

ACN

**Anti-Corruption Network
for Eastern Europe and Central Asia**

Anti-Corruption Division
Directorate for Financial and Enterprise Affairs
Organisation for Economic Co-operation and Development (OECD)
2, rue André-Pascal, 75775 Paris Cedex 16, France
Phone: +33(0)1 45241319, Fax: +33(0)1 44306307,
E-mail: anti-corruption.contact@oecd.org
Website: www.oecd.org/corruption/acn

OECD Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

Second Round of Monitoring

Georgia

Monitoring report

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Executive Summary

This report analyses progress made in Georgia in developing anti-corruption reforms and implementing recommendation received under the Istanbul Anti-Corruption Action Plan since the first monitoring round in 2006. The report also provides a set of new recommendations to continue supporting reforms efforts in Georgia in three areas: anti-corruption policies; criminalisation of corruption; and prevention of corruption.

Anti-Corruption Policy

Political will to fight corruption in Georgia was confirmed by the implementation of effective measures, which have significantly reduced the level of corruption in the country, especially administrative corruption affecting everyday life of citizens. National anti-corruption policy of Georgia was first expressed in the National Anti-Corruption Strategy and Action Plan adopted in 2005-2006; new National Anti-Corruption Strategy and Action Plan are currently under preparation and expected to be adopted in 2010. Although formal assessment of implementation of previous anti-corruption policy was conducted, a thorough use of this assessment was lacking in the development of the new strategy. Few surveys on corruption have been carried out in Georgia in recent years. Analysis of trends and level of corruption, as well as identification of risk areas should be more systematic, supported by the government and used in the anti-corruption efforts led by the government. Criteria should be developed to allow monitoring of implementation of anti-corruption actions by the government and civil society.

No specific anti-corruption awareness raising and education activities were carried out. While the government considers that the public perception is improving as a result of its actual work in preventing and fighting corruption, more systematic education and broader efforts to disseminate information specifically about anti-corruption policies and achievements in this area – other than those of criminal investigations – should be ensured.

A positive achievement showing commitment of the Georgian government is the establishment of the Anti-Corruption Interagency Council in 2008. The Council is tasked to coordinate anti-corruption efforts in Georgia. Composed of high level officials and supported by a Secretariat, the Council should also play a role in monitoring the implementation of anti-corruption measures and legal drafting in the area of prevention and fight against corruption. However, the analytical and organisational capacities of the Council should be improved and it should be provided with adequate resources. To ensure public trust the accountability of the Council to different branches of power, but also to the public should be increased.

While government declares that development of national anti-corruption policy is open to every interested party and the civil society, in practice it is limited to participation of four NGOs in the Interagency Anti-Corruption Council. More involvement of civil society in the development and also implementation and monitoring of anti-corruption efforts in Georgia is needed

Criminalisation of Corruption

Georgia has made significant progress in criminalising corruption in accordance with relevant international standards. Offences of active and passive bribery in the Criminal Code of Georgia include offer and promise of the bribe, bribery in favour of a third person and bribery through an intermediary. It is a positive development that Georgia has introduced criminalisation of solicitation of a bribe. The minimum

sanctions for offences of passive bribery and money laundering is 6 years of imprisonment, which appears disproportionate, and need to be reduced in cases where the damage is not significant.

Georgia is among first countries to introduce criminal liability of legal persons for a number of crimes, including corruption. While this is a very significant achievement, practical application of this novel provision is at its early stage and training of investigators and prosecutors on this matter could promote its more effective enforcement. While mandatory confiscation in all corruption-related cases is provided by the law, there is little practical evidence of its enforcement and procedures for identification and seizure need to be further improved. Certain improvements are needed to ensure effective international mutual legal assistance in investigation and prosecution of corruption cases.

The Investigative Division of the Prosecution Service is the central body to fight corruption through law enforcement in Georgia. The Division investigates and prosecutes corruption crimes, including having exclusive competence over certain high-level corruption crimes, and supervises corruption investigations of other competent bodies. Given that the prosecution system in Georgia allows the Minister of Justice to intervene in decisions taken in cases involving certain high level officials, there are concerns about the operational independence to investigate and prosecute corruption in Georgia. More efforts are needed to ensure that the prosecution service can investigate and prosecute corruption at high level autonomously.

Prevention of Corruption

Georgia has made important progress to establish legal and institutional basis for transparent and merit-based recruitment, remuneration and promotion of public servants. Among most recent developments are the new rules on competitive recruitment and appraisal of public servants adopted in February 2009. However, rules on recruitment and appraisal commissions and criteria for assessing candidates should be clarified. Rules on remuneration need to be more transparent. Discretion of the heads of public institutions in the appointment and appraisal remains wide and contain potential risk of politisation. While various elements of civil service are transformed continuously, the civil service reform still lacks a clear overall approach and coherent strategy. Principles of impartiality and political neutrality should be properly grounded in the reform.

While there is a legal obligation to develop a code of conduct for all public officials in Georgia, this has not been enforced in practice. In addition, training to public servants on prevention of conflict of interests and corruption, as well as on the new rules on whistle-blowers protection should be developed and provided in a systematic manner.

One of the main achievements in the area of prevention of corruption is the adoption of amendments to the Law on Conflict of Interest and Corruption in the Public Service in June 2009. The revised law introduces rules of whistle-blowers protection in Georgia for those public servants who report suspicions of corruption to senior management or to law enforcement bodies. According to the law, the Public Service Bureau is now the central authority in charge of collection and disclosure of asset declarations submitted by high level officials. An important step towards more public scrutiny in this respect is publication of the asset declarations on the website of the Bureau since end 2009. As a next step Georgia should consider possibilities to verify information provided in the asset declarations.

Practical enforcement of rules on conflict of interest should be pursued. No central body is responsible for this area. Roles of individual institutions and any central body should be further clarified.

A system of public financial control and audit is being put in place in Georgia. The external audit is ensured by the Chamber of Control and main internal audit bodies are Inspectorates General in all ministries and some public institutions conducting internal audit, which is compliant with EU standards. However, the internal audit is not compliant with broader international standards and lacks proper legal basis. The Law on Public Financial Internal Control should be adopted and implemented, including ensuring operational independence and necessary resources of internal control units and enforcing internal audit in practice.

In the area of public procurement, which is considered to be highly prone to corruption, Georgia has a decentralised system with procuring entities and the State Procurement Agency with limited co-ordinating and monitoring role. The reform of public procurement should be pursued with adoption of a new law that would ensure more transparency and monitoring, as well as introduce an independent and effective complaint procedure.

The system of political parties financing was introduced in Georgia in 2006 and was amended several times, providing for public funding for political parties, establishing limits of private donations, prohibiting anonymous donations and donations from legal persons and making information about donations public. A central institution for enforcing the political parties funding rules should be ensured, with appropriate authority and resources. Monitoring of donations and campaign expenditure should be improved.

Integrity and trust in judiciary are considered issues of concern in Georgia and should be further addressed by the government. More transparency in the judiciary should be introduced, including through disclosing information about criteria for selection and reasons for dismissal of judges and ensuring transparent and speedy trial of corruption and human rights cases.

Measures to prevent corruption should also involve the private sector. Georgian government should encourage businesses to develop and adopt internal control and ethical measures to prevent and expose bribery, including encouraging business associations to provide assistance in this area, in particular to small and medium size enterprises.

Second 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 targets Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan involves systematic and regular peer review of legal and institutional framework for fighting corruption in the targeted countries

The initial review of legal and institutional framework for the fight against corruption and recommendations for Georgia were endorsed in January and June 2004. The first round of monitoring took place from 2005 – 2007. The first round of monitoring report which assessed the implementation of recommendations and established compliance ratings of Georgia was adopted in June 2006. In addition to the adoption of the reports, since 2004 Georgia has provided updates about national actions to implement the recommendations at all monitoring meetings. Georgia has also actively participated in and supported other activities of the ACN.

The second round of monitoring under the Istanbul Action Plan started in summer 2009. Georgia and Azerbaijan are the first countries reviewed under this round. The government of Georgia provided answers to the questionnaire in August 2009.

The country visit to Georgia took place on 23 – 28 November 2009. The aim of the country visit was to meet with relevant state institutions, civil society and foreign missions to discuss progress made in Georgia in implementation of 2004 recommendations and identifying issues for further improvement in the areas of anti-corruption policy, criminalisation and prevention of corruption. Georgian authorities organized 8 thematic sessions with relevant state institutions, including the Parliament, Ministry of Justice, Public Service Bureau, Ministry of Finance, State Procurement Agency, Chamber of Control of Georgia, Supreme Court, Financial Monitoring Service, Public Defenders Office of Georgia, Central Election Commission, Tbilisi City Court, Chief Adviser to the Prime Minister. In cooperation with TI Georgia, the ACN Secretariat organized special monitoring session with civil society and businesses; a session for international organizations and bilateral donors was organized in cooperation with the USAID.

This examination of Georgia was led by the team leader Mr. Daniel Thelesklaf (Switzerland). The monitoring experts included Ms. Mari-Liis Sööt (Estonia), Ms. Olena Smirnova (Ukraine), Mr. Peter Strasser (United States) and Mr. Dmytro Kotliar (OECD). The coordination on behalf of Georgia was ensured by the national coordinator Mr. Vakhtang Lejava, Chief Adviser to the Prime Minister of Georgia in Economic and Governance Affairs and Deputy Chair of the Anti-Corruption Council.

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

The report was adopted at the ACN/Istanbul Action Plan plenary meeting on 31 March 2010. The report is made public after the meeting, including at <http://www.oecd.org/corruption/acn>. Authorities of Georgia are invited to disseminate the report. A follow-up mission to present the report is planned. To further support implementation of the recommendations, Georgia is invited to participate to the OECD ACN/Istanbul Action Plan Secretariat peer learning activities in 2010 and beyond.

Country Background Information

Economic and social situation ¹

Georgia covers an area of 69,700 square kilometres; 20% of its territory is not under government control. The population is 4.4 million. Georgia has a GDP of GEL 10.7 billion (USD 6.1 billion) in 2008 (per capita: \$2439), up 43% since 2003. The national resources include forests, hydropower, metals, fruits, tea and wine. The main trade partners are Turkey, Azerbaijan, Armenia, Germany, Ukraine, United Kingdom, Turkmenistan and the United States.

The dual shocks of the August 2008 armed conflict with Russia and the global economic downturn led to a sudden reversal of Georgia's strong and steady growth. GDP is expected to decrease by 4%. An economic recovery appears to be under way. 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.

Customs and trade regulations have been reformed significantly. The authorities have simplified and will continue to simplify the tariff structure and customs 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. Changes to the tax code reduced the number of taxes and broadened the tax base. The new licensing regime reduced the number of permits drastically and also provides for a "one-stop-shop"-concept and a "silence is consent"-principle for issuing licences. These activities are essential elements of the Government's strategy to reduce corruption.

Political structure

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 conflict with Russia over these territories has erupted in 2008.

The Georgian state is centralized, except for the autonomous regions of Abkhazia and Ajara. Those regions were subjects of special autonomies during Soviet rule, and the legacy of that influence remains.

Georgia is a democratic presidential republic. Since 2004 Mikhail Saakashvili is the President of Georgia. He was re-elected to a second 5-year term in January 2008.

The last parliamentary elections in 2008 were considered generally free and fair. The majority parties have 128 or 150 seats in Parliament.

Judiciary branch includes the Supreme Court (judges elected by the Supreme Council on the president's or chairman of the Supreme Court's recommendation); Constitutional Court; first and second instance courts.

Civil society in Georgia is vibrant and politically influential. Legislation provides for easy registration procedure and freedom of operations. NGOs are mainly dependent on foreign funding.

¹ International Monetary Fund, World Economic Outlook Database, October 2009

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 legal criminal responsibility for revealing state secrets. However, some reports express concerns about lack of transparency in shareholding structure of TV stations: “Georgia’s current regulation of the broadcasting sector has proven insufficient to ensure a transparent media ownership regime and to promote a competitive, pluralistic television market”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 have seriously undermined the credibility of the government. However, the new Georgian government in 2004 committed to tackle corruption at the highest levels, as visibly displayed by arresting and prosecuting several former government officials.

Georgia’s Transparency International CPI score increased from 2.0 in 2004 to 4.1 in 2009; Georgia is now on the 66th rank of 180 countries. This is by far the most significant increase for all Istanbul Action Plan countries. Georgia is now ranking higher than EU member countries Greece, Bulgaria and Romania. While all studies confirm that corruption has been widely eradicated from the citizen daily life, many civil society representatives and representatives of international organisations believe that high level corruption has not yet been combated sufficiently and there are concerns about corruption in public procurement and judiciary.

According to 2009 report by Freedom House, government in Georgia has made some progress to fight corruption, for example, in the area of higher education, but this process did not seem to address political corruption. Freedom House claims that democratic governance in Georgia is still in its early stages of development and there are concerns of political interference in the work of the judiciary.³

Progress in anti-corruption efforts has probably made the most significant impact on economic factors. In the latest Doing Business report Georgia moved up from 16th to 11th spot and it now ranks in top 100 in all of the indicators and in top 10 in four indicators. According to the latest Enterprise Surveys (2009), corruption has been eliminated from the top three impediments to doing business and investment in Georgia and is taking now a 7th place out of 10 proposed factors. The reported percentage of firms expected to pay informal payments is now dramatically below both region’s and world’s average and stands at 4,1% according to the World Bank Group’s Business Environment Snapshot for 2009.

² Transparency International Georgia, Television in Georgia – Ownership, Control and Regulation, November 2009, <http://transparency.ge/sites/default/files/Media%20Ownership%20November%202009%20Eng.pdf>

³ Freedom House, Nations in Transit 2009

Glossary

ABA	-	American Bar Association
CC	-	Criminal Code of Georgia
CEC	-	Central Election Commission
COC	-	Chamber of Control
CPC	-	Criminal Procedure Code of Georgia
FATF	-	Financial Action Task Force on Money Laundering
FMS	-	Financial Monitoring Service
FOIA	-	Freedom of Information Act
GAC	-	General Administrative Code of Georgia
GEL	-	Georgian Lari (GEL 1 = EUR 0.40)
GEPAC	-	Council of Europe Project to Support to Anti-Corruption Strategy in Georgia
GRECO	-	Group of States against Corruption
GYLA	-	Georgian Young Lawyers' Association
HCOJ	-	High Council of Justice
IG	-	Inspectorates General
NGO	-	Non-Governmental Organisation
OSMRC	-	Office of the State Minister for Reforms Coordination
PSB	-	Public Service Bureau
SAR	-	Suspicious Activity Report
SPA	-	State Procurement Agency
TI	-	Transparency International
UNCAC	-	2003 UN Convention against Corruption

1. Anti-Corruption Policy

1.1. – 1.2. Expressed political will and anti-corruption policy document

Previous Recommendation 1

Review and update existing Anti-Corruption policies; in order to demonstrate political will, mobilize civil society and all actors to participate; prioritise and focus on implementation measures. It is very important to review existing Anti-Corruption laws.

Recognising that the magnitude of challenges calls for active and rapid actions, Georgia should ensure that policy reforms are carried out in a fully transparent and participatory manner, are based on sound analysis and consistent with the overall reform objectives. In particular, the elaboration of the new Anti-Corruption strategy by the national Security Council should be open for public participation, pursuant to January 2004 recommendations 1 and 2.

Previous rating: Largely compliant.

During the monitoring period (2006-2009), the Georgian authorities and the leaders of the country showed strong political will to curb corruption. Thus, fighting against corruption was frequently mentioned in addresses of the President and constitutes one of the President's priorities. Political leaders also underline in their public speeches that combating corruption is one of their priorities. The program of the Government of Georgia 2008-2012 "Georgia without Poverty" also contains the part concerning the Anti-Corruption issues. The political will to fight corruption, especially in areas of the administrative corruption that relate to every citizen's life, is not doubted. Some civil society representatives are concerned that this political will addresses the issue of low-level corruption rather than of high level corruption. These concerns were echoed by representatives of some international organisations. However, none of these concerns were underpinned by concrete observations.

After the first round of evaluation it was marked that the Government of Georgia had applied a number of effective anti-corruption measures and substantial changes in legislation had been adopted. The National Anti-Corruption Strategy and Action Plan for its implementation had been drafted with some input from civil society and in cooperation with some international agencies in Georgia and had been adopted in 2005/2006. Herewith, many ideas of the civil society had been reflected in adopted documents.

The Government of Georgia stated that it considers the Anti-Corruption Strategy and Action Plan as effective tools in the area of prevention of corruption, and that is why such tools should be developed, implemented, updated on regular basis and the implementation of those program documents should be obligatory monitored.

The Action Plan was updated in 2007 and currently the Interagency Anti-Corruption Council is drafting a new Anti-Corruption Strategy and Action Plan. At the time of the on site visit, these documents were still in the form of drafts. They are planned to be finalized in March 2010 with the assistance of the GEPAC project. However the previous Anti-Corruption Strategy and Action Plans fulfilment has only been formally analyzed. The recently established Anti-Corruption Council is tasked to assess the old strategy.

1.3. Surveys

Most surveys that have been conducted in Georgia on anti-corruption are based on perceptions. There is very limited information about levels, forms, types, manifestations and location of corrupt practices. Such information could be utilized to inform policy-making and build cooperative partnerships with all stakeholders engaged in anti-corruption work at the national level. Surveys to qualify and quantify corruption at selected country levels provide independent, specific and reliable information to inform, trigger and monitor policy change.

No research on corruption had been done by the Government in 2006-2008, and there was no dedicated budget to develop anti-corruption studies or surveys. In July 2009 the Government of Georgia accomplished two surveys⁴ on corruption and quality of public services in Georgia. Those surveys had been done on Government's request by the Georgian Opinion Research Business International (GORBI Gallup International) that was identified through public tender organized by the Council of Europe (GEPAC project). Such exercises should be conducted regularly.

Georgia is largely compliant with the recommendation 1.

New 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.

1.4.-1.5. Public participation, raising awareness and public education

Involvement of civil society in the anti-corruption policy development process is limited to the NGOs' participation in the work of the Interagency Anti-Corruption Council. Several NGOs are members of the Council and the Government ensures that any other civil society organisation, which is eager to work in the anti-corruption sphere, is free to become a member of the Council. Civil society's participation in the assessment of the implementation of the Anti-Corruption Strategy and the Action Plans is complicated by the lack of implementation criteria.

Raising anti-corruption awareness and public education are not included in the objectives of the National Anti-Corruption Strategy. As the result there are no relevant implementing measures either in the 2007 Action Plan, or in the 2009 Action Plan. While various NGOs believe that raising anti-corruption awareness and public education are not a priority for the Government, the Government argues that the surveys do not sustain this view. No information was provided about awareness-raising activities or trainings provided by the Government to the general public, NGOs, mass media, business associations, private companies, or other groups.

Press conferences are organized only by the Prosecutor's Office concerning some major criminal cases. No information was provided about mass media appearances of the representatives of other bodies of executive branch, e.g. Cabinet or Anti-Corruption Interagency Council, in order to inform the general public about the on-going and planned anti-corruption activities and to involve citizens in their implementation. Thus, only the repressive aspects of the Government anti-corruption activities come into

⁴ (a) perception of general public, and (b) public servants)

notice of the general public. This, however, does not replace the need to inform the public on preventive anti-corruption activities of the Government.

The key elements of the successful implementation of the Anti-Corruption Strategy and Action Plan include the broad dissemination of these documents and information on their implementation. Such approach will facilitate awareness raising on the proposed reforms and will help to obtain more public support.

The fight against corruption can be effective when preventive, repressive and educational measures are combined. Anti-corruption education of the public shall be carried out at the educational institutions of all types and levels in accordance with their curricula, through the media and other means.

Corruption can re-emerge when and where there is a lack of public information and general public is not aware about how their rights and interests can be protected. That is why raising awareness and educating campaigns are of great importance and should be a continuous effort.

As an exception, in 2008, ABA developed an anti-corruption module for its Street Law program, which is taught in at least 7 high schools per year across Georgia. Street Law is a participatory legal education method, which aims at providing better skills-based education to law students, while at the same time trying to bring the study of law, democracy and human rights to the general public (in that case high school students). In 2008 ABA also developed an anti-corruption animation that its trainers use when teaching the anti-corruption module.

New Recommendation 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.

1.6. Specialised anti-corruption policy, co-ordination and law enforcement institutions

Previous Recommendation 2

Strengthen the existing Anti-Corruption Coordination Council, which should consist of persons with high moral and ethical standing, including representatives of the general public and from relevant executive bodies (administrative, financial, law enforcement, prosecution) as well as from the Parliament and civil society (e.g. NGOs, academia, respected professionals).

Previous rating: Largely compliant

The responsibility of coordinating anti-corruption policy in Georgia has been drifted from one institution to another. In 2005 the Office of the State Minister on Reforms Coordination took over the responsibility. By the time of the on-site visit in November 2009, the position of the Minister was abolished and coordination responsibilities in December 2008 transferred to the newly created Anti-Corruption Interagency Council.

The setting up of the Council was widely advertised in the media. Made up of high level officials, the Council has a coordinative role. The main objectives of the Council are (i) the elaboration of the anti-corruption strategy and action plan and (ii) the co-ordination of the implementation of the strategy and action plans. According to its Charter the Council also prepares a report on the implementation of recommendations by different international organisations.

The future role of the Council has been discussed in the context of drafting a new Law on the Conflict of Interests and Corruption in Public Service. In addition to the existing co-ordination task, the Council may also be authorised to monitor the implementation of the anti-corruption strategy and all drafts legal acts relevant to anti-corruption policy, including civil service reform.

Meeting once every three months, it is chaired by the Minister of Justice. The president of Georgia appoints members of the Council; they can be recalled by the President on any occasion. Members of the Council are high-ranking officials of the Government bodies and representatives of the civil society. Four NGOs participate in the Council: Transparency International Georgia, Georgian Young Lawyers' Association, Open Society Georgia Foundation and American Bar Association.

At the time of the on-site visit, the Council has been functional for less than a year. This short period does not allow a profound assessment on the work and achievements of the Council. However, there is no documentary evidence of the work of the Council. The lack of analytical capacity is one of the main deficiencies of the current anti-corruption policy coordination, which is partly attributable to the absence of dedicated staff. The Analytical Department of the Ministry of Justice serves as the Council secretariat, but the officials of the Ministry assigned for this job have other tasks as well. This leaves them little time for analytical work. Currently, no budget has been foreseen for creation of a Council secretariat. In 2009 the Council's initiatives were financed by the GEPAC project, which is implemented by the Council of Europe and funded by the Government of the Netherlands⁵. However, the establishment of a secretariat has been discussed in the Council meetings. The Government confirmed that, if needed, more resources would be allocated for the strengthening of the Analytical Department itself.

The creation of the Anti-Corruption Interagency Council as well as its high level composition shows the commitment and willingness of Georgian Government to tackle corruption. However, the current set-up has a number of weaknesses. Firstly, the Council has been established by a presidential decree which makes it easy to dissolve the Council at any time, thus making its continued existence vulnerable. Besides, the power of the President of recalling members at any time raises concerns about its impartiality. Secondly, while the Council is currently supported by the GEPAC project, it lacks continuous funding and human resources, which diminishes its analytical capacity and ability to implement anti-corruption policies. Finally, being a high-level co-ordination body without any reporting obligations affects effectiveness of its work and outputs. This is also reflected in the low level of public awareness of the objectives and activities of the Council.

Georgia is fully compliant with the recommendation 2.

New 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;***

⁵ http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/GEPAC/gepac_en.asp

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.).

Previous Recommendation 3 and Additional Recommendations 2 and 3

Establish a Specialized Anti-Corruption Agency with a mandate to detect, investigate and prosecute corruption offences, including those committed by high-level officials.

Previous rating: Largely compliant

The establishment of specialised anti-corruption bodies or persons is one of the many standards established by the UN Convention against Corruption. Article 36 of the Convention encourages the state parties to “ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement.”

The 2006 recommendation asked Georgia to establish an agency specialized in combating corruption through law enforcement. During the first round of monitoring, Georgia stated that the establishment of the Investigative Division of the Prosecution Service, which has the main jurisdiction for investigation and prosecution of corruption crimes in Georgia, effectively met this recommendation.⁶ In addition to the Investigative Division of the Prosecution Service, there are specialized units/divisions that deal with the corruption offences inside the Prosecution Service, Ministry of Internal Affairs, and Ministry of Finance, including:

1. Department of Procedural Supervision over Investigations in the Office of the Chief Prosecutor of Georgia.
2. Department of Constitutional Security of the Ministry of Internal Affairs of Georgia;
3. Investigative Division of the Revenue Service of the Ministry of Finance of Georgia.

The Government position is that there is no need for an independent, specialized anti-corruption body because the Investigative Divisions of the Prosecution Service, headed by a Deputy Prosecutor General, has autonomy in the jurisdiction over all corruption investigations. All investigative agencies are required to support and report to it. Thus, even though a corruption crime may fall within the investigative jurisdiction of a separate Ministry, the Prosecutor's Investigation Division will supervise the investigation. It also has exclusive jurisdiction over alleged corruption by certain higher level officials. A separate unit of investigators from the Ministry of Justice will investigate alleged corruption by prosecutors.

While personal and internal anti-corruption law enforcement specialisation in general is in line with international standards (see Article 36 of UNCAC), such persons and/or units should at the same time possess necessary level of functional independence to ensure effective investigation and prosecution of corruption offence.

Since the first round of monitoring, the Prosecution Service of Georgia has been subsumed into the Ministry of Justice, and the Chief Prosecutor is now subordinate to the Minister of Justice who is acting as Attorney General. A new Law on the Prosecution Service was adopted in October 2008. While institutional arrangement whereby the prosecution service is placed under the executive branch is acceptable, it

⁶ GRECO in its Final Compliance Report on Georgia's First Round Evaluation (document Greco Eval I (2005)4E Final, adopted in June 2006) found that establishment of a special unit in the prosecution service dealing with corruption cases was in line with its recommendation to set up an independent anti-corruption investigation unit (Recommendation XIV).

requires special attention to verify whether public prosecutors are able to perform their professional duties and responsibilities without unjustified interference.⁷

According to the Law on the Prosecution Service Minister of Justice of Georgia has direct prosecutorial powers concerning cases against certain public official, including President of Georgia, member of Parliament, member of the Government of Georgia, judges of general courts, prosecutors. Minister of Justice can also abolish acts of subordinated prosecutors, thus opening way for overriding prosecutor's decisions in individual cases.⁸ This raises concerns as to the operational independence of the prosecution service in Georgia in investigation and prosecution of corruption cases, especially with regard to the high-level officials.

As regards professional capacity the Government notes that the staff selection procedure at the Prosecutor's Investigation Division is thorough, comprising of oral interviews before a panel of both Government and non Government personnel. Although training is supposed to be carried out annually, in practice it is *ad hoc*. There are no mandatory hours to be completed each year. Much of the training is conducted by foreign experts operating under different donor organizations.

In a welcome change to the Criminal Procedure Code, it is now possible to open a criminal case concerning a corruption offence based solely on media reports, and to use evidence gathered by investigative journalists at trial. However, it is difficult to assess if the Prosecutor's Office will be willing and able to react to all media reports even-handedly.

The Investigative Division of the Office of the Chief Prosecutor has a staff of 26, out of which 17 are prosecutors, 8 investigators, and 1 specialist. The statistics below show the performance of the Division. However, the Government has not identified any of these defendants as being high-level officials.

Corruption-related registered offences	2006	2007	2008
Misappropriation or Embezzlement	530	412	237
Illicit Entrepreneurial Activity	98	58	22
Legalization of Illicit Income	5	13	7
Use/acquisition/possession/trade with objects obtained by legalization of illicit income	10	9	9
Abuse of Authority	64	31	16
Commercial Bribery	13	4	2
Abuse of Official Authority	374	316	145
Exceeding Official Authority	182	160	130
Passive Bribery	63	63	29
Active Bribery	18	43	18
Trading in influence	-	3	3

⁷ See, in particular, paragraphs 11 and 13 of the Council of Europe's Committee of Ministers Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system.

⁸ Opinion on Four Constitutional Laws amending the Constitution of Georgia, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009), Opinion no. 503 / 2008, Document CDL-AD(2009)017rev.

Accepting Illegal Presents	1	1	-
Service-related Forgery	82	80	43

Georgia is largely compliant with the above recommendations.

New 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.

Previous Recommendation 4

Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organized crime and those agencies responsible for the fight against corruption.

Previous rating: Partially compliant

There are no written guidelines for increased cooperation, exchange of information and resources between law enforcement agencies. Rather, the cooperation between them is more *de facto*, insofar as the Investigative Divisions of the Prosecution Service has the controlling jurisdiction over all corruption investigations. All investigative agencies are required to support and report to it.

The Government submits that indeed guidelines on "financial investigation and disqualification" have been prepared by the Ministry of Justice. In addition, there are in existence "practice of cooperation memorandums" between a few agencies. It further states that cooperation is rendered as the needs thereof may arise through the practice of creating *ad hoc* joint investigative teams of different law enforcement agencies. The legal basis for this practice is Article 61.3 of the CPC which stipulates that the prosecutor may decide, in writing, to assign the investigation of a case to any other investigator not directly involved in the investigation.

If a Ministry determines that a case falls outside its jurisdiction, it is mandated by law to refer the case to the appropriate agency. However, there are no formalised mechanisms for cooperation between agencies. The Government claims that law enforcement agencies co-operate on a regular basis through exchange of information and correspondence. Since it is the prosecutor who is actually the central procedural authority, he will bring together all investigative actions in a case and be informed on all developments in the case from the very beginning. The Government states that a guarantee of action is thereby ensured. Under Article 33 of the new Criminal Procedure Code (not yet enacted), the authority to initiate investigation/prosecution, close the case, or submit the case to the court will be vested solely in the discretion of the prosecutor. As regards the investigators, they are obliged to comply with the instructions of prosecutors.

Regardless, as was noted in the 2006 Report, to sustain the good practices and to ensure that they will be followed by every Government, written procedures and protocols must exist.

The co-operation between the General Prosecutor's Office and the country's Financial Intelligence Unit, the Financial Monitoring Service (FMS), can be intensified. No suspicious activity reports (SAR) related to

corruption have been identified so far. This is astonishing, considering that the FMS receives over 60.000 reports per year. An intensified cooperation could lead to a set of red flags or indicators for typical money movements in corruption cases. The FMS can use these indicators to train financial institutions and other reporting entities. The General Prosecutor's Office should also routine seek to access data from the FMS in ongoing investigations related to corruption.

Georgia is largely compliant with the recommendation 4.

New 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).

1.7. Participation in international anti-corruption conventions

Georgia is a Party to all main international anti-corruption treaties. Georgia ratified Council of Europe Civil Law Convention on Corruption in 2003. It had also acceded to the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Georgia, however, neither signed nor ratified the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

After the first round of evaluation, in 2008, Georgia became a Party to the UN Convention against Corruption and Council of Europe Criminal Law Convention on Corruption. Georgia was also among the first signatories of the Council of Europe Convention on Access to Official Documents in June 2009.

2. Criminalisation of Corruption

2.1.-2.2. Offences and Elements of offence

Previous Recommendation 5 and additional recommendation 4

Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the Criminal Code and other relevant legislation.

Ensure the implementation of outstanding January 2004 recommendations, in particular recommendations 6, 7, 8 and 10, which relate to bringing up criminalisation of bribery and corruption related offences in line with international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) and to responsibility of legal persons for corruption offences.

Previous rating: Non compliant

Article 339 of the Criminal Code of Georgia provides for the criminal responsibility for promising, offering or giving of money or other material benefits to an official or a person with an equal status⁹ ("**active**" **bribery**), in order for such person to perform or not to perform any action. It is welcomed that the new statute has clearly followed the international standard and now explicitly includes also offering and promising of a bribe. The bribe can be given in favour of the bribe taker (public official) or any third person. The authorities confirm that this covers also legal persons and associations. The receiver of the bribe does not need to be aware that a bribe is offered to him or her. The offender is exempted from criminal liability if the bribe is extorted from him or if he/she voluntarily reports the crime to a law enforcement agency before the agency become aware of the facts. Bribery through an intermediary is also covered ("direct or indirect"). There are two categories of the crime – a normal and an aggravated form. The latter will be applied when the active bribery is committed by a member of an organized group. So far, the provision for active bribery is consistent with the international standard. Article 339 CC is also in line with the international standard that asks for coverage of any "undue advantage".

Direct or indirect demanding of any material benefit, or accepting such a promise or offer by an official or a person with equal status, in favour of the bribe giver or a third party ("**passive**" **bribery**), is criminalised by Article 338 of the Georgian CC. It is sufficient to commit the crime if the person accepts the offer or the promise. A physical handover of the bribe is not required. It is positive that Georgia has introduction criminalization of solicitation of a bribe. There are two categories of the crime – a normal and an aggravated form. The latter will be applied when the bribe is demanded or accepted by an official with political status (as referred to in the Public Service Law), when a large amount is involved (GEL 10,000 (approx EUR 4,000) or when the crime is committed by a group¹⁰. In an even more aggravated form, passive bribery is punished harshly when committed repeatedly, by extortion, by an especially large amount of money (GEL 30,000, approximately EUR 12.000) or by a member of an organized criminal group.

⁹ The "person with equal status" refers to foreign and international public officials, see below Section 2.3.

¹⁰ A group must have a minimum of 2 individuals: Article 27 CC

Article 339¹ CC covers **trading in influence**. Only “illegal” influence is criminalised to reflect that “normal” lobbying is legal. The accepted forms of lobbying are described in the Law on Lobbying. Georgia had several successful prosecutions when Article 339¹ was applied: there were 3 cases in 2008 and 3 in 2009. One case dealt with a lawyer that offered his defendant undue influence on the decision of the court.

Embezzlement and misappropriation constitute a crime in Georgia according to Article 182 CC. The crime can be committed by any individual. If committed by a public official, this is regarded as an aggravated factor.

Abuse/excess of function is criminalized in Article 332 CC. However, the provision is only applicable if “substantial damage” to the state or a third party is caused. Under UNCAC, “damage” is not an element of the crime.

Illicit enrichment is a non-mandatory requirement of UNCAC. The criminal legislation of Georgia does not know a stand alone, explicit criminalisation of illicit enrichment. However, a note to the money laundering offence (Article 194 CC) says that “unjustified property or income” are considered illegal if a person cannot prove legal means of gaining such property or income. The authorities claim that this is a sufficient ground to forfeit the property based on Article 52 of the CC.

Georgia has introduced “**Private-to-private Bribery**” in Article 221 CC. It follows the structure of bribery in the public sector. The same comments apply.

Article 194 of the CC criminalises **money laundering**. By amendments of 19 March 2008, the relevant provision has been amended to bring it in line with the international standard (Vienna and Palermo Conventions). The old financial value threshold of GEL 5,000 for suspicious transaction reporting and the exemption for crimes committed in the tax and customs sphere have been removed. Georgia follows now an all-crime approach. All corruption related offences are predicate offences for the money laundering provision.

Incorrect or incomplete accounting is criminalized under Article 204 CC. The authorities confirmed that this covers also **false accounting** for the purpose of corruption and/or for hiding such corruption.

Georgia is fully compliant with the above recommendations.

Previous Recommendation 10

Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Georgia should, with the assistance of organisations that have experience in implementing the liability of legal persons (such as the OECD and the Council of Europe), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

Previous rating: Partially compliant

Criminal liability for legal persons has been introduced in Article 107 CC for a number of crimes, including bribe taking, trading in influence and money laundering. The crime is an act performed on behalf of the company by an authorized person. The authorized person is not necessarily a manager, any employee authorized to represent the company can trigger responsibility of the legal person. Releasing the physical person from criminal responsibility has no impact on the responsibility of the legal person. A conviction of the legal person does not exclude prosecution of the individual person that committed the crime. The

provision has been applied in some 15 plea bargaining cases (for “patronage”), but has not been tested in court yet. According to Article 107-1 CC, paragraph 4, legal person can be held liable even if the perpetrator (natural person) is not identified/prosecuted/convicted. Good anti-corruption compliance system of the legal entity can be regarded as a mitigating circumstance, but not as a defence. However, it is not clear whether the contractors or external agents are covered. Determination of the standard for “poor supervision and control” is in the discretion of the court in specific cases.

Georgia is fully compliant with the recommendation 10.

New Recommendation 2.1.-2.2.

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

2.3. Definition of public official

Previous Recommendation 7

Ensure that the definition of “official” in the Criminal Code encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.

Previous rating: Partially compliant

In the Chapter dealing with corruption offences, the Georgian CC refers to “public official or a person with equal status”. According to Article 4 of the Law on Public Service, a public servant is a citizen of Georgia performing paid job in state or self-governing (municipalities) agencies. The comprehensive list of stage agencies is contained in Article 3 of the Law on Public Service. Candidates for political office and staff members of the Parliament Commissions are not regarded as public officials. Public officials that are not paid are not regarded as public officials. Both, national public officials and officials in municipalities are covered.

The list of public officials is exhausting and covers the most important categories. The only shortcomings are candidates for political office and staff members of the Parliament Commissions.

Georgia is largely compliant with the recommendation 7.

New 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.

Previous Recommendation 8

Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

Previous rating: Non compliant

In the Chapter dealing with corruption offences, the Georgian CC refers to “public official or a person with equal status”. According to Article 4 of the Law on Public Service, a public servant is a citizen of Georgia performing paid job in state or self-governing (municipalities) agencies. The comprehensive list of stage agencies is referred to in Article 3 of the Law on Public Service. Public officials that are not paid are not regarded as public officials. Both, national public officials and officials in municipalities are covered. However, candidates for political office and staff members of the Parliament Commissions are not regarded as public officials.

For the purposes of Chapter XXXIX of the CC (“Crime in public office”), the term “persons equal to the status to public official” also includes **foreign public officials and staff of international organisations**, as well as members of foreign parliaments (Note 2 to Article 332 CC). The offences of active and passive bribery fully apply to these categories. There is no limitation to international business only, as referred to in the UN and OECD Conventions. Georgia is fully in line with this requirement. Interestingly, even the bribery of a foreign public official by a foreigner in a foreign country would be criminalised in Georgia, as Note 2 to Article 332 would apply equally to active and passive bribery.

Georgia is fully compliant with the recommendation 7.

2.4. Sanctions

Previous Recommendation 6

Amend the incriminations of active and passive bribery in the Criminal Code to meet international standards. In particular, clarify the relationship between the offence of passive bribery (Art. 339), and the offence of accepting prohibited presents (Art. 340). Consider increasing the punishments for active bribery and the statute of limitations for all corruption offences.

Previous rating: Non compliant

The following types of sanctions are provided for in the CC of Georgia: restriction of liberty, deprivation of the right to hold an office, deprivation of the right to hold a business licence, correctional labour and community service and fines. The ranges of sanctions are as follows:

Offence	Fine	Corrective labour	Deprivation or restriction of liberty	Deprivation of right to hold office
Active bribery (basic form)	Yes	Up to 2 years	Up to 3 years	No
Active bribery (aggravated form)	No	No	Up to 5 years	No
Passive bribery (basic form)	No	No	6 to 9 years	No
Passive bribery (aggravated form)	No	No	11 to 15 years	No
Abuse of official authority	Yes	Up to 4 months	Up to 3 years	Up to 3 years
Abuse of official authority by state political official	Yes	No	Up to 5 years	Up to 3 years

Trading in influence	Yes	Up to two years	Up to two years	No
Misappropriation / embezzlement (basic form)	Yes	No	Up to 4 years	No
Misappropriation / embezzlement (aggravated form)	No	No	2 to 7 years	Up to 3 years
Money laundering (basic form)	Yes	No	3 to 6 years	No
Money laundering (aggravated forms)	No	No	6 to 12 years	No
Commercial bribery	No	No	Up to 3 years	Up to 3 years

It is striking that the minimum sentence for passive bribery and for money laundering is 6 years of imprisonment. This is not proportionate and does not leave room for an appropriate sanction for facilitation payments, for example. There is a risk that the case will not be brought to the attention of a court because the minimal sentence is inappropriate.

Georgia is largely compliant with the recommendation 6.

New 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.

2.5. Confiscation

Previous Recommendation 9 and additional recommendation 6

Consider amending the Criminal Code to ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational. Explore the possibilities to check and, if necessary, to seize unexplained wealth.

Previous rating: Largely compliant

The Georgian legal system provides for the possibility of confiscation of the bribe. According to Article 52 of the Criminal Procedure Code, the proceeds of a criminal act can be forfeited and transferred to the state budget. The Georgian authorities consider this to be a basis for mandatory confiscation in all corruption-related cases.

The efficiency cannot be assessed as there are no statistics available on confiscations of proceeds of corruption. Anecdotal evidence has been noted, for example, the FMS is located in a confiscated mansion.

The Georgian authorities claim that the proceeds of corruption that have been transferred or converted can also be confiscated, but this is not substantiated by an explicit provision. The same can be said about confiscation from third parties. It is not clear if proceeds of crime can be confiscated from a third party.

The provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational have not yet been revised.

Georgia is largely compliant with the above recommendations.

2.6. Immunities and statute of limitation

Previous Recommendation 11

Adopt clear, simple and transparent rules for the lifting of immunity and limit the number of categories of persons benefiting from immunity (e.g. candidates for the Parliament) or the scope of immunity for some categories (e.g. judiciary) to ensure that it is restricted in applications to acts committed in the performance of official duties.

Previous rating: Largely compliant

Pursuant to Article 144 of Georgian Code of Criminal Procedure, immunity from prosecution is limited to the following public officials: the President, Members of Parliament, the Chairmen of the Chamber of Control, the Public Defender, and Judges. This immunity applies to all acts perpetrated by the person enjoying immunity, whether committed during the performance of official functions or not. The immunity can be lifted. The written rules defining the process and criteria for lifting immunities varies in accordance with the specific position of the public official.

Although the Criminal Procedure Code grants immunity from prosecution, the immunity does not apply to investigation. Thus, any investigative and operative-detective actions defined by the Georgian Code of Criminal Procedure and Law on Operative and Search Actions, including interviewing witnesses, search and seizure of bank and financial records, can be applied provided there is a formal commencement of investigation. These rules nonetheless make it difficult, if not impossible, for an anti-corruption unit to ever put together a prosecutive case built upon undercover, electronic surveillance, or search warrant evidence. For example, and of most particular interest to Anti-Corruption work, and to this recommendation, are the rules regarding Members of Parliament. Specifically, the arrest or detention of a member of the Parliament, the search of his/her apartment, car, workplace or his/her person shall be permissible only by the consent of the Parliament, except in the cases when he/she is caught *flagrante delicto*, which shall immediately be notified to the Parliament. Unless the Parliament gives the consent, the arrested or detained member of the Parliament shall immediately be released.

In the last years in 6 cases immunity of parliament members, including 4 from the majority party, was lifted, as stated by the Government.

Regardless, as was noted in the 2006 Report, the procedure for lifting the MPs' immunity seems to include an element of excessive scrutiny of a judicial decision by a political body.

In the current system immunity is not restricted to acts committed in the performance of official duties.

The Statute of limitations allow for sufficient time to investigate and prosecute corruption related cases:

Offence	Category of crime	Statute of limitations (years)
Active bribery (basic form)	Serious	10
Active bribery (aggravated form)	Particularly serious	15
Passive bribery (basic form)	Serious	10
Passive bribery (aggravated form)	Particularly serious	15
Abuse of official authority	Serious	10
Abuse of official authority by state political official	Serious	10
Trading in influence	Serious	10
Misappropriation / embezzlement (basic form)	Serious	10
Misappropriation / embezzlement (aggravated form)	Serious	10
Money laundering (basic form)	Serious	10
Money laundering (aggravated forms)	Particularly serious	15
Commercial bribery	Less serious	6

Georgia is largely compliant with the recommendation 11.

2.7. International cooperation and mutual legal assistance

Previous Recommendation 12

Ensure effective international mutual legal assistance in the investigation and prosecution of corruption cases.

Previous rating: Largely compliant

Georgia is a party to the major UN and Council of Europe treaties that contain provisions concerning mutual legal assistance (MLA) and extradition in criminal matters. Specifically, the basic legal framework is provided by: the United Nations Convention against Corruption; the Council of Europe Conventions (1957 Convention on Extradition and 1959 Convention on Mutual Assistance in Criminal Matters); the Minsk Convention, and the UN Convention against Transnational Organized Crime.

Georgia is also bound by bilateral MLA treaties with several countries. The Government notes that the number of bilateral instruments is increasing. The Government states that priority for signing bilateral treaties is given to non-European countries, as they are less covered in comparison to European ones. Thus, Georgia has entered into bilateral agreements that cover corruption offences with Armenia, Azerbaijan, Bulgaria, Kazakhstan, Turkey, Ukraine and Uzbekistan. The Government states it is in the process of negotiating MLA treaties with the U.S., Canada, and China.

The Georgian Criminal Code has provisions on cooperating with other countries based on international cooperation treaties concluded by Georgia. The Georgian Criminal Code further allows non-treaty assistance too. However, in those cases, a formal agreement establishing the rules of an *ad hoc* cooperation is required under Article 247 of the CPCG. All crimes covered by the Criminal Code, including corruption crimes, are subject to these provisions. According to the Criminal Code, those persons who are accused of committing an act that is not punishable under Georgian law cannot be subject to extradition. Also, according to the Constitution, the extradition of a Georgian citizen to another country is not permitted, unless otherwise provided in international treaties concluded by Georgia.

A draft law on “International Legal Co-operation in Criminal Matters” has been submitted to the Parliament.

The current law provides that MLA requests be made either through the Ministry of Justice of Georgia or the General Prosecutor’s Office. The Government has submitted statistics on international mutual legal assistance requests in the investigation and prosecution of corruption cases: “a total of 15 outgoing requests for MLA in corruption offences during 2006-2008, and 8 incoming requests for MLA from a foreign law enforcement agency, in the same period.” Although there has not been reported any specific challenge faced in getting or providing assistance in these cases, it is difficult to assess the effectiveness of these requests.

In the area of asset recovery, the Georgian legislation allows tracking, seizing, arresting, and confiscating property based upon a request for legal assistance from a foreign law enforcement agency. The Government notes that it cooperated in 19 such cases during 2006-2008.

The Georgian criminal procedure legislation is generally congruous with recommendations on international cooperation among law enforcement agencies. It is recommended, however, that the draft law on “International Legal Co-operation in Criminal Matters” include provisions authorizing: 1) the use of video cameras during depositions; 2) mandated confidentiality of a request; and 3) the formation of joint investigative bodies in relation to matters that are also subjects of investigations, prosecutions or judicial proceedings in other countries; 4) other measures provided for in the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS No. 182).

Georgia is largely compliant with the recommendation 12.

New 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.

2.8. Application, interpretation and procedure

Article 24, paragraph 5, of the CPC requires that an investigation must be completed within 12 months. While it is important that investigations should be carried on in a timely manner, the 12 month period is definitely too short to investigate complex corruption offences seriously. A strict deadline does not reflect the needs of the reality. When proceeds of corruption have been stashed away in financial centres abroad, it will most certainly take more than one year to trace, locate and freeze the accounts. This

limitation is a significant detriment to complex investigations and does not give the court enough flexibility to find case-to-case solutions.

New Recommendation 2.8.

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

2.9. Specialised anti-corruption law-enforcement bodies

(see section 1.6.)

3. Prevention of corruption

3.1. *Corruption prevention body*

(see section 1.6.)

3.2. – 3.3. *Integrity of public service and promoting transparency and reducing discretion in public administration*

Previous Recommendation 13

Introduction of a system of merit-based appointment and promotion in the civil service is needed.

Previous rating: Largely compliant

During the first monitoring round, the transformation of public service and introduction of merit-based appointments and promotions were praised; however recruitment procedures were criticized. One of the main concerns was that there were no uniform criteria. Recruitment procedures and selection criteria were determined by individual institutions. Due to this shortcoming, compliance with Recommendation 13 was rated as largely compliant.

During the second round of monitoring, the Georgian authorities demonstrated that uniform rules for appointment and promotion were introduced. Rules on recruitment, promotion, dismissal and other procedures are provided in the Law on Public Service. On 2 February 2009 the President of Georgia approved Rules on Holding Competitive Selection for Recruitment and Appointment on Positions in Public Service (*Rules of Recruitment*) and Rules on Appraisal of Public Servants (*Appraisal Rules*). The former determines the principles and conditions for holding competitions for vacancies at public service, while the latter specifies the principles and conditions of appraisal of the public servants who are already working in public administration. Appointment and appraisal rules are applicable to professional officials; they are not applicable to state-political officials, such as ministers. Besides, they are not applicable to the officials of legal entities of public law (e.g. public service bureau, public procurement agency, etc.) and members of the local self-governing authorities, as these sectors are not covered by the current public service legislation. The rules of recruitment also make an exception for those officials who are selected for the position related to secret information which might contain rather large number of officials to whom general rules of recruitment do not apply.

According to the rules of recruitment, public officials are recruited through competition based on assessment of compliance with the requirements of the vacancy's job description. All vacancies and results of the competitive recruitment procedures should be published. According to the appraisal rules performance of officials is appraised once in every 3 years and when promoted; results of the in-service appraisals are made available to all interested parties. Assessments and appraisals are carried out by commission established by the heads of relevant institutions. Number and members of the commission are defined by the head of the organization; there are no criteria for the establishment of these commissions.

The principles of competitive selection are impartiality, transparency, non-discrimination, publicity, collegiality and politeness. According to the rules, criteria for selection of candidates and appraisal of functioning public officials contain such categories as ‘qualification, level of professionalism, abilities and personal characteristics/features, which shall be determined by individual institutions’. According to the Survey results¹¹ the majority of surveyed respondents (74%) claimed that during the last two years human resource decisions were made in accordance with organizational policies and in a transparent manner. A wide range of job announcements are available in both electronic and printed formats, such as on the official websites of governmental organizations, on specialist “jobs board” web sites, received via e-mail from job list servers, and published in widely-distributed newspapers. Two thirds (67% of state employees) maintain that they enjoy job security. According to the rules the commission can oblige a candidate to perform different types of tests. In case of disagreement about the results of the recruitment competition or appraisal, the applicant of the public official has the right to appeal to the commission of appeals, established by the head of the individual institution; as other citizens, candidates or public officials can also appeal directly to court.

It appears that heads of institutions have important discretion in the appointment and appraisal of public officials. While they should be able to select and manage their human resources based on the needs of the institutions, the scope of their discretion is wide, which can lead to politization of public administration. Currently, head of the institution, having reviewed conclusions and recommendations of the commission, may overrule the commission’s decision (e.g. according to the appraisal rules, head of the institution makes decision on dismissal from the office, promotion/demotion, etc.), which may harm the principles of objectivity in appointing and appraising officials.

It appears that the rules provide large discretion to senior management of public institutions, i.e. of state-political officials, which can lead to undue influence of political officials on the professional decisions of public servants. In the context of the overhaul of the public service regulations, it will be important to clarify the rules for recruitment and promotion, e.g. through introduction of clear and unified criteria for the establishment of recruitment and appraisal commissions and clear criteria for assessing candidates and active public servants.

Senior managers and human resource units in individual public institutions should receive training on the recruitment and promotion rules.

Georgia is largely compliant with the recommendation 13.

See below new recommendation 3.2.-3.3.

Previous Recommendation 14

Prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Consider elaborating specific Codes of Conduct for public officials and work on their dissemination.

Previous rating: Partially compliant

¹¹ Perception of Corruption in Georgia, Survey of Public Officials, prepared within the framework of the Project on Support to the Anti-Corruption Strategy of Georgia funded by the Ministry for Development Cooperation of the Netherlands and implemented by the Council of Europe.

During the first round of monitoring, it was noted that ethical standards were scattered throughout several laws, including law on Conflict of Interests and Corruption in Public Service, Public Service Law, as well as specific norms established in selected institutions, such as Juridical Ethics Code, Code of the Prosecutors Office, Rules for officials in the Ministry of Finance and Customs officials. However, there was no general code of conduct for the public service. This assessment provided grounds to rate Georgia as partially compliant with Recommendation 14.

During the second monitoring round, it was determined that the Law on Public Service establishes code of conduct for all public servants (*Chapter VI¹: General Code of Conduct for Public Servants*). This step should be commended, however there is still no implementation mechanism supporting it. There has been no attention paid to local government officials in this respect, as the Public Service Bureau only focuses on central administration. Although the Public Service Bureau is responsible for general ethics trainings to public officials, each state body is responsible for conducting the trainings for its public servants.

According to GIPA¹² most of the ministries do not have budget for training; most of the trainings are provided by international organizations which means that only few public servants can have the training and these are not necessarily about ethics or rules on conflict of interest. There are few exceptions concerning law enforcement, though: Ministry of Justice has its own training centre which has organized number of seminars and trainings to prosecutors; Police Academy under the Ministry of Interiors organized trainings on the code of ethics to policemen.

For corruption prevention it is of utmost importance that ethics and conflict of interest rules are known within public service and the rules and norms are commonly agreed upon. Code of conduct *per se* does not prevent corruption but the implementation mechanism accompanying it (e.g. general ethics training to all public service, any other mechanism). Therefore it is necessary to establish centralised coordinated ethics training program to all public service, including local Government officials, and to guarantee unified approach, attributing the role to the sole institution (e.g. the Public Service Bureau) so that the awareness and application of ethics and conflict of interest rules would not depend on the institution concerned.

Georgia is fully compliant with the recommendation 14.

See below new recommendation 3.2.-3.3.

Previous Recommendation 15

Strengthen the Public Service Bureau to improve the observance of legal requirements in the civil service at large. Provided that the Public Service Bureau is strongly committed to upholding professional and legal standards in the civil service, it should be vested with powers to enforce legislation, in particular with the help of disciplinary actions.

Previous rating: Partially compliant

As reported during the first round of monitoring, the Public Service Bureau was established in 2004 on the basis of the Law on Public Service. The Bureau has a quasi autonomous status of a Legal Entity of Public Law: the Head of the Bureau is appointed directly by the President; the Head and the employees of the Bureau are not covered by the Law on Public Service; the Bureau is subject to control of the Chamber of Control. The Bureau is an advisory body to the President; its functions include analysis of public service regulations, coordination of human management activities in Government bodies and methodological support to training of public officials. Since 1 August 2009, the Bureau of Asset Declarations for Public

¹² GIPA, 2007, "The Prospects for Civil Service Reform: Ready, Willing and Able?".

officials was merged into the Public Service Bureau. Therefore, the Public Service Bureau has additional responsibilities for collection and publication of asset declarations of public officials. Currently, the Bureau has 14 employees.

The Public Service Bureau does not have powers to apply disciplinary actions, except for those related to asset declarations. However, as noted in the report from the first round of monitoring, general inspections established in all/many public agencies play an important role in enforcing various legal requirements and possess powers for application of disciplinary sanctions. It appears that they all have different rules and approaches, and there are no harmonised/unique rules, and largely depend on the head of the agency. In this context, the rules for the general inspectorates in various public institutions need to be clarified and unified; the role of the Public Service Bureau in the enforcement of legal requirements for civil servants vis-à-vis individual institutions will also need to be clarified, and may involve central capacity for training of civil servants on special requirements that concern them. Therefore it cannot be concluded that the Bureau upholds professional and legal standards in the civil service in general. Lack of coordination in local governments in this respect raises concerns too.

Georgia is partially compliant with the recommendation 15.

See below new recommendation 3.2.-3.3.

Previous Recommendation 16

Ensure a more effective enforcement of the Law on Conflict of Interest and Corruption. Consider strengthening the existing institution that monitors its implementation and provide the institution with the authority to verify the accuracy of submitted asset declarations. All asset declarations have to be available to the public.

Previous rating: Partially compliant

During the first round of monitoring, Georgia was considered partially compliant with Recommendation 16; main weakness was the absence of a structure capable to effectively monitor the Law on Conflict of Interest and Corruption that deals with the system of asset declaration for public officials.

The Law on Conflicts of Interest was amended in June 2009. In Georgia, term “public official” refers only to higher officials listed in the Law on Conflicts of Interest (e.g. president, members of parliament and Government, head of agencies). Previously this group of public servants were under more restrictions with regard to conflict of interest as the rules in the Law applied only to these higher public officials, however with the amendments the Law became applicable to all public servants.

The system of declarations of assets has not benefitted from any major changes recently, with the exception of the institutional arrangement. The Public Service Bureau is responsible for collection and disclosure of the declarations and controlling of timely submission of the declarations. According to Article 20 (1, 2) of the Law on Conflict of Interests and Corruption in Public Service in case of non-timely submission of the declaration the Public Service Bureau can issue a fine (1000 GEL= 415 EUR). Apart from public control, there is no review of the substance of the information submitted except for in the course of criminal investigation. As for certain data, it is nearly impossible to check the accuracy of the data unless criminal investigation is carried out which deviates from the initial meaning of the declarations (controlling and criminal investigation is not the main aim of declarations but publication and prevention instead). For example an official needs to declare cash possessed by him/her and family member amount

of over 4000 GEL (1660 EUR) or any contract concluded by him/her and his/her family member subject to which exceeds 3000GEL (1245 EUR).

Since the end of 2009, all asset declarations are automatically made public on the web site of the Bureau, which provides an important possibility for public scrutiny. Before that asset declarations were disclosed on request.

The number of officials who are obliged to submit declarations has increased from year to year. In 2005, 1571 declarations were submitted; the number had more than tripled by 2008: in 2008, 5106 declarations were submitted. According to Georgian authorities this is mainly due to the increase in the list of officials (mainly head of public legal entities) obliged to declare their assets. The constant growth in the number of declarations has to be monitored carefully to maintain the preventive function of declarations.

Currently Georgia has a double declaration system, there is a) the overall income declaration obligation upon entering public service and then annually, and b) there is a separate declaration of assets for higher officials. All public servants upon entering public service - and then at the end of each financial year - need to submit declaration on their financial situation and income according to the Law on Public Service. These are submitted purely for tax purposes to tax authority. High officials submit declarations of assets. The obligation to submit declarations lies only on high officials, e.g. president, members of the parliament, ministers etc. All data required in the asset declaration form is to be submitted not only for the person in question, but for all members of the family as well. During the on-site visit the evaluation team was informed that there is a plan to merge these two systems.

Georgia is largely compliant with the recommendation 16.

Previous recommendation 17

Adopt measures for the protection of employees in State institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants; adopt (basic) regulations on the protection of "whistleblowers".

Previous rating: Not compliant

During the first round of monitoring, it was noted that a special witness protection programme was foreseen under the National Anti-Corruption Strategy; however there was no regulation or awareness raising campaign on measures to protect employees of state institutions, who report suspicious practices in their institutions, i.e. "whistleblowers", from disciplinary actions or other harassment. As a result, Georgia was assessed as not compliant with recommendation 17.

As regards whistle-blowers' protection, the Law on Conflict of Interests and Corruption in Public Service now provides protection for public servants who report suspicions of corruption to senior management or to law-enforcement bodies. The rules on whistle-blowing are comprehensive. According to chapter V¹ of the Law protection is provided when whistle-blowing is done honestly, is confirmed by the evidence, while it is not protected when the information is wrong, when the whistle blower acts for his/her own personal profit. The complaints should be addressed to the structural subdivision of the corresponding public institution, which performs the control, audit and work inspection, but the whistleblower may take the complaint directly to the head of this public institution or before the superiors of the head of the state institution. The Law prohibits to intimidate, oppress or threaten a whistle-blower in discriminatory ways.

There is no obligation for the public institution to keep the whistleblower's identity in secret unless within criminal proceedings according to the Code of Criminal Procedures. However the whistleblower may not be subject to disciplinary or administrative procedures, hold otherwise responsible, release from the job until the untruthfulness of his/her information has been proved. The public institution must prove that whistle-blowing was not a reason for the actions mentioned above. There is no sanction in the law for violating the rule of protection of whistle-blowing.

No information was provided about internal awareness-raising of the new measures among civil servants. Therefore Georgian authorities should raise awareness of new measures on protection of whistle-blowing among civil servants.

Georgia is partially compliant with the recommendation 17.

Institutions and legal framework

The most important laws in the context of public service integrity are the Law on Public Service (1997) and the Law on Conflict of Interests and Corruption in Public Service (1997, amended in 2009). Taking into account major transformation of the public service which took place after the Rose Revolution, and continued incremental reforms in this area, both laws are largely outdated; they lag behind the existing practice and fail to provide a clear direction for the advancement of civil service reform based on the rule of law.

Between the two monitoring rounds, the Office of the State Minister for Reforms Coordination was the key player in the public service reform; it was abolished. The Public Service Bureau (PSB) is currently the main body of the executive power responsible for public service regulation (see Recommendation 15). Besides, there is the Public Service Council that is an advisory body to the president, established by the Law on Public Service. The Public Service Council has become dysfunctional and seems to exist only formally, with only two members in the Council and the fact that the members had not met even once within last five months. The future role of the Council has been discussed but it is still not clear whether the Council would be dissolved or merged with some other already existing Council.

The debate about the main ideological direction for the civil service reform was ongoing already during the first round of monitoring; it was based on the rejection of the 'old fashioned' bureaucracy, direction towards liberal economy and therefore flexible and effectively performing public administration. However, this debate is yet to be translated into a tangible policy; many elements of civil service reform are still to be elaborated.

Remuneration

The Presidential Decree of 1996 established a general salary scheme for public service; special laws regulate salaries in banking sector and in the judiciary. As reported during the first round of monitoring, salaries for public officials were increased, and specific measures were introduced to harmonise wage levels across the public service. However, there is no unified remuneration scheme for public service; every public agency regulates this issue with its internal act. The salary may contain the fixed salary, a premium (based on performance) and an allowance (based on duration of service, rank); premiums and allowances can equal up to 100% of the fixed salary. Premiums and allowances are financed from spare/unused resources of the salary fund of each agency; their allocation is in full discretion of the senior management. For example, in the Ministry of Justice, heads of departments propose premiums to their

staff on a monthly basis; these proposals should be approved by the minister subject to available funds. Salary fund (including premium fund) of the budget organisations is determined by the law on budget. According to the budget law, legal persons of the public law have right to allocate the premium during the year (from budget funds or from their own funds) not exceeding 20% of annual remuneration. The budget organisations have a right to increase their premium fund during the year only in the scope of 1/12 of amount approved by the law for remuneration. Premiums are allocated for execution of overtime or/and particularly important work on the basis of the organization's individual legal act. Variable part of the remuneration, such as premiums and allowances, should not permanently represent a dominant part in the total pay of civil servants. Allocation of the variable part should be made transparent and should be based on clearly defined rules, to avoid unlimited discretion of senior managers, i.e. state-political officials, and to ensure the best value for public money.

Rules on conflict of interest and post-office employment

Currently, there is no central body responsible for ensuring the implementation of conflicts of interest rules; this responsibility is de facto given to individual institutions. There exists no information on the application of the rules in practice. It will be important to ensure that the new Public Service policy and legislation establish principles of legality and impartiality in public service, that it provides a clear definition of conflict of interest, rules of incompatibility and regulations for proper conduct for public servants. It will be also important to identify which body or bodies are responsible for considering and solving conflict of interest cases, and to clarify the roles of individual institutions vis-à-vis any central body responsible for civil service reforms.

As for post-office employment, according to the Article 65 of the Law on Public Service, public official in the course of 3 years after leaving his/her official position is prohibited to perform activities in the enterprise which was under his/her supervision within last 3 years when performing his/her official duties. The person is also prohibited to receive an income from this enterprise. "Supervision" is defined in the Law on Conflict of Interests and Corruption in Public Service (Article 6 (2)) through "supervised person" who is a person given indications for redressing deficiencies in the acts issued or action performed, to suspend the act or performance of action, or to repeal the act. There is no indication about the duration (whether it is temporary or incidental) of the supervision whether a person can be denied from entering private sector due to one-time supervision or should the supervision be of longer time. Besides there is no information how this rule is being enforced; it is up to the human resource management units to monitor the implementation of the rules. Therefore it is necessary for the Georgian authorities to make sure that the post-office employment rules are enforced in practice.

Gifts

In June 2009, the amendments to the Law on Conflict of Interests and Corruption in Civil Service clarified the definition of "gift". According to Article 73⁵ of the Law on Public Service, public servants are not allowed to receive any type of gifts or services that can influence execution of their work obligations. The rules on "gifts" are very detailed in Georgia: the law stipulates the upper limits of the value of the gifts and lists exceptions. For example, according to Article 5 the total sum of gifts received per year cannot exceed 15% of the official's years wages; the value of one gift received by public official or his/her family member shall not exceed GEL 1,000 (EUR 400). There is a list of exceptions in the law so that grants, scholarships by international organizations, diplomatic gifts, symbolic souvenirs, etc. are not considered as gifts. From 1 June 2009 the rules on gifts apply to all public officials, while previously applied only to higher officials (Article 2¹).

New 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.***

3.4. Public financial control and audit

No previous recommendation

Management of public funds carries high corruption risks. Diversion, embezzlement or other forms of corrupt actions with financial resources administered by public authorities can undermine ability of the Government to achieve its goals and affect economic growth and social development of the whole country. Robust public financial management system is therefore crucial for effective and efficient public governance and reducing opportunities for corruption. It is a new topic for assessment, as it was not covered in the first round of the monitoring under the Istanbul Action Plan.

Public internal financial control (includes financial management and control and internal audit) is decentralised in Georgia and is carried out by the relevant budget spending units (state and local self-Government agencies, public law legal persons, etc.), inspectorates general of the executive bodies and Ministry of Finance that plays certain coordinative role. External audit is included in the mandate of the Chamber of Control of Georgia.

Georgia, in general, has established a sound system of preparation, discussion, approval, execution, reporting and auditing of the budget according to the Budget System Law. All state financial transactions are consolidated under the Single Treasury Account and the Treasury exercises an effective *ex ante* control when processing transactions.

Main internal control bodies in the public administration are the so called Inspectorates General (IGs) that were created in all ministries and some other public agencies. Their role in the financial management and control system lies mainly in the *ex post* inspection to verify legal compliance and detect fraud and corruption. Regulations on some of the IGs mention internal audit, but in practice no IG conducts internal audit according to EU standards on a regular basis. IGs of the civil ministries conduct inspections and administrative/disciplinary inquiries with detected allegations of criminal misconduct being referred to the law enforcement bodies. However, IGs in the Ministry of Justice (Prosecutor's General Office) and Ministry of Interior have also the right to conduct operative measures and pre-trial investigation. Administratively an IG is subordinated directly to the relevant minister who appoints/dismisses the head of this unit and can also order termination of any inquiry/inspection carried out by the IG. IG in the Ministry of Finance is an exception, as it is a separate entity under the Ministry and head of the unit is appointed by the Prime Minister upon submission of the Minister of Finance.

IGs in Georgia play an important role in ensuring compliance with legislation and uncovering corrupt acts by conducting inspections. Their effectiveness is, however, seriously affected by the lack of necessary autonomy, scarce resources and non-harmonised procedures. IGs do not have a functional independence to conduct effective inspections and properly contribute to the internal control system. IGs are often understaffed and do not have sufficient resources. Also their budgets are included in the budget of the ministry and thus can be restricted by the minister. Each ministry has its own regulations on the IG that provide for different modalities of operation, reporting responsibilities, etc. IGs are also not appropriate bodies to conduct internal audit, as the latter is supposed to assess effectiveness and soundness of the internal control, of which the IGs are themselves a part.

Internal audit according to international standards is absent in Georgia, but creation of relevant units is provided for in the Public Finance Management Reform Action Plan adopted in 2009 and implemented by the Ministry of Finance. Internal audit units should be created in all ministries and carry out assessment of financial system, procedures, operations, internal control and risk management according to international standards¹³. Internal audit should in particular aim at detecting deficiencies in the management system that facilitate or create opportunities for corruption. They must have functional independence from the managers of the institution. Oversight and co-ordination of the internal auditing (as well as of the financial management and control) should be carried out by the Central Harmonisation Unit to be based in the Ministry of Finance.

There is also no proper legal basis for the internal audit and control in Georgia. Article 44 of the Budget System Law provided that procedures for the audit of revenues and expenditure transactions should be approved by the Ministry of Finance and Chamber of Control (CoC). These rules should have also been a basis for relevant audit procedures to be prepared and approved by the local self-Government bodies. None of the mentioned documents have been enacted. Also the role of the Chamber of Control in approval of the internal audit procedures is questionable, as the Chamber would have to audit how the system of internal control is functioning and it would therefore result in a conflict of interests.

External audit is within the remit of the CoC whose activity is regulated by the relevant law (a new wording was enacted in January 2009 replacing the 1997 Law). CoC is an independent supreme audit institution that is accountable to the parliament. It is supposed to conduct compliance and financial audit and from 2012 will also have to carry out a performance audit. In practice, however, the activity of the CoC is limited to inspections of compliance with relevant legislation and budgets. Audit of the financial systems and of internal control and internal audit functions are not carried out.¹⁴

The new law has extended the auditing authority of the CoC 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 per cent of shares.

If an allegation of a criminal act is discovered during the audit conducted by the CoC it immediately notifies the law enforcement bodies thereof. In a positive development, under the new law the CoC is to forward for the possible criminal prosecution only relevant materials and not the whole audit report as before. The law enforcement authorities have also to inform the CoC of the measures taken upon the notification of a possible crime.

¹³ *E.g.* International Standards for the Professional Practice of Internal Auditing of the Institute of Internal Auditors.

¹⁴ Public Expenditure and Financial Accountability Assessment of Georgia, World Bank and European Commission, November 2008.

New 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 (inspectors 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.

3.5. Public procurement

Previous Recommendation 18

Review the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.

Previous rating: Largely compliant.

Public procurement is one of the areas highly prone to corruption risks. Bribery and other forms of corruption can occur at different stages of the procurement process: from formulation of procurement needs, definition of tender requirements, choice of procedure to awarding of contracts and procurement contract management.

Government procurement in Georgia is regulated by the Law on Public Procurement that entered into force in 2006 and regulations approved by the State Procurement Agency.

Public procurement is decentralised in Georgia and carried out by procuring entities – mainly ministries and other executive bodies. State Procurement Agency is responsible for co-ordinating and monitoring state procurement. It supervises the legality of procedures related to the state procurement, provides dispute settlement, develops legal acts and standard tender documents, develops training programmes, etc. Since May 2007 the head of the State Procurement Agency is appointed and dismissed by the Prime Minister (previously by the Minister of Economic Development). State Procurement Agency combines the functions of supervision, policy regulation and review of complaints. This creates a problem of conflict of interest that should be addressed.

In 2007 the World Bank conducted Country Procurement Assessment that concluded that Georgian procurement system was still classified as “high risk”, as it was during review in 2002.¹⁵ One of the issues is the lack of independent review mechanism and restriction preventing appeals against decisions on the type of procurement chosen by the procuring agency (e.g. single-source procurement).

In December 2008 the law was amended to include mentioning of the register of “unreliable persons, contenders and providers participating in the procurement” which is maintained by the State Procurement Agency and includes entities banned from participation in the procurement for 2-year term. While it may be useful to keep track of companies that failed to perform properly under procurement contracts, it is much more important to introduce administrative sanction of debarment of companies convicted for corruption-related offences and keep a register of such entities. This was a part of the original recommendations that to date has not yet been implemented.

In November 2009 the parliament of Georgia adopted a new law on public procurement that will come into force in several stages and is supposed to be fully enacted on 1 September 2010. From this date Georgia is supposed to move to e-procurement system, giving up any paper-based procedures. This is a very ambitious objective that requires allocation of significant resources and extensive training of procurement officials.

Among many other substantial changes in the procurement regime the new Law will abolish the category of procurement from a single source as such by introducing instead a simplified tender procurement in certain cases. It will also supposedly address the problem of transparency of the procurement process by mandating electronic processing of all related documents and making the system of e-procurement accessible to public scrutiny. If properly implemented this would address concerns about the deficiencies in the integrity of the procurement system present now.

One of the problems of the current system is the mechanism for review that does not provide for an independent review body to deal with complaints. The new law proposes to address this by setting up a complaint review panel that would consist of Government and civil society representatives and convene when a complaint is filed. Georgian authorities explain such approach by the low number of complaints submitted to the State Procurement Agency in the previous years (e.g. only 8 complaints in 2008). Most complaints are filed with the procuring agencies or directly to courts. Such situation, however, may be explained also by the lack of trust in the ability of the SPA to deal properly with the complaints, in particular because of the inherent conflict of functions under the current arrangement. The solution proposed by the new law is an unusual one and should be closely monitored to verify its effectiveness.

Georgia is largely compliant with the recommendation 18.

New 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.

¹⁵ The Assessment noted that substantial improvements and reforms were needed to bring the system up to the international best practices in terms of economy and efficiency, transparency, non-discrimination and equal treatment

3.6. Access to information

Previous Recommendation 19 and Additional Recommendation 7

Ensure that the access to information legislation limits discretion on the part of the public officials in charge as to whether the requested information should be disclosed, and to limit the scope of information that could be withheld. Consider steps to reach out to both, public officials as well as citizens to raise awareness about their responsibilities and rights under the access to information regulations.

Ensure the implementation of outstanding January recommendations in the area of transparency of civil service and financial control issues.

Previous rating: Largely compliant

In June 2009 Georgia was among the first states to sign the Council of Europe Convention on Access to Official Documents (CETS No. 205). Access to information issues in Georgia are regulated by the Freedom of Information Act (FOIA) incorporated into the General Administrative Code of Georgia (Chapter III of the GAC). According to Article 36 of the General Administrative Code every public agency is supposed to designate an official responsible for ensuring the accessibility of public information. Public Defender (Ombudsman) of Georgia is responsible for monitoring FOIA implementation by public agencies within his general mandate for overseeing human rights. Within last two years Public Defender has received about 50 complaints on the violations of the rules of disclosing of information, majority of which included breach of the Freedom of Information Act. Public Defender has asked for feedback from the agencies on the further status of his requests (e.g. what kinds of sanctions were imposed), but often received no information from the agency concerned. Public Defender cannot challenge the violation in court.

The definition of a public agency/office covers not only administrative bodies, but also legal entities of private law receiving budgetary funds from national or local entities. This creates a very broad and commendable coverage, but reportedly does not necessarily ensure thorough implementation, since according to NGOs met during the on-site visit not all organizations are aware or willing to provide information. In 2008 the Georgian Young Lawyers' Association (GYLA) carried out a survey according to which 62 of 100 requests of information sent to public institution were answered, the rest did not give any answer.

All public information kept by a public agency shall be entered into the public register. Public agencies have separate registration systems and thus use different registers, some agencies keep their registers electronically. In order to obtain public information, a person shall submit a written request; the applicant shall not be required to specify grounds or purpose for requesting the information. Accessibility of such registries is questionable as they are not always available on ministries' web sites or in hard copy. GYLA has created a database of contact persons of public institutions available on their web page and distributed on CDs.

According to the statistics of the Public Service Bureau in 2007 there were 211 967 requests for public information of which 1.2% were rejected (based on the analysis of 99 public agencies); in 2008 there were 258 463 such requests out of which 5.2% were rejected (based on the analysis of 649 public agencies).

There have not been major changes since the last monitoring report and the same problems seem to exist in the area of implementation of the FOIA, namely the discretion of officials to interpret what is personal secret; failure to provide public information in due time limits (maximum 10 days); failure to provide any response to the request and refusal to register request of public information. NGOs attribute this partly to the fact that designated officials have other tasks among answering the requests from the public.

There is no body responsible for the regular training of information officers and therefore the training is incidental. There have been few awareness raising activities by the Georgian Young Lawyers' Association targeted at general public and trainings by the Public Defender's Office for public officials and journalists. Few training sessions have been carried out by the training centre of the Ministry of Justice. Thus it is necessary to carry out systematic training to information officers and other public officials as well as private entities receiving state budgetary funds on obligations to provide access to information.

No public authority has the mandate to systematically control implementation of the law on access to information (e.g. random checks on the submission of information on due time-limits, consideration of complaints). Public Defender's Office has no proper resources so far to perform this role. Powers of the Public Defender's Office should be strengthened in this regard or an independent Information Commission (Commissioner) be set up. It should have the authority to receive explanation and additional information from public bodies to review and decide on the complaint, issue mandatory instructions to such bodies concerning disclosure of information or apply to courts on behalf of the complainant, apply sanctions to officials.

Georgian legislation does not provide for a list of information that should be published by the public bodies proactively, i.e. without prior request. Such proactive publication should include, in particular, information on powers and structure of the public authorities, their budgets and financial reports, how the public can influence decision-making or provide other input, what public services are available, procedures to access information and contacts of public servants, including information officers, decisions of the body and their drafts, statistics and other publicly important information. Availability of such information facilitates public access to information and ensures better transparency of public administration. It can also decrease the number of information requests by pre-empting disclosure.

All court judgments are in principle public and can be accessed upon request. Some courts selectively publish their judgments on their websites. There is no unified register of court decisions, although the judiciary is now elaborating an electronic case-management system that would cover all common courts of Georgia and provide access to judgments. Such system when created should allow access to final judgments not only to the parties of the case but also to any other person. This would significantly improve transparency of the judiciary and allow public scrutiny of court decisions.

Defamation is not criminalised under the Georgian law and no special protection is granted to public officials with regard to the damage to their dignity.

Georgia is largely compliant with the above recommendations.

New 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.*

3.7. Political corruption

No previous recommendation

Area of political corruption, in particular the question of political party finances, was not covered by the 2004 recommendations to Georgia and subsequent first round of monitoring. Second round of monitoring includes relevant issues, as the problem of corruption in politics becomes more and more visible in the world and there is a body of international standards and best practice in this area.¹⁶

Political parties in Georgia are governed by the Organic Law on Political Unions of the Citizens that was adopted in 1997 and amended several times after that. State financing of individual members of the parliament existed in Georgia since 2000. The current system of party financing was introduced in 2006 and was amended several times since then with the last changes passed in December 2009. As a result of the 2008 amendments to the Law on Political Unions of the Citizens state financing is allocated to parties who have overcome 4% threshold during parliamentary elections or 3% threshold during local elections (Art. 30).¹⁷ Amendments also provide for creation of a special fund for party development (funds for research activities, conferences, business trips, seminars, etc.) and NGOs affiliated with parties. This fund shall be administered by the Centre of Development, Reforms and Education, duties of which are fixed in its Statute and the Election Code. Functions of the Centre cover but are not limited to the support of election reforms, monitoring the election process, elaborating recommendations under its competence, teaching election administration employees, etc.

State funding as an alternative source of party financing is an important instrument to prevent political corruption and subversion of parties by private interests. Georgian system ensures allocation of budgetary funds to political parties according to the level of their popular support and is therefore on a par with other European states. In the first half of 2009 (January to July) “United National Movement” (the President’s party) received 43% of the state funds, followed by the “Giorgi Targamadze Christian Democrats” (14%), while the rest of the parties got less than 10% of the allocations each.

Every citizen of Georgia has the constitutional right to found the party; party has to be registered in the Ministry of Justice. Besides state funding, the parties are entitled to collect membership fees, donations

¹⁶ See, among other documents, Recommendation No. Rec (2003) 4 of the Committee of Ministers of the Council of Europe to member states *on common rules against corruption in the funding of political parties and electoral campaigns*, Recommendation No. 1516 (2001) of the Parliamentary Assembly of the Council of Europe on *Financing of political parties*; Guidelines on *financing of political parties* by the Venice Commission (CDL-INF (2001) 8).

¹⁷ According to March 2008 amendments to the electoral legislation, 75 members of the 150-members parliament are elected under a list-based proportional system in one nationwide constituency, and another 75 are elected in 75 single-mandate constituencies. Threshold, which parties and blocs must pass to participate in the allocation of mandates from the proportional component, is 5 %.

from natural and legal persons, as well as have income from parties' activities (e.g. income from selling of party symbols, giving of lectures, etc).

The main body responsible for administration of elections is the Central Election Commission (CEC). The Commission is made up of 13 members. The CEC Chairperson is elected by the CEC opposition party members. President of Georgia nominates 3 candidates after the consultations with the NGOs. If CEC opposition party members fail to elect the Chairman within the 5 days after their nomination or if neither of the candidates receives 4 votes, the Parliament of Georgia is obliged to elect the latter from the same 3 candidates and 5 members are elected by the Parliament upon nomination of the President of Georgia, while 7 members are appointed by political parties that receive state funding.¹⁸ During the election period a financial monitoring group is set up, which is an *ad hoc* body composed of well-known persons in society, e.g. auditors, professors, representatives of NGOs, experts, lawyers. The role of the group is monitoring of donations and expenditures from the campaign funds of election subjects. The Election Code, however, is lacking provisions on the powers of the financial monitoring group and mechanism of its operation. The Statute of the Monitoring Group and its duties and mechanism of its operation prepared by the Group members themselves is to be defined by the CEC Decree within 5 days upon its nomination.

The value of the donations received by the party per year cannot exceed 30 000 GEL (13 000 EUR) from natural person and 100 000 GEL (41 000 EUR) from legal person. Anonymous donations are prohibited and in case it happens, they will be transferred directly into the state budget. Donations have to be transferred by bank, thus no cash donations are allowed, except for donations not exceeding 300 GEL (120 EUR) by natural persons. The Law explicitly prohibits making donations on other person's behalf. Donations from foreigners, public law legal persons and companies with at least 10% of state shares are prohibited as well. As a result of violation of donation rules a party will be banned from the state funds up to 4 years (depending on the value of the illegal donations), besides the donation will be transferred to the state budget. There is no statistics on the use of the aforementioned sanctions in Georgia. There is no limit on the maximum amount of the membership fee. This creates a loophole that allows circumventing restrictions on private party donations through establishing possibilities for illegal donations.¹⁹

Information on the donations of a party is public, including information on each natural and legal person making a contribution. According to the Law by 1 February each year parties need to publish its annual financial declaration in the press together with an independent opinion of an auditor. During the on-site visit the interlocutors expressed their concerns about impartiality of the auditors, as parties are entitled to choose any auditor who might disregard violations by the party and give aspired opinion on the financial declaration. Moreover, the same auditor may audit the same party each year, which makes it even more difficult to have objective information on party's finances. There is no control over auditors' activities in this respect. After the declaration is published in the media, the CEC and local tax body receive the declaration. There is no unified form for annual financial declarations. CEC does not carry out an audit of the financial reports by parties.

According to the Unified Election Code election subjects are required to open election campaign funds. Contributions to the election campaign fund are considered to be the funds deposited to its account by natural persons and legal entities, as well as all kinds of material values and services received free-of-charge. Election subjects submit only one report on the funds used for elections - no later than one month after the publication of election results. For parties (blocs) that overcome the threshold such reporting deadline is 8 days after the Election Day. Manager of the election campaign fund is obliged to inform corresponding election commission about the source, amount and date of the donations according to the

¹⁸ [http://www.venice.coe.int/docs/2008/CDL-EL\(2008\)016-e.asp](http://www.venice.coe.int/docs/2008/CDL-EL(2008)016-e.asp).

¹⁹ See, for example, Third Round Evaluation Report on Estonia (Theme II) by GRECO, paragraph 66.

defined forms every month during the period (at least two times). Also for parties (blocs) that overcome the threshold, by the preliminary information, such reporting deadline is 8 days after the Election Day; and all of them have to submit the reports no later than one month after the publication of election results. No disclosure and reporting are required before the Election Day, thus not allowing voters to be apprised of the party's or candidate's election campaign funding sources.

Georgian system of party finances contains basic rules in line with the European standards and practice. Its weakness, however, lies in the lack of proper monitoring and control over party financing by public authorities. The CEC has neither a mandate nor the resources to closely and rigorously control compliance with party financing legislation. Without such mechanism of monitoring and supervision the system of political party financing is incomplete and makes regulation of party donations useless. Reports by independent auditors is a form of internal control and as such is important but cannot replace effective state supervision over party finances and should be used only as an additional tool to assist parties in compiling accurate financial reports. Effective control over party finances is all the more important, because under the Unified Election Code of Georgia there is no limit on the amount of funds a party can contribute to its own election fund.

Lawful lobbying in Georgia is regulated by the 1998 Law on Lobbyist Activity that establishes rules for registration as lobbyists, their rights and duties. Monitoring team received no information on the practical implementation of this Law.

New 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.***

3.8. Integrity in the judiciary

No previous recommendation

The Government has taken many welcome steps towards judicial reform. The Government is well aware that if it is to build lasting democratic institutions, judicial reform must be at the centre of government policy. An independent judiciary free from executive influence is the cornerstone to guaranteeing human rights, free elections, independent media, and sanctity of property and contract rights. The measures taken by the Government in the past three years have gone a long way towards meeting concerns in this

area. Nonetheless, improper influence from the prosecutor's office and the executive branch continue to be a public relations issue facing the judiciary.

Georgia's judicial system consists of regional (city) courts, appellate courts, and the Supreme Court. There is also a Constitutional Court, separate from this common courts system. The regional (city) courts are courts of first instance, whose number and territorial jurisdiction are established by the High Council of Justice (HCOJ). Wherever practicable, judges will specialize in either criminal or civil/administrative cases. There are presently two appellate courts, in Tbilisi and Kutaisi. The appellate courts are courts of second instance and are also established by the HCOJ. Appellate judges likewise are specialized, and also have their own Investigative Collegium. The Supreme Court, located in Tbilisi, is the highest court in Georgia. Since 2005, it has functioned exclusively as a court of cassation, charged with ensuring uniformity of judicial practice, supervising the administration of justice, and deciding on issues important for the development of justice. It reviews the lower courts' application of law to the facts, but does not re-evaluate the facts themselves.

Judgments and decisions in all courts are publicly delivered (even the decisions of *in camera* hearings are made public). The Supreme Court, the Constitutional Court, appellate courts, and some regional (city) courts publish judicial decisions on their websites. Decisions from other courts are available to the public upon request. Courtroom proceedings are generally open to the public and the media, and courtrooms are usually adequate to accommodate them. But since 2007, the media has been banned from recording court proceedings. Allegedly, the presence of cameras in the courtroom during hearings was considered to "cause provocations, deter comprehensive and impartial discussion of the case, and improperly influence the judge." Because standing is not permitted in courtrooms, the number of observers is limited by the number of seats. Generally, few citizens attend trials, and the media do so only in sensational cases or cases of political significance.

Regional (city) court and appellate court judges are appointed for a term of 10 years, and may serve for more than one term. The Chairman and other Supreme Court judges are appointed for a term of 10 years by a majority vote in Parliament, upon nomination by the President. They may also serve more than one term. Judges are well paid, from GEL 2,300 to 5,100 per month. Fixed-term tenure of judges and possibility of their re-appointment raises the question of whether such decisions are made objectively and on merit and without taking into account political considerations.²⁰

Per constitutional amendments adopted in December 2006, the HCOJ, which had been an advisory body to the President of Georgia regarding judicial matters, was reorganized as an independent agency of the judicial branch. The HCOJ is now directly responsible for appointing and dismissing judges of the regional (city) and appellate courts, whereas it used to just make recommendations to the President. The HCOJ has also been restructured and expanded from 9 to 15 members. In conformity with international standards, more than half of the members are now judges (namely, the Chairman of the Supreme Court and eight other common court judges elected by the Conference of Judges). The Chairman of the Supreme Court now chairs the HCOJ (previously it was the President of Georgia).

Judicial vacancies are publicly announced. The HCOJ has the authority to appoint a candidate to each vacant position based on the candidate's qualification in written and oral examination results, professional and moral reputation, ability to assess issues freely and impartially, professional work experience, and physical health. It must be noted, however, that although the procedure for selection and promotion is "merit based," there are no established criteria. Selection/promotion is totally discretionary.

²⁰ See, inter alia, Opinion No. 1 of the Consultative Council of European Judges on standards concerning the independence of the judiciary and the irremovability of judges.

Some observers have criticized the oral examination process as particularly susceptible to the introduction of subjective criteria, suggesting that “reliability” is an important factor for appointment, as are contacts and personal relationships. Further, there are no selection criteria for promotion to chief judge for a district. It has happened (e.g. Batumi) that new judges with no judicial experience have been promoted to chief judge over other candidates who have served a respectable amount of time on the bench.

Candidates for judicial appointment are now required to complete a 14-month training course at the High School of Justice. The course includes lectures and seminars on legal theory, internships in all three levels of courts to give students practical experience, and completion of a thesis.

Georgian Constitution affirms that the judiciary shall be independent from the other branches of government: a judge shall be independent in his activity, and any pressure upon a judge to influence his decision is prohibited and punishable by law. In a major breakthrough, Georgian law now provides that “no one shall have the right to demand from a judge an account as to a particular case.” Thus, judges can no longer face disciplinary sanction (as they had in the past) for incorrect interpretation of the law (i.e., deciding a case in a fashion that displeased the executive branch). In 2007, the “Law on Communication with Judges” was adopted to prohibit any form of communication with a judge during an ongoing trial, in order to address concerns surrounding the common Soviet practice of ‘telephone justice.’”

These recent changes represent steps in the right direction to cure the past deficiencies in the system that had posed significant threats to judicial independence. Further, in October 2007, the Conference of Judges adopted new judicial ethics rules, which are mandatory for all judges. All judges have and are being trained in the ethics rules. It is, for example, an ethical violation for a judge both to engage in *ex parte* communication and/or not to report such an attempted communication. In 2008, 35 cases were brought against judges (out of 1,256 complaints filed). Twelve judges were found guilty of violating the ethics rules, and three were dismissed. A Disciplinary Collegium of Judges (comprised of 6 judges) hears the disciplinary case and renders punishment, if any. Appeal is to the Supreme Court.

Nevertheless, the perception remains that judges are heavily influenced by the executive. The judiciary is one of the least trusted institutions in the country. The high court fees, the duration and complexity of the court processes and the cost of legal representation may add to this negative perception.

Reportedly, the judges acknowledged that the perception of the judiciary should be improved and this was sustained by a number of polls²¹.

According to NGOs, there is a variety of reasons contributing towards this public perception, including:

1. The judiciary’s rulings in high-profile cases wherein opposition defendants consistently appear to get heavier sentences than similarly placed Government defendants. Also, cases brought against opposition activists on charges of “hooliganism” are given the stamp of approval by the judiciary. NGOs report that incidents of violence or intimidation against opposition supporters are seldom investigated²².

2. The decisions as to whether to appoint or discipline a judge remain confidential, and thus are not open to public scrutiny. Although, as noted above, a judge can no longer be removed for rendering unpopular decisions, there does seem to be enough play in the ethics rules that the HCOJ could still bring proceedings against a judge in disfavour. See e.g. *Rules of Judicial Ethics of Georgia*, Article 2, par 2(c) “engaging in activity incongruent with the position of a judge,” and par 2(e), “improper fulfilment of the

²¹ CRRC poll, conducted in August 2009

²² Transparency International Georgia, *Reform or Retouch, Georgia’s New Wave of Democracy*, pp.18-19

duties of a judge.” Thereby, the real reason for removal can be masked.

3. The regional courts were consolidated into the regional (city) courts, thereby reducing their number from 72 to 15. Judges whose courts were eliminated were either assigned to another court or dismissed (and placed on a list of reserve judges). There simply was a lack of transparency surrounding the HCOJ’s decisions on which judges to assign to the reorganized courts and which to place on the reserve list, as well as a lack of apparent objective criteria for making such decisions. Thus, the public perception naturally was that judges were occasionally dismissed for acquitting criminal defendants or otherwise failing to reach a judgment desired by the government. A report states that reliability was the primary criterion for selecting judges for appointment to the reorganized courts, rather than consigning them to the reserve list²³.

4. The criminal conviction rate averages around 96%. That could be because the prosecutor’s office is doing a good job screening and preparing cases for trial, or it could be because “telephone justice” still exists. It is no longer necessary, however, to pick up the telephone, as judges know what is expected of them. According to the former Public Defender, the prosecutor’s office has become “the executive punitive tool which implements the Government’s political decisions and, for its part, completely governs the courts.” In July 2008 the Chairman of the Supreme Court of Georgia stated that the judges were not independent due to the lack of principles and tradition of an independent judiciary.²⁴

True or not, factors such as this need to be addressed by the Government in order to improve trust in the judiciary. Other commentators on the Georgian judiciary have made similar observations and recommendations regarding transparency. It can only help to increase public trust in the judiciary if the interview process and criteria for selecting judges were made public, as well as the reasons for their dismissal. Another area for the judiciary to help build public trust is to carefully scrutinize high-profile and human rights cases, insist on equal treatment for Government opponents, and to show it can indeed rule against the government.

New 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.

3.9. Private sector

No previous recommendation

The private sector has not yet been involved in the Anti-Corruption policy of Georgia. The OECD Recommendation for further combating bribery of foreign public officials in international business transactions of 29 November 2009 calls on Governments to support awareness raising initiatives in the private sector. Countries should take the necessary steps, taking into account, where appropriate, the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation, so that laws, rules or practices with respect to accounting requirements,

²³ ABA, Judicial Reform Index for Georgia, April 2008, pp. 35-36

²⁴ “Judicial reform initiatives: results orientated?”, by *Giorgi Chkheidze*, Deputy Public Defender of Georgia. “Spotlight on Georgia”, Foreign Policy Centre, <http://fpc.org.uk/fsblob/1079.pdf>.

external audits, and internal controls, ethics and compliance are in line with the following principles and are fully used in order to prevent and detect bribery of foreign public officials in international business, according to their jurisdictional and other basic legal principles.

UNCAC (Art. 12) also asks Georgia to take measures to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

Financial institutions are required to determine the identity of beneficial owners of funds deposited and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates (so called PEPs – Politically Exposed Persons; Art. 52 UNCAC and FATF Recommendation 6). Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

New 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.

Summary Table

Pillar I. Anti-Corruption Policy						
New structure	New recommendations	Previous recommendations	Rating			
			fully	largely	partial	not
1.1. Expressed political will						
1.2. Anti-corruption policy document		1. Review and update of anti-corruption policy		+		
1.3. Corruption surveys						
1.4. Public participation	+					
1.5. Raising awareness and public education						
1.6. Anti-corruption policy and coordination institutions	+++	2. Coordination of anti-corruption policy	+			
1.7. International anti-corruption conventions						
Pillar II. Criminalisation of corruption						
2.1. Offences	+	5. Harmonisation of criminal, admin. and disciplinary offences	+			
		10. Responsibility of legal persons	+			
2.2. Elements of offence						
2.3. Definition of public official	+	7. Definition of an official		+		
		8. International and foreign official	+			
2.4. Sanctions	+	6. International standards for active and passive bribery, prohibited gifts, sanctions for active bribery and statute of limitation		+		
2.5. Confiscation		9. Confiscation, provisional measures, unexplained wealth		+		
2.6. Immunities, statute of limitation		11. Categories protection by immunities, functional immunity, rules for lifting immunity		+		
2.7. International cooperation, MLA	+	12. Mutual legal assistance		+		
2.8. Application, interpretation and procedure	+					
2.9. Specialised law-enforcement bodies		3. Anti-corruption prosecution department		+		
		4. Guidelines for exchange of information and cooperation between law-enforcement bodies		+		

			fully	largely	partial	not
		21. Financial intelligence unit				
Pillar III. Prevention of corruption						
3.1. Corruption prevention body						
3.2. Integrity of public service	+	13. Merit based appointments and promotion		+		
		14. Practical guidelines, Code of Conduct	+			
		15. Civil service regulations and standards, and disciplinary actions			+	
		16. Control of asset declarations		+		
		17. Protection of whistleblowers			+	
3.3. Transparency and discretion			20. Liberalisation of business environment	+		
3.4. Public financial control, audit	+					
3.5. Public procurement	+	18. Public procurement		+		
3.6. Access to information	+	19. Access to information legislation		+		
3.7. Political corruption	+					
3.8. Judiciary	+					
3.9. Private sector	+					