector, NGOs, international organizations, e.g. World Bank, experts, etc.). CSB formally requested technical assistance from the World Bank on the topic of asset declaration monitoring. In September 2013 a follow-up event was organized to discuss outstanding issues on monitoring. The CSB will carry out further analysis and present results to the Anti-Corruption Council.

NGOs acknowledged the shift in the official position: The government's previous position was that the publication of asset declarations was sufficient as interested citizens and the media would then exercise control over their content. The attitude appears to have changed now and the government appears to have recognised the need for a formal verification system, as the initial steps have been taken in this direction. NGOs also noted that the comparative analysis was conducted by the CSB and several discussions were organised about this issue with participation of civil society organisations.

Conclusions

A number of legislative amendments introduced during the last three years, albeit important and positive, do not represent a systemic reform based on a clear vision of the future of the civil service. Therefore, the conceptual direction of the civil service reform is yet to be determined in an inclusive manner and implemented by the government. Reports by NGOs also show that in practice civil service has been heavily affected by political influence and its neutrality and impartiality were not ensured in practice, as it was recommended to Georgia.

The legislative amendments, developed new standards and procedures to strengthen the merit-based employment are very positive. The implementation, including building the capacity of individual institutions to carry out open competitions by reaching all potential candidates and

making the selection based on clear and purely professional criteria, is still under development.

No reform of the remuneration system of civil servants has been conducted since the second round of monitoring. Transparency and predictability of the remuneration of civil servants still remains a serious concern as the procedure for determining the salary, bonus and additional pay is not unified in the civil service, being highly discretionary. According to the Georgian legislation, only defined higher public officials are obliged to submit the asset declarations which provide information on their annual income. However, it is not possible to see how much the higher officials received in bonuses on monthly basis. For the majority of civil servants, the remuneration remains highly decentralised and discretionary, and therefore unpredictable and often unfair.

A general legal framework and system on conflicts of interest are in place. The clear mechanisms for the enforcement of conflict of interest rules are still to be applied in practice since there is no central authority to enforce and monitor the conflict of interest legislation.

The Government has analysed possibilities for introducing asset declarations verification mechanisms and taken initial steps to introduce this mechanism. It is therefore compliant with this part of the recommendation. No amendments to the legislation on the verification and monitoring of asset declaration have been adopted yet. It is recommended to pursue this reform and introduce such system in line with international best practice.²⁶

Georgia is partially compliant with the recommendations 3.2. - 3.3.

No new recommendation is made under this section; previous recommendation remains valid.

²⁶ See, for example, OECD/ACN Study on Asset Declarations for Public Officials, 2011, available at www.oecd.org/daf/anti-bribery/47489446.pdf.

Public financial control and audit

Previous recommendation 3.4.

Adopt and implement the Law on Public Financial Internal Control in line with international standards and best practice.

Ensure operational independence of the internal control units (inspection general) from the management of public bodies. Set proper legislative safeguards against undue interference in activities of internal control units and restriction of their powers, ensure sufficient staffing and other resources.

Harmonise regulations on the internal control units and outline their role in the system of financial management and control.

Approve and implement in practice general standards for internal audit and relevant manuals and codes of conduct for internal auditors in line with international auditing standards. Create internal audit units in executive bodies and Central Harmonisation Unit under the Ministry of Finance.

Implement provisions of the new Law on the Chamber of Control of Georgia and ensure auditing of state authorities, local self-Government bodies and other entities in line with the Strategic Development Plan of the Chamber of Control for 2009-2011.

Adopt and implement the Law on Public Financial Internal Control in line with international standards and best practice

In 2011 the Law of Georgia on State Audit and Inspection was updated (and renamed) to the Law of Georgia on Public Internal Financial Control (PIFC Law).

By Decree No. 1525, adopted by the Prime Minister on 1 December 2010, the Internal Audit Council was set up. The Council acts as a Central Harmonization Unit (CHU), organizing and co-ordinating activities for the introduction of the internal controls system. The Council is supported by the Secretariat with 6 staff members. The Ministry of Finance provides the organizational and material support to the CHU. The Ministry of Finance is the authorized body, which co-ordinates the formation and development of Public Internal Financial Control policy.

CHU is responsible for: introduction of the concept of internal financial control in budgetary entities and local bodies of self-governance to ensure implementation of functions of financial control and internal audit; elaboration of methodology for financial management, control and internal audit for all public entities and local bodies of self-governance; conducting trainings and increasing awareness on internal financial control within the public sector; running a program of certification of internal auditors; elaboration of legislation on internal financial control within public sector; co-ordination of the process of elaboration of strategy of internal financial control with the supreme auditing body, relevant ministries and municipalities.

Currently 12 Ministries have internal audit unit (IAUs). Starting from 2013, these units are required to conduct IT, performance and system audits along with the existing financial and compliance audits. This is an ambitious plan but there is no statistics and other information available about its actual implementation.

TI Georgia also mentioned that starting from January 2013 a number of the IAUs seem to have started identifying risks in internal control systems, which had not been done before.

It should also be noted that not much of attention was paid so far to the Financial Management and Control part of the PIFC. Without a good functioning FMC the system of internal audit is not very useful, as there is not much to be audited.

Independence of the internal audit units

PIFC Law contains provisions on the independence of the internal audit units. However, internationally accepted measures to safeguard the independence of internal auditors have not yet been put in place in the Public Sector.

Article 3 of the PIFC Law (“Independence of the Internal Audit Unit and Internal Auditor”) provides:

“1. The Internal Audit Unit reports to the head of the institution and shall act in coordination with the Central Harmonization Unit within the authorities assigned by this Law.

2. Internal Audit Unit is functionally independent from other organizational units of the entity.

3. The Internal Audit Unit is functionally independent in the process of planning, performing and reporting of internal audit.

4. Internal auditor is independent in his/her activities and act on the basis of Georgian legislation, internal audit standards and methodology, Code of Ethics of Internal Auditors and legal acts, interference with its activities or other influence is inadmissible. It is absolutely, inadmissible to intervene in the activity of internal auditor or any kind impact, except in cases stipulated in the Georgian Legislation.

5. The Head of the institution ensures the functional independence of internal auditors in the course of planning, performing, reporting of audit and monitoring of follow-ups.

6. The head of the institution ensures the proper reacts to the agreed recommendations.”

Internal Audit Standards approved by the Government in the amended version on 14 September 2011 provide clarifications on the independence of the audit units:

“ Article 2. Independence and Objectivity

The Internal Audit Unit must be independent, and internal auditors must be objective in performing their work.

Interpretation

Independence is the freedom from conditions that threaten the ability of the Internal Audit Unit to carry out internal audit responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out the responsibilities of the Internal Audit Unit, the head of Internal Audit Unit has direct and unrestricted access to the head of institution.

....

Threats to independence and objectivity must be managed at the individual auditor, engagement, functional, and organizational levels.

Article 3. Organizational Independence

1. *The head of Internal Audit Unit must report to a level within the organization that allows the Internal Audit Unit to fulfil its responsibilities. The head of Internal Audit Unit must confirm to the Council, at least annually, the organizational independence of the internal audit activity.*

2. *The head of institution provides the functional and organizational independence of the Internal Audit Unit.*

Interpretation

Organizational independence is effectively achieved when the head of Internal Audit Unit reports functionally to the head of institution. Examples of functional reporting involve the head of institution:

a) Approving the internal audit charter;

b) Approving the strategic and annual plans of internal auditing;

c) Receiving communications from the head of Internal Audit Unit on the Internal Audit Unit's performance;

d) Approving decisions regarding the appointment of internal auditor by the presentation of the head of Internal Audit Unit.

2. *The Internal Audit Unit must be free from interference in determining the scope of internal auditing, performing work, and communicating results.*

3. *The head of Internal Audit Unit must communicate and interact directly with the head of institution.*

Article 5. Impairment to Independence or Objectivity

1. *If independence or objectivity is impaired in fact or appearance, the details of the impairment must be disclosed to the head of institution. The nature of the disclosure will depend upon the impairment.*

Interpretation

Impairment to organizational independence and objectivity may include, but is not limited to, personal conflict of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations, such as funding. ...”

Head of Internal Audit Unit is appointed and dismissed by the head of the institution. No other approvals (e.g. by CHU) are required. Internal auditors are appointed by the head of the institution based on the head of Internal Audit proposal.

Article 26 of the PIFC Law sets that audit function cannot be combined with any other institution's function: “1. *Internal audit shall not be authorized to perform functions, other than the functions, related to this law.*”

Government stated that audits are conducted according to the annual plans. According to Article 21 of the PIFC Law, the plan is prepared by the head of the IAU and is to be endorsed by the head of the institution. No other approvals (e.g. by CHU) for audit plans are required.

During the on-site visit Georgian authorities indicated that once the audit plan is approved, the IAU conducts its activities according to the plan without any interference. CHU conducted survey in 2011 which did not find cases of interference of the institution management into the auditors activities. While, if true, this is a good accomplishment, there may be doubts as to whether the IAUs would indeed report such cases of interference, taking into account the fact that they are dependent from the head of the relevant institution.

Internal audit system in public authorities

According to the CHU Annual Report for 2012, the 29 Internal Audit Units have been established in Georgia²⁷:

- 12 in the ministries (except the Ministry of Justice, Ministry of Defence, Ministry of Internal Affairs, Ministry of Penitentiary, Probation and Legal Aid Issues where inspectorates general still operate);
- five in the ministries of Autonomous Republic of Adjara;
- five in the ministries of Autonomous Republic of Abkhazia;
- Administration of South Ossetia;
- Chancellery of the Government;
- five in municipalities of Adjara.

Article 31 of the PIFC Law provides that in four Ministries – the Ministry of Justice, Ministry of Defence, Ministry of Internal Affairs, Ministry of Penitentiary, Probation and Legal Assistance Issues the internal audit units should be established by 2014.

PIFC Law also stipulates that IAUs should be established “*in the Executive Bodies of Local Government – in governing units (city halls) on the basis of decision of the relevant Sakrebulo*”. At the time of the IAP monitoring on-site visit, no such units have been established except in five municipalities of Adjara.

Article 4 of the PIFC Law provides that Internal Audit Units should be established in the Legal Entities of Public Law, which are funded from the state budget and the list of which is defined by the Government of Georgia. At the time of the on-site visit, the list of such LEPLs was not defined by the Government.

At the same time representatives of TI Georgia and other NGOs during the meeting with the monitoring team expressed their concern about the lack of internal audit in such state-owned companies as Georgia Post and Georgia Railways as well as in the Ministry of Defence.

Article 4 of the PIFC Law also provides that Internal Audit Units may be established in the legal persons of private law (where the state owns over 50% of shares or interest) and other budget-funded organizations on the basis of their decisions. So far no IAUs have been established in such entities.

Staff and resources of the internal audit units, audit standards

According to the CHU Annual Report for 2012, the total number of employees in the IAUs was 139. Authorities indicated during the meetings that in average an IAU in a ministry has 4 staff members, Ministry of Finance has a unit of 10 people. 17% of staff had experience of internal auditing of less than 1 year, 64% - from 1 to 2 years, 19% - over 2 years.

CHU representatives also stressed the importance of training for the new staff and awareness raising of the audit standards. CHU has started in 2012 to provide trainings to the internal auditors with the assistance of GIZ.

²⁷ TI Georgia noted that IAUs in the Administration of South Ossetia and Chancellery of the Government have been disbanded.

CHU has prepared a number of documents which have been subsequently adopted, namely: Internal Audit standards; Code of Ethics; Internal Audit Methodology; Guidelines for Internal Auditors; Risk Management Manual.

In July 2013 the State Audit Office of Georgia published the performance audit report on effectiveness of measures for introduction of PIFC in 2010-2012. The report heavily criticizes the performance, stressing, *inter alia*:

- Internal audit reports are mostly based on inspection approach (find irregularities and deliver sanctions) rather than on modern audit methodology.
- Insufficient training and inadequate recruitment practices.
- Independence of internal auditors is not ensured by mechanisms widely used in the international practice.
- CHU Secretariat is understaffed and is not able to adequately support the Internal Audit Units in the Ministries.

The report by the State Audit Office also argues for placing the CHU under the Government to ensure its independence.

External Audit Institution

On 26 December 2008 the Parliament adopted a new law on the Chamber of Control of Georgia envisaging the establishment of an external audit system complying with the international standards. Based on the abovementioned law, the function of “control” was replaced with “audit”.

On 24 November 2011 the Law was amended to strengthen the organizational and functional independence of the Chamber of Control and to determine relevant legal guarantees in line with Mexico declaration of the INTOSAI.

According to amendments of 28 December 2011, the Chamber of Control was assigned additional mandate of monitoring the political finances with the aim to prevent political corruption and support transparency of political financing.

In line with the Constitutional law of 22 May 2012, the Chamber of Control was renamed to the State Audit Office of Georgia (SAO). Relevant changes were also introduced in the law regulating its mandate (Law No. 6550, 22 June 2012).

By amendments of 21 December 2012 the Law regulating the State Audit Office functioning was amended to introduce provision that financial, economic, legal and organizational performance, control of audit quality and internal audit procedures of the SAO shall be audited by the commission established by the decision of the Parliament of Georgia.

Such provision appears to contradict Principle 3 of the INTOSAI Mexico Declaration that “SAIs are free from direction or interference from the Legislature or the Executive” and Principle 8 “- SAIs should have available necessary and reasonable human, material, and monetary resources - the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it appropriately”.

The auditing authority of the State Audit Office extends to all legal entities of public law, local self-government bodies, National Bank of Georgia, legal entities of private law, in which the State, Autonomous Republics and the Local Self-Government Bodies hold more than 50% of shares.

During past three years SAO carried out 303 audits/inspections in 54 budgetary entities. 14 audit reports were referred for legal action to law enforcement bodies. Consequently, 27 persons were found guilty in the respective criminal cases. From 94 audits conducted in 2011, 81 were compliance audits, 12 financial audits, 2 performance audits.

The State Audit Office, upon request from law enforcement bodies, was involved as a forensic auditor in corruption-related investigations. During last three years, a total of 87 cases have been investigated with the support of the SAO auditors. Consequently, 90 persons were found guilty of corruption-related financial crimes resulting in the reimbursement of GEL 16.7 million (approximately USD 10 million) to the state budget.

Government reports a number of professional and capacity building measures taken by the SAO during last three years:

- Training course in financial audit methodology conducted with financial aid from the World Bank: 132 auditors have been trained from Tbilisi, Kutaisi and Batumi offices.
- Initiation of two pilot performance audits within the framework of co-operation with the Swedish National Audit Office: State Program of Tuberculosis and Effectiveness of Government measures in implementing PIFC in Georgia were audited.
- Sustainable professional development program developed under human resource management strategy for audit staff.
- Three-month internship programs for graduates and young specialists in Kutaisi - 22 interns trained.
- Georgian Federation of Public Accountants and Auditors trainings – Currently 40 employees are at various stages of the programme.
- Two employees of SAO participated in a four-month international training program in Government Accountability Office of the USA.
- Six-month internship for four auditors in North Rhine Westphalia Chamber of Accounts.
- SAO Department Directors delivered lectures to students at the A. Tsereteli University on public auditing.

Reportedly in the past three years SAO has developed performance and financial audit manuals, which was an important step forward. Quality assurance has been at the forefront of the Chamber of Control and its successor – SAO - efforts at institutional and organizational development since late 2011 when the Law on the Chamber of Control was amended to set up a Public Audit Institute, which implements SAO professional development programme, certifies supreme auditors, carries out forensic investigations as well as certain audits that require special expertise. For example at the SAO's request Public Audit Institute audited Georgian Oil and Gas Corporation, JSC Electricity System Commercial Operator, the Agency for Natural Resources, etc. In early 2012 the SAO set up a Department for Quality Assurance; it reviews outputs of the SAO units to develop recommendations on how to improve their performance. The Department for Quality Assurance contributed significantly to the preparation of manuals of performance and financial audit.

Conclusions

The legislative framework for the system of the internal audit in the public sector is established by adoption of the PIFC Law and internal audit standards and guidelines. The central harmonization unit is established and is working on development of the internal audit in the public sector.

The Internal Audit Units have been established in most of ministries, but should yet be created in four more ministries. No Internal Audit Units have been established in the state-owned or state-controlled companies. Internal Audit Units have not been established in the most of municipalities.

There are legal requirements to ensure independence of the Internal Audit Units within the respective institutions, making Internal Audit Unit accountable only to the head of the institution. Nevertheless, there are no formal mechanisms in place (like complaint to the higher level of the public administration, external approval of appointment/dismissal of the head of Internal Audit, etc.) that prevent interference of the head of institution into the internal audit activities.

State Audit Office of Georgia is conducting external audits in the public sector. However the December 2012 legislative amendments allow the excessive interference of the Parliament in the activities of SAO and this contradicts the international standards on independence of the supreme audit institutions.

Overall while the law has mostly clarified different roles, in practice there is still a lot to be done to effectively differentiate the financial inspection function from the internal audit function. Many IAUs still function as inspection units.

Georgia is largely compliant with the recommendation 3.4.

New Recommendation 8

- ***Implement the Financial Management and Control part of the PIFC law and assess the anti-corruption measures built in the existing Financial Management and Control.***
- ***Finalize the establishment of Internal Audit Units in all ministries of Georgia. Establish Internal Audit Units in the state-owned (controlled) companies and in the municipalities and ensure that the internal audit function is not mixed in practice with financial inspections (both institutionally and operationally).***
- ***Establish additional provisions for ensuring independence of the Internal Audit Units. Consider introducing approval of appointment and dismissal of the head of Internal Audit Unit by an external body – e.g. by Central Harmonization Unit.***
- ***Provide regular training for the staff of the Internal Audit Units with special attention paid to detecting and analysing signals of possible corruption.***
- ***Consider establishing statistic and other indicators that allow assessment of the efficiency of the Internal Audit Units and their contribution to the prevention of corruption.***
- ***Ensure the institutional and operational independence of the State Audit Office.***
- ***Establish in the State Audit Office a review system to monitor the functioning of the Financial Management and Control and Internal Audit with regard to combating corruption.***

Public procurement

Previous recommendation 3.5.

Complete the reform of the procurement legislation by enacting the new public procurement law that would ensure transparency at all stages of the procurement process, allow appeals against any procurement-related decisions and ensure independent and effective complaint procedure. Raise awareness about the new legislative framework and conduct trainings for procurement officials. Introduce administrative debarment from procurement for corruption-related offences and create a register of debarred entities.

“Complete the reform of the procurement legislation by enacting the new public procurement law”

The current public procurement law (PPL) of Georgia was enacted in 2006 and amended a number of times since then. In November 2009 the PPL was changed, in particular, to introduce an electronic procurement system. These amendments came into force during 2010 and represented the “new public procurement law” mentioned in the previous monitoring round recommendation.

E-procurement. Traditional paper-based tendering system was replaced with a new e-procurement system. Georgian Electronic Government Procurement (Ge-Gp system²⁸) was launched in October 2010 and became obligatory for all procuring entities since 1 December 2010. In addition to the PPL related secondary legislation was revised as well: the chairman of the State Procurement Agency (SPA) issued Order No. 9 on 7 April 2011 about the Rules for Conducting Simplified Procurement, Simplified Electronic Tender and Electronic Tender that are still in force. Several additional orders were also issued to support proper functioning of the new procurement system.

The goal of the reform was to: conduct tenders electronically; reduce and simplify procurement procedures and processes; increase transparency; reduce geographical discrimination of companies; make tender information easily accessible to any interested domestic and foreign entities; ensure equal treatment of suppliers; reduce high costs for obtaining the required procurement documents and save time.

According to the Government, 65,619 electronic tenders have been announced from 1 December 2010 till 31 January 2013. 64,769 bidders have participated in tenders where the contract was awarded (a registered user of the system can take part in multiple tenders). Since 1 December 2010 the estimated value of electronic tenders amounted to equivalent of about USD 1.8 billion and, as a result of electronic reverse auction, state funds in the amount of about USD 215 million were saved.

Other changes. In December 2010 a concept of “lot” (dividing the groups of goods, services and construction works into different lots in one tender) was removed from the legislation. Procuring entities announce tenders on homogeneous procurement objects. According to the Government, this facilitates access by SMEs to public procurement, because the content of tender may be better suited for a specialised sector of the SME activity. Furthermore,

²⁸ See official website at: http://procurement.gov.ge/index.php?sec_id=1&lang_id=ENG .

contracting authorities may decide whether to award a global contract or to sub-divide their purchases into separate tenders.

According to the Ge-Gp system new terms have been introduced: electronic means; electronic tender; simplified electronic tender; simplified procurement; electronic reverse auction; consolidated tender; affidavit; design contest; alternative procurement of communication services, etc.

According to the order No. 2 of 10 February 2010, “Reports of Procuring Entities”, approved by the Chairman of the SPA, reports on state procurement annual plans and reports on performed state procurement contracts are submitted electronically via the Ge-Gp system.

Under Order No. 7 of 20 September 2010 of the Chairman of the SPA on approving the Rules for identification of the procurement objects and determination of homogeneity, the Common Procurement Vocabulary stipulated under the European Union Directive No. 213/2008 was recognized. It set forth a unified system of objects of state procurement and was aimed at standardizing the references used by procuring entities to describe procurement objects.

As to the further measures the Competition and State Procurement Agency (CSPA replaced the SPA) reported, in particular, about the following plans:

- Stabilize the functioning and development of electronic payment system for submitting bank guarantees and tender proposals.
- Ensure the availability of information for simplified procurement via corresponding electronic module.
- Enhance IT infrastructure (servers, systems for data security/protection etc.) for e-procurement system.
- Train the staff of procuring organizations.
- Put certification and attestation of staff of procuring organizations into practice.
- Increase public awareness in respect of Ge-Gp system (trainings and seminars).
- Increase public awareness of the Dispute Resolution Board.
- Implement information security system and act in accordance with ISO 27000 standards.
- Implement control quality system and act in accordance with ISO 9001.
- Elaborate E-Procurement Development Strategy in compliance with expert recommendations and international standards and best practices.
- Improve regulations necessary for the implementation of the Georgia’s PPL.
- Elaborate e-catalogue.
- Develop e-ordering.

Assessment of the legislative reforms. Overall it should be acknowledged that recent e-procurement reforms in Georgia were quite successful and represent a good practice. Ge-Gp is a user-friendly, internet-based purchase system that offers electronic purchase order processing and enhanced administrative functions to buyers and suppliers. It results in operational efficiency and potential cost savings. Internally, it connects every procurement process from purchase requisition to goods received. Externally, it connects organization with suppliers via marketplace service.

The Georgia’s public procurement system (law and institutions) is mostly in line with the international standards. But there are still some serious issues, in particular, related to the scope of the law, timing for bid submission and appeals system, which are not fully in line with the standards. Georgian CSPA has direct involvement in the review of complaints, which is not a good practice. The use of the new technology is not a reform in itself and it cannot succeed in addressing the core problems if it is isolated from other changes in the

organization of procurement processes and practice. That is why the further amendments in the PPL are required to make the public procurement system more effective and fully in line with the best international practice.

With regard to the scope of the public procurement regulations the following issues should be addressed:

- 1) To minimize the procurement that is currently excluded from the e-procurement system. The competitive and transparent e-procurement is used for about 70% of the total volume of government purchases, according to the CSPA's annual report.
- 2) To review the list of exemptions from the PPL. These exemptions include procurement from reserve funds of the Government, the President and the Tbilisi city hall (these funds²⁹ have been used in the past to finance a broad range of activities and projects, including pop concerts and the satellite TV channel PIK), issues of national security, procurement that is urgent. As noted by the TI Georgia, some of these exemptions are excessive and unnecessary and have been misused to keep contracts out of the public's eye for political reasons, increasing the risk of corruption, misuse and excessive spending.
- 3) Rules allowing the President or the Government to classify a tender of any value as a simplified procurement (which is not subject to e-procurement) because they are required to implement an event of state or public importance is very worrisome. In 2011, one third of all procurement was spent under such arrangement to the amount of GEL 600 million (about USD 360 million); in 2012 this amount increased to GEL 800 million.³⁰ TI Georgia states that this rule was abused for the aim of personal enrichment and should therefore be abolished.
- 4) The PPL does not cover the utilities sector, which according to the EU public procurement standards and the WTO GPA should be subject to the same public procurement rules as the public sector.
- 5) The PPL (Article 3.1.a.h.) provides that publicly owned companies, *i.e.* enterprises with more than 50% of shares owned by the state or the local self-government (SOEs), may be excluded from the PPL scope if the Government establishes "a special rule" for procurement by such entities for no longer than 2 years. It is not clear from the PPL whether the Government should establish regulation on the procurement by such entities, but in practice it means that the Government can exclude a SOE from the PPL by its decision (based on submission of the Ministry of Economy and Sustainable Development or the Ministry of Regional Development and Infrastructure). According to the Government comments, a number of companies were excluded from PPL, including: "State Construction Company" Ltd, "Tbilaviamsheni" Ltd, "Georgian Solid Waste Management Company" Ltd., "Tetnuldi Development" Ltd, Georgian Railways. "Partnership Fund" was excluded until 10 August 2013 when relevant decision expired and it became automatically subject to the PPL (it does not exclude possibility of its

²⁹ President's and Government's funds accounted in 2012 for GEL 50 million each (about USD 30 million); the Tbilisi City fund was GEL 2 million in 2012 and GEL 3 million in 2013 (USD 1.2 million and 1.8 million respectively).

³⁰ TI Georgia, Georgia's Public Procurement System, June 2013, p. 22: http://transparency.ge/sites/default/files/post_attachments/State%20Procurement%20Report%20ENG.pdf.

further exemption by a new government decision). These companies are thus allowed to arrange for their own procurement.³¹

This arrangement raises concern.³² While the EU and WTO standards provide that SOEs should be exempted from the general public procurement rules, this relates to companies operating independently (*i.e.* not micro-managed by a public authority) in a competitive market, who are subject to bankruptcy, etc. Some SOEs also serve public interest and/or use public resources, similar to utilities entities, and as such require some level of public scrutiny. Therefore, taking into account high corruption risks inherent in the procurement, it is not advisable to fully exclude the SOEs, especially those that operate as monopolies or control important public resources (like companies in extractive industries), from the public oversight and procurement regulations. While they may be exempted from the general PPL, their basic rules on procurement should be regulated by law or government regulations, which should require, as a minimum, increased transparency and disclosure of the procurement operations. It is also problematic that the Government of Georgia has full discretion in deciding which companies should be exempted from the PPL, with no criteria provided in the law – this creates additional corruption risks.

TI Georgia also reported about another problem. As noted above, the Common Procurement Vocabulary Codes (CPV), that is the classification codes used for tendering goods, works and services in the Georgian procurement system, are the same as those used in the EU. Except for one additional code - CPV 999 - which is not used in the EU systems. According to the CSPA, this code is used in cases that cannot be classified under other usual CPV codes. However, the CPV is meant to cover all possible procurement objects. According to TI Georgia, there were 51 tenders that fell under the CPV 999 code. This is problematic because CPV 999 is ambiguous and suppliers are likely not to be aware of tenders that are posted under it, decreasing competition and increasing the risk of corruption.³³

During the on-site visit Georgian authorities mentioned that the Government considers starting the negotiation process for accession to the WTO Government Procurement Agreement. Participation in the GPA would bring real benefits not only in terms of access to other Parties' markets for procurement of goods, services and construction services, but also in the form of enhanced competition and transparency in the country's internal markets. It embodies a political and legal commitment to good governance principles that reflects very positively on the acceding country. By applying for GPA accession Georgia would effectively demonstrate its continued commitment to these principles.

“Transparency at all stages of the procurement process”

According to the Government, all information concerning public procurement is published electronically and is accessible for anyone on the official web-page of the CSPA. The CSPA is monitoring the procurement process to protect the principles of publicity, fairness, non-discrimination, due reporting, guarantees of effective competition and free choice. Everyone

³¹ In May 2013 Tbilisi City Court ordered pre-trial detention of the former general director of Georgian Railways and released on bail seven other defendants – former employees of the company, all of whom are accused of embezzlement and misappropriation of public funds in a large amount (allegedly causing damage of GEL 65 million or about USD 39 million). Source: <http://en.trend.az/regions/scaucasus/georgia/2152099.html> (cited in the TI Georgia 2013 report, mentioned above).

³² TI Georgia noted in this regard: “*There are strong indications that the procurement law exceptions granted to state owned entities such as the Partnership Fund, Georgian Railways and Georgian Oil and Gas Company, have resulted in misconduct and corruption. These exceptions should be revised.*” (TI Georgia 2013 report, cited above, p. 33).

³³ TI Georgia 2013 report, cited above, p. 22-23.

can see the on-going tenders in the Ge-Gp system. No one is able to see the bidder of the tender until the electronic reverse auction is over. Afterwards the information about the bidder is available. Anyone is able to search for the information about the bidders; including the data about what kind of experience they have in the particular field and whether or not one can compete with the company considering the price offered in the Ge-Gp system. Additionally, any documentation related to dispute resolution process and relevant decisions are uploaded on the special e-module of the Ge-Gp system³⁴ and can be accessed by anyone.

Reportedly, Ge-Gp system is multilingual and most of the information is available for any interested user in Georgian, Russian and English. The information contains: annual state procurement plans and reports; tender notices; estimated value of tender; tender documentation and its amendments; supplier tender bid and bid price; minutes of meetings of the tender committee board and correspondence with the supplier; contracts; information on payment deducted.

Georgian NGOs, in particular TI Georgia, confirm that the e-procurement system and the tenders procured through the electronic platform are highly transparent. Tender announcements as well as supporting documentation and amendments to these documents are freely accessible to all users. Furthermore, the web-site shows how many and what bidders have submitted bids on a tender, as well as the amount of the bids in different bidding rounds. The winner and the successful bid, signed contracts and amendments to these contracts are also published. Visitors of the procurement platform can also see procurement plans of government entities for the current budget year. The only limitations to transparency in practice is that the web-site provides vast amounts of data but few ways that allow users to aggregate information in order to be able to analyse it. For this purpose, TI Georgia is currently building a procurement analysis web-site that scrapes (downloads) data through a custom-made software from the official web-site and allows users to browse and explore the data. This would raise the accountability of the system.

All relevant information for tenders procured under “simplified electronic procurement” (for objects in the range of GEL 5,000 and GEL 200,000 or, respectively, approximately USD 3,000 and USD 120,000) and “electronic procurement” procedures are proactively published online. The threshold requiring the use of electronic procurement is GEL 5,000. However, there are a number of exemptions allowing government entities and certain government-owned companies to bypass electronic procurement (see above). Also, all contracts awarded under the simplified procurement until recently were not published, but the Government informs that since July 2013 even such contracts are published in the e-system.

“Allow appeals against any procurement-related decisions and ensure independent and effective complaint procedure”

The following decisions are still not subject to appeal (under Article 23.9 PPL):

- 1) Selection of procedure for conducting procurement in compliance with the PPL and relevant normative acts;
- 2) Decision of a procuring entity on the suspension or cancellation of procurement procedures.

This is not in line with the previous IAP monitoring round recommendation and also international standards (*e.g.* the 2011 UNCITRAL Model Procurement Law).

³⁴ See <https://tenders.procurement.gov.ge/dispute/?act=6> (in Georgian).

Some 30% of government contracting is carried out under procedures that are not transparent and often not competitive. In practice, as noted by the TI Georgia, appealing against procurement that is not conducted through the e-procurement platform is almost impossible, as the terms and parties to these contracts are not disclosed. However, since July 2013 when, as the Government informed, even contracts not awarded through e-procurement system began to be published in the electronic platform there is a possibility to appeal such contracts in court.

The procurement-related remedy system was significantly reformed since the previous round of monitoring. This included amendments in the PPL and adoption of the Rules for Activity of the Procurement-Related Disputes Resolution Board under the State Procurement Agency (Order No. 11 of 30 November 2010 of the SPA Chairman). The Dispute Resolution Board (DRB) was set up in November 2010 and became functional in January 2011.

As stated by the Government, the DRB operates independently, is not accountable to any state body. DRB consists of six members, three members are employees of the CSPA and appointed by the CSPA Chairman; three other members represent the civil society. Three representatives of NGOs are selected by a broad group of NGOs to serve as members of the Board under the principle of rotation for a one-year term. The work of the board members is not reimbursed and is on a voluntary basis.

As the DRB members do not represent any procuring entity or suppliers, equal and independence treatment is guaranteed. Every member of the Board assesses the complaint and filed evidence based on a comprehensive, full and objective consideration of the dispute. The parties are able to appeal against decisions of the Board in court.

Activity of the procuring entity or tender committee may be challenged in an electronic form through the Ge-Gp system. Submitting a complaint to the DRB is free of charge. Complaint is visible on-line and is linked to the tender. A complaint is filed through the unified electronic system. A complainant should indicate the legal basis for the complaint and submit the complaint according to the form which is automatically generated. In addition to the substance of the complaint, the complainant can upload through the Unified Electronic System other materials and evidence that, in his opinion, corroborates the complaint. GIZ supported procurement-related project in Georgia stated that the appeal button gives users a unique power “to freeze” any tender. It means that in case of appeal the procurement is automatically suspended for the period of the complaint review (but not longer than 10 working days).

Interestingly, the DRB accepts complaints not only from the parties to the procurement but from any person who monitored the procurement through electronic platform (and was therefore a registered user in the system). This is based on the CSPA interpretation of the PPL’s provision that any entity interested in the participation in the procurement is eligible to file a complaint.

The maximum time for the DRB to reach a decision was reduced from 20 working days to 10. The dispute review procedure is optional and a complainant can either address the procuring entity or directly the DRB or lodge an application with the court.

Each party is given an opportunity to fully present and defend their position in written and oral forms during the proceedings conducted before the Board. DRB takes a decision by the majority of votes of present members. DRB can uphold the complaint fully or partially, or reject it. The board is authorized:

- To indicate to the procuring organization its incorrect action and require the implementation of procurement procedures in compliance with legislation.
- Require from the procuring organization to revise or revoke its decision.
- Bring the matter of responsibility of participants of the procurement procedure to the attention of the relevant bodies specified by the legislation of Georgia.

Since establishment of the DRB and till 31 January 2013 (*i.e.* during two years), 219 complaints have been submitted and 108 of them were satisfied. In 2012 the CSPA summarised DRB activity for the period from January 2011 till June 2012 and analysed it in a special report that was made public.³⁵ Communication practices of the DRB and its “business processes” were also evaluated in the study under the USAID funded project in close co-operation with the CSPA.³⁶

TI Georgia in its 2013 report noted that interviews with companies suggested that not many of them are fully aware of the opportunity to file a complaint against alleged misconduct and appeal to the Dispute Resolution Board. However, since the new complaint review board was introduced, the number of complaints has been steadily increasing, which, as TI Georgia believes, indicates an increasing trust in the new mechanism.³⁷

Assessment of the complaint procedure. Georgia has introduced an innovative approach by setting up a Dispute Resolution Board with half of its members representing civil society and selected by the NGOs. TI Georgia in its recent report (cited above) highly welcomed the new system, although did call it as not a substitution of the tender review process, but rather as a good addition against corruption and a guarantee of accountability. The system gives civil society the opportunity to review all tenders and appeal them when a violation is spotted. It also concluded that the new DRB has ensured a high degree of professionalism, independence and transparency.³⁸ It should also be noted that the number of filed complaints has significantly increased (from 8 in 2008³⁹ when complaints were reviewed by the State Procurement Agency to 142 during January 2011 - June 2012 period); although the appealed tenders still represent only 0.3% of the total number of tenders.⁴⁰

At the same time, there are several concerns with regard to the new system of complaint review:

- 1) The DRB cannot be considered as independent from the Government, namely the CSPA: it was created by the CSPA Chairman and three of its six members are employees of the CSPA (one of them is the CSPA Chairman himself). The role of the CSPA should be re-defined in this regard by putting more focus on assistance, less on direct involvement in the review procedures. For example, the CSPA could act as a secretariat that organizes the DRB activities, conducts preliminary evaluation of the received complaints and provides non-binding opinion to the DRB.

³⁵ See English version at: http://procurement.gov.ge/files/_data/geo/dispute/cspa_guideline_eng.pdf.

³⁶ Available in English at:

http://procurement.gov.ge/files/_data/eng/publications/SPA_DRB_Business_processes_review_eng.pdf.

³⁷ TI Georgia, Georgia’s Public Procurement System, June 2013, available at:

http://transparency.ge/sites/default/files/post_attachments/State%20Procurement%20Report%20ENG.pdf.

³⁸ TI Georgia 2013 report, cited above, p. 13, 32.

³⁹ IAP Second Monitoring Round report on Georgia, p. 37, available at: www.oecd.org/countries/georgia/44997416.pdf.

⁴⁰ During January 2011 – June 2012 period 51,375 tenders were announced and 142 tenders appealed. (DRB practice analysis, CSPA, available at: http://procurement.gov.ge/files/_data/geo/dispute/cspa_guideline_eng.pdf).

- 2) There are no qualification requirements to the DRB members from the “non-governmental” side, which raises the issue of their professionalism and also the question whether they can resist authoritative opinion of the experts working in the CSPA (especially since only one civil society member of the DRB has to concur with the CSPA representatives for decision to be made, assuming that all six members of the Board are present). The Government comments that qualification requirements are actually defined in the bylaws and provide that NGO representatives should be lawyers or economists with knowledge/experience of public procurement legislation.
- 3) Rules on the quorum and voting in the DRB shift balance in favour of the governmental part of the Board who are not independent as such (especially with the Chairman of the CSPA sitting on the Board along with his two subordinates) – and this balance is shifted further still if one or more of the civil society members does not take part in the DRB meeting.
- 4) Annual rotation of the civil society DRB members prevents building of institutional memory and experience.
- 5) Low capacity of the Board to review the increasing number of complaints. TI Georgia notes in this regard that, since the DRB consists partly of non-paid NGO representatives and, while facing a steadily increasing workload, the current mechanism might not be sustainable with time.⁴¹

The Government commented that in practice these issues do not affect independence and impartiality of the review mechanism.

With regard to the complaint procedure as such, it opens possibilities for abuse that the appeal submitted via the e-procurement system automatically suspends an on-going tender. Instead, in case of a complaint, the DBR could grant an interim measure suspending the tender if it is required by the applicant and as long as it is appropriate and necessary to prevent possible damage when a final decision on the complaint is made. The DBR has to take into account the probable consequences of the interim measure for all interests likely to be affected, including the public interest, and may decide not to grant such measure where its negative consequences could outweigh their benefits. A decision not to grant interim measure shall not prejudice any other claim of the person who lodged the complaint.

Also if a person appeals against the award decision, he should only lodge his complaint to the DBR within the standstill period. The DBR should not consider complaints received after standstill period. Such complaints should be considered by courts only.

“Raise awareness about the new legislative framework and conduct trainings for procurement officials”

According to the Government, the CSPA has conducted various trainings and workshops for procurement entities to raise awareness about new procurement legislation. The CSPA tried to involve all stakeholders. It concluded memoranda with six training centres and institutions and arranged trainings for trainers for them in 2010 (CSPA lawyers acted as trainers). Trainings/workshops were organized to introduce the Ge-Gp system features and functions and to increase awareness of the new legal provisions. List of training activities was provided to the monitoring team. In addition, together with the Academy of the Ministry of Finance of

⁴¹ TI Georgia 2013 report, cited above, p. 34.

Georgia, the CSPA is planning a long-term project of trainings for all stakeholders. In addition, interested entities can contact the Agency for recommendations from its lawyers.

Also in 2011-2012, with the support from the GIZ funded project, meetings were held with suppliers and business representatives to discuss problems and obtain feedback. CSPA arranges regular meetings and workshops with companies in collaboration with Business Association of Georgia. TI Georgia acknowledged that the CSPA organised several events to engage business community and raise awareness about the e-procurement system. CSPA has also been making a strong effort to use social media to raise awareness about its work and e-procurement. However, according to the TI Georgia, given the CSPA's limited resources, many businesses are not fully aware of the reformed procurement system. As of 20 March 2013, a total of 12,256 individuals and entities were registered on the e-procurement system as potential suppliers.

GIZ also confirmed that CSPA has conducted trainings for procurement entities to raise awareness about the new procurement legislation and the electronic system. The reform process was also accompanied by a communication campaign in the most popular media at the initial stage in order to inform stakeholders about the profound changes in the procurement system. Currently CSPA maintains telephone lines through which procuring officers can be consulted. CSPA is also working on the concept for creating an independent service unit aimed at providing procurement related knowledge and counselling services to the decentralized contracting authorities as well as private sector representatives ("Procurement Competence Centre").

Communication strategy of the CSPA and its implementation were evaluated by outside consultants with the funding from the USAID project⁴² which in itself is a positive fact.

“Introduce administrative debarment from procurement for corruption-related offences and create a register of debarred entities”

The CSPA compiled a “black list” – a registry of dishonest participants in the procurement process. If blacklisted a supplier loses the right to participate in state procurement procedures for one year. One of the grounds for such debarment may be conviction for a criminal offence.

The relevant provision is included in the PPL (Article 3): *“The Registry of dishonest participants of the procurement is the Black List maintained electronically and posted on its official web page by the authorized body set forth in the present law. The Black List includes the data on those dishonest entities, bidders and suppliers - participating in state procurement, which are not authorized to participate in state procurement and award a contract on state procurement for a one-year period after their entry into the Black List. The Black List is available for any person. The rules and conditions of maintaining the Black List shall be proscribed under a bylaw approved by the Chairman of an authorized body set forth under the present law”*.

Procuring entity can ask for supplier's previous criminal records as a qualification data. For the same purposes the supplier fills in an affidavit form. A bid can be submitted only after accepting affidavit terms. The affidavit is a certificate, where the signatory certifies the

⁴² PMC Research Center, The Study of Processes and Procedures of and Strengthening the Communications Function of the Dispute Review Board of the Competition and State Procurement Agency, available at: http://procurement.gov.ge/files/data/eng/publications/SPA_DRB_Business_processes_review_eng.pdf.

truthfulness of the data and circumstances specified in the document on behalf of the bidder and bears respective responsibility envisaged by law. Violation of the terms and conditions of the certificate are subject to criminal liability under Article 195-1 of the Criminal Code.

The CSPA maintains and publishes the Black List on its web-site which is available electronically to all interested entities.⁴³ In case the decision about disqualification of a supplier and/or a bidder has been taken or if a supplier has not discharged completely the obligations taken under the contract, a procuring entity is obliged to immediately inform the CSPA in writing about such decision and indicate relevant reasons for disqualification. Currently there are 214 companies included in the “black list”.

TI Georgia noted that, to its knowledge, the CSPA usually blacklists suppliers for violating a procurement contract or poor/insufficient delivery of the service or good. TI Georgia is not aware of companies that have been blacklisted as a result of a corruption-related offence.

Assessment of the current debarment system. It appears that the main rules with regard to the “black list” should be included in the PPL. Also to ensure proportionality there should be different periods of debarment for violations of different gravity.

The right of the procuring entity to debar a company without any guidelines and strict criteria raises concern, as it may lead to arbitrary debarment and exclusion of competitors. In addition to court appeal, there should also be a possibility for the company to challenge and reverse its debarment through administrative procedure (*e.g.* to the CSPA or the DRB).

TI Georgia also notes that there were cases when owners of the blacklisted company set up a new company with the same shareholders, management and address and even the same name as the blacklisted company. Therefore the debarment system should target not only the company but also its directors and/or shareholders.⁴⁴

Debarment for commission of corruption or other related offences (fraud, money laundering, etc.) is not automatic and mandatory. It should be aligned with the EU Directive 2004/18/EC (Article 45) in this regard.

Conclusions

Since the previous round of monitoring Georgia has implemented a significant reform of its procurement legislation, first of all with regard to the introduction of the electronic procurement system. This allowed ensuring high transparency of most of the public procurement at all stages of the process. It is important to maintain the current level of transparency at all stages of procurement process and ensure further development and improvement of the existing e-procurement platform.

However, a number of significant exemptions from the public procurement law and from the e-procurement system remain an issue, which reflects on the overall success of the new system. It also leaves an important part of the procurement out of the public scrutiny. This set of exemptions has to be reviewed and narrowed down.

Some procurement-related decisions remain not subject to appeal, despite the relevant recommendation of the previous round. The new innovative arrangement for review of

⁴³ In Georgian at: http://procurement.gov.ge/index.php?sec_id=14&lang_id=GEO.

⁴⁴ TI Georgia 2013 report, cited above, p. 13.

complaints allowed raising the number of complaints compared with the previous system, but still lacks capacity to be an efficient instrument. It also has a number of deficiencies, in particular the lack of independence of the Dispute Resolution Board.

The CSPA has conducted a number of laudable activities to raise awareness and train relevant actors on the new legislative framework. It also plans to continue these efforts by implementing long-term projects of trainings and awareness-raising for all stakeholders. Evaluation of the CSPA communication policy is also very much welcomed.

With regard to the debarment Georgia has created a functioning register of blacklisted companies, which focuses mainly on the entities that failed to comply with procurement contracts or submitted false information. Debarment for commission of a corruption offence is not automatic. Existing blacklisting procedures also have several deficiencies that should be addressed.

In order to ensure compatibility of Georgian procurement system with the good international practice it is also recommended to start the negotiating process for adhering to the WTO Government Procurement Agreement and align Georgian procurement system with this international instrument.

Georgia is largely compliant with the recommendation 3.5.

New Recommendation 9

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

Access to information

Previous recommendation 3.6.

In order to facilitate public access to information and ensure better transparency of public administration, it is necessary to:

- i. Designate a public authority, or strengthen the powers of an existing body, responsible for enforcement of the access to information legislation, including control over compliance of the public entities with the law, independent review of complaints, application of sanctions as well as training and awareness raising in this area;***
- ii. Carry out a systematic training of information officers and other officials, including on the local level, on the access to information;***
- iii. Determine the list of information that should be published by public authorities proactively and ensure its implementation;***
- iv. Set up a centralised electronic system for automatic publication and public access to court decisions.***

Overall assessment of problems and necessary reforms in the area of access to information

Access to public information is regulated by a section in the General Administrative Code, which is Georgia's analogue of a Freedom of Information Act. Each public agency is supposed to have a freedom of information (FOI) Officer, who is responsible for guaranteeing access to public information. In May 2012, as a part of Georgia's Open Government Partnership commitments, the General Administrative Code was amended to introduce mandatory proactive publication of information (see details below) and allow for information requests to be sent and replied electronically. The amendments entered into force on 1 September 2013.

Georgia was among the first countries to sign the Council of Europe Convention on Access to Official Documents of June 2009. It was not, however, ratified so far by Georgia.

Level of enforcement of access to information provisions can be seen from the data provided by the Georgian NGO Institute for Development of Freedom of Information:

- 1) In 2011-2012 the IDFI submitted about 9,000 requests to 237 public agencies. From them: 278 requests were declined, 2,518 requests remained unanswered, 4,498 requests were answered completely and 1,176 requests were answered incompletely. As to the time frame of responses by public agencies: 4,019 responses were provided within legal time limit (47,5%), while 4,448 responses were not (52,5%).
- 2) 69 complaints were submitted to different administrative bodies in 2012, but only 4 administrative complaints were reviewed. IDFI did not receive any information concerning other 65 administrative complaints.
- 3) IDFI brought 10 lawsuits in courts in 2012. Litigation in 6 cases was not pursued, because administrative bodies provided IDFI with information before the trial started. Tbilisi City Court rejected 4 complaints by IDFI and Tbilisi Appeal Court rejected one complaint. In all cases, IDFI requested performance of certain action by administrative body, but courts decided that incomplete responses from state authorities were sufficient and claims were rejected.

These data, especially the high number of requests which were not answered at all, show that access to information right is not effectively enforced in Georgia and that existing complaint mechanisms do not provide an effective legal remedy. This is confirmed by the annual reports of the Public Defender which state that the fundamental right to freedom of information has been repeatedly violated by administrative bodies.

According to Government, main obstacle for effective implementation of the access to information legislation is the lack of human resources and capacity. This is supposed to be partly addressed through joint Ministry of Justice – USAID Good Governance in Georgia (G-3) Program which will include regional meetings and trainings for local FOI Officers. Government also submits that the number of staff dedicated to disclosure of public information could be increased.

More detailed analysis of problems with enforcement of the access to information right is provided by NGOs, notable by IDFI, but also by TI Georgia and GYLA. They underline the following issues:

- 1) Lack of awareness: Public officials are not well acquainted with freedom of information legislation.
- 2) FOI officers: Not every administrative body has an official responsible for access to information, notably in local self-government authorities.
- 3) Inconsistent practice of public authorities and courts in handling FOI cases.
- 4) Administrative bodies ignore information requests and do not provide any responses in some cases. Responses, when they are given, are mostly incomplete. Administrative agencies violate the timeframe defined by Article 40 of the General Administrative Code for delivering requested information. The responses of administrative agencies are not well-founded in accordance with requirements of the General Administrative Code of Georgia, because state authorities do not use public interest test and harm test to evaluate the level of secrecy of information in specific cases and refer to legal provisions of the General Administrative Code of Georgia, the law on State Secret of Georgia or the Law on Personal Data Protection of Georgia concerning the secrecy of information.
- 5) The system of disciplinary sanctions for civil servants responsible for access to information does not work in practice. Disciplinary sanctions are not imposed even when the court abolishes administrative acts and/or requests administrative bodies to disclose requested information.
- 6) The fee levied for copies of requested documents is another obstacle, because legal provisions on the fee do not set a minimum number of copies provided free of charge and do not provide waiver for special groups of requesters, *e.g.* journalists and NGOs focusing on human rights, impecunious people.
- 7) State authorities do not submit complete annual reports on implementing FOI provisions to the Parliament and President on 10 December, as required by the law. Furthermore, the Parliament of Georgia and the President of Georgia do not evaluate submitted reports and do not carry out any oversight based on such reports.
- 8) The consideration of complaints in courts is protracted and the requested information often loses its importance for requesters by the time of court decisions.

9) The burden of proof is shared between a public authority and an applicant in disclosure of information disputes, as is seen from analysis of the case law of Georgian courts. The overall lack of judicial independence results in a high number of unsatisfied complaints against administrative bodies in cases of access to information.

10) The state fee (“excise”) for filing administrative complaints concerning access to information is minimum GEL 100 (about USD 60) in accordance with Article 4(d) of the Law on State Fee of Georgia. This creates a high administrative barrier for submitting complaints to the court for citizens and NGO focusing on human rights. There are no exceptions for disputes concerning information of public interest or any other similar waivers.

There is an on-going debate in Georgia about the need for a stand-alone FOI Act versus the existing approach when relevant provisions are embedded in the Administrative Code. IDFI suggests first amending the Administrative Code to remedy the existing deficiencies, because changes in the existing Code can be done more quickly. In parallel, a comprehensive process should be initiated to formulate suggestions for a new legislative setup, taking into account domestic environment and international practice.

IDFI highlights, in particular, the following specific issues that need to be addressed in the legislation revision process:

1) Scope: Specify which institutions and organizations are covered by the duty to provide information to avoid misunderstandings, in particular with regard to legal entities with partial or full state-ownership or under government control.

2) Fees: Specify thresholds (*e.g.* requests of small volume of documents) and situations (low-income requesters) that allow the administration to waive fees for obtaining information.

3) Responsibilities of public agencies:

- Oblige public agencies to keep records of all FOI-related requests.
- Every request received by an agency should be made publicly available, *e.g.* by documenting the communication on the department’s website.
- Specify in more detail contents of annual FOI reports.

4) Exemptions from openness:

- The definition of “commercial secrets” and “state secrets” should be more specific.
- The law should be more specific on the interaction with other legislation, in particular on personal data and state secrets.
- The law should clarify that the assessment of whether an exemption exists needs to be conducted on a request-by-request basis.
- The law should specify that when assessing exemptions, this needs to be done with the aim of divulging as much information as possible. In particular there should be an obligation on part of the government department to remove exempted information from a document and publish the remaining parts that do not constitute an exemption.
- The law should include the obligation of conducting a public interest test in case information is considered to be not suitable for publication. This should apply for all kinds of exemptions.

In our opinion, a stand-alone FOI Act presents significant benefits compared with revision of the existing provisions in the General Administrative Code. It will allow boosting enforcement of the access to information right, raise awareness about this right and opportunities for its enjoyment among the population, address existing deficiencies of legal

regulation in a comprehensive and coherent way. Taking account of the number and seriousness of the existing deficiencies (see above), it also appears that elaboration of a new separate law is the best solution. It is also a wide spread practice to have separate FOI Acts (more than 90 countries have stand-alone laws), which prove to be more effective in ensuring respect for the right to information in practice.

It is a welcome development that, as reported by the Government, on 9 July 2013 it adopted a decree on “Necessary measures for the implementation of the Open Government Partnership Action Plan of Georgia”, which, among other issues, instructed the Ministry of Justice to develop the following recommendations and suggestions:

- Recommendations on the necessary measures for implementations of electronic request and proactive publication of public information.
- Recommendations on the necessary measures for civic engagement in policy-making process.
- Recommendations on the legislative amendments in relations to access to public information.

Reportedly, the Analytical Department of the Ministry of Justice organized a number of working meetings and events with participation of all relevant stakeholders, including NGOs. Proposals on legislative amendments were developed on the basis of international standards and best practice, research by the IDFI and input by other NGOs. They were submitted to the Government on 1 August 2013 and include, in particular, suggestions to develop a separate Law on Freedom of Information, create a special monitoring body, enhance the definition of the public information, etc.

Supervisory authority

Georgia was recommended after the second round of IAP monitoring to designate a public authority, or strengthen the powers of an existing body, responsible for enforcement of the access to information legislation, including control over compliance of the public entities with the law, independent review of complaints, application of sanctions as well as training and awareness raising in this area.

Government reported that there is no special public authority responsible for the oversight of access to information legislation enforcement, but that it has started contemplating which agency should be performing supervisory functions.

The complaint mechanism currently consists of the two main avenues: 1) administrative complaint to superior public official or higher administrative agency in accordance with Article 178 of the General Administrative Code; 2) complaint in court in accordance with procedure set by the Administrative Procedure Code.

Public Defender’s Office (Georgia’s Ombudsman) is responsible for monitoring implementation of the Freedom of Information legislation within its general mandate of overseeing human rights. However, Public Defender’s Office has no proper resources to perform this role and its mandate is rather general and diffused. Also Ombudsman’s powers are generally weak – he can just submit recommendations to public agencies and can neither issue mandatory instructions, nor apply sanctions to non-complying public officials.

The President and the Parliament may, in principle, exercise control over the enforcement of access to information legislation by considering and reacting to reports submitted by public authorities according to Article 49 of the General Administrative Code of Georgia on 10

December each year. According to Georgian IDFI, the President and the Parliament of Georgia do not use this power in practice, do not present any statements or feedback concerning annual 10 December reports. IDFI requested annual 10 December reports from administrative bodies and found that, in some cases, reports contain incorrect information and there is no common practice among administrative bodies about preparing such reports. Some agencies fail to submit them at all.

Georgian NGOs advocate for setting up a Freedom of Information Commissioner, attached to the position of the Data Protection Inspector provided by the Law on Data Protection. According to the Government, this recommendation is being considered by the Prime Minister's Office and the Ministry of Justice, but no steps have been taken so far to introduce relevant legislative amendments.

It is an established international good practice that oversight over access to information right enforcement should be vested with an independent public authority.⁴⁵ Main options in designating such institution are to set up a separate commission (or position of a commissioner) or to refer this mandate to the general Ombudsman. In a number of countries in Europe Ombudsman is in charge of overseeing access to information (*e.g.* in Croatia, Denmark, Greece, Norway, Spain, Sweden). However, it is acknowledged that Ombudsman institution often lacks necessary powers and resources to be an effective oversight body. For example, it usually may only issue recommendations and may not order disclosure of information and override an administrative body's decision. Therefore the global trend is towards separate information commissioners or commissions.

In some countries (*e.g.* Estonia, Ireland, Germany, Latvia, Serbia, Slovenia, Switzerland, the United Kingdom) there is a dedicated information commissioner, who is merged with the data protection authority. Such approach may appear at first glance unnatural, because two mandates protect seemingly opposing interests (protection of private information from disclosure on the one hand and ensuring maximum accessibility of information held by public entities on the other). However, it allows creating a beneficial symbiosis and effective mechanism to solve one of the main problems of data protection and access to information enforcement – finding a right balance when the right to privacy and the right to information come in conflict and deciding where the public interest lies. It also allows focusing resources in one institution and is therefore more viable economically.

It is recommended that Georgia pursue the idea of setting up a dedicated institution dealing with access to information enforcement – an independent commission or commissioner (which may be merged with the data protection authority). Such authority should be vested with sufficient powers to enforce access to information legislation, in particular to obtain access to any information held by public entities, including classified one, to issue binding decisions with regard to access to information and impose sanctions for non-compliance (directly or through court).

Training of officials on access to information

Previous recommendation to Georgia was to carry out a systematic training of information officers and other officials, including on the local level, on the access to information. Government reported that since 2010 trainings of information officers are usually carried out

⁴⁵ For overview of enforcement models see for example: Laura Neuman, *Enforcement Models: Content and Context*, World Bank Institute, 2009, available at: <http://siteresources.worldbank.org/EXTGOVACC/Resources/LNEumanATI.pdf>.

once in a month or once in every two/three months. They are co-ordinated, organised and hosted by the Ministry of Justice. As a rule, trainings are informal and are led by the Ministry of Justice staff, include discussion of best practices, aim at uniform application of the legislation, analyse court decisions and clarify legal requirements. Some of the trainings are formalised (one of the freedom of information training agenda was provided by the Government).

The non-governmental organisations are frequently invited to take part in the trainings. In 2012 the Ministry of Justice in co-operation with USAID Good Governance in Georgia (G-3) Program co-organised two workshops for information officers where the NGOs provided trainings together with the Ministry of Justice representatives on the issues of proactive disclosure of public information, e-requests of information and commercial secrets.

Proactive publication

Georgia was recommended to determine the list of information that should be published by public authorities proactively and ensure its implementation. Government reported that within Georgia's Open Government Partnership commitments, the General Administrative Code of Georgia (the law that includes freedom of information provisions) was amended in May 2012. It provides now that each administrative body is to disclose public information electronically on its web-site. The amendments entered into force on 1 September 2013. The list of information to be published proactively should be defined by secondary legislation. According to the Government, the draft of such list was prepared based on recommendations of NGOs and was approved by the Government decree no. 219 on 26 August 2013 (entered into force on 1 September 2013). IDFI confirmed that it took active part in promoting and drafting of the respective amendments in the General Administrative Code and the list of information to be published proactively.

According to the Government, it was decided to approve one legal act on electronic information requests and on proactive publication. Relevant decree of the Government is mandatory for administrative bodies operating under the control of the Government, in particular Government's Chancellery, ministries, legal persons of public law, offices of the State Ministers and other relevant agencies. Other state institutions and independent agencies, such as Parliament, Public Defenders Office, Civil Service Bureau, will be responsible for adopting their own standards for e-requests and proactive publication.

List of information subject to proactive publication is included in the Annex of the mentioned Government decree and contains the following categories:

- General information on administrative body, including information on its structure, functions, documents concerning its policy, main principles and directions, contact information, etc.
- Freedom of information page which shall be created on an official web-site of the relevant administrative body as required by Article 6 of the Decree and include contact details of freedom of information officers, legislative acts and regulations related to public information, complaint forms/samples, "December 10th" reports.
- Information on human resources of the administrative body.
- Information on public procurement and privatisation.
- Information on state financing and expenditures of the administrative body.
- Information on legislative acts adopted or related to the functions of the administrative body.

- Information on public services and fees, tariffs and rates established by administrative body.

Introduction of the proactive publication requirement and approval of the list of relevant information are very positive steps. However, the scope of information subject to publication could be extended, in particular, by including: all draft normative acts, including draft laws (with a set deadline for such publication); public register of documents held in the public agency; schedule of open meetings of the public authority.

It would also be preferable if the list of information mandatory for proactive publication was included in the law and not in secondary legislation – it would help its better implementation in practice and would also result in immediate enforcement without the need for additional decisions. Moreover a unified list could then be extended to all public entities, not only executive power bodies, as the Government decree does not cover Office of the President, courts, parliament, local self-government bodies, some other public institutions. This should be considered in the process of the revision of the FOI legislation in Georgia.

The same concerns procedures for filing and processing electronic requests of public information – common basic rules should be established in the law and not defined by each institution separately, as it may lead to inconsistent practice. It may also be an obstacle for effective access to information, if the requester has to be aware and comply with different rules applying to various authorities.

The ACC Secretariat prepared a draft action plan to duly implement the amendments in the General Administrative Code mentioned above. Already in October 2012, a test version of the web-site Data.gov.ge was launched. This is a unified portal of public information where all electronically available public information should be disclosed under user-friendly format. It will also enable individuals to request public information electronically.

In addition, Georgia's OGP Action Plan envisages proactive publication of all draft laws. Currently draft laws initiated by the Ministry of Justice are available on the web-site of Georgia's official legislative e-journal, the "Legislative Herald" (<https://matsne.gov.ge>).

Access to court decisions

Second round IAP monitoring report recommended Georgia to set up a centralised electronic system for automatic publication and public access to court decisions.

Government reported that the Supreme Court has created a special online database of its cases, which has a search system for finding court decisions (prg.supremecourt.ge). It is managed by the Supreme Court itself and includes all Supreme Court judgments. The names of natural persons are redacted and replaced by initials. Additionally, the Supreme Court publishes its judgments online at supremecourt.ge. According to NGOs, decisions of the Constitutional Court are publicly available at its web-site; Tbilisi City Court has its separate system for on-line publication of decisions.

During the on-site visit representatives of the judiciary also informed the monitoring team about a new centralised portal (info.court.ge), which has recently been launched and is supposed to include all decisions of all Georgian courts. At the time of the on-site visit the portal was not fully functional and covered only few courts.

Conclusions

Access to information right has been poorly enforced in Georgia, as shown by the independent NGOs monitoring.⁴⁶ Until recently, besides some efforts within the Open Government Partnership and a number of training on FOI issues, no new measures were undertaken to promote enforcement and improve state oversight in this area. However, the situation appears to be changing and major reforms have started or are being planned in 2013. A system of mandatory proactive publication of information and electronic information requests were introduced in 2012 and came into force on 1 September 2013. In August 2013 Government of Georgia adopted necessary decisions to make the new system functional. Government is also discussing further reforms, including adoption of a stand-alone FOI law and establishment of a supervisory authority.

Government reported about systematic training of information officers and other civil servants on access to information provisions, which is a welcome practice that should be continued. Special attention should be paid to training of information officers in the local self-government authorities.

At the same time, Georgian access to information legislative provisions would benefit from comprehensive and broad revision, preferably through adoption of a stand-alone Access to Information Law, which would comply with international standards and best practice.

Public Defender's Office currently cannot be seen as an effective oversight institution for enforcement of FOI provisions – it lacks necessary powers and specific focus on FOI work. Setting up an effective and independent supervising authority should be an important part of the reform. It could be a separate institution or an office affiliated (merged) with the Data Protection Authority.

Amendment of the General Administrative Code to introduce mandatory proactive publication of certain information is a positive step. It is also recommended to consider broadening the list of information to be published proactively; the list of such information should also be uniform and included in the law.

Introduction of a possibility to file information requests electronically is also a very important and welcome change. If implemented properly it will significantly facilitate access to public information. However, basic rules on filing and processing of such requests should be established in the law to ensure uniform practice and easy access for requesters.

Georgia has recently set up a new centralised system for publication and public access to court decisions (info.court.ge). It has yet to be filled with content and it is too early to assess its functioning.

Georgia is largely compliant with the recommendation 3.6.

⁴⁶ According to the Government, new data by the IDFI presented in September 2013 shows that the level of enforcement has increased since 2013.

New Recommendation 10

- *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.*
- *Ratify the Council of Europe Convention on Access to Official Documents.*
- *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.*
- *Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.*
- *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.*

Political corruption

Previous recommendation 3.7.

In order to introduce effective monitoring and supervision over party finances, it is necessary to:

- i. Empower the Central Electoral Commission (or other appropriate institution) with the authority of controlling party financing and ensure that necessary financial and personnel resources are allocated for this mandate;***
- ii. Ensure the transparency of the Centre of Development, Reforms and Education and publication of its activity reports, with emphasis on funds for party development.***

In order to ensure transparency of party financing, including election campaign funding, it is necessary to:

- iv. Limit the maximum amount of membership fee;***
- v. Approve a unified form for annual financial declaration by political parties;***
- vi. Strengthen monitoring and supervision over donations to and expenditure from the election campaign funds to be carried out by the ad hoc financial monitoring group or the Central Election Commission.***
- vii. Define in the law mandate and powers of the financial monitoring group.***
- viii. Introduce regular disclosure and reporting by election subjects on their election funds during the election campaign, in particular before the election day.***

Overview of legislative reforms

Political party financing and financing of election campaigns in Georgia are regulated by two main legal acts - the Law on Political Unions of Citizens (LPUC) and the Election Code. Both acts were amended a number of times during past three years, with especially substantial changes introduced in December 2011 in anticipation of the October 2012 Parliamentary Elections (further amendments were made in May and June 2012 and in July and August 2013 - see below).

The amendments introduced to the LPUC and the Election Code (not taking into account July and August 2013 changes) address the following issues:

1) Donations and membership fees

- Political parties are allowed to receive loans/credits only from commercial banks after their registration as electoral subjects. Maximum amount of loan/credit is GEL 1 million per year (about USD 600,000).
- Loans granted under favourable conditions are considered as donations to the extent that their interest rate differs from ordinary market rate or where they deviate from the customary market conditions. The same rule applies to goods and services (other than voluntary work) received at below the market value.
- Donations can be made only via bank transfer to ensure transparency and better accounting of party finances.
- Legal persons are prohibited to donate to political parties. Donations can be made only by natural persons - citizens of Georgia.

- The maximum limit of donations for a natural person was set at GEL 60,000 (about USD 36,000) per year or a service of the same value.
- A cap of GEL 1,200 for party membership fee annually from each member.

2) Misuse of administrative resources. The new 2011 Election Code doubled the sanction for the violation of rules prohibiting the misuse of administrative resources. In addition, an Interagency Commission under the National Security Council was established to monitor and react to the misuse of administrative resources.⁴⁷

3) Standards for auditing party and election campaign finances. Under amendments in the LPUC, the standard-setting authority relating to the auditing and accounting rules to be applied by political subjects and their auditors was conferred on the SAO. Decrees of the Auditor General provide for detailed regulation of this issue. In particular, Decree No. 8/37 of 16 January 2012 on the approval of auditing standards for financial activities of political parties, stipulates professional competence and ethical requirements for auditors engaged in auditing of political subject's financial statements. According to the decree, financial activities of political parties shall be audited according to the International Auditing Standards issued by the International Federation of Accountants. Further, decrees No. 142/37 (17 August 2012) and No. 145/37 (22 August 2012) set forth the standard forms of financial reporting for political subjects and provided regulations and guidance on filling out the standardized forms.

4) Election campaigning

- Introduction of a campaign expenditure ceiling (0.2% of country's GDP for the previous year).
- Possibility to impose fines of five or ten-fold the amount of an illegal donation.
- Concept of 'persons with declared electoral goals', which obliges such individuals to establish special funds for election-related financial transactions.

5) Harmonization of sanctions. Following the amendments, the sanctions for the violation of the Election Code and of the LPUC are covered separately by respective Laws. In addition, infringements of the Election Code and LPUC have been removed from the Code of Administrative Violations.

The introduced amendments were in general aimed at aligning Georgian law with international standards and have significantly improved provisions on transparency and supervision of political financing. However, some of them turned out to be quite controversial. For example, the OSCE/ODIHR Election Observation Mission (EOM) report referred to interlocutors who criticized the amendments as beneficial to the incumbents and driven by immediate political interest. The "Georgian Dream" coalition, which was in the opposition at the time, alleged that most amendments were tailored to constrain the political activities of the parties in their coalition in view of the perceived financial capacity of its leader.⁴⁸

⁴⁷ On 27 July 2013 the Election Code of Georgia was further changed and a new Inter-Agency Commission under the Ministry of Justice was mandated to monitor and react to the misuse of administrative resources. Government reported that the Commission has already held two sessions and developed recommendations to state agencies.

⁴⁸ OSCE/ODIHR Election Observation Mission Final Report, Georgia: Parliamentary Elections 1 October 2012, 21 December 2012, page 14, available at: www.osce.org/odihr/elections/98399.

October 2012 elections. The latest national (parliamentary elections) tested the new legal provisions and discovered their weaknesses and deficiencies in enforcement.

The State Audit Office, while trying to apply new provisions, did not manage to establish consistent practice and was accused of selective approach, first of all with regard to its practice of imposing sanctions.

The SAO provided to the monitoring team the following statistics: in the framework of the 2012 parliamentary elections, the SAO submitted to courts 36 administrative protocols for alleged violations of the LPUC, including 25 cases concerning natural persons (with total amount of fines imposed by courts for illegal donations by natural persons of about GEL 3.3 million or about USD 2 million⁴⁹) and 15 cases against legal persons (with total amount of fines imposed by courts for illegal donations by legal persons of almost GEL 23 million or USD 13 million). With regard to natural persons, overall 91 natural persons were fined by courts for illegal donations: United National Movement (governing party at the time) - 9 persons; Georgian Dream (main opposition contestant) – 68 persons; Free Georgia – 5 persons; For Renewed Georgia - 6 persons; Fund Qomagi – 1 person; Democratic Movement – United Georgia – 2 persons.

OSCE/ODIHR in its report noted that at least 66 cases resulted in ordering the seizure of bank accounts, movable or immovable property of the donor, or both. In at least 27 cases property was auctioned off. In most cases, the SAO did not impose any sanctions directly on political parties that received funding and did not transfer illegal donations to the state budget, as required by the law. The SAO also informed the OSCE/ODIHR EOM that they suspended fines on electoral subjects as well as seizure of property, following a recommendation by the Inter-Agency Commission (a body composed of senior officials of the executive mandated to consider complaints or allegations of violations by civil servants). OSCE/ODIHR Mission noted in this regard that the inconsistency of the application of sanctions in case of incompliance raised questions as to the impartiality of enforcement and challenged public confidence.⁵⁰

According to the OSCE/ODIHR Mission, in 40 cases examined by the EOM, the SAO applied its powers disproportionately against opposition parties and their donors. The SAO summoned more than 200 individuals as witnesses in cases of possible breaches of law and questioned over 100 individuals and legal entities that donated to the GD; of these, 68 were eventually fined by courts. In contrast, only 10 UNM donors were investigated and 8 were fined, although the overall amount of donations to the UNM was some 6.5 times higher than that for the GD. In general, sanctions were imposed on the donors rather than on parties. The SAO exercised wide discretion in determining which donors to investigate and how to make inquiries. At times, the investigations were conducted without respect for due process and in an overall intimidating manner that may have deterred other potential donors.

In all 79 cases adjudicated by the SAO and courts it was deemed that donations by individuals were illegal on the grounds that the donor did not have sufficient income to make a donation. Such conclusions were most commonly drawn on the basis of scrutinizing donor tax records

⁴⁹ This does not include donations made by Mr Ivanishvili and Mr Kaladze who were qualified as individuals with declared electoral goals. The courts found that they donated in total about GEL 22.5 million (or about USD 13.5 million) in illegal donations to the benefit of Georgian Dream Coalition. Fine imposed by the court for these illegal donations amounted to more than GEL 114 million (about USD 69 million).

⁵⁰ OSCE/ODIHR report, cited above, p. 15.

from the past two years. Such criteria were not provided for in the law, and did not constitute sufficient basis for determining the income of a donor and deeming a donation illegal.⁵¹

Finally the SAO was also not perceived as independent and impartial because its leadership belonged to the governing party at the time.

Future reforms. Government reports that after the Parliamentary Elections of October 2012, the new Government of Georgia started reviewing the regulatory framework to ensure real transparency of political financing in Georgia and address weaknesses of the Georgian political system.

In order to enable effective functioning of political parties, the new Government plans to improve current legislative framework by: defining the subjects of donations; introducing proportionate sanctions; establishing adequate and transparent procedure for responding to violations to prevent inconsistent or/and arbitrary practices; ensuring independence of the monitoring mechanism; defining the criteria and methodology for respective authorities to conduct inquiries of possible breaches of legislation; defining the meaning and the scope of some vague and very broad terms, *e.g.* “the person with electoral goals”; enhancing transparency of campaign funding, ensuring prevention of misuse of administrative resources in election campaigns, and etc.

At the meeting of the Anti-Corruption Council of Georgia on 25 January 2013, it was decided that the regulation of party funding would be one of the priority areas for the Council to work on in the coming months. The special working group was created under the ACC with involvement of local and international experts. ACC’s Secretariat (Analytical Department of the Ministry of Justice) prepared relevant research and suggestions. At the same time a separate inter-factional group was formed in the parliament which also launched preparation of the reform draft law.

Amendments prepared by the parliament’s group were adopted and came into force on 29 July 2013 and provide, *inter alia*, for the following⁵²:

- Donations by legal persons to political parties are allowed and limited to the maximum of GEL 120,000 (about USD 72,500) annually.
- Only companies, registered in Georgia and whose ultimate beneficial owners are Georgian citizens, will have the right to make political donations. A company, which had more than 15% of its income in the preceding year or in the current electoral year received from public procurement contracts through the “simplified procurement” procedure, will also be not allowed making political donations.
- Lowering cap on the total amount of party’s annual expenses from current 0.2% to 0.1% of country’s GDP for the previous year (about GEL 26 million or USD 15.6 million in 2013).
- Lowering financial penalty for violation of the party funding rules from a fivefold to twofold amount of illegal donation.
- Revising the definition of “persons with electoral goals”.

⁵¹ *Idem*, p. 16.

⁵² Based on information provided during the on-site visit, media report (www.civil.ge/eng/article.php?id=26299) and Government comments to the draft report.

- A party having an annual turnover not exceeding GEL 10,000 (USD 6,000) will no longer be required to provide financial audit report when submitting annual financial declaration to the State Audit Office (previously – GEL 1,000).
- Financial monitoring service at the SAO will remain responsible for the monitoring of political finances. The SAO will have the right to carry out comprehensive financial audit of a political party only once in a year; authorisation from the court will be required for the SAO to carry out unscheduled audit of a party.

Effective monitoring and supervision

After the second round of the IAP monitoring Georgia was recommended to introduce effective monitoring and supervision over party finances, in particular to empower the Central Electoral Commission (or other appropriate institution) with the authority of controlling party financing and ensure that necessary financial and personnel resources are allocated for this mandate.

According to December 2011 amendments in the LPUC, the State Audit Office (SAO) was designated as an agency responsible for monitoring of political parties and election campaigns financing (Article 34¹ of the LPUC). SAO is the supreme audit institution established under the Constitution of Georgia.

According to amendments, including those introduced in July 2013, the SAO is, in particular, authorized to: (1) elaborate standard format for financial declarations; (2) define auditing standard for electoral subjects; (3) check the accuracy, legality and completeness of the financial declarations and reports of electoral campaign funds; (4) carry out audit of the financial activities of political parties no more than once a year; (5) address the court for authorisation to carry out an unscheduled/ad hoc audit of the financial activities of political party in case of reasonable doubt of illegal financial activities; (6) ensure transparency of political party funding; (7) on the basis of court decision, request financial information on donors of political parties and persons with electoral goals; (8) provide consultations to interested persons on financial information of political parties; (9) investigate violations of political party funding regulations and apply sanctions prescribed by law; (10) address the Prosecution Service in case of detection of a crime. In addition, the SAO is authorized to elaborate a methodology for monitoring the financial activities of political party (Article 34¹ of the LPUC).

Financial Monitoring Service, a new structural unit established within SAO, is responsible for carrying out the above functions. It employs lawyers and auditors and currently has 21 staff members including head and deputy head of the unit, who are all appointed by the Auditor General.

The role, mandate and functions of the SAO as a monitor of political finances are defined in the Law on the State Audit Office, the Election Code and the LPUC, as well as in decrees of the Auditor General. In July 2012, the Political Financing Monitoring methodology⁵³ was approved by the SAO after discussion with electoral subjects and civil society. According to the Government, it aims to improve transparency of the State Audit Office activities with regard to party finance monitoring and make the monitoring system as predictable and accessible as possible for the public. Methodology represents a practical guide on the monitoring of political finances. It defines rules and procedures for the implementation of the

⁵³ Available online at: <http://sao.ge/res/files/pdf/60/document.pdf>.

monitoring. It also addresses issues related to relations between the State Audit Office and other stakeholders involved in the monitoring process. The document is a supplementary tool in the monitoring process. It provides details on how the monitoring is undertaken and how subjects of monitoring are identified. It also includes detailed information on the mandate and procedures of the State Audit Office.

Georgia was also recommended to ensure the transparency of the Centre of Development, Reforms and Education (Centre) and publication of its activity reports, with emphasis on funds for party development.

The Government stated that the goal of the Centre is to foster a competitive political system and development of political parties. To this end Article 30¹ of the LPUC provides, in particular, that:

- 1) 50% of the money transferred from the state budget to the Centre shall be distributed directly among political parties proportionally with their basic state funding (funds are released only for financing research, studies, conferences, official visits, regional projects, voters' electoral and civic education projects);
- 2) 50% is distributed among NGOs (the grants for the NGOs shall be released only based on the submitted projects aimed at the development of political parties and voters' civic education programs).

As reported by the Government, in order to enhance transparency, the Centre, in co-operation with relevant stakeholders (parties, NGOs), introduced such tools:

- To strengthen impartiality and transparency while distributing funds among NGOs, the Centre prepared procedural regulations on open and competitive grant competitions. Transparency of grant competitions is ensured by publication of preliminary information on grant topics and additional criteria on the web-site of the Centre (www.electionreforms.ge), on other web-sites (like www.job.ge) and in the media. The grant projects are reviewed by the Grants Commission that functions independently from the Centre and consists of experts and specialists with relevant experience, including experts from international organisations (e.g. International Foundation for Electoral Systems, International Republican Institute, National Democratic Institute for International Affairs).

- In order to improve control over financial expenditures by NGOs, the Centre employs an independent audit service. In case of violations the report is submitted to the Grants Commission to make decision on imposing penalty measures.

According to the monitoring conducted in 2011 by the Institute for Development of Freedom of Information, the Centre was listed among the best public institutions in providing information to the public and was awarded relevant certificate.

To ensure its accountability and institutional transparency, the Centre submits quarterly and annual reports to the Ministry of Finance and it is also subject to annual audit by an independent auditor appointed by the Central Election Commission. Reports submitted to the Ministry of Finance and on audit of the Centre are not published (but reportedly are available upon request). At the same time, according to the Government, Centre also separately prepares annual reports on its activity, including information on expenditures and grants allocated, and these reports are published.

Limit the maximum amount of membership fee

Amendments introduced in the LPUC in December 2011 established a maximum limit for membership fee per one party member at GEL 1,200 per year (Article 27.1 of the LPUC). Georgia, therefore, complied with this part of the recommendation.

Approve a unified form for annual financial declarations by political parties

Amended LPUC provided that the SAO was to prepare a standard form for annual financial declarations of political parties (Article 32.5 of the LPUC). The standard form for financial declarations was approved by the SAO in August 2012 and is available on its web-site.

Pursuant to the amended legislation, political subjects are required to submit the following financial reports to the State Audit Office of Georgia:

1) Annual financial declarations. According to Article 32.1 of the LPUC, a financial declaration for the previous year has to be submitted by 1 February of each year. In 2013, 60 political parties submitted annual financial declarations out of 208 parties that are formally registered – all other parties could not be located and the law is silent on the situation when a party does not function.

2) Financial reports covering two months period. Starting from January 2013, 35 political parties submitted financial reports covering two-month periods due on the last day of every two months to the State Audit Office, as provided by the Political Financing Monitoring Methodology. Approximately 140 reports were submitted from January till September 2013. All reports were submitted in line with the established timeframe.

Annual declarations include detailed information, in particular: party income (membership fees, identity of members, amount of donations, information on donors, funding allocated by the state, income from publications and other activities), expenditure (election expenses, financing of various activities, remuneration, business trips, other expenditure) and property (owned premises, number and type of vehicles, their total value and sums held in bank accounts). Income and expenditures related to the participation in elections is to be shown separately.

Submitted financial declarations are uploaded on the website of the State Audit Office within five working days of their receipt. No information is redacted and even details of the name and ID number of natural persons who donated (any amount) to the party are public.

Issues of monitoring and supervision over donations to and expenditure from the election campaign funds, as well as mandate and powers of the financial monitoring group, were covered above.

Regular disclosure and reporting by election subjects

Following recent amendments the following financial reports should be submitted with regard to elections:

1) On-going reports on financing of electoral campaign. As provided for in the Election Code, following the official announcement of the election date, for the purpose of obtaining the permission to participate in the elections, election subjects have to be registered by the election commission. Article 57.2 of the Election Code and Article 32¹ of the LPUC establish

that once political parties/subjects are registered, they are obliged to submit to the State Audit Office reports on financing of electoral campaigns (including information on donation sources, amount and date of receiving of donations) every 3 weeks.

18 political subjects participated in October 2012 Parliamentary elections: 14 political parties, 2 political blocks and 2 independent candidates. All subjects submitted declarations in due time. In total, 54 reports on financing of the electoral campaign were submitted to the State Audit Office.

2) Financial report following the elections. Pursuant to Article 57.3 of the Election Code, political subjects are required to submit financial reports, including information regarding sources of income and expenses during electoral campaign, together with an audit report, no later than 1 month after an official announcement of election results. Those political subjects, which according to preliminary results have obtained necessary votes to pass the threshold prescribed by the law, should submit the above documents to the State Audit Office no later than 8 days after voting.

In 2012 Parliamentary elections, 2 political entities acquired necessary votes to pass the threshold and were admitted to the Parliament. Both subjects submitted reports within 8 days from voting. Remaining 16 electoral subjects also submitted reports on time.

3) Information on donations or membership fees received should be reported within 5 working days following the donation date (Article 27¹.1 of the LPUC). Article 26.6 of the LPUC establishes the obligation of the SAO to make information on donations public on monthly basis. SAO uploads information received from the political subjects on its web-site. Information regarding donations during the 2012 Parliamentary elections was published by the SAO in accordance with the law.

It should be noted that financial reports that are submitted by electoral subjects during and after the campaign, except for reports on donations, are not published by the SAO.

Conclusions

Georgia took important steps to align its legislation on political financing with the European standards. Significant amendments were introduced in 2011 and 2012; new substantive changes were initiated by the new Government and have already been adopted in July and August 2013.

In terms of the previous round recommendations Georgia is mostly compliant. It authorized the State Audit Office, a supreme audit institution established by the Constitution, to monitor and supervise party financing within and outside of electoral campaigns. Activity of the Centre for Development, Reforms and Education is sufficiently transparent. New legislation capped membership fees. The State Audit Office approved and implemented a unified form for political parties to submit annual financials declarations; the form provides detailed data on income, expenditure and assets of political parties. Monitoring and supervision of donations and expenditures from election campaign funds were strengthened (though with some problems with uniform and impartial enforcement during the 2012 parliamentary elections). Amended legislation introduced regular reporting by election subjects on their election funds during election campaign and immediately after it; monthly information on donations to election subjects is published by the SAO.

The remaining issues are the publication of financial reports submitted by the Centre for Development, Reforms and Education to the Government and disclosure of financial reports submitted by election subjects apart from the information on donations. This information should be published as well.

Previous round also recommended defining in law mandate and practice of the financial monitoring group. Taking into account that the SAO was designated as an authority responsible for the supervision of party financing, that it is governed by a special law, its mandate and powers are provided in the relevant laws on political parties and elections and that the financial monitoring group is an internal unit within the SAO, it is sufficient that its functioning is governed by internal regulations of the SAO.

Latest parliamentary election campaign showed some serious problems in the enforcement of the new rules. The SAO was not perceived as independent and according to international monitors was not impartial and was selective and disproportionate in applying the law, especially in sanctioning. This can only partly be attributed to the lack of experience and sufficient time for preparation. Main reason appears to be in the lack of genuine independence from the executive and from political affiliation. This affects the SAO as an institution overall, not just as a body responsible for control over party finances. In this regard recent amendment in the Law on the SAO should be noted – in December 2012 a provision was introduced that financial, economic, legal and organizational performance, control of audit quality and internal audit procedures of the SAO shall be audited by the commission established by the Parliament of Georgia. While this may be a logical reaction to the problems with the SAO's performance during the 2012 election campaign, it does not seem to be a step in the right direction, as it formalizes political involvement in the SAO activity and may seriously undermine its independence in the future. This amendment should be reviewed.

Despite numerous amendments in the legislation on political financing relevant laws still remain not fully co-ordinated, inconsistent and sometimes ambiguous. For instance, the Law on Political Unions of Citizens in fact regulates not only political parties finances related to election campaigns, but also of other electoral subjects. A notion of “persons with declared electoral goals” is quite ambiguous and proved to be open for abuse during last elections. There are still some discrepancies between the LPUC and the Election Code.⁵⁴

The new Georgian Government has declared its intention to continue reform of the relevant legislation and take into account relevant international recommendations. Drafting process has been launched and quickly progresses. These are welcome developments. At the same time one should caution against frequent and hasty revisions in the electoral and political party regulations. It is therefore important that the revision process is carried out in a transparent and inclusive manner (with involvement of opposition parties), that proposed amendments are publicly debated and that opinion of international bodies (Venice Commission, OSCE/ODIHR) is obtained and taken into account before final adoption of changes.

Georgia is largely compliant with the recommendation 3.7.

⁵⁴ See more details in the GRECO Compliance report on the Third Evaluation Round of Georgia, pages 7 and 19, available at: [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)9_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)9_Georgia_EN.pdf).

New Recommendation 11

- *Complete reform of the legislation on party finances by providing a consistent legal framework, eliminating discrepancies among various laws and providing clear procedures for supervision, in particular with regard to sanctioning, in line with international recommendations and following an open and inclusive process.*
- *Ensure publication of all financial reports submitted by electoral subjects in relation to their electoral funds and results of their verification by the State Audit Office.*
- *Provide for mandatory publication of independent auditors' reports on political parties finances.*
- *Ensure uniform and impartial enforcement of rules on monitoring and supervision of political parties finances during and outside of elections, in particular application of effective and proportionate sanctions.*

Integrity in the judiciary⁵⁵

Previous recommendation 3.8.

Ensure transparency of the judiciary, including but not limited to such means as publicizing the criteria for the selection and promotion and reasons for dismissal of judges; ensuring that high-profile corruption and human rights cases are intensively and transparently tried, for example by using jury trial. Consider replacing fixed-term renewable tenure of judges with judicial appointments until the legal retirement age.

Publication of criteria for the selection and promotion and reasons for dismissal of judges

Government reported that criteria for selecting candidates for judges are set in the decision of the High Council of Justice (HCJ) on the “Rules on selection of candidates for judges“ of 9 October 2009, No. 1/308 (amended on 3 July 2012). The decision has two annexes which describe qualifying exam programme and detailed rules on the examination procedure. Government stated that this decision is publicly available.

Criteria included in the Rules on Selection adopted by the HCJ include: decision-making ability, effective communication skills, managerial skills, impartiality, morality, personal skills, professional work experience, the number in the qualification list of the High School of Justice (only for school listeners), judicial temperament/ability to manage emotions, statistical data about decided cases (only for candidates who have experience of working as a judge), ability to manage trial effectively.

Transparency of the selection process and decision-making by the HCJ, however, raised concerns of Georgian NGOs. GYLA also noted that some aspects of selection criteria were considered to be subjective and difficult to assess.

As regards criteria for promotion of judges, Government stated that they are provided in the Organic Law of Georgia on Common Courts (Article 41). Article 41, however, provides the following:

- “1. Regional (city) court judge may be appointed at the Appellate court if he/she exercised judicial function at least for 2 years at the regional (city) court. The criteria for promoting a judge shall be elaborated by the High Council of Justice.*
- 2. A judge shall be granted with earlier promotion than it is established under paragraph 1 of this Article if he/she has made a special contribution to the development of justice, elaboration of the unified judicial practice and administration of the prompt and effective justice, also for demonstrating highly qualified judicial skills while exercising his/her duties.*
- 3. The High Council of Justice shall carry out a judge’s assessment on the basis of promotion criteria.”*

⁵⁵ Government stated in its comments to the draft report that the Ministry of Justice drafted a new set of amendments on the following issues: selection and appointment of judges; transparency of disciplinary proceedings; lifetime appointment of judges; reserve list of the judges; promotion of the judges, etc. The first presentation of the draft amendments took place on 7-8 September 2013 and will be followed by wide public consultations. A special working group will be formed under the Ministry and include representatives of all stakeholders, including judges and the HCJ.

The criteria for judicial promotions have yet to be adopted by the HCJ. No open competition is announced when a vacancy opens in a higher court – proposals are made and decided on by the HCJ.

As to other measures taken to promote transparency of the judiciary Government referred to the following:

1) Any interested person can request public information on courts activities (statistics, disciplinary measures, HCJ activity, court expenditures) and even decisions in individual cases but with names redacted at a special web-site (www.service.court.ge/public) - apparently by submitting an electronic information request.

2) High Council of Justice publishes on its official web-site (<http://hcoj.gov.ge/en/home>) information on all steps with regard to selection of judges, such as qualification exam of judges, interview of listeners of the High School of Justice and judicial candidates. NGOs attend the HCJ meetings where the interview of listeners of the High School of Justice is conducted.

3) There is a possibility of obtaining access to court premises and hearings, the schedule of court hearings on each case is announced in the entrance of the court building and any person is entitled to attend the court session. GYLA and TI Georgia noted in this regard that courtrooms are generally open to the public, but as these NGOs' monitoring has revealed sometimes courts fail to provide adequate space, as some hearings take place in small courtrooms.

4) The information on the judiciary, addresses and contact details of the courts is provided on the HCJ and Supreme Court web-sites. Under the USAID-funded project on judicial administration and management, electronic programme of case management has been developed and implemented in the first instance courts where an interested person (claimant, respondent or third party) is provided with information on case development, including date of proceedings, copies of all judicial decisions, etc.

Disciplinary proceedings against judges remain confidential – supposedly to protect judicial independence and judges' rights. GYLA noted in this regard that transparency of disciplinary proceedings against judges has been a major concern of Georgian NGOs, since the whole process was confidential. Amendments were adopted in 2012, which determine that decisions of disciplinary bodies should be uploaded on the official web-site of the HCJ in order to make proceedings more transparent. Only four such decisions were adopted and, accordingly, uploaded on the web-site of the HCJ so far. But even when such decisions are published names of judges remain redacted.

Article 2 of the Law on disciplinary liability and disciplinary proceedings against judges of common courts of Georgia lists the following grounds for disciplinary liability of judges: (a) commission of a corruption offence or abuse of official powers to the detriment of the interests of justice and the interests of office. A corruption offence is understood as an offence envisaged by the Law of Georgia on Conflict of Interests and Corruption in Civil Service; (b) activity incompatible with judicial office or conflicting with judicial duties; (c) an action inappropriate for a judge that disgraces the judiciary or damages the trust towards the judiciary; (d) undue delay of adjudication of a case; (e) non-performance or improper performance of judicial duties; (f) disclosure of the secrecy of judicial deliberation or professional secret; (g) hindrance to the activity or contempt of a disciplinary organ; (h)

violation of judicial ethics norms. Disciplinary sanctions are: a notice; a reprimand; a strict reprimand; dismissal from the judicial office; and removal of a judge included in the reserve of common court judges from the reserve. There are also “disciplinary measures”: a private recommendation letter to the judge; dismissal of a chair, first deputy or a deputy chair of a court or a chair of a judicial panel or chamber from the position.

According to the statistics provided by the HCJ, in 2012 three disciplinary sanctions were applied to 3 judges (1 notice and 2 reprimands). As of June 2013 no disciplinary sanctions has been issued.

No judge was dismissed in 2012-2013 (as of June 2013) for commission of a disciplinary offence. Overall 40 judges were dismissed in 2010-2012. In 2012, eight judges were dismissed due to expiration of their judicial term, one – due to retirement age and one – due to liquidation of the court (the judge was enrolled in the reserve list of judges). As of June 2013 two judges were dismissed due to expiration of their judicial term.

One of the grounds for dismissal is commission of a corruption offence provided under the Law of Georgia on the Conflict of Interest and Corruption in Civil Service. According to Article 20.6 of the latter, an official is to be dismissed for commission of a corruption offence if he has already been subjected to disciplinary sanction (except for dismissal) for such offence and he commits corruption offense for the second time within a year. HCJ informed the monitoring team that this provision has never been used as a ground for dismissal of judges.

Another relevant issue is audio, photo, video recording and broadcasting of court sessions. Since 2007 media were not allowed to photograph or video record court proceedings. Audio recording was possible only if allowed by the presiding judge. Therefore, audio recording was significantly restricted as well. In March 2013 these provisions were amended in order to make courtrooms open for the media and video recording. According to the amendments, the public broadcaster has the right to film and carry out live broadcast of trials. Public broadcaster will then have to share footage with other broadcasters upon request.⁵⁶ In case of jury trials, broadcasting shall be carried out without filming members of the jury as well as revealing their identity or/and other personal data. Every person, attending a trial, has the right to carry out audio recording of hearings in courtroom. Restrictions were also lifted from taking photos and videos, carrying out audio recordings in the yard and corridors of court buildings. Courts have to carry out audio and video recording of trials and then to hand these recordings over to the parties. Courts had a deadline before 1 June 2013 to equip courtrooms with audio and video recording equipment. Government stated in February 2013 that it had allocated GEL 3.55 million from its reserve fund for providing courts with such equipment.⁵⁷

“ensuring that high-profile corruption and human rights cases are intensively and transparently tried, for example by using jury trial”

Government reported that according to January 2013 amendments in the Criminal Procedure Code jury trials are to be convened in cases where defendants are high-ranking officials. Amendments provide that jury trials in Tbilisi, Kutaisi and Batumi city courts will decide

⁵⁶ If public broadcaster is not using this right, any other TV station with broadcasting license can record and broadcast the trial and hearings. If two or more TV stations apply, the court will chose the TV station by random selection. The TV station that will obtain the right to film or broadcast the hearing/trial has the same obligations as public broadcaster, in particular to share their material with other TV stations upon their request.

⁵⁷ In September 2013 Government informed that the process was finalized and all courtrooms were duly equipped.

cases of defendants who held or hold high positions in public authorities and other people who are charged with them in the same cases. This extends the use of jury trials, which were introduced in 2011 and applied only to some aggravated offences against a person (e.g. murder, rape). It is worth noting that since introduction of jury trials only three cases were decided by juries (all of them murder cases).

These amendments raised some controversy. While jury trials could be viewed as a way to avoid political influence on high-profile sensitive trials involving former government officials (the main rationale behind this recommendation of the IAP monitoring), they may also be marred by political bias of the jurors, especially when convened immediately after highly divisive and heated election campaign. For this reason (also due to other fair trial considerations) it is crucial that the defendant has the right to choose whether to be tried by a jury or by a judge. It is therefore welcome that the parliament abandoned amendments which would have stripped defendants of such a right (amendments were passed in April 2013, then vetoed by the President and parliament did not overturn the veto during a vote on 1 May 2013 despite the fact that the governing party has majority in the parliament).⁵⁸

As regards overall transparency of trials in high-profile cases it is worrisome that some cases have recently been tried in regional courts despite the fact that alleged offences were committed in the capital where alleged perpetrators work and reside. TI Georgia reported that investigation in the capital city was logical for the two most famous cases, because according to the facts that were put forward by the prosecution the alleged crimes had happened in Tbilisi; however, these cases were transferred to the regional investigative organs. Hence, the cases were examined in the regional courts, namely Vano Merabishvili case – in Kutaisi City Court and Tbilisi City Hall employees’ case – in Rustavi City Court.⁵⁹ This looks like forum shopping by the prosecution and also may result in less publicity and difficulties in ensuring proper media coverage of the trials.

Consider replacing fixed-term renewable tenure of judges with judicial appointments until the legal retirement age

Government reports that Georgia’s Constitution was amended to introduce life-time appointment of judges. This amendment will enter into force in October 2013.

Comparative table of relevant provisions of Article 86 of the Constitution:

Current text	As amended on 15.10.2010 (comes into force when an oath is taken by the newly elected President in October 2013)
1. A judge shall be a citizen of Georgia who has attained the age of 28, and has the highest legal education and at least five years experience in the practice of law. (27.12.2005, N 2496)	1. A citizen of Georgia who has attained the age of 30 has relevant higher legal education and has at least 5 year-working experience in the legal area is eligible to hold the judicial office.
2. A judge shall be designated on the position for a period of not less than ten years. The selection, appointment or	2. Judges are life-time appointed, unless they reach the age determined by the Law. Before life-time appointment of the judge, the Law

⁵⁸ For more details see: www.civil.ge/en/article.php?id=26012. See also statement by the NGOs: [www.coalition.org.ge/en/article161/The Coalition for an Independent and Transparent Judiciary Welcomes Parliament’s Decision on Draft Law on Jury Trial](http://www.coalition.org.ge/en/article161/The%20Coalition%20for%20an%20Independent%20and%20Transparent%20Judiciary%20Welcomes%20Parliament%E2%80%99s%20Decision%20on%20Draft%20Law%20on%20Jury%20Trial).

⁵⁹ TI Georgia, Judiciary after parliamentary elections 2012, July 2013, available at: <http://transparency.ge/en/blog/judiciary-after-parliamentary-elections-2012>.

dismissal procedure of a judge shall be determined by law.	may envisage the appointment of the judge for definite period, no more than 3 years. The rules on selection, appointment or dismissal of judges are defined by the organic law.
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At the same time Supreme Court judges will continue to be appointed for limited term. According to Article 90 of the Constitution, which was not amended in October 2010: *“The President and judges of the Supreme Court of Georgia shall be elected for a period of not less than ten years by the Parliament by the majority of the number of members of Parliament on the current nominal list upon the submission of the President of Georgia.”*

This provision concerning Supreme Court judges, as well as possibility of establishing 3-year probationary period, was criticised by the Venice Commission in its Opinion on the constitutional amendments.⁶⁰

As the recommendation of the IAP monitoring was to consider replacing the fixed term tenure of judges, Georgia complied with it by preparing, considering and adopting relevant amendments.

Other issues related to integrity and independence of the judiciary

Government mentioned its plans to continue reforms aimed at ensuring genuine independence of the judiciary from any outside interference and increasing public trust in the court system of Georgia. The reform is supposed to be carried out in several stages:

1) The first set of draft amendments to the laws regulating organisational and structural issues aimed at increasing independence of judiciary were proposed for adoption to the Parliament in the end of 2012. With these amendments rules regulating composition of the High Council of Justice, Administrative Committee of Judicial Conference and Disciplinary Chamber for disciplinary proceedings against judges would be revised to achieve better decentralization and balanced allocation of powers within the judiciary as well as civil society involvement in the decision-making on organizational issues of judiciary.

The draft amendments were elaborated on the basis of international and European standards, including Venice Commission Report on the European Standards as regards the Independence of the Judicial System. The recommendations of the coalition of civil society organisations working on the independence of judiciary have been taken into account. In November 2012 the public discussion of the draft amendments was held with participation of legislative, executive and judicial authorities, foreign and international missions, as well as Georgian and international NGOs. The final version of the draft was submitted to the Venice Commission for opinion.⁶¹ Amendments were adopted by the parliament on 5 April 2013.

It should be noted that one of the main concerns of the Venice Commission with regard to this draft law was not addressed in the final text. Amendments introduced new rules on the composition of the High Council of Justice (in particular, that the parliament appoints six instead of four HCJ members as before, President no longer takes part in the appointment of the HCJ composition, judicial members of the HCJ are appointed by the Judicial Conference

⁶⁰ Venice Commission, Opinion No. 543/2009 on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, October 2010, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)028-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)028-e).

⁶¹ Opinion No. 701/2012 on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia, March 2013, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e).

on proposal from judges themselves). Transitory provisions of the law with amendments provided that authority of current at that time members of the HCJ should be terminated.

This arrangement was heavily criticised by the Venice Commission, which stated that removing all members of the Council prematurely would set a precedent whereby any incoming government or any new Parliament, which did not approve of either the composition or the membership of the Council could terminate its existence early and replace it with a new Council. In many circumstances such a change, especially on short notice, would raise a suspicion that the intention behind it was to influence cases pending before the Council. In its comments Government noted that this suspicion was not confirmed in practice, since all elected judges were supported by the Chairman of the High Council of Justice who is at the same time the Chairman of the Supreme Court of Georgia. In addition, the election of the new members of the HCJ did not affect pending cases of the HCJ.

2) Further reforms are envisaged regarding the criteria for appointment of judges and their promotion in order to ensure full compliance with international and European standards regarding the independence of Judiciary.

3) It is planned that in 2013 a Commission on Miscarriages of Justice would be established to address cases of alleged injustice and malfunction of the judicial system. According to the Government, with due process guarantees the independent Commission will study court cases and “in case of any vivid instances of malfunction will submit these cases to the court for review and adjudication”.

Creation of the Commission on Miscarriages of Justice raises serious issues with regard to respect of the rule of law principles. This idea was proposed by the new Government after the October 2012 elections in response to allegedly wide popular demand for justice and reversal of allegedly unfair decisions taken under the previous administration.⁶² The draft law proposes to set up for a three-year term (with possible two years extension) a Temporary State Commission to review miscarriages of justice, consisting of 9 members who are elected by the Parliament (2/3 majority) upon proposal of parliamentary factions from candidates nominated by civil society. The Commission will examine complaints filed by aggrieved individuals and conclude the existence or the absence of a miscarriage of justice. The case would then go to Criminal Chamber of the Supreme Court for a new consideration. Commission’s mandate will be limited by cases decided in the period between 1 January 2004 and 1 November 2012.

Representatives of the Georgian judiciary voiced strong objections against such a Commission. Also Bureau of Consultative Council of European Judges adopted on 24 May 2013 a very critical opinion of the draft law (text was provided to the monitoring team).

Venice Commission in its recent opinion on the draft law noted: *“The very idea of a process of massive examination of possible cases of miscarriage of justice by a non-judicial body raises issues as regards the separation of powers and the independence of the judiciary as enshrined in the Georgian Constitution. It may only be conceived in very exceptional circumstances. If the Parliament of Georgia were of the opinion that indeed such*

⁶² The preamble of the draft Law states that “after the parliamentary election of October 1, 2012 thousands of Georgian citizens, foreigners or stateless persons have filed complaints to the executive authorities and Parliament of Georgia stating that in 2004-2012 they were unlawfully and/or unjustly convicted of criminal offences” and that “it is the intention of the Government of Georgia to restore law and justice with respect to all those persons who were convicted unlawfully and/or unjustly, for which reason it is necessary to design some additional and temporary legislative mechanisms”.

circumstances occur nowadays in Georgia, it is evident that the mere re-examination of cases without a profound reform of the judiciary would be insufficient. Any such measure would have to be accompanied by a wider reform of the judiciary in order to strengthen its independence and impartiality. It is particularly important that the rule of law should not be weakened by the adoption of a measure that might be perceived by some as politically motivated as this, and the relevant provisions of the proposal that highlight its political nature, will only bring discredit to the judiciary and the justice system."⁶³

Venice Commission also stressed that it seemed difficult to reconcile the rule of law imperatives which must apply to any process of re-examination of criminal cases with the specific features of today's Georgia, in particular the extremely polarised political context and the limited size of the judiciary. In this context, the Venice Commission underlined the very different contexts in which the other criminal cases review commissions, which exist in Europe, operate.⁶⁴

It is not up to this monitoring to take a stand whether alleged miscarriages of justice indeed happened and on the scale of the claimed violations.⁶⁵ If justice was breached it indeed needs to be restored. However, it has to be done in compliance with the fundamental principles of separation of powers and the rule of law requirements of *res judicata* and legal certainty. Creation of a mechanism to reverse final court decisions may set a dangerous example for the future. It is hard to imagine possible consequences if some time later a new party winning a majority would claim that the suggested process of reviewing previous court decisions was marred by miscarriages itself and has to be revised. Georgian current legislation allows exceptional revision of cases when new or newly discovered circumstances emerge – should there be a finding in accordance with legal procedures that a crime was committed during investigation, prosecution or adjudication of a specific case it would allow a fresh examination of the case by the court under ordinary proceedings. Overall proposal of the Commission on Miscarriages of Justice as it is now seems to create serious risks for independence and integrity of the judiciary in Georgia, especially when viewed in the long-term perspective.

For some other important developments in the judiciary of Georgia after the October 2012 elections see relevant report by TI Georgia.⁶⁶

Conclusions

There were some positive developments in terms of ensuring transparency of the judiciary, in particular legislative amendment requiring publication of disciplinary decisions concerning judges. The latter, however, does not seem to be properly implemented and such decisions in any case do not include name of the judge, which significantly diminishes effect from such publication. Positive step is publication by the High Council of Justice of information on all steps with regard to selection of judges.

⁶³ Venice Commission, Opinion No. 728/2013 on the Draft Law on the Temporary State Commission on Miscarriages of Justice of Georgia, June 2013, §11, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)013-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)013-e).

⁶⁴ *Idem*, §82.

⁶⁵ Government noted that more than 20,000 complaints of alleged serious violations have been submitted to the Prosecution Service, Ministry of Justice, Parliament of Georgia and other state agencies.

⁶⁶ TI Georgia, Judiciary after parliamentary elections 2012, July 2013, available at: <http://transparency.ge/en/blog/judiciary-after-parliamentary-elections-2012>.

Criteria for selection of judges seem to be transparent as required by the IAP recommendation. Basic criteria for promotion of judges are set in the law and they appear to be too wide and open for subjective assessment. Also the same law requires that these criteria be detailed by the High Council of Judges, which has not been done so far. Promotion of judges remains in the discretion of the HCJ and is not based on open competition.

In line with the IAP monitoring recommendation jury trials were extended to criminal cases, including those related to corruption, against former and current high-level public officials. It is also welcomed that the right of the defendant to waive his right to have his case tried by a jury was preserved and amendments overturning this right were ultimately not sustained.

With regard to dismissal of judges it appears that relevant decisions do not state grounds for dismissal. Also some of the grounds for dismissal raise concern – for example, due to liquidation of courts or reduction of judicial positions. It may lead to manipulation and be used as a tool for political pressure on the judiciary.

Georgia also complied with the IAP second monitoring round recommendation to consider replacing fixed term tenure of judges with a permanent tenure – relevant constitutional amendments were prepared and even adopted by the parliament (will come into force in October 2013). However, the reform itself appears to be incomplete, since judges of the Supreme Court will still be appointed for a 10-year tenure and the possibility of probationary period was introduced. It is also recommended to clearly provide in the law that current judges do not have to undergo a re-appointment procedure to receive life-time tenure, as it would seriously undermine independence of the judiciary.

Georgia is partially compliant with the recommendation 3.8.

New Recommendation 12

- ***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.***

Integrity in the private sector

Previous recommendation 3.9.

1. Encourage:

i. Companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery;

ii. Business associations and professional organisations, where appropriate, in their efforts to encourage and assist companies, in particular small and medium size enterprises, in developing internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery;

iii. Company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those which contribute to preventing and detecting bribery;

iv. The creation of monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards.

2. For politically exposed persons, their family members and close associates, introduce legislation or regulations that require financial institutions to determine the identity of beneficial owners of funds deposited and to conduct enhanced scrutiny of accounts.

Government measures to promote private sector integrity

Georgian legislation is overall business friendly. Efforts of the government to deregulate economy and to reduce administrative barriers produced good results: in 2013 Georgia ranked 9th among 185 countries according to the World Bank's Doing Business. The National Integrity System (NIS) report prepared by TI Georgia in 2011 (<http://transparency.ge/nis/2011/business>) describes main achievements and remaining challenges for doing business in Georgia: starting business and registering property involve simple and quick procedures, while closing a company, protecting property rights and contract enforcement are somewhat more difficult; and intellectual property rights are not effectively enforced. According to TI, tax authorities tend to be excessively harsh on companies; big businesses are engaged in close collaboration with authorities, which is also reflected in important donations from businesses to political parties.

Business integrity remains an unexplored issue in Georgia since the second round of monitoring. While there are many surveys and studies on various aspects of corruption in Georgia conducted by public and private sector, no similar surveys were conducted in the area of private sector integrity, apart from the TI NIS report. As a result, little information is available about corruption risks involving companies, measures that companies and the government take to promote compliance programmes and other business integrity measures.

According to the business associations interviewed during the on-site visit, a growing number of companies operating in Georgia are introducing compliance programmes as a response to external signals from foreign investors, international financial institutions (IFIs) and IPO requirements. 25 Georgian entities participate in the UN Global Compact, including 7 companies, however only 4 of them are active members. Companies are also seeking to improve their corporate governance, for instance several companies made use of the American Chamber of Commerce (AmCham) Handbook on corporate social responsibility (CSR). According to TI, in 2009, a number of Georgian banks signed the voluntary Corporate

Governance Code developed by the IFC, the Georgian Banking Association and the Georgian Stock Market. According to the business associations, subsidiaries of international companies are most advanced as they follow the policy established by their parent companies.

Regarding efforts of business associations to promote business integrity, AmCham in co-operation with the US Department of Commerce organised two workshops on business ethics. However, apart from these events, business associations interviewed during the on-site visit did not have committees or programmes that would assist companies to deal with the risk of corruption, introduce compliance programmes and other business integrity measures.

The current Anti-Corruption Strategy of the government does not address business integrity. Where there are agencies established to promote business development, such as the National Investment Agency, or to protect companies from discriminatory actions of state bodies, such as the Free Trade and Competition Agency, there are no persons or bodies in the government that are responsible for promoting business integrity. Governmental representatives and business associations interviewed during the on-site visit were not aware of any measures taken by the government to promote business integrity and company compliance programmes.

The lack of actions to promote business integrity by the government and by the business may be attributed to several factors. Firstly, recent success in reducing administrative corruption created an impression that bribery was eradicated. Secondly, the awareness of various forms of corruption that involves businesses and government officials is low. Thirdly, labour relations, tax disputes, reform of the judiciary and other overriding priorities occupy the attention of both the government and the business and little attention is given to the corruption risks involving companies.

Involvement of businesses in corruption may present a serious risk for future development of the country. It is therefore important for the government and for the private sector to examine the risks of corruption involving companies and to identify measures to address them.

The new or updated national anti-corruption strategy and action plan may provide a useful framework to develop business integrity measures and to ensure their enforcement. It will be important for the government to involve business partners in the development of such measures in the framework of the business integrity section of the national anti-corruption policy documents. It is encouraging that in 2012, business representatives were invited to join the National Anti-Corruption Council; it will be important to ensure their active engagement in the work of the Council.

Business ombudsman of Georgia can play an important role in promoting business integrity. While the institution of business ombudsman was established in 2009, the current ombudsman was appointed by the President only three months before the on-site visit. Business ombudsman currently has five experts and a working group of auditors supporting his activities. The main role of the ombudsman is to mediate between companies and the government; at the time of the on-site visit this institution focused mostly on tax disputes between the SMEs (SMEs represent around 94% of all Georgian companies) and the Ministry of Finance. The business ombudsman also has a mandate to receive and review complaints by companies, including complaints about corruption (in addition to the possibility for companies to report to the prosecution service), however no such reports were received to date.

Enforcing corporate liability for corruption, as discussed in the section on criminalisation and law-enforcement, would be an important signal by the government to private sector about the need to improve internal controls, ethics and compliance programmes to prevent corruption. Establishing a legislative provision that would exempt companies with effective internal anti-corruption programmes from responsibility for corrupt acts committed by individual employees may be an effective tool to promote introduction of compliance programmes by companies.

According to TI, corporate governance provisions were missing from the Georgian law prior to 2008; amended Law on Entrepreneurs established some general rules, while allowing companies to address many issues through their internal regulations. Under the Law, information about registration of businesses is provided by the National Agency of the Public Registry. Companies trading on the Georgian Stock Exchange (180 companies are registered on the Stock Exchange) are required to conduct annual audit by independent auditors and to publish reports about their operations. According to TI, progress has been made in recent years in the application of corporate governance rules by Georgian enterprises, most notably by banks. However, significant weaknesses remain, including the effectiveness of supervisory boards, internal controls, information disclosure and shareholder rights. Besides, there is no governmental agency that is responsible for overseeing the implementation of corporate governance rules and regulations.⁶⁷

The government officials interviewed during the on-site visit noted that corporate governance regulations does not provide detailed provisions regarding the responsibility of the management structures of companies for corruption, or disclosure requirements regarding anti-corruption policy and performance of companies.

The management of state-owned enterprises (SOEs) appears prone to corruption risks. According to the governmental officials interviewed during the on-site visit, there are 461 SOEs operating in different sectors – from social and medical services to agribusiness and infrastructure, including 20 large SOEs; there are plans to privatise the majority of SOEs in Georgia. Most SOEs operate under the Law on Entrepreneurship, and some under the Law on public-private partnership (PPP) where the PPP boards are chaired by the Prime Minister and are composed of other ministers. Currently managers of SOEs are appointed to their position without competition; they are not considered public officials and conflict of interests provisions do not apply to them; SOEs can be exempted from public procurement rules through the Government's discretion (see details in the section on public procurement). No information was provided about governance and disclosure rules that are applicable to such companies; lack of transparency can further increase the risk of corruption.⁶⁸

Government informed that in September 2012 a National Agency of State Property (NASP) was established under the Ministry of Economic and Regional Development and it is currently in charge of SOEs management. NASP has started implementing a number of measures in order to improve corporate governance and transparency at SOEs (*e.g.* a new reporting system to disclose information on SOEs, competitive recruitment in certain companies). The NASP is also to analyse SOEs' financial documentation, prepare recommendations on their business plans approval and monitor execution of SOEs' business plans (including expenditures).

⁶⁷ See TI NIS report, available at: <http://transparency.ge/nis/2011/business>.

⁶⁸ See EBRD assessment of the quality of the PPP legislation and of the effectiveness of its implementation in Georgia, 2011, available at: www.ebrd.com/downloads/legal/concessions/georgia.pdf.

As discussed in the section on public procurement, significant reforms were implemented in this sector. According to the business and government representatives interviewed during the on-site visit, the risk of corruption in procurement procedures has been reduced. However, further efforts are needed to improve integrity of public procurement and promote business integrity. (Issues such as black listing, complaints mechanism and suspension of contracts are discussed in the public procurement section of this report.)

During the past years several large infrastructure projects were implemented or planned in Georgia, including publicly funded projects, such as the construction of the new Parliament building in Kutaisi, construction of city halls across the country and the proposed construction of a new city of Lazika. Large infrastructure projects in any country represent high corruption risks, and a new good practice is emerging around the world in order to prevent and manage such risks. For instance, many countries now implement integrity pacts, where all potential participants of such projects from the government and private side sign a contract committing not to engage in corrupt activities; the enforcement of such contracts is usually entrusted to a third party such as an NGO. To date, Georgian did not explore the possibility of such integrity acts.

Additional scrutiny concerning PEPs

Government stated that the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization provides a definition of “beneficial owner” that is in line with FATF Recommendations and the EU Directives. It refers to the natural person(s) representing an ultimate owner(s) or controlling person(s) of a person or/and a person on whose behalf the transaction (operation) is being conducted. Beneficial owner of a business legal entity (as well as of an organizational formation (arrangement) not constituting a legal entity, provided for in the Georgian legislation) means a direct or indirect ultimate owner, holder and/or controlling natural person(s) of 25% or more of such entity’s share or voting stock, or natural person(s) otherwise exercising control over the governance of the business legal entity (Article 2(q) of the Law).

According to amendments of 20 December 2011 in the AML/CFT Law of Georgia, monitoring entities (financial institutions as well as the so called designated non-financial businesses and professions) are obliged to identify the beneficial owner of the client and to take reasonable measures to verify his identity by means of reliable and independent source of documents (information) and be satisfied that they know who the beneficial owner of the client is.

Therefore, in relation to beneficial owners, including beneficial owners of funds deposited, the monitoring entity is required to use the same identification and verification procedure (customer due diligence) that is generally used for identification and verification of the client. The AML/CFT Law of Georgia sets the obligation for monitoring entities to conduct enhanced customer due diligence measures for the client or his beneficial owners that are politically exposed persons (PEPs).

In line with requirements of FATF Recommendations, the AML/CFT Law of Georgia includes the definition of PEP, his family member as well as the person having close business relationship with the PEP. According to Article 2 of Law:

“v) Politically Exposed Person [is] a foreign citizen, who has been entrusted with prominent public functions according to the legislation of a respective country or/and carries out significant public and political activities. They are: Head of State or of

government, member of government, their deputies, senior official of government institution, member of parliament, member of the supreme court and constitutional court, high ranking military official, member of the central (national) bank's council, ambassador, senior executive of state owned corporation, political party (union) official and member of executive body of the political party (union), other prominent politician, their family members as well as person having close business relations with them; a person shall be considered as a politically exposed during a year following his / her resignation from the foregoing positions;

w) Family member – a spouse of a person, his / her parents, siblings, children (including step – children) and their spouses;

x) Person having close business relationship with the politically exposed person (PEP) – a natural person who owns or / and controls a share or voting stock of that legal entity, in which a share or voting stock is owned or / and controlled by the Politically Exposed Person (PEP); also, a person having other type of close business relationship with the Politically Exposed Person (PEP)”.

With respect to PEPs, the AML/CFT Law of Georgia establishes obligation of monitoring entities (financial institutions and designated non-financial businesses and professions), in addition to the normal customer due diligence provided by the law, to conduct enhanced due diligence to identify and verify the client (his beneficial owner) that is PEP.

More precisely, according to Article 6/1 of the mentioned law:

“1. Monitoring entity shall identify whether the client or his / her beneficial owner belongs to the category of Politically Exposed Persons (PEPs).

2. If a client of the monitoring entity or his / her beneficial owner represents a Politically Exposed

Person (PEP), in addition to the steps stipulated under the Law, the monitoring entity shall take the following actions:

a) Obtain permission from the management to establish or to continue business relationship with such client;

b) Take reasonable measures to establish the source of wealth (including funds) of such client or

his/her beneficial owner;

c) Perform enhanced monitoring over its business relations with such person.

3. If the client (his/her beneficial owner) becomes Politically Exposed Person (PEP) after establishing business relations with the monitoring entity, the latter shall undertake measures provided for in paragraph 2 of this Article against such client upon availability of the aforementioned information.”

Requirements with regard to PEPs currently concern only foreign nationals. However, as the Government reports, at its 39th plenary meeting (2-6 July 2012) the MONEYVAL Committee discussed and adopted Fourth round detailed assessment report prepared by the IMF on the Georgian AML/CFT legislation and its compliance with FATF Recommendations. The document includes also the recommended “Action plan to improve the AML/CFT system”. Consequently, in order to implement measures provided in the Action Plan and to bring Georgian AML/CFT legislation in compliance with the requirements of FATF Recommendation 12, it is planned to extend the AML/CFT requirements to domestic PEPs as well.

In addition, Central Bank adopted guidelines for commercial banks to check foreign beneficiary owners. Central Bank also adopted guidelines on risk-based approach for commercial banks. As was noted during the on-site visit, the share of the “off-shore” clients in commercial banks is around 0,1%. Central Bank verifies internal controls of commercial banks in regard to the AML requirements; since 2012 it has the right to impose sanctions for insufficient controls (19 commercial banks, *i.e.* half of the inspected banks, were sanctioned).

As regards availability of information on beneficial owners of legal entities overall, Georgian system does not provide for effective mechanism to establish ultimate beneficial owners and make that information public. Since 2010 registration of legal entities is conducted by the National Agency of Public Registry (NAPR). As was noted in the 2012 IMF Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism in Georgia, the information on beneficial ownership and control of legal persons is in most of the cases not adequate, inaccurate and not current, for the following reasons:

- There is no specific requirement to obtain information on the ultimate beneficial ownership.
- The absence of strict obligation to provide and update the information in any case of change of ownership or control of the legal persons (regulations mention the founders only).
- The information about legal persons registered under the system before 2010 is not accurate since the old system was not efficient in identifying beneficial owners and control. Also, the information has not been updated and is therefore neither accurate nor adequate as the process of checking the information has not been completed.
- As of December 2011, only 40% of the information were migrated from the old system, and therefore not all the information was available online. Law-enforcement agencies usually send requests to the NAPR to inquire about the beneficial owners and persons controlling these companies. In these cases, the NAPR manually searches and replies to the requests.⁶⁹

Conclusions

Since the previous monitoring round Georgian Government has not introduced any measures to encourage business integrity, as was recommended. Georgia is therefore non-compliant with the first part of the recommendation.

As regards second part of the recommendation it appears that Georgia is in full compliance with it: the Anti-Money Laundering Law, as amended in December 2011, requires from monitoring entities (including financial institutions) to identify beneficial owner of the client and of funds deposited and to conduct enhanced due diligence for politically exposed persons.

Georgia is partially compliant with the recommendation 3.9.

⁶⁹ See IMF report, pages 307-313. Available at: www.imf.org/external/pubs/ft/scr/2013/cr1304.pdf.

New Recommendation 13

- *Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.*
- *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.*
- *Implement integrity and anti-corruption plans for state-owned (state-controlled) enterprises.*
- *Explore the possibility of concluding integrity pacts in large publicly funded projects.*
- *Extend definition of the politically exposed persons to include Georgian nationals.*
- *Ensure that information about ultimate beneficial owners of legal entities is obtained and disclosed through public registry.*

Summary table

	New recommendation	Previous recommendation	Rating for previous recommendation			
			Fully	Largely	Partially	Not compliant
Pillar I. Anti-Corruption Policy						
A-c policy documents and surveys	+	1.3. Strategy, action plan			+	
Public participation, awareness raising and public education	+	1.4. - 1.5. Public participation		+		
Policy and co-ordination institutions	+	1.6.1. Co-ordination body			+	
Pillar II. Criminalisation of corruption						
Offences and elements of offences	+	2.1. - 2.2. Liability of legal persons			+	
Definition of public official	-	2.3. Definition of public official	+			
Sanctions	+	2.4. Sanctions				+
International cooperation, MLA	Previous rec. valid	2.7. MLA		+		
Application, procedure, specialised law-enforcement bodies	+	2.8. Flexible time-limits		+		
	+	1.6.2. Prosecution service	+			
	-	1.6.3. Inter-agency co-operation	+			
Pillar III. Prevention of corruption						
Integrity of civil service	Previous rec. valid	3.2. - 3.3. Integrity of civil service			+	
Public financial control and audit	+	3.4. Public financial control and audit		+		
Public procurement	+	3.5. Public procurement		+		
Access to information	+	3.6. Access to information		+		
Political corruption	+	3.7. Party financing		+		
Integrity in the judiciary	+	3.8. Integrity in the judiciary			+	
Private sector	+	3.9. Private sector			+	

Annex

Statistics on investigation, prosecution, adjudication and sanctioning of corruption criminal offences (2010-2012)

Table 1. Investigation, prosecution and adjudication of corruption-related crimes

Article CC ¹	2010				2011				2012			
	Investigation ²	Prosecution ²	Submitted to court ²	Ended with conviction ²	Investigation	Prosecution	Submitted to court	Ended with conviction	Investigation	Prosecution	Submitted to court ³	Ended with conviction
164 ¹	-	-	-	-	-	0	0	0	48	9	9	1
182	336	257	261	88	276	303	372	134	245	232	318	67
192	41	89	46	24	41	110	117	111	22	30	46	3
194	22	29	32	12	58	143	128	124	93	91	170	66
194 ¹	0	0	1	0	2	0	0	0	0	0	0	0
220	-	-	-	18	20	28	28	24	12	14	10	10
221	-	-	-	43	20	35	38	26	17	15	25	19
332	128	91	87	79	77	67	75	55	115	47	86	27
333	85	15	15	16	127	25	29	21	165	34	10	10
337	-	-	-	3	0	0	1	0	0	3	1	1
338	146	149	138	137	63	69	73	65	20	41	80	50
339	43	87	77	61	28	37	55	51	7	17	31	21
339 ¹	7	3	5	6	10	10	5	4	1	2	16	4
340	1	0	1	0	1	1	0	0	0	1	1	0
341	72	69	68	45	37	73	68	65	13	13	15	8

Notes:

¹ Statistical data is provided for the following articles of the Criminal Code of Georgia: Article 164¹ – Vote Buying; Article 182 - Misappropriation or Embezzlement; Article 192 - Illicit Entrepreneurial Activity; Article 194 - Money Laundering; Article 194¹ - Usage, Purchase, Possession or Selling the Property Acquired through Money Laundering; 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; 339¹ - Trading in Influence; Article 340 - Accepting Illegal Presents; Article 341 – Falsification in Service.

² Number of persons.

³ Data for January-September 2012.

Table 2. Sanctions applied for corruption-related crimes in the first instance courts (2010)

Article of the Criminal Code	Ended with conviction		Sanctions							
			Imprisonment		Fine		Average amount of fine	Fine as an additional sanction		Average amount of fine
	case	person	case	person	case	person	GEL	case	person	GEL
221	28	43	14	16				26	40	30100
332	53	79	18	27	2	5	3600	46	67	10719
333	14	16	7	8	2	2	50500	10	12	7083
338	92	137	82	120				67	100	23709
339	33	61	10	22	12	13	25692	18	39	13897
339.1	3	6	2	4	1	1	30000	1	2	12500
182 (2,d)	69	88	31	38				55	68	5685
192	13	24	4	15				13	23	12000
194	9	12	8	10				7	10	49707
220	9	18	2	2				8	17	26286
337	3	3	2	2				3	3	30000
341	29	45	5	8				25	37	17108

Table 3. Sanctions applied for corruption-related crimes in the first instance courts (2011)

Articles of the Criminal Code	Ended with conviction		Sanctions								
			Imprisonment		Fine		Average amount of fine	Fine as an additional sanction		Average amount of fine	
			case	person	case	person	case	person	GEL	case	person
221	12	26	5	9					12	26	9192
332	37	55	16	25	1	1	1000		30	46	8565
333	15	21	7	10	2	3	2000		9	12	7500
338	66	85	53	71	1	1	2500		57	72	32507
339	23	51	11	17		1	2000		15	40	16806
339.1	4	4	3	3					3	3	35000
182 (2,d)	84	134	35	61					43	67	11810
192	53	111	15	34	1	1	1000		45	92	15649
194	74	124	23	40					65	112	127103
220	18	24	3	3	2	4	3003500		16	18	29789
337											
341	39	65	6	8	2	4	2250		35	59	22610

Table 4. Sanctions applied for corruption-related crimes in the first instance courts (2012)

Article of the Criminal Code	Ended with conviction		Sanctions							
			Imprisonment		Fine		Average amount of fine	Fine as an additional sanction		Average amount of fine
	case	person	case	person	case	person	GEL	case	person	GEL
164¹	1	1				1	20000			20000
221	13	19	4	5	2	2	6000	9	15	283267
332	18	27	6	7				13	22	4727
333	8	10	3	3				6	8	6250
338	35	50	27	37				25	36	13583
339	9	21	3	4	1	1	15000	6	15	45467
339.1	3	4	1	1				2	3	57667
182 (2,d)	45	67	15	26	2	4	2300	37	56	9491
192	1	3						1	3	2000
194	52	66	12	18	1	1	10500	38	50	85360
220	5	10	1	2	1	3	33333	4	7	18571
337	1	1						1	1	5000
341	8	8	2	2	1	1	2000	5	5	4200

Table 5. Number of convicted persons for corruption-related crimes in the first instance courts (imprisonment sentences per duration; 2010)

Article of the Criminal Code	Imprisonment sentences																				Average term
	Convicted with imprisonment	Less than a year	1 year	2 year	3 year	4 year	5 year	6 year	7 year	8 year	9 year	10 year	12 year	13 year	14 year	15 year	18 year	20 year	22 year	24 year	
221	16	6	5	2	3																1 year 4 month
332	27	11	1	9	3			3													1 year 11 month
333	8	2	1	1	1			1		1				1							4 year 3 month
338	120	14	11	34	17	19	2	4	5	4	5				2	3					3 year 7 month
339	22	9	3	1			4		1	1	1	1	1								3 year 5 month
339.1	4	1				2					1										4 year 5 month
182-(2,d)	38	8	12	3		6	1	3	1	1	1	2									3 year
192	15	1	5	8	1																1 year 8 month
194	10	1	1	1							2					1	1	1	1	1	12 year 1 month
220	2			1				1													4 year 3 month
337	2			2																	2 year
341	8	3	2	1	2																1 year 5 month

Table 6. Number of convicted persons for corruption-related crimes in the first instance courts (imprisonment sentences per duration; 2011)

Articles of the Criminal Code	Imprisonment sentences																		Average term	
	Convicted with imprisonment	Less than a year	1 year	2 year	3 year	4 year	5 year	6 year	7 year	8 year	9 year	10 year	12 year	13 year	14 year	17 year	18 year	19 year		23 year
221	9	3	2	2		2														1 year 9 month
332	25	11	2	3	5	1	1	1						1						2 year 3 month
333	10	2	3	5																1 year 5 month
338	71	5	11	17	15	7	1	1	1	6	4		2	1						3 year 8 month
339	17	3	4	2	1		3		2		2									3 year 6 month
339.1	3		1	1		1														2 year 4 month
182-(2,d)	61	35	5	5	3	1	3	5	2		1						1			1 year 2 month
192	34	7	5	6	2	4	5	2	2	1										3 year
194	40	9	7	3	1	2		1			3	3	1	2	4	2		1	1	6 year 1 month
220	3	1		1		1														2 year 2 month
341	8	1	2	2			2	1												2 year 10 month

Table 7. Number of convicted persons for corruption-related crimes in the first instance courts (imprisonment sentences per duration; 2012)

Articles of the Criminal Code	Imprisonment sentences														Average term
	Convicted with imprisonment	Less than a year	1 year	2 year	3 year	4 year	6 year	7 year	8 year	9 year	10 year	11 year	12 year	14 year	
221	5	3	1	1											11 month
332	7	2	1	1	1	1	1								2 year 5 month
333	3	2	1												8 month
338	37	1	6	9	9	3		3	1	2		1	1	1	4 year
339	4	2	1							1					2 year 9 month
339.1	1					1									4 year
182 (2,d)	26	9	13				4								1 year 7 month
194	18	8		1					1	1	1	5	1		5 year 7 month
220	2	1			1										1 year 9 month
341	2	1		1											1 year 3 month