ISTANBUL ANTI-CORRUPTION ACTION PLAN

FOURTH ROUND OF MONITORING

GEORGIA

PROGRESS UPDATE

This document contains the progress update and assessment of implementation of recommendations from the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan for Georgia. This Progress Update was adopted at the ACN Plenary meeting on 13 September 2017.
## CONTENTS

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Anti-corruption action plans</td>
<td>7</td>
</tr>
<tr>
<td>2</td>
<td>Anti-corruption awareness raising and education</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>Anti-corruption policy co-ordination institution</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>Policy framework for integrity in the civil service</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Legal framework for the civil service reform</td>
<td>23</td>
</tr>
<tr>
<td>6</td>
<td>Professionalism in the civil service</td>
<td>27</td>
</tr>
<tr>
<td>7</td>
<td>Merit-based recruitment and promotion</td>
<td>29</td>
</tr>
<tr>
<td>8</td>
<td>Remuneration of civil servants</td>
<td>33</td>
</tr>
<tr>
<td>9</td>
<td>Conflict of interest, asset declarations and other anti-corruption requirements</td>
<td>36</td>
</tr>
<tr>
<td>10</td>
<td>Protection of whistle-blowers</td>
<td>42</td>
</tr>
<tr>
<td>11</td>
<td>Integrity of political public officials</td>
<td>46</td>
</tr>
<tr>
<td>12</td>
<td>Integrity in the judiciary</td>
<td>49</td>
</tr>
<tr>
<td>13</td>
<td>Integrity in the public prosecution service</td>
<td>68</td>
</tr>
<tr>
<td>14</td>
<td>Transparency in the public administration</td>
<td>78</td>
</tr>
<tr>
<td>15</td>
<td>Integrity in the public procurement</td>
<td>85</td>
</tr>
<tr>
<td>16</td>
<td>Business integrity</td>
<td>95</td>
</tr>
<tr>
<td>17</td>
<td>Criminal law against corruption</td>
<td>101</td>
</tr>
<tr>
<td>18</td>
<td>Liability of legal persons</td>
<td>104</td>
</tr>
<tr>
<td>19</td>
<td>Foreign bribery</td>
<td>107</td>
</tr>
<tr>
<td>20</td>
<td>Procedures for investigation and prosecution of corruption offences</td>
<td>110</td>
</tr>
<tr>
<td>21</td>
<td>Anti-corruption criminal justice bodies</td>
<td>113</td>
</tr>
<tr>
<td>22</td>
<td>Procurement for infrastructure projects</td>
<td>118</td>
</tr>
</tbody>
</table>
About the OECD

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD’s mission is to promote policies that improve economic and social well-being of people around the world. Find out more at www.oecd.org.

About the Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor co-ordination via regional meetings and seminars, peer-learning programmes and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at www.oecd.org/corruption/acn/.

About the Istanbul Anti-Corruption Action Plan

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

After the adoption of the Monitoring Report, the evaluated country presents a Progress Update at each subsequent ACN Plenary meeting.

The Progress Update begins with a description of the methodology, followed by the summary of the assessment of implementation of recommendations, as agreed during the Plenary Meeting of September 2016. It then goes into each recommendation separately, providing the country report, as well as the ACN and expert evaluation. Each recommendation section includes all progress updates since the last monitoring report.

The Progress Update follows the following steps:

1. Progress Update reports are prepared by country representatives

These documents include information on implementation measures taken for each recommendation, and may also cover additional anti-corruption developments. Country representatives submit a written Progress Update report to the ACN Secretariat through appointed National Co-ordinators, together with supporting documents, such as laws and statistical data. Civil society also submits alternative reports on progress.

2. Preparation of preliminary assessment by ACN Secretariat and experts

The Secretariat and the experts who contributed to the Monitoring Reports (or delegates replacing the experts) study the Progress Update reports and prepare a draft progress assessment for the Plenary Meeting. Civil society is also invited to contribute to the evaluation.

3. Discussion at ACN Plenary meeting

ACN Secretariat and experts discuss the Progress Update during a bilateral preparatory meeting with country representatives. The Plenary then discusses and endorses the assessment.

4. Finalisation of Progress Update

Following the Plenary Meeting, the Secretariat adds the final assessment to the Progress Update reports, finalises and publishes them on the ACN website.
PROGRESS UPDATE SUMMARY

18th Istanbul Anti-Corruption Action Plan Monitoring Meeting 12-13 September 2017: Assessment of the Progress Update of Georgia was prepared by the following experts: Davor Dubravica, Croatia; Evgeniy Smirnov, EBRD; Mary Butler, USA; Tetyana Kovtun, Ukraine; and Dmytro Kotlyar, OECD/ACN Secretariat. The evaluation is based on the Government’s Progress Update and submissions by Georgian NGOs (Georgian Young Lawyers’ Association - GYLA, Procurement Monitoring and Training Centre, Institute for Development of Freedom of Information - IDFI, Transparency International Georgia - TI).

19th Istanbul Anti-Corruption Action Plan Monitoring Meeting 3-5 July 2018: Assessment of the Progress Update of Georgia was prepared by the following experts: Davor Dubravica, Croatia; Mary Butler, USA; Tanya Khavanska; and Anette Nahapetjan, OECD/ACN Secretariat. The evaluation is based on the Government’s Progress Update and submissions by Georgian NGOs (Institute for Development of Freedom of Information - IDFI, Transparency International Georgia – TI, and Human Rights Education and Monitoring Center (EMC)).

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Assessment of progress</th>
<th>18th Meeting</th>
<th>19th Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>September 2017</td>
<td>July 2018</td>
</tr>
<tr>
<td>Recommendation 1</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 2</td>
<td>Lack of progress</td>
<td>Lack of progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 3</td>
<td>Lack of progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 4</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 5</td>
<td>Lack of progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 6</td>
<td>Lack of progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 7</td>
<td>Progress</td>
<td>Lack of progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 8</td>
<td>Lack of progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 9</td>
<td>Lack of progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 10</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 11</td>
<td>Lack of progress</td>
<td>No rating</td>
<td></td>
</tr>
<tr>
<td>Recommendation 12</td>
<td>Significant progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 13</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 14</td>
<td>Lack of progress</td>
<td>Lack of Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 15</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 16</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 17</td>
<td>Lack of progress</td>
<td>Lack of progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 18</td>
<td>Significant progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 19</td>
<td>Lack of progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 20</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 21</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
<tr>
<td>Recommendation 22</td>
<td>Progress</td>
<td>Progress</td>
<td></td>
</tr>
</tbody>
</table>

Note:

Significant progress – important practical measures have been taken by the country to adequately address many elements of the recommendation (more than a half). This can involve the adoption and/or enforcement of an important law.
**Progress** – some practical measures have been taken towards the implementation of the recommendation. For example, drafts of laws that have been at least approved by the government and submitted to the parliament would constitute "progress" for the assessment of Progress Updates.

**Lack of progress** – no such actions have been taken.

Recommendations that appear to be fully addressed can be closed for the progress update procedure and further evaluated only as a part of the monitoring procedure.
CHAPTER 1: ANTI-CORRUPTION POLICY

Recommendation 1: Anti-corruption action plans

Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.

Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation.

Promote the development and implementation of an anti-corruption action plan for the local self-government level.

Develop impact indicators for the monitoring of the next anti-corruption action plan.

Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.

Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.

18th Monitoring Meeting, September 2017

1.1. Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.

**Government report**

New Anti-Corruption Action Plan was adopted by the Anti-Corruption Council (ACC) on April 24, 2017. Each activity in the Action Plan except of implementation of those which do not require additional expenses (as they are foreseen by the state budget by the means of remuneration for the staff) has its own budget. Budget allocation is secured as activates are also reflected in the State Budget for 2017 and are part of BDD (Basic Data Direction document) for the next year. Additionally, some of the activities are financed by the donors such as USAID, EaP, UNDP, World Bank, UNICEF, UNFPA, PROLoG, etc. Thus, the budget for the implementation of the Action Plan is allocated.

**NGOs report**

According to NGOs, draft Anti-Corruption Action Plan for 2017-2018 was elaborated through a number of working group meetings and was presented to the Council on April 24, 2017. The action plan presented to The Council and approved includes the attachment of budget estimate for the activities. However, new action plan is not yet approved by the Government and is not publicly available on the webpage.
1.2. Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation

**Government report**

Revised Anti-Corruption Strategy and Action Plan for 2017-2018 are based on 16 strategic Priorities of Corruption Prevention. Additionally, a number of Anti-Corruption activities are included in the separate chapter for the Criminalisation of Corruption. Sectorial ministries and other state agencies are responsible for the implementation of the planned activities foreseen in the Action Plan.

Planning process of the Anti-Corruption Strategic documents includes analysing different sources of information, recommendations and standards of international and local organisations, international surveys and assessments, thematic publications of local and international organisations and public entities, state policy documents, performance evaluation of the action plans of previous years, the analysis of existing corruption risks and recommendations of international and non-governmental organisations, national legislation and existing practice. Furthermore, the meetings of the expert level working group operating under the (Anti-Corruption Council of Georgia (ACC) are organised and the existing challenges and corruption vulnerabilities are discussed.

One of the key goals of the planning process is the taking responsibility over implementation of corruption prevention based, actual, achievable and effective activities and respective indicators.

**NGOs report**

Sectoral Anti-Corruption action was elaborated only for Increasing the Transparency and Integrity of the Ministry of Regional Development and Infrastructure of Georgia (MRDI) (2017-2018). Throughout 2016, IDFI has been actively supporting the Ministry in the process of developing the sectoral integrity strategy and action plan. IDFI recommended the elaboration of transparency and accountability strategy and action plan for the security sector was based in the framework of Anti-Corruption Action Plan. This recommendation was not reflected in the action plan. In addition, IDFI considers that the resources of the secretariat will not be sufficient to work with other ministries/agencies independently outside the framework of the action plan on the elaboration of sectoral actions. Moreover, no information is provided by the Secretariat on the agenda to initiate work on the sectoral actions.

TI Georgia is not aware of any anti-corruption actions developed in sectoral ministries and agencies.

1.3. Promote the development and implementation of an anti-corruption action plan for the local self-government level.

**Government report**

For increasing transparency and accountability of representative and executive bodies of municipalities, the National Anti-Corruption Council accommodated a new strategic priority - "prevention of corruption in the activities of self-government bodies” into the policy documents in 2015. Number and the scope of activities applicable to the corruption prevention in municipalities were increased in the new Anti-Corruption Action Plan for 2017-2018.
**NGOs report**

In the action plan presented to the Council priority 14 is related on the prevention of corruption in the local self-governing bodies. This part includes 6 different activities of Rustavi Municipality City Hall and Council, Telavi Municipality Council and Tbilisi Municipality City Hall. Although involving the above-mentioned municipalities is a positive step, IDFI considers that including selected municipalities in the action plan does not adequately reflect the challenges identified within Recommendation 1(3). The Secretariat of the Council has not devoted a separate meeting to the issue of a separate action plan for the local level. In addition, the actions given in the 2017-2018 action plan only include several municipalities, which does not offer a unified policy solution for all municipalities. IDFI recommends to adopt measures/legislative amendment proposals that will have a collective effect. It is also vital to include the Ministry of Regional Development and Infrastructure in the elaboration of a separate action plan, since MRDI is a central government institutions that serves as a liaison between the central government and municipalities.

1.4. Develop impact indicators for the monitoring of the next anti-corruption action plan.

**Government report**

Indicators for the Anti-Corruption Action Plan are developed to measure the targets/results. During the monitoring process for every 6 month the targets for implementation of each measure are monitored, whereas at the end of action plan (2-year period) the monitoring and evaluation of achieved results are analysed based on the SMART indicators.

**NGOs report**

New Anti-Corruption Action Plan is not yet approved by the Government of Georgia and is not publicly available. Updated monitoring framework is also not presented to the members of the Council. Despite the fact that the action plan approved by Council includes both outcome indicators, it does not include indicators that measure impact.

1.5. Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.

**Government report**

No further action has been taken at this stage.

**NGOs report**

The plan to conduct survey based on the impact indicators is not presented by the Secretariat. Activity 4.6. of new Action Plan (not approved by the Government yet) envisages elaboration of analytical and legal research in the anti-corruption direction. The same activity indicates that at least one research should have been elaborated and published on the MoJ’s or ACC’s webpage in the first half of 2017. However, no document was published by the Secretariat. Also, the Action Plan does not include activities related to launching of separate webpage of the ACC.

1.6. Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.
**Government report**

As required by the recommendation and as ensured by the internal monitoring and evaluation mechanism, the ACC Secretariat implemented the practice of giving the time of minimum two weeks for the feedback from the non-governmental sector during elaboration and monitoring and evaluation processes of the anticorruption strategic documents.

**NGOs report**

During the elaboration of new Action Plan sufficient time for feedback and recommendations (2 weeks) was provided to CSOs.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 1.

**NGOs conclusions**

Elaboration of Anti-Corruption Action Plan for 2017-2018 started in December 2016. It was approved by the Council in April 2017. The action plan has not yet been approved by the Government and is not publicly available. The Secretariat stated that elaboration and implementation of sectoral action plans should not be part of the Anti-Corruption Action Plan. Activities of the 3 municipalities are reflected in the action plan approved by the Council. Impact indicators are not developed for new action plan and monitoring framework is not updated for the new action plan. Surveys to demonstrate progress have not been conducted, nor planned by the Secretariat. Adequate time was given to the CSOs to present their feedback in the process of elaboration of new action plan. On the basis of described developments IDFI considers that there has been lack of progress for the implementation of Recommendation 1.

**Assessment of Progress**

As described above, the Government achieved progress under recommendations 1.1., 1.3. and 1.6. Overall, assessment could be that the Georgia made **Progress** under Recommendation 1.
Government report

1. 1. Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.

Anti-Corruption Action Plan for 2017-2018 has been approved by the Government Decree N443 on September 27, 2017.¹ Information on fulfilment of recommendation has already been provided in the earlier progress update.

Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation.

Requirements of the recommendation is met since National Anti-Corruption Action Plan is a result of unification of 17 different sectorial action plans (16 priorities and a separate chapter for the Criminalisation of Corruption). Information on fulfilment of recommendation has already been provided in the earlier progress update.

Promote the development and implementation of an anti-corruption action plan for the local self-government level.

For a pilot phase three municipalities became part of the national anticorruption policy documents and members to the National Anti-Corruption Council.² Government of Georgia plans to extend coverage of the unified policy documents to other municipalities as well on a gradual bases.

Develop impact indicators for the monitoring of the next anti-corruption action plan.

Indicators for the Anti-Corruption Action Plan are developed to measure the targets/results. Please see some of the examples: Monitoring and revision process of Anti-Corruption strategic document is clear and concise for members of anticorruption working group; Anti-Corruption strategic documents use the studies of international organisations and recognised NGOs as sources, inter alia, sociological rankings and assessment reports; ratio of cases considered by Disciplinary Board and appealed cases to the Disciplinary Chamber; Electronic database of court resolutions is created and electronic programme of case allocation is operational; The number of simplified procurements within state procurement process is reduced as opposed to the previous year (according to the 2016 data the number of positive decisions on the request of simplified procurement amounted to 2,893 (77%) out of the total of 3,760 requests); the ethics code for persons responsible for state procurement is elaborated and adopted etc.

¹ Anti-Corruption Action Plan for 2017-2018 is available here.

² Please take into consideration that the introductory and awareness raising meetings have been held for all Governors (Heads of Municipalities)
Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.

No further action has been taken at this stage.

Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.

ACC Secretariat implemented the practice of giving the time of minimum two weeks to the non-governmental stakeholders for their feedback. The practice is already established and continues in a same manner.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 1.*

NGOs report

1.1) TI reported that the new Action Plan includes budget estimates but is not aware whether or not corresponding allocations have been made. IDFI states that the draft version of the Action Plan included a budget, but the adopted document does not.

1.2) TI Georgia reported that no risk assessment has been conducted in individual ministries or agencies and no action plans have been developed. IDFI gives an example of anti-corruption measures in the Ministry of Regional Development and Infrastructure, where they adopted an Transparency and Integrity Action Plan.

1.3) NGOs reported that the National Anti-Corruption Action Plan only covers 3 of 79 municipalities. None of them have developed their own Action Plans, and significant progress has not been made.

1.4) TI Georgia stated that no indicators have been developed. IDFI reported that the indicators included in the Action Plan are vague and do not enable effective measuring of the impact of the activities. The monitoring only measures factual implementation of the Action Plan but does not analyse the actual impact of the measures.

1.5) NGOs reported that no surveys have been conducted.

1.6) NGOs reported that the ACC has proactively sought NGO input and has provided adequate time for NGOs to provide responses.
Assessment of Progress

Georgia has made progress with recommendations 1.1 and 1.6. Progress in recommendations 1.2-1.4 cannot be assessed at the moment, because the development of the tools mentioned would have to be considered during the development of the new Anti-Corruption Action Plan. The amount of municipalities in the pilot cannot be increased as of now, because the current Action Plan foresees the inclusion of three. Overall, Georgia has made progress under Recommendation 1.

Progress

Recommendation 2: Anti-corruption awareness raising and education

Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.

Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.

18th Monitoring Meeting, September 2017

2.1. Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.

Government report

The ACC Secretariat with the support of the USAID Good Governance Initiative and CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF) “Project on Fight against corruption and fostering good governance; fight against money laundering” has finalised the drafting process of the public relations strategy. Strategy will soon be submitted to the Council for approval and then the Secretariat will start working on its implementation.

NGOs report

According to the IDFI, the strategy was supposed to be finalised by the end of 2016. No further development is shown with regard to the strategy. In the new Anti-Corruption Action Plan approval of public relations strategy is envisaged in the second half of 2017 (from July till December), and 30% of activities of the strategy should be planned and implemented in the same period. However, no progress is shown yet. TI Georgia is not aware of any activities toward developing a public relations strategy.
2.2. Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.

**Government report**

The Anti-Corruption Action plan for 2017-2018 has the separate strategic priority for “Education and Public Awareness Raising with the Corruption prevention purpose”. Planned activities are unified under the following outcomes: “General public is informed on results and challenges in fighting against corruption” and “Public is informed about the Anti-Corruption Council and Anti-Corruption news” and involve holding informational meetings to raise public awareness on Anti-Corruption policies, organising round tables, seminars, competitions and other events on anticorruption issues, ensuring accessibility of the information on the activities of the ACC, elaboration of the materials on activities of the Anti-Corruption Council and anticorruption topics, availability of the analytical and legal studies on Anti-Corruption issues for the public etc.

**NGOs report**

IDFI is not aware of any educational activities conducted by the Secretariat for the public, especially with regard to the high-level and complex corruption issues that are becoming alarmingly challenging issues for the Government of Georgia. Nor has the Secretariat informed members of the Council/working group about planned educational activities. According to the 2017-2018 Action Plan, the Secretariat had an obligation to conduct at least 5 small working meetings about the new action plan an anticorruption policy; however, IDFI is not informed where and if those meetings have taken place. It is also important to have a pre-defined target audience (reflected in the action plan) that will be engaged during those meetings. TI noted that no significant and tangible progress has been made toward this goal.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 2.

**NGOs conclusions**

The draft strategy was prepared by the time of the OECD-ACN expert visits in Georgia, August 2016. Until today, no development is shown for the finalisation of the document. IDFI is not aware of any educational activities conducted by the Secretariat within the reporting period. Hence, no progress was shown to implement Recommendation 2.

**Assessment of Progress**

From the provided information, it appears that **no progress** was made to implement Recommendation 2. Draft PR strategy has not been presented to the public and the Council and was not approved. While public education activities have been included in the new action plan, none of them have been conducted as yet.
# Government report

Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.

No further action has been taken at this stage.

Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.

No further action has been taken at this stage.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 2.*

## NGOs report

2.1) NGOs reported that no public relations strategy has been adopted.

2.2) NGOs did not report any progress regarding this recommendation.

## Assessment of Progress

No progress has been made regarding Recommendation 2.

## Lack of Progress
Recommendation 3: Anti-corruption policy co-ordination institution

Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.

Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.

Create a dedicated anti-corruption web-site of the Anti-Corruption Council.

Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council’s visibility.

Consider establishing a dedicated anti-corruption unit in the Analytical Department of the Ministry of Justice as a visible Secretariat to the Council.

18th Monitoring Meeting, September 2017

3.1. Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.

*Government report*

No further action has been taken at this stage.

*NGOs report*

Emerging high-level corruption instances are becoming increasingly alarming in Georgia. IDFI recently published a policy paper on the inefficiency of the institutions performing the corruption prevention and investigation functions. ACC Council obviously does not have power to fight high-level corruption crimes, it has only recommendatory and policy making character and does not exercise any hard law enforcement power. The challenge emerging of high-level corruption instances was mentioned by IDFI several times on the working group and other thematic meetings. However, no specific steps were planned to review the practice of ACC. Neither did the Secretariat expressed its readiness to tackle this challenge. The State Security Service, Office of the Prosecutor and the Investigation Service of the Ministry of Finance are the main public agencies tasked with enforcement of anticorruption legislation; however, no specific plans/solutions have been presented by either of these institutions. In addition, several alarming corruption allegations have been made by media and CSOs with regard to present and former high ranking officials of the law enforcement agencies. Nevertheless, the agencies in question have failed to provide policy solutions and arguments to the contrary.

3.2. Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.
Government report

Currently there are 11 employees working in the ACC Secretariat. Job descriptions of nine employees comprise mostly anticorruption activities/tasks, including the facilitation of implementation of the Anti-Corruption Strategy and Action Plan.

NGOs report

No additional resources are provided to the ACC Secretariat. Neither is there a known intention to allocate additional resources to the Secretariat. TI Georgia noted that the failure to implement a number of important OECD/ACN recommendations and, more broadly, to develop effective measures to tackle the problem of high-level corruption may indicate that the ACC Secretariat does not have sufficient resources.

3.3. Create a dedicated anti-corruption web-site of the Anti-Corruption Council.

Government report

No further action has been taken at this stage.

NGOs report

The website of the Anti-Corruption Council is not created and the Secretariat expressed its position that creation of specialised website is not on the agenda. Only a banner on the webpage of MoJ was added. At the same time, activity 4.6. of the Action Plan states that the documents should be published on either MoJ’s or ACC’s webpage; however, no other activity in the Action Plan states that the Secretariat will work on launching of separate webpage for the ACC. The webpage of MOJ is not regularly updated; anticorruption documents, including minutes of the Council/working group meetings and reports are not updated. The Secretariat made a clarification on one of the working group meetings (6 months ago), that the webpage is under construction and after the process is finished they will provide updated information. Until today, nothing has changed with regard to the webpage.

3.4. Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council’s visibility.

Government report

No further action has been taken at this stage.

NGOs report

The agenda to start cooperation with the Parliament through regular reporting was not communicated with the ACC members. IDFI considers that no steps had been taken to fulfil this recommendation. Since the civil society works actively with the parliament (also within the scope of the Interfractional Parliamentary Openness Working Group), it is also important to involve CSOs in the process of establishing a link between ACC and the parliament. Unfortunately, representatives of the parliament do not participate in the work of the Council and the legislative body does not have any commitments/actions in the draft 2017-2018 action plan.

3.5. Consider establishing a dedicated anti-corruption unit in the Analytical Department of the Ministry of Justice as a visible Secretariat to the Council.
**Government report**

The ACC Secretariat discussed the necessity of establishing a separate Anti-Corruption unit in the Analytical Department with the management of the Ministry of Justice and it was decided that, taking into consideration the information provided above in respect of question 2 of this recommendation, there is no need to establish such unit so far.

**NGOs report**

IDFI and TI were not aware of any steps/measures to establish a dedicated anticorruption unit in the Analytical Department of MoJ.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress (minor, but still) has been made in implementing the recommendation 3.

**NGOs conclusions**

No actions had been taken to fulfil either part of the recommendation. The practice of ACC is not revised, neither has there been any movement in this direction. Allocation of further resources to ACC has not yet been discussed and the fighting against high-level corruption is becoming insufficient in relation to the challenges that exist today. A specialised website for the ACC is not created and it is not planned to create one in the nearest future. No steps had been taken to start cooperation with the Parliament. No effort has been undertaken to establish a dedicated anticorruption unit in the MoJ. IDFI and TI concluded that no progress has been made to fulfill recommendation 3.

**Assessment of Progress**

From the provided information, it appears that **No progress** was made to implement Recommendation 3.

**19th Monitoring Meeting, July 2018**

**Government report**

Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.

No further action has been taken at this stage.

Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.
Number of employees has increased during the reporting period. Now 13 employees (including three trainees) are employed in the Secretariat.

Create a dedicated anti-corruption website of the Anti-Corruption Council.

No further action has been taken at this stage for the creation of separate web-page for the Anti-Corruption Council, however all the information about the Council, its work and Anti-Corruption Policy is available and regularly updated on the web-page of the Ministry of Justice.³

Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council’s visibility.

No further action has been taken at this stage.

Consider establishing a dedicated anti-corruption unit in the Analytical Department of the Ministry of Justice as a visible Secretariat to the Council.

No further action has been taken at this stage.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 3.

NGOs report

3.1) NGOs reported that no actions have been taken.
3.2) NGOs reported that no progress has been made and not enough resources have been allocated.
3.3) NGOs reported that no websites have been created.
3.4) NGOs did not report any progress regarding this recommendation.
3.5) NGOs did not report any progress regarding this recommendation.

Assessment of Progress

Progress has been made under Recommendation 3, although very limited. Under recommendation 3, the number of staff has been increased, but the ACC Secretariat does not have a separate budget. The staff has also undergone trainings. The information about the ACC is available online, but the website is not user-friendly and is hard to reach.

³ “Fight against corruption” bar under the Ministry of Justice web-page is available here.
CHAPTER 2: PREVENTION OF CORRUPTION

Recommendation 4: Policy framework for integrity in the civil service

Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.

Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.

Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.

Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.

18th Monitoring Meeting, September 2017

4.1. Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.

Government report

Development of the corruption risk assessment methodology is part of the Anti-Corruption Action Plan for 2017-2018. The ACC Secretariat has already started elaboration of the first draft of the methodology that will be used by separate sectorial ministries and other state agencies for carrying out risk assessments. Additionally, in the framework of CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF) “Project on Fight against corruption and fostering good governance; fight against money laundering” and IACA Academy two trainings on corruption risk assessment have been held for the staff members of the ACC Secretariat and members of the ACC Working Group.

NGOs report

Elaboration of corruption risk assessment methodology is envisaged in the new Anti-Corruption Action Plan for 2017-2018 approved by the ACC. According to the action plan this activity should be implemented in 2018.
4.2. Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.

**Government report**

Coordination mechanism operated by the ACC Secretariat requires that each of the ACC member agency names the focal point to the Secretariat. The named person is an expert of anticorruption aspects in the sectorial field he or she is occupied. He or she represents the naming agency at the AC working group. The same process was followed during the elaboration of new anticorruption policy documents.

**NGOs report**

IDFI is not informed of any steps undertaken to assign specific persons or units for coordination of integrity and anticorruption work. TI Georgia is not aware of any progress made toward this objective.

4.3. Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.

**Government report**

The ACC Secretariat in cooperation with the Civil Service Bureau (CSB) and the Training Centre of Justice has developed the curricula for civil and state servants on Anti-Corruption Policy and Legislative Framework. The sessions in the curricula *inter alia* involve training on: the system of asset declarations of public officials, ethics, conflict of interests and incompatibility in civil service, protection of whistle-blowers etc. The curricula is designed for all civil and state servants, however, the special training module is developed for the special target groups, such as staff members of: HR Units in line Ministries, the CSB, State Security Service, Ministry of Internal Affairs, Prosecution Service General Inspections of the line Ministries and Freedom of Information Officers.

**NGOs report**

During the ACC session on April 24, 2017, the Secretariat presented the Concept on Training Program for Public and Civils Servants on Anti-Corruption Policy and Legal Framework. However, since corruption risk assessment has not yet been conducted, the document was not based on any practical experiences. It is regrettable that CSOs have not been involved in the process of elaborating the assessment and have only been given an opportunity to provide comments on the draft document.

According to TI Georgia, the Civil Service Bureau has been conducting regular training sessions for civil servants (rather than "public officials") on integrity, ethics, and corruption. It is not clear, however, whether the participants were selected based on corruption risk assessment. Also, the training content has so far been identical for all civil servants and does not reflect the specific risks of different institutions/offices.

4.4. Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.

**Government report**

No further action has been taken at this stage.
NGOs report

Impact indicators that measure progress for the entire action plan have not been developed. Regular surveys that promote integrity have also not been conducted neither as a whole nor for selected institutions.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 4.

NGOs conclusions

The new Anti-Corruption Action Plan approved by the ACC envisages elaboration of corruption risk assessment methodology in 2018. No work has been done nor has there been a plan presented to promote the role of the heads of institutions in ensuring integrity and assigning persons or units to coordinate integrity and anticorruption work in each public institution. Concept on training program for civil servants was presented on the ACC session and was approved. Impact indicators are not developed and regular surveys are not conducted, neither is there a plan presented to conduct those activities. There is lack of progress in implementing recommendation 4.

Assessment of Progress

There was lack of progress on most of the parts of Recommendation 4, except for the development of the Concept on Training Program for Public and Civils Servants on Anti-Corruption Policy and Legal Framework. Overall, Georgia made Progress under Recommendation 4.

19th Monitoring Meeting, July 2018

Government report

Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.

No further action has been taken at this stage.

Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.

No further action has been taken at this stage. Information on fulfilment of recommendation has already been provided in the earlier progress update.

Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.
ACC Secretariat in cooperation with the Civil Service Bureau and Georgian Young lawyers Association and with the support of the USAID project Good Governance Initiative Georgia (GGI) conducted three trainings in regions for the representatives of municipalities. Overall 48 participants took place in the seminars from Kutaisi, Batumi and Akhaltsikhe municipalities.

**Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.**

No further action has been taken at this stage.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 4.*

**NGOs report**

4.1) NGOs reported that they are not aware of any methodologies having been developed.

4.2) NGOs did not report any progress being made regarding this recommendation.

4.3) NGOs reported that targeted trainings have not been conducted and the training programs that have been implemented are of general nature.

4.4) NGOs did not report any progress being made regarding this recommendation.

### Assessment of Progress

**Progress** has been made only under Recommendation 4.3, since trainings have been conducted for representatives of municipalities. They are at the moment developing assessments and selecting target groups for further trainings. Georgia reported that they have donors in place for these activities. No progress under other sub recommendations.

**Recommendation 5: Legal framework for the civil service reform**

Finalise the legislative framework for the civil service reform by adopting remuneration and [job] classification legislation without delay.

Ensure that all positions that perform core functions of the state fall under the civil service legislation.
5.1. Finalise the legislative framework for the civil service reform by adopting remuneration and [job] classification legislation without delay.

**Government report**

New Law on Civil Service (CSL), adopted on October 27, 2015 entered into force on July 1, 2017 and set the general framework for the new Civil Service System. As part of this reform, the CSB elaborated the first draft Law on Remuneration aimed at developing the general framework of the remuneration system, the scope of regulations and legal grounds of determining the labor remuneration for civil servants. The main calculations regarding the definition of coefficients, “monetary worth of work”, ceilings of supplements, etc. were developed by the Ministry of Finance of Georgia (MoF). With international experts’ support, the MoF studied the best practices on defining the salary schemes in civil service. Prior to finalising the text, the CSB has introduced the draft law to the Government and the Parliament of Georgia at a working meeting format. In July 2017, public discussions with donors, local NGOs, legal and financial units of public institutions were held. The CSB has also hosted the SIGMA working mission to further improve the draft law in accordance to the experts’ assessment. Feedback received from public discussions and working meetings with SIGMA has been considered in the final draft law that was submitted to the Government of Georgia for approval.

**NGOs report**

Remuneration legislation, namely the law of Georgia on “Remuneration in Public Institutions” has not yet been presented to the parliament, even though the Government of Georgia, according to the new law on Public Service, should have submitted it to the parliament on 1 September 2016. The effect of the new Law on Civil Service has also been postponed to 1 July 2017. Although there were several public discussions on the new draft law on remuneration (only one discussion has taken place for CSOs) it has not yet been adopted by the Government and has not been submitted to the parliament. Furthermore, an ordinance of the Government of Georgia on the Procedure and Conditions for Assigning Officer Classes to Qualified Public Officials is in force since April 2017. According to GYLA, the new law on civil service entered into force on 1 July 2017 without the new remuneration system and old provisions regulate it during the transition period (01.07.2017 – 01.01.2018), which are highly decentralised and does not create a uniform and fair remuneration system in Georgian civil service. As a result, the Georgian Government failed to fulfil this obligation under the civil service reform without delay.

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

**Government report**

On 1 July 2017, the new CSL and classification system entered into force. All public institutions, including the local self-government, rearranged the staff according to the new classification system defined by the CSL. For this purpose, the functions were categorised into core and support functions. All positions (contract-based and in-staff) performing the core functions were transformed to the professional civil servant position, which fall under the scope of the Civil Service legislation. It is planned to apply the new classification system to the Legal Entities of Public Law (agencies) in 2017-
2018. To do so, the legislation on Legal Entities of Public Law (LEPL) will be amended by the end of 2017. The new law on LEPLs will categorise and systematise the agencies and identify those which will fall under the scope of the new CSL. Currently, only the regulations on competition are applicable to the LEPLs.

**NGOs report**

Law on Civil Service covers almost all state institutions. However, in the transitional period (from 1 July until 31 December 2017) the law does not extend to Legal Entities of Public Law. In addition, the amendments to the law on Civil Service and the law on National Regulatory Bodies, entered into force on 30 June 2017, one day before entering new law on Civil Service in force, exempted the staff of the regulatory bodies from the law on Civil Service. This amendment was criticised by the IDFI and GYLA. Regulatory bodies are the ones that are engaged in the public administration and extension of the law on Civil Service to regulatory bodies was based on the Civil Service Reform Concept that stated that a civil servant is any person, who is engaged in public administration. One more alarming development should be mentioned here with regard to the National Bank of Georgia. IDFI published an article on the risks of corruption and unequal treatment that possibly will derive from the amendments to the law on Conflict of Interest in Public Service, if entered into force. Namely, the amendments registered in the Parliament exclude the board members of the National Bank of Georgia from the law on Conflict of Interest in Public Service, giving only exception from the rule that “any other person elected, appointed or approved under the Constitution of Georgia” should be considered as official. The board of National Bank obviously performs governing functions and the Bank itself is one of the core institution in the state, while the law on Conflict of Interest in Public Service is one of the core legislative acts in the civil service system.

Besides, as reported by GYLA, according to the latest amendments in the Law on Civil Service (June 2017), civil servants working in the Ministry of Corrections of Georgia will be covered by the Law on Civil Service if the special legislation does not regulate differently. Before the amendments, this exception included the civil servants working only in penitentiary system under the Ministry, which was justified by their special function. However, the latest amendments excluded the whole administration of the Ministry, which has no additional justification.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 5.

**NGOs conclusions**

The Decree of the Government on the Rules and Conditions of Assigning Classes to Professional Civil Servants was adopted on 28 April 2017. The enactment of the law on remuneration is delayed and its timely enactment is crucial for the successful implementation of the civil service reform. Law on Civil Service covers almost all state institutions. However, national regulatory bodies were excluded from the law. At the same time, there are negative developments with regard to the board of National Bank of Georgia and Ministry of Correction. Overall, IDFI believes that progress was shown in the implementation of recommendation 5, while GYLA think no such progress can be acknowledged.
Assessment of Progress

The draft Law on Remuneration has been developed, but has yet to be submitted in the parliament and, therefore, cannot be counted as progress. The Law on Legal Entities of Public Law has not been amended and, therefore, not all core function positions have been covered by the Civil Service Law. Besides, the staff of the national regulatory authorities and Ministry of Corrections were declassified as civil servants, which is a negative development. It is also regrettable that the enactment of the new Civil Service Law had to be postponed till July 2017. Overall, the steps taken have not been enough to acknowledge progress under Recommendation 5 (conclusion: Lack of progress).

19th Monitoring Meeting, July 2018

Government report

5.1 Finalise the legislative framework for the civil service reform by adopting remuneration and classification legislation without delay.

The draft law on Remuneration aimed at developing the general framework of the remuneration system, that was developed by the Civil Service Bureau (CSB) in cooperation with the Ministry of Finance of Georgia (MoF) was adopted on December 22, 2017 and came into force on January 1, 2018. From 2018 the salaries are defined and paid according to the new classification system, which was introduced and implemented in 2017.

A new classification system was introduced by the new Civil Service Law (CSL), entered into force on July 1, 2017, and its secondary legislation. All public institutions, including the local self-governmental institutions, rearranged the staff according to the new classification system and all public institutions adopted new staff list according to the CSL and new classification system.

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

On December 2017, the Final Report on Institutional Review of Central Governmental Institutions (line ministries) was elaborated and on December 29, 2017 was published on the CSB webpage. The report consists of three chapters. Chapter I provides a brief description of methodological approach and overview of the progress and phases of institutional analyses as well as the principles of organisational structure of central public agencies, according to which vertical analyses were conducted. Key findings and recommendations are given in other two chapters. In particular, the issues related to possible overlaps and duplications detected as a result of structural analyses, as well as the gaps against each principle identified as a result of vertical analyses of the ministries are reviewed. The final part of the report presents the results of the study of each ministry against the principles accompanied by 17 annexes, providing the outputs, main findings and conclusions of
institutional analyses on all ministries individually. Institutional review has also identified a correlation of functions between the Ministries and LEPLs that fall under the civil service legislation.

In line with legal requirement and main finding of the institutional analyses, the CSB plans to undertake functional analyses of LEPLs with the goal to categorise them and identify all positions that perform core functions to be fallen under the CSL by the end of 2018. However, in order to implement the new law on remuneration, the all staff of LEPLS (even though they do not currently fall under the scope of the new CSL), were classified according to equivalent classification system adopted by the decree of the Government of Georgia starting from December 2017.

**Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 5.**

NGOs report

5.1) NGOs welcomed the adoption of the new law as a positive step, and reported that the new Law on Labor Remuneration in Public Institutions established ranks and classes, as well as coefficients for calculating salaries in different categories. They also highlighted several shortcomings: the law does not apply to some individuals who are part of the civil service; the system of coefficients is arranged in a way that leaves heads of institutions too much discretion in deciding pay; there is a considerable gap between the remuneration of civil servants in the central government and those of governments of autonomous republics, also local governments; the law allows for “special cases” of bonuses without defining the term; the law allows bonuses for temporary employees and political officials.

5.2) NGOs did not report any progress regarding this recommendation.

**Assessment of Progress**

Progress was made under recommendation 5.1 by adopting the new law, albeit with some shortcomings pointed out by the NGO-s. Recommendation 5.2 is yet to be implemented. Overall, Georgia made **progress** under Recommendation 5.

**Progress**

---

**Recommendation 6: Professionalism in the civil service**

Consider introducing a top civil service post in public authorities (such as Secretary General) to prevent undue influence.
### 18th Monitoring Meeting, September 2017

**Government report**

According to the CSL, the top civil servant position in the ministries is the position of the head of the department (first level unit). As for the Secretary General’s position, after discussions with international and local experts, considering the Georgian reality and practice, at this stage, this position should not be introduced.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 6.

**NGOs report**

The position of the Government of Georgia is that introduction of top civil service post is not in the agenda, since it is not suitable for the Georgian model. No detailed communication or discussions had been held on this issue. As noted by GYLA, under the framework of the civil service reform, the introduction of Secretary General as a top civil service post has not been discussed and implemented. In spite of the recommendation of NGO sector, Georgian Government decided that Georgia Civil Service wasn’t ready for such important changes; furthermore, the Minister has also administrative functions, which may cause undue political interference or influence in the administration of public institution. GYLA believes that this recommendation is very important for creation of professional civil service, which is the main goal of the civil service reform. However, Georgian Government/Parliament have not taken any steps to reach this aim in the nearest future.

NGOs concur that there was no progress under this recommendation.

### Assessment of Progress

It should be noted from the start that the recommendation was to “consider introducing” a top civil service post in public authorities (such as Secretary General) to prevent undue influence. It is not clear from the Government’s report whether such consideration took place after the OECD/ACN Fourth Round Monitoring Report on Georgia was adopted and, if yes, what are the details and outcomes of such consideration. Therefore, there is **Lack of progress** under Recommendation 6.
Government report

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

On April 25, 2017 the Head of CSB adopted the ordinance on “Guiding Principles and Methodology for Organisational Set-up of the Public Institutions” for purpose of elaboration of standards for better management of the organisation. One of the principles, covering the arraignment of political management level of public institutions, states that supporting functions of a public agency can possibly be incorporated into the portfolio of one of the Deputy Heads of public institution.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 6.

NGOs report

6.1) NGOs did not report any progress regarding this recommendation.

Assessment of Progress

Georgia assessed the need for introducing a top civil service post in public authorities to prevent undue influence, and it was decided that the tasks could be attached to an already existing post. Progress was made regarding Recommendation 6.

Progress

Recommendation 7: Merit-based recruitment and promotion

Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.

Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules.

Establish a human resource management information system to consolidate statistics.
7.1. Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.

**Government report**

Since 2015 important steps have been made to enhance the CSB capabilities. To name a few: in 2015 two new departments (Civil Service Institutional Set-up and Practice Generalisation Department and Civil Service Human Resources Management Department) were created to tackle issues arose during the Civil Service reform implementation process; additionally, the top management layer of CSB was expanded by adding another deputy director.

In 2017, a new department – Asset Declarations Monitoring Department – was created within the CSB to monitor asset declarations and verify the accuracy of the information received. This department has been mandated to report to the relevant law enforcement agency or issue an administrative fine in case detecting a violation.

New CSL has also enhanced the CSB’s authority regarding the Merit-based recruitment and promotions rules. According to the CSL, the CSB is responsible to:

- study and analyse the state of the public service;
- monitor implementation of a unified state policy in public service area;
- observe implementation of normative acts related to the government policy and prepare respective recommendations;
- develop action standards, instructions and guidelines, draft legislative proposals in the area of public service;
- maintain an electronic human resources management system;
- cooperate with human resources management units of public institutions in the process of preparation of annual human resources management plans;
- examine and generalise existing practices of recruitment, evaluation, career promotion, career management, professional development and dismissal of officers and adherence by public servants to ethical norms, and prepare respective recommendations;
- study the current level of qualification and the needs of professional trainings in public service;
- study the experience of other countries in the area of public service and cooperate with international organisations to improve public service management;
- analyse legal disputes arising between officers and prepare respective recommendations to improve the current practice;
- participate in the development and implementation of the state programs for fighting against corruption in public service;
- monitor asset declarations completed by public officials.
**NGOs report**

IDFI is not aware what activities have taken place in order to increase the capacity of the representatives of CSB. Although the new Law on Civil Service includes guarantees for merit-based recruitment, it has come into effect only recently and has most likely not had any practical influence over the system. According to TI Georgia, the role of the Bureau in this respect increased under the new Law as it is now responsible for managing the civil service reserve as well as certifying civil servants, facilitating their mobility and overseeing reorganisation of public institutions.

### 7.2. Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules

**Government report**

Article 24 of the CSL sets an obligation of creating a HRM in all public institutions and introduces a general frame of functions for these units. According to the law the key functions should be facilitating and planning the human resources management policy of a public institution, managing and administering human resources.

According to the principle elaborated by the CSB, a HRM unit should be the first level unit (Department) directly under the head of institutions (e.g. Minister) or it should be distanced from the head of institution only with one management layer (e.g. under Deputy minister).

The HRM units have crucial role in conducting competitions (open and closed), assessing the candidates’ compliance with a competition requirements, ensuring organisational support of the performance appraisal process. Throughout the performance appraisal process, the HRM unit is responsible to: study documents produced in the evaluation process, request for additional information/documentation if needed, observe legality of the performance appraisal process and provide recommendations for improvements. The HRM units are also the central part of the career management (transfer, promotion, mobility, etc.), professional development, needs assessment and capacity building process.

**NGOs report**

Civil Service Bureau has organised several informational meetings with various public agencies, covering mainly the novelties introduced by the new Civil Service Law. IDFI is not informed whether CSB has worked with HRM units/departments on the topic of merit-based recruitment and promotion. The new law provides for a better integration of the HR units with the Civil Service Bureau, although TI Georgia is not aware of the extent to which their capacity has improved.

### 7.3. Establish a human resource management information system to consolidate statistics.

**Government report**

The Electronic Human Resources Management System (e-HRMS), which is the unified electronic database of Civil Service Employees, has been fully operational since the end of 2016. It was further adapted to the new requirements of the CSL. In particular, the minimum requirements and catalogues necessary for forming the unified database of civil service across the country were added. The system also allows to aggregate, generate and process data. Currently, majority of government agencies are linked to the e-HMRS.
**NGOs report**

The Civil Service Bureau has been active in installing the information system for human resources departments of public institutions – HRMS. However, IDFI is not informed on how many institutions have been covered by the system. According to the latest report of the Bureau, HRMS had been installed in all central level public institutions (mainly ministries); however, it is not clear whether the system is operational in Legal Entities of Public law and municipal public agencies.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 7.

**NGOs conclusions**

IDFI is not informed of any capacity development activities organised by the Civil Service Bureau for representatives of HRM units. Therefore, it can be stated that lack of progress has been shown with regard to recommendation 7.

**Assessment of Progress**

Recommendations 7.1. and 7.2. concerned practical implementation of the new legal provisions and no information was provided on the practical steps taken to build capacity and enhance the status of the Civil Service Bureau, as well as to build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules. No progress under these recommendations. However, progress was made under recommendation 7.3. where electronic Human Resources Management System has become functional. Overall, Georgia made Progress under Recommendation 7.

---

**19th Monitoring Meeting, July 2018**

**Government report**

**Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.**

To ensure the application of merit-based recruitment rules, starting from 1st of July, 2017, the CSB is now authorised to check all qualification requirements before publishing the vacancies on official web-page (www.hr.gov.ge). Moreover, the CSB is able to attend and observe the competition process and monitor how the rules of merit-based recruitment are applied and implemented by the public institutions.

**Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules**
No further action has been taken at this stage.

Establish a human resource management information system to consolidate statistics.

No further action has been taken at this stage.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 7.

NGOs report

7.1) CSB conducts regular trainings of HRM units regarding merit based recruitment of civil servants, but IDFI has observed instances of recruitment without competitive procedures outlined in the Law on Civil Service. In December 2017, a new amendment was introduced in the Law on Civil service, which simplifies recruitment procedures for individuals hired under a contract but they highlight that simplified procedures increase risks related to transparency, arbitrariness and nepotism.

7.2) NGOs did not report any progress regarding this recommendation.

7.3) NGOs considers the continued installation of the e-HRMS system a significant progress.

Assessment of Progress

No progress has been made in implementing Recommendation 7 since the last progress update.

Lack of Progress

Recommendation 8: Remuneration of civil servants

Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.

Consolidate statistics on payroll.

18th Monitoring Meeting, September 2017

8.1. Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.
The CSB elaborated the first draft Law on Remuneration aimed at developing the general framework of the remuneration system, the scope of regulations and legal grounds of determining the labour remuneration for civil servants. The main calculations regarding the definition of coefficients, “monetary worth of work”, ceilings of supplements, etc. were developed by the MoF. As of the day of this report, the final draft law is submitted to the Government of Georgia for approval. The draft law regulates issues of the labour remuneration of persons employed by the civil service institutions, including the state-political and political public officials, administrative and labour contract employees, persons working part time, at night, on holidays and weekends, in risky working conditions. The draft law also determines the amount of supplements and monetary awards (bonus).

The system of labour remuneration rests on principles of equality and transparency which imply the receipt of equal pay for the performance of equal job in accordance with rules established in advance. General rule of labour remuneration is that the source of formation of labour remuneration fund in a civil service institution is a corresponding budget. Reduction in budget allocations shall not become a ground of decrease in position wages.

According to the draft law, an employee of a civil service institution shall be entitled to labour remuneration from the day of employment to the day of dismissal from the job. In case of performing duties within the framework of a contract, labour remuneration may be received in accordance with actually completed work. Salary amount of positions of professional civil servants of each hierarchical rank shall be determined in light of functional load of a position, by multiplying a basic salary and a relevant rank coefficient. An additional criterion, for determining the salary scheme, set on local level is the size of the population of Municipalities. Moreover, the draft law defines the relevant percentage of supplement for each class, regulates the rule of calculating salary supplement, remuneration for performing work at night, on holidays/weekends and in grave working conditions and sets the upper limit for the monetary reward (bonus).

Since the law on remuneration is not submitted to the Parliament yet the conclusions cannot be given at this stage. However, the principle of “equal pay for equal work” is reflected in the Article 57 of the law on Civil Service and it is also reiterated in the new draft law on remuneration. According to the IDFI, the draft law contains many positive developments, however, it leaves room for risks related to transparency and predictability of remuneration. For example, according to the draft law, two individuals employed on similar civil service position can have a salary difference of 300%. The above-mentioned difference is however not linked to the civil service rank or class of the servant. In addition, the draft law does not regulate the problems that exist with regard to bonuses and salary supplements of high-level political officials (ministers, and heads of agencies), which remains problematic. Overall, the draft law on remuneration only describes the existing practices and fails to reform the negative tendencies established the remuneration system.

8.2. Consolidate statistics on payroll.

No further action has been taken at this stage.
**NGOs report**

IDFI is not aware if consolidated payroll statistics have been published, since the information has not been distributed to CSOs.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 8.

**NGOs conclusions**

Since the law on remuneration is not yet in force, there is lack of progress for implementation of the recommendation 8.

**Assessment of Progress**

The draft Law on Remuneration has been developed but not yet submitted in the parliament. Even if the Law on Remuneration was adopted it would not result automatically in implementation of the recommendation which is about implementation of the relevant principle both in law and in practice. No action was taken to consolidate statistics on payroll. There is, therefore, **Lack of progress** under Recommendation 8. The Government should also take into account the criticism of the draft Law on Remuneration stated by NGOs and consider amending the draft law.

---

**19th Monitoring Meeting, July 2018**

**Government report**

Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.

Please see the **Government Report** on the recommendation 5.

**Consolidate statistics on payroll.**

No further action has been taken at this stage.

**Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 8.**

**NGOs report**

8.1) Article 3 of the Law on Remunerations clearly outlines the principle of “equal pay for equal work”; however, further articles of the law do not provide for a clear application of the law. In
practice, the law provides for a possibility for employees of the same rank and class to have different remuneration, which will be based on the individual decision of the head of the public institution.

8.2) NGOs did not report any progress regarding this recommendation.

<table>
<thead>
<tr>
<th>Assessment of Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>As noted under Recommendation 5, the adoption of the new Law was a positive step, which will make the remunerations predictable and more transparent, but the application of these regulations in practice can prove to raise issues, as pointed out by the NGOs. Overall, Georgia made progress regarding Recommendation 8.</td>
</tr>
</tbody>
</table>

**Progress**

**Recommendation 9: Conflict of interest, asset declarations and other anti-corruption requirements**

Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public Service to all posts performing core public functions, including prosecutors.

Clarify the roles of different institutions in enforcement of conflict of interests and other anti-corruption restrictions, strengthen the capacity of internal audit or other units in line ministries and at the local level, consider designating special officers in large administrations and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.

Monitor and evaluate effectiveness of the asset declaration verification system and impact of the asset declarations on the spread of conflict of interest and illicit enrichment.

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

---

**18th Monitoring Meeting, September 2017**

9.1. Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public Service to all posts performing core public functions, including prosecutors.

*Government report*

The Law on Conflict of Interest and Corruption in Public Institutions (CoI Law) establishes basic principles of prevention, discovery and elimination of conflict of interest and corruption in public
institutions and basic principles of responsibility of perpetrators of corruption, and the basis and mechanisms of legal regulation. This Law also regulates the conditions and mechanism for the submission of asset declarations by officials and for the monitoring of submitted declarations, as well as the fundamentals of whistle-blower protection and the general rules of ethics and conduct. For the purpose of monitoring of the declaration, the term “public official” and for the purpose of conflict of interest the term “public servant” are used. Under both these terms falls the Chief Prosecutor of Georgia and his/her deputies, the heads of the Departments of the Chief Prosecutor's Office and persons equivalent to them thereto, regional and district prosecutors and prosecutors of Tbilisi and the Autonomous Republics of Abkhazia and Adjara.

NGOs report

According to TI Georgia, the provisions of the law Conflict of Interest and Corruption in Public Institutions currently apply to senior prosecutors. The updated civil service legislation extends to most posts performing core public functions, although there are some notable gaps, such as the employees of regulatory commissions.

According to GYLA, the scope of the CoI Law can be limited by the latest legislative initiative submitted by the Georgian Government to the Parliament on 27 May 2017. The draft law has already been approved by the Legal Issues Committee and Budget and Finance Committee. According to the draft law, Members of the Board of the National Bank of Georgia will not be obliged to submit the asset declarations, except the President and Vice-President of the Board. The Georgian Government explained that Members of the Board of the National Bank are not public servants and therefore, they should not be obliged to fill the asset declaration, which is not in compliance with the purpose and main principles of the Law on Conflict of Interest. The suggested amendments may increase the risk of corruption and reduce the transparency and accountability among the Members of the Board of the National Bank.

9.2. Clarify the roles of different institutions in enforcement of conflict of interests and other anti-corruption restrictions, strengthen the capacity of internal audit or other units in line ministries and at the local level, consider designating special officers in large administrations and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.

Government report

The decree of the Government of Georgia #200 adopted on April 20, 2017 “General Code of Ethics and Conduct for Civil Service” has created the ethical environment by developing the professional standards of Civil Servants and implementing the fundamental principles and values in Civil Service. According to the CSL disciplinary misconduct by officers includes neglect and breach of ethical norms and the general rules of conduct that are intended to discredit an officer or a public institution, irrespective of whether it is committed at or outside work. Internal audit units in line ministries are responsible for the conduct of disciplinary procedures for enforcement of ethical principles and norms in public institutions.

For clarifying the roles by capacity development of the staff members of internal audit units in line ministries, the CSB conducts the trainings on Ethics and Whistle-blowers protection mechanisms. Since 2015, the CSB conducts the trainings on Ethics and Whistle-blowers protection mechanisms, for the representatives of governmental institutions (line ministries, Legal Entities of Public Laws (LEPLs), Administration of President, members of the apparatus of the Parliament, administration of state

---

4 Article 85 (c), Civil Service Law of Georgia, 2015.
trustees – Governors, central institutions of the Autonomous Republic of Abkhazia). As a result, during 2015-2016, 772 civil servants were trained. The target groups for the trainings are the representatives of internal audit, public procurement, legal and HRM units. The training covers the important issues connected with conflict of interest, incompatibility, “revolving door”, whistle-blowing, gift policy, integrity, professionalism, etc.

**NGOs report**

According to TI Georgia, no significant changes have been implemented to attain these objectives. There is still considerable ambiguity regarding the enforcement of anti-corruption and conflict of interest rules, while no special officers have been designated to ensure enforcement. GYLA stated that the Georgian Government has not taken any steps to strengthen the capacity of internal audit institutions on the central and local level. The enforcement of the conflict of interest rules in each public institution is still difficult to monitor and analyse. Despite the fact that the Georgian Government has adopted the decree on the Ethics and Code of Conduct in Civil Service, ethic commissioner has not been appointed in public institutions, who will be responsible for effective implementation and monitoring of the Code.

**9.3. Monitor and evaluate effectiveness of the asset declaration verification system and impact of the asset declarations on the spread of conflict of interest and illicit enrichment.**

**Government report**

New amendments to the CoI 5 established a monitoring system of the public officials’ asset declarations. The objective of the monitoring is to increase accountability of public official and prevent conflict of interest, and corruption. The CSB was granted the authority to monitor declarations and to determine and verify accuracy of the information; also, in cases where it is found that public officer deliberately presented incomplete or incorrect data, or specific elements of crime were identified, the declaration in question together with appropriate documentation to forward it to law enforcement body for their consideration or issue an administrative fine in case of violation of the rules on filling the asset declaration. Furthermore, Government Decree on “Adoption of the Instruction for Monitoring Asset Declarations of Public Servants” (Instruction) was adopted on 14 February 2017.

For evaluation of effectiveness of the asset declaration monitoring system, in October 2016, international expert was invited by the CSB in order to conduct seminar on analysing: the risks and grey areas which must be monitored more thoroughly, what is the additional information needed from declarant for complete picture, how to identify the levels of violation and classification of violations, essential elements of conclusion and what important factors must be included in final output, mechanisms of protecting independence and autonomy of CSB.

According to the CoI law and instruction, the ground for initiating the monitoring of an official's asset declaration shall be: a) a random selection by the electronic system and b) justified written statement (application). Total number of selected declarations by electronic system shall not exceed 5%. In addition, declarations are selected by the independent commission (composed of 5 members - 3 representatives of the NGOs and 2 representatives of Academia) established by the Head of the CSB on the basis of specific factors (positions of State-political officials, particular risk of corruption, high public interest and violations revealed as a result of the monitoring). The total number of selected declarations by the commission shall not exceed 5% as well. The results of the monitoring shall be proactively published at the end of each calendar year.

---

5 The amendments to the CoI Law entered into force on 1 January 2017.
Additionally, in order to strengthen and improve the effective functioning of monitoring process, the CSB in cooperation with the Administration of the Government, adopted and published online multi-annual action plan 2017-2020 for the implementation of the asset declarations system and related activities. The action plan defines the baselines, targets and indicators for implementation of monitoring system.

**NGOs report**

GYLA reported that monitoring of the asset declaration started on 1 January 2017 and the final results will be published at the end of the year. Therefore, at this time, only the procedure for selecting asset declarations can be evaluated. According to the law, the asset declarations may be selected in three ways: a) random selection by the electronic program; b) selection by an independent commission, which is composed of representatives of NGO sector and academic sphere; c) an individual statement by interested person. This year, asset declarations are only selected randomly by electronic program and the independent commission has not been created, because Georgian Government adopted the decree on the asset declaration verification system with a delay, in February 2017, while the independent commission should have been created already in December last year. As a result, only the % of the asset declarations are being verified this year instead of 10%.

TI Georgia is not aware whether the authorities are currently monitoring and evaluating its effectiveness. IDFI published an article on the shortfalls of the ordinance. The monitoring of the effectiveness of the system will be possible after specific commitments derived from the ordinance are enforced. No further communication occurred by the Government of Georgia on the evaluation of effectiveness of system.

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

**Government report**

No further action has been taken at this stage.

**NGOs report**

There have been no legislative amendments with regard to implementing effective penalties for violations of conflict of interest legislation. Currently there is an old system in place, which envisages a GEL 1,000 fine for improperly submitting the declaration. It must be pointed out that the only system is ineffective and does not adequately prevent conflicts of interest.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 9.

**NGOs conclusions**

The provisions of the Law on Conflict of Interest do not apply to all prosecutors – the law is only applicable to the Chief Prosecutor, Deputy Chief Prosecutors, Heads of Departments and individuals equivalent to their rank and heads of regional and district prosecution offices. There is a draft amendment to the law pending in the parliament which would exclude the board members of the National Bank of Georgia from the scope of the Law. Effectiveness of the asset declaration system has not been evaluated yet. Enforcement measures for conflict of interest legislation have not been
amended and the old and ineffective system is still in place. The penalty for violations in the
declaration is GEL 1000, which cannot be regarded as an effective measure. NGOs believe that there
has been no progress in implementation of the recommendation 9.

Assessment of Progress

As regards Recommendation 9.1., there was no progress in its implementation, because only senior
prosecutors are covered by the CoI Law, employees on labour contracts and majority of LEPLs’
employees are not covered by the said Law. It is worrying in this regard that there is a pending draft
law that was proposed by the Government and would further limit the scope of the law concerning
National Bank’s Board Members.

No progress can be stated with regard to Recommendation 9.2, either, as adopting an ethics code and
conducting training does not address the recommendation.

On Recommendation 9.3., the Government of Georgia did not carry out the actual monitoring and
evaluating effectiveness of the asset declaration verification system and impact of the asset declarations
on the spread of conflict of interest and illicit enrichment. There was also a delay in the start of the
verification of declarations, which, as noted by NGOs, resulted in the fact that lesser declarations would
be verified in 2017. No progress under this recommendation.

Overall, there was Lack of progress under recommendation 9.

19th Monitoring Meeting, July 2018

Government report

Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public
Service to all posts performing core public functions, including prosecutors.

No further action has been taken at this stage. Information on fulfilment of recommendation has
already been provided in the earlier progress update.

Clarify the roles of different institutions in enforcement of conflict of interests and other anti-
corruption restrictions, strengthen the capacity of internal audit or other units in line
ministries and at the local level, consider designating special officers in large administrations
and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.

Two-day training sessions for public officials, including heads of internal audit units from line
ministries have been held in July-December, 2017 with support of the Project “Capacity Building in
Civil Service and Anti-Corruption Area”.

Monitor and evaluate effectiveness of the asset declaration verification system and impact of
the asset declarations on the spread of conflict of interest and illicit enrichment.
In 2017 the Civil Service Bureau monitored 287 declarations in total, whereas 284 declarations were randomly selected through electronic system and 3 as a consequence of justified written applications. As a result, 224 declarations were assessed negatively and 56 positively. The monitoring procedure was discontinued on one of the declarations because of the death and in 6 more cases because of the expiry of the term specified by Article 4(3) of the Decree N81 of the Government of Georgia on Approval of the Monitoring Instructions for Asset Declarations of Public Officials of 14 February 2017. Statistically, the number of positively assessed declarations constitutes to 20% of the total number of the declarations inspected during 2017, while 78% of the inspected declarations have been assessed negatively and the monitoring of 2% of the declarations has been discontinued. The result of the monitoring with the list of the public officials was proactively published on December 2017 on the webpage of CSB.

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

The CoI law determines the fine for failure of submission of the asset declaration and for violation in asset declaration detected through the verification process, the subject that falls under the competence of the CSB. The amount of each fine is 1000 GEL. At the end of 2017 the CSB has measured the effectiveness of penalties for existence violation in asset declarations and outlined the practical difficulties and the violations that were not essential for the purpose of Asset Declaration Monitoring. Based on the 2017 Monitoring result the draft amendments of CoI was prepared and initiated by the members of the Parliament. According to the draft amendments, in order to ensure the principle of proportionality, instead of imposing a fine of 1000 GEL for every violation, the public official will be fined in the amount of the percentage of the salary, in particular in the amount of 25% of monthly salary. However, the minimum amount of penalty is declared as 500 GEL. Additionally, non-essential violations, which are determined by the draft amendment, will not be subject to fine, however be still considered as a violation and warnings will be exposed. Moreover, in case of identifying the non-essential violation during the next monitoring process, the declaration will be assessed negatively and the official will be subject to fine.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 9.

NGOs report

9.1) NGOs did not report any progress regarding this recommendation.

9.2) NGOs did not report any progress regarding this recommendation.

9.3) NGOs reported no developments, but highlighted that an independent commission for the selection of asset declarations is still not established.

9.4) NGOs reported that with new amendments, the penalties are not given as sums but in %-s of the public officials’ salaries.

Assessment of Progress

Progress was made regarding Recommendation 9. Many asset declarations were monitored, but since this is a new tool, Georgia has not had time to thoroughly assess their effectiveness. The system for
calculating penalties was changed after analysing what system of penalising would be most effective.

**Progress**

**Recommendation 10: Protection of whistle-blowers**

Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.

Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies to identify the needs for further improvement.

---

**18th Monitoring Meeting, September 2017**

10.1. Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.

**Government report**

Since 2015, the CSB conducts the trainings on Ethics and Whistle-blowers protection mechanisms, for the representatives of governmental institutions (line ministries, Legal Entities of Public Laws (LEPLs), Administration of President, members of the apparatus of the Parliament, administration of state trustees – Governors, central institutions of the Autonomous Republic of Abkhazia) and representatives of self-governing bodies. In May 2017, the training on “Ethics and Code of Conduct in Civil Service” was conducted for the representatives of the Public Defender’s Office of Georgia. In total, 6 trainings were delivered and 114 civil servants were trained. As a result, in 2016-2017, 35 trainings were delivered and 606 civil servants were trained.

The CSB is planning to launch the new project on “Capacity Building in Civil Service and Anti-Corruption Area” with the financial support of the UNDP. Training module on new the Law on Civil Service and corruption prevention mechanism will be developed and up to 350 public officials will be trained. Within the framework of this project, the Handbook on Ethics and Code on Conduct of Civil Servants will be updated, published and distributed throughout the civil service, Guidelines on Code of Ethics and new Law Civil Service will be elaborated and published, a module on ethics for political appointees as well as the concept of an E-learning module on ethics will be developed.
Furthermore, the CSB is working on the draft decree of Government on “Rule of Determining the Needs for Professional Development of Professional Civil Servant, Standard and Rule of Professional Development”. The mandatory standard of professional development will consist of basic and extra training programs, covering also the topics on ethics and whistle-blowing.

**NGOs report**

According to the IDFI, there is no activity envisaged by the new Anti-Corruption Action Plan on whistleblower protection. Problem of lack of statistics on whistleblowing is still present. IDFI has been observing that public servants still refrain from blowing the whistle on obvious corruption crimes they encounter (e.g. misuse of public resources). The reasons vary, including that they do not trust the institution they work in. Namely, they consider that the person in the managerial position would be better protected then them; they consider that it will damage them more than the perpetrator of corruption crime. The trainings on legislation and practice of whistleblower protection is envisaged in the concept of the training program of public officials and civil servants. An online whistle-blowing portal – www.mkhileba.gov.ge was created by the Civil Service Bureau and IDFI has been actively monitoring its utilisation. In addition, the attitude towards the whistle blowing remains negative. Responsible agencies need to increase their efforts on the awareness activities on whistleblower. TI Georgia noted that the Civil Service Bureau’s training sessions for civil servants have covered whistle-blowing; TI Georgia is not aware of any similar undertakings in the private sector.

10.2. Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies to identify the needs for further improvement.

**Government report**

Amendments to the legislation regarding additional safeguards and protection of the rights of whistleblowers have already entered into force and the so-called “Red Button” on the official web-page of the CSB is fully operational. 68 cases of whistle-blowing have already been registered thought this channel and were forwarded to the appropriate institution for further respond.

**NGOs report**

There has been no official communication on the Government’s efforts to evaluate the effectiveness of reporting channels.

According to GYLA, in spite of the good legislation in the area of the protection of whistle-blowers, the reporting channels are not working in practice and there are very rare cases reporting the malpractice in public administration internally or externally. The reason may be the lack of the administrative culture and awareness of public officials. During the monitoring period, additional steps haven’t been taken to improve the reporting channels in practice.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 10.

**NGOs conclusions**

According to the training program of public and civil servants the Government will continue education activities on the whistleblowing in public institutions. The statistics of the cases of whistleblowing is still challenge in Georgian public service. No effort had been shown by the
Government to evaluate the effectiveness of reporting channels. IDFI and GYLA believe that there was lack of progress in the implementation of recommendation 10, while TI thinks there was progress.

**Assessment of Progress**

As acknowledged by NGOs, there was progress in continuing education and awareness-raising activities about whistle-blowing in public institutions, even such activities did not target the private sector. No evaluation of the effectiveness of reporting channels and the follow-up by law-enforcement bodies has been conducted. Overall, Georgia made **Progress** under Recommendation 10.

---

**19th Monitoring Meeting, July 2018**

**Government report**

Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.

Since 2015, the CSB conducts the trainings on Ethics and whistle-blowers’ protection mechanisms, for the representatives of governmental institutions (line ministries, Legal Entities of Public Laws (LEPLs), Administration of the President, members of the apparatus of the Parliament, administration of state trustees – Governors, central institutions of the Autonomous Republic of Abkhazia) and representatives of self-governing bodies. In 2016-2017 35 trainings were delivered and 606 civil servants were trained.

In July-December, 2017 The CSB has launched the new project on “Capacity Building in Civil Service and Anti-Corruption Area” with the financial support of UNDP. The project aimed at increasing the level of awareness among civil servants and public officials on a) novelties of new Law on Civil Service and b) new Anti-Corruption mechanisms, including whistle-blowing mechanisms. The project covered the following activities:

- Providing training sessions for Public Officials on a) novelties of the new LCS and b) corruption prevention mechanisms - the team of trainers organised two-day training sessions for up to 409 civil servants and public officials from central government level, including heads of structural units from line ministries and top managers from LEPLs;
- Updating the Handbook on Ethics and Code of Conduct in Civil Service; Developing Guidelines for the Code of Ethics and Guidelines for the new Law on Civil Service;
- Enhancing Communication on Civil Service Reform - within the framework of the campaign promotional materials – leaflets/brochures, calendars, info graphics and video clip on novelties regarding Civil Service Reform and Anti-Corruption regulations were developed. In the frame of enhancing communication with the stakeholders the new brand of CSB was presented;
Preparing e-learning training module for provision of online training in Ethics for civil servants and developing training module and training structure for political appointees (state political officials, political officials and administrative contract employees).

Finally, on December 2017, at closing event of the project more than 200 civil servants attended and took part in discussions, as well as received materials prepared. Moreover, the CSB sent the package to the heads of all public agencies at the end of the year with the request to insure integrity in their institutions.

On May 22, 2018, the Government adopted the decree on “Rule of Determining the Needs for Professional Development of Professional Civil Servant, Standard and Rule of Professional Development”; thus, established the legislative framework on process of determining the needs for professional development, define the mandatory standards for professional development and regulate the procedure of controlling the quality of mandatory professional development programs.

Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies to identify the needs for further improvement.

Amendments to the legislation regarding additional safeguards and protection of the rights of whistleblowers have already entered into force and the so-called “Red Button” on the official web-page of the CSB is fully operational. 68 cases of whistle-blowing have already been registered thought this channel and were forwarded to the appropriate institution for further respond. During 2017 38 cases were registered through so-called “red-button” via the CSB web-page.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 10.

NGOs report:

10.1) NGOs did not report any progress regarding this recommendation.

10.2) The special articles in the law on Conflict of Interest and Corruption in Public Service do not apply to the law enforcement agencies. It is stated that whistle-blowing in law enforcement bodies shall be regulated by the special legal act. Despite the fact that, the law consists of this reservation since 2014, special regulatory act has not been adopted yet. Consequently, public servants in MIA do not enjoy effective legal instruments to promote the prevention of systematic misconducts, eliminate violation of ethical norms and general rules of behavior, in a free and protective way.

Assessment of Progress

Progress was made under recommendation 10. Trainings and seminars were organised to raise awareness on whistleblowers’ protection. Data on the use of the reporting channel for whistleblowers was communicated, but no information about the evaluation of the effectiveness of the channel and identification of needs for improvement was provided.
Recommendation 11: Integrity of political public officials

Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.

Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.

18th Monitoring Meeting, September 2017

11.1. Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.

**Government report**

With the purpose of implementing the OECD/ACN recommendation as well as other international recommendations, the Permanent Parliamentary Council on Open and Transparent Governance envisaged the issue of Code of Conduct for Parliamentarians in its 2017-2018 Action Plan. More specifically, the activity 4.3 of the Action Plan states that by the end of 2017 the Code of Conduct for the MPs will be adopted, the supervisory body will be determined, the enforcement mechanism will be created and the sanctions will be set. The Working Group consisting of MPs and the advisory group of the Council was created in 2017 and the work on reviewing the norms of ethics has been started. The Code of Ethics will be introduced to the Parliament by the end of 2017.

**NGOs report**

According to GYLA, the Code of Conduct for MP has not been adopted yet. The adoption of the Code is also one of the obligations under the new Open Parliament Action Plan (2017-2018). A consultative group composed of NGO representatives and the Members of the Parliament has been working on drafting the Code of Conduct for MPs. The draft Code was finalised and includes the enforcement mechanism, including sanctions for violation of the Code of Conduct. However, the Code of Conduct may be finally evaluated after its adoption by the Georgian Parliament.

11.2. Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.

**Government report**

According to the Law on Conflict of Interest and Corruption in Public Institutions a dismissed public servant may not, within 1 year after dismissal, start working in the public institution or carry out activities in the enterprise which has been under his systematic official supervision during the past 3 years. Within this period, he/she also may not receive income from such public institution or enterprise. Under these regulations fall the ministers, as for the purpose of the Law the term of “public official” includes the Ministers of Georgia and their Deputies.
As stated by IDFI, the only rule that applies to officials leaving the office is submission of asset declarations one year after resignation. There is no readiness from the Government side to introduce other rules in the legislation. According to TI Georgia, given the wording in the law, current post-employment restrictions appear to apply to civil servants only (rather than political officials, including ministers). No effective enforcement mechanism is in place and TI Georgia is not aware of any plans to establish one.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 11.

**NGOs conclusions**

Post-employment restrictions for ministers are not introduced in law. GYLA and IDFI believe there was progress in the implementation of recommendation 11, while TI Georgia thinks there was no progress.

**Assessment of Progress**

While development of the draft Code of Conduct for MPs is a welcome step, it is not sufficient to acknowledge progress, as it has not been even officially introduced in the parliament. There was no progress with introduction of post-employment restrictions for ministers in the law with an effective enforcement mechanism in place. Overall, **Lack of progress** under Recommendation 11.

**18th Monitoring Meeting, September 2017**

**Government report**

**11.1. Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.**

On 14 December, 2017 the draft Code of Ethics and Conduct of Parliamentarians was submitted to the Parliament. On 10 April, 2018 the draft Code was discussed at the plenary session of the Parliament but did not receive necessary votes. The draft Code was reinitiated in May 2018 and the Parliament commenced relevant proceedings.

**11.2 Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.**

No further action has been taken at this stage.

**Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 11.**
NGOs report - IDFI

11.1) In April 2018, the Parliament of Georgia dropped the bill on the Code of Ethics of the MPs. In May 2018, the new draft Code of Ethics had been registered with the slight amendments. The Parliament hearing has not been conducted yet. Hence, it cannot be considered as the progress taking into consideration the previous experience, when registered Code of Ethics was dropped on the first hearing.

11.2) No further progress.

Overall, IDFI considers that the implementation of this recommendation should be evaluated as lack of progress.

NGOs report – TI-Georgia

11.1) Parliament has failed to adopt a Code of Conduct.

11.2) The law prohibits former ministers (for a period of one year after leaving the post) from entering jobs in companies which they “oversaw in their official capacity systematically over the last three years.” There are two problems with this provision: The law does not clearly define what “systematically overseeing” a company implies, while the stipulation that the post-employment restriction only applies to the officials who held the same position for at least three years essentially renders the provision useless in many potentially relevant cases. Also, it is not clear how/whether the adherence of former ministers to this requirement is monitored and enforced in practice.

Assessment of Progress

While draft Code of Ethics and Conduct of Parliamentarians, development of which was reported previously, was submitted to the Parliament, it was rejected. Amended draft Code has been registered in May 2018 again but has not yet been reviewed. Civil society is sceptical about the chances of adoption of the new document. The monitoring experts would like to withhold recognising these developments as progress until further developments in regards to the Code in the Parliament.

No further actions have been reported by the Government on the second element of the recommendation.

No rating (or Lack of Progress)
**Recommendation 12: Integrity in the judiciary**

Increase transparency of the High Council of Justice activities, ensure that all Council’s decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.

Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.

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

Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.

Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.

Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.

Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

---

12.1. Increase transparency of the High Council of Justice activities, ensure that all Council’s decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.

**Government report**

The legislative amendments (so called “third wave reform”) entered into force in the beginning of 2017 and most of the OECD-ACN and other international recommendations were covered by this reform. Article 49 of the Organic Law of Georgia on Common Courts (LGCC) was amended and newly added paragraph 4 states that all decisions made by the High Council of Justice (HCJ), information about the change of the HCJ members and any other information in respect with the HCJ’s activities as well as information on the competition and the outcomes of the competition on the judge’s position must be published on the official HCJ webpage. Additionally, the information regarding the HCJ meeting date and the agenda must be published on the HCJ webpage no later than 7 days before the meeting. Further actions for increasing the transparency of the HCJ’s activities are foreseen by the New Anti-Corruption Action Plan (AC AP) 2017-2018 and the Judicial Action Plan 2017-2018 (this includes open sessions for the members of the civil society, the obligation for the HCJ to promptly deliver to the society its reports regarding the implementation of judicial power and analysis of statistical data, etc.). As regards justification of the HCJ decisions, new AC AP envisages...
this requirement for the Judiciary, which based on the Action Plan should be completed by the end of 2017.

In respect of the conflict of interest, newly amended Article 35 of the LGCC states that during the competition held for the selection of judges, a candidate has a right to ask for the disqualification of a member of the HCJ with the reason of conflict of interest, namely, if there are circumstances that will put under the doubt the objectivity, independence and/or impartiality of the member of the Council. Based on the same article, in case of conflict of interests the HCJ member must declare about it and disqualify himself/herself from taking part in deciding on the issue of selection of a judge. Same Article forbids the member of the HCJ to take part in decision-making on the selection of a judge if s/he is participating in the competition for a vacant position of a judge as a candidate. The decision to disqualify the member of the Council is taken by the HCJ with the majority vote. The member in question does not participate in a voting procedure.

**NGOs report**

IDFI emphasised in several instances that the HCoJ uses its powers against the interests of justice, instead of protecting them. The failure of the Ministry of Justice and the legislative authorities to act, and the inadequacy of legislative reforms that have been implemented so far, grants the HCoJ absolute power to act in an arbitrary manner, which is leading the judiciary into a crisis. Despite this, authorities are failing to take effective measures to address the crisis. On 31 May 2017, in protest of the developments in the judicial system, NGOs refuse to present their report and demand creation of a parliamentary forum to discuss the developments and prompt reforms.

According to GYLA, the general obligation of the HCoJ to substantiate its decisions has not been established by the law or the regulations. Some amendments have been introduced in the Organic Law on General Courts of Georgia as part of the third wave reform of the judiciary. The amendments are related to the judicial selection/appointment system, as well as prior publication of information on the upcoming HCoJ meeting. However, these amendments proved to be insufficient. The HCoJ adheres to its previous practice and considers issues and makes decisions without making prior public notification within the established time and makes decisions on the issues that have not been on the agenda.

As for the amendments related to the selection and appointment of judges, according to the existing HCoJ regulations the interviews with the judicial candidates are closed for public. It should be mentioned that procedure of interviewing candidates is the only open stage of the whole selection process. Despite the low public trust towards the objective appointments of judges, the law does not provide for open hearings. Although, in practice the HCoJ usually conducts interviews with judicial candidates in an open session, more and more candidates motion for closure of his/her interview based on the HCoJ regulation.

Some changes have been introduced to avoid conflict of interests in the HCoJ. However, the norms regulating this issue apply only to the decisions of the HCoJ related to the appointment of judges. New amendments on the avoidance of conflict of interests does not apply to other similarly important decisions of the council, such as, transfer of judges, appointment of court presidents, etc.
TI reported that providing justifications for the Council’s decisions remains a problem in practice. The Council’s decisions, including those concerning appointment of judges, are too general and lack proper justification, while appeal mechanisms are ineffective. The issue of conflict of interest has only been addressed partially: as of March 2017, Council members can no longer administer competitions for judicial vacancies if they themselves are among the contestants but conflict of interest in other situations remains unregulated.

12.2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.

**Government report**

As a result of the new legal amendments of 2017 the LGCC now envisages detailed criteria for the selection of judges, which are based on competence and integrity. The LGCC now regulates in details the procedure for the selection of judges as well. Legal provisions on promotion, transfer and dismissal of the judges are now foreseen by the same law. The new AC AP 2017-2018 and the Judicial Strategy envisage to further regulate procedure for selecting judges and the trainees of the High School of Justice, to elaborate a clear and transparent system for the promotion of judges, which will be based on objective criteria and based on the outcomes of continuous evaluation of judges.

**NGOs report**

GYLA reported that criteria for the selection of judges according to their professionalism and integrity have been introduced by the amendments to the Organic Law on General Courts. However, the amendments do not comply with the established international standard of objective criteria for the selection of judges. No indication of sources of information or evidences on which the members of the HCoJ would be obliged to rely on while evaluating the candidates were introduced by the law or the HCoJ regulation.

Points based system of evaluation of judicial candidates has been introduced which aims to ensure substantiation of decisions on judicial appointments. However, the points based system applies only to the evaluation of competency of the candidate and does not apply to the evaluation of integrity of a person. This gives the HCoJ improper discretion for subjective evaluation and does not guarantee objective decisions on the judicial appointments. As a concluding stage of evaluation process, the third wave legislation preserves secret voting by the HCoJ members which excludes possibility of any substantiation of the final decisions on the judicial appointments. The suggestion of the NGO Coalition for an Independent and Transparent Judiciary, to abolish secret voting system and appoint candidates with the best evaluation results, has not been taken into consideration.

As a result, even after the adoption of the third wave reform, nothing has changed in the practice of appointment of judges, no proper transparency or substantiation of decisions on the appointment of judges are ensured by the HCoJ.

The Organic Law on General Courts contains general provisions of evaluation of probationary judges. The HCoJ has not adopted detailed rules of evaluation which would establish specific, objective procedure for evaluation which undermines the independence of judges on probation and makes whole process non transparent.

The law still does not provide the liability of the HCoJ to substantiate any of its decisions, including decisions related to the transfer of judges. The established grounds for non-competitive transfer of
judges are very broad, does not comply with established international standards and leave room for subjective decisions.

TI noted that some progress has been made, particularly in terms of establishing the rules for the transfer of judges, which have reduced the opportunities for abusing the transfer mechanism. Still, the transfer criteria remain vague, while important specific criteria such as the caseload in the courts and the specialisation of the judges have not been included in the law. The same applies to the criteria used for admission to the High School of Justice and transparency of the selection process has not been ensured, while the Schools is also excluded from the process of judicial promotions. The introduction of criteria for judicial candidates in 2017 was a positive development, although the content of the criteria still leaves too much room for subjective decisions.

According to the IDFI, selection procedure of judges still remains of the main problem in the Georgian judicial system. NGOs stated that because of the deficient rules of judicial appointment, the public does not know what factors the Council considers during discussions and on what it bases its decision.

Recent appointments confirmed that in reality the amendments to the judicial selection and appointment system introduced by the so called “Third Wave” of reforms do not ensure appointment of candidates whose integrity and professionalism is adequately checked and confirmed. Additionally, the legislation still leaves the Council legal chances for arbitrary decisions, specifically allowing for appointment without substantiation and argumentation via secret ballot.

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

**Government report**

After the amendments of 2017 the legal provisions on promotion of judges have been amended with the aim to define the criteria for promotion of judges; a judge cannot be promoted earlier than set by the law and the time passed after the appointment on a position of a judge after which s/he can be promoted was changed from two to five years. New AC AP 2017-2018 and the judicial strategy and the action plan foresee this recommendation in order to further improve the legal provisions on the promotion of judges. The HCJ has already started to implement the recommendation and together with international experts has elaborated the recommendations for improvement of the legislation in this respect. These recommendations will be discussed and the draft legal amendments prepared by the HCJ and the Ministry of Justice.

**NGOs report**

According to GYLA, the law does not provide objective requirements for the merit based promotion of judges or procedure for promotion of judges. The law requires the HCoJ to establish particular requirements and procedure for the promotion. Nothing has changed in the HCoJ regulations regarding the promotion of judges which does not establish objective criteria or transparent procedure for the promotion. TI Georgia concurred that the promotion criteria are not currently established by the law and the Council has full discretion in regulating the question. It is necessary to at least have the rules for non-competitive promotion to be established by the law, which is currently not the case.

---

6 LGCC Articles 34, 35, 35¹, 35², 35³, 35⁴, 36.
12.4. Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.

**Government report**

After the “third wave reform” the court chairpersons do not have a power to initiate the disciplinary proceedings against a judge, neither do they have the power to appoint a judge as the appointment of a judge is carried out based on the open competition regulated in detail by the law (discussed above in 12.1.), the court chairpersons do not have power to allocate the cases to judges. The reform regulated in details the functions of the court managers and separated it from the functions of the court chairpersons. Furthermore, the new AC-AP 2017-2018 envisages the activity for the judiciary to further review the functions and powers of the court chairpersons in accordance with the OECD-ACN recommendations and finalise this process by the end of 2018. According to the same action plan, the legal provisions on appointment of the court chairpersons should be reviewed by mid-2018.

**NGOs report**

TI Georgia reported that the administrative powers of court chairpersons were limited to some extent under the “Third Wave” of judicial reform as the power of direct administration of court staff was transferred to court managers. While this is a positive development, the chairpersons have retained significant administrative functions which also need to be transferred to court managers.

GYLA stated that nothing has changed in the law regarding the appointment and dismissal of court chairpersons or their powers influencing the career of individual judges. The appointment of court chair persons is practically not regulated by the law or the HCoJ regulations. Court chair persons are still perceived as being a mechanism in the hands of the HCoJ to influence individual judges and control the court system. In 2016 and 2017, many court chairpersons have been appointed or dismissed without any procedure or pre-determined criteria in place, without competitive selection or substantiation of those decisions. Moreover, the presence of court chairpersons in the HCoJ has been increased as the restriction of court chairpersons to become a member of the HCoJ has been abolished with the last-minute amendments in the third wave legislation.

12.5. Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.

**Government report**

Effective steps have been taken to ensure the automatic/electronic case allocation system within the Judiciary. New legal amendments of 2017 envisaged this issue and in order to implement the new legal provisions, the HCJ approved automatic/electronic case allocation system in Common Courts of Georgia with the official decision of 1 May 2017. A pilot program of electronic case allocation system was launched in Rustavi City Court in July 2017; starting from 31 December 2017, the electronic system of automatic case allocation will be fully applied in the entire Common Court System.

**NGOs report**

GYLA noted that the principle of automated random case assignment has been introduced by the third wave legislation. However, no guarantees of safety of the program or list of exceptional circumstances when random case assignment will not apply or any procedure thereof has been established by the law. The law provides that the random case assignment system will come into
force at the end of 2017. The pilot program of random case assignment has been launched in one district court. Very general information has been presented to the public about the program/software launched which does not give the public sufficient information or confidence in the effectiveness and safety of the system. Recently the HCoJ amended the regulation on the automated random case assignment so that the issue was not included in the agenda of the meeting and the draft amendments were not published prior to its adoption.

12.6. Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.

Government report

Along with the abovementioned, in order to strengthen the control of conflict of interests, amendments were made to the Law of Georgia on Disciplinary Liability and Proceedings of Common Courts’ Judges (LDDC). According to the amended Article 7 of the LDDC newly created institution of Independent Inspector is in charge with initiation and initial check of the disciplinary case and later reports to the HCJ. Based on Article 12(4) a judge whose case is being considered has the right to demand the disqualification of the Independent Inspector. This should be substantiated. The Independent Inspector has a right to disqualify himself/herself as well. The matter of disqualification of the inspector from a specific case is decided by the board of three members of the HCJ, selected by casting lots. In case of the disqualification of the Inspector from the case, the case is handled by a member of the HCJ chosen based on the Rules of Procedures of the HCJ. The HCJ member can be disqualified with the same grounds as the Inspector. The member who replaces the Inspector in the specific case cannot participate in decision making on that case.

It is also notable that disciplinary proceedings and disciplinary prosecution has been separated from each other. In particular, disciplinary proceedings against a judge can be initiated by the independent inspector, but disciplinary prosecution can be initiated by the HCJ. According to the recent changes, the HCJ decision on the disciplinary proceedings shall be sent not only to the author of complaint, but also to a judge in question. Moreover, changes have been made regarding the transparency of the disciplinary proceedings. In particular, according to the law, the HCJ is obliged to invite the relevant judge, and the author of complaint in case of necessity. In the disciplinary proceedings, the disciplinary board cannot refer to the HCJ with the issue which is not alleged by a party. Standard of proof for the disciplinary cases has been set by law.

Moreover, in accordance with the new AC AP 2017-2018 the HCJ in collaboration with the Ministry of Justice has to further revise the regulations on disciplinary liability for the purposes of increasing efficiency, transparency and impartiality; to improve disciplinary proceedings and to revise formulation of disciplinary liability. Based on the Action Plan the work in this respect should start in the second half of 2017 and be finalised by mid-2018.

NGOs report

IDFI stated that it is necessary to revise the current basics of disciplinary proceedings of judges. The particularly important issue is imposition of disciplinary liability against a judge for decisions made in the process of administration of the justice. A judge should have freedom in interpreting and explaining the law and be protected from the threats of disciplinary proceedings unless the judge’s actions point at his/ her bad faith.
At the same time, it is necessary to increase the institutional guarantees of independence for the Independent Inspector who shall be appointed and dismissed for the 5-year term office by the High Council of Justice. The Independent Inspector based on a preliminary examination shall assess the validity of initiating disciplinary proceedings.

TI Georgia stated that there have been positive changes under the “Third Wave” of reform, notably in terms of limiting the power of the Council secretary to unilaterally deciding the question of launching disciplinary proceedings against the judge. This responsibility has now been assigned to an independent inspector who is to be appointed by the Council for a five-year term. On the negative side, the law does not currently contain sufficient guarantees of the inspector’s independence and neither does it establish predictable grounds of launching disciplinary proceedings against the judge, which makes it possible to abuse such proceedings for exerting pressure on judges.

According to GYLA, substantial changes still need to be introduced in the law, among others: the law should precisely define the goals and objectives of disciplinary proceedings in order to avoid the threat of administering the parallel justice in disciplinary proceedings; institutional guarantees of independence of the inspector (which has been established by the third wave) are not sufficient and need to be increased; the law should determine the standard of proof in disciplinary proceedings and the rules for admissibility of evidences; the provisions of the Criminal Code of Georgia which are related to judicial liability when exercising official duties need to be improved in order to clearly define in what circumstances a judge’s action may go beyond the disciplinary boundaries; decisions about lifting of the immunity of judges of district (city) courts and courts of appeal in criminal offences should be made by the High Council of Justice and not unilaterally by the Chairperson of the Supreme Court of Georgia; the disciplinary panel should make decisions by majority of the entire composition and not by a majority of members present at the sessions. These and other important procedural flaws have not been addressed by the third wave of the reform in the judiciary.

The third wave of the reform did not address the problem of the existing very broad and vague grounds for disciplinary liability of judges. The law should be precise and foreseeable in establishing grounds for disciplinary responsibility of judges. Also, any general provisions of ethical norms should not constitute the grounds for disciplinary proceedings. A judge’s action which affect and undermine the reputation of the court, and public confidence in the court should be expressly and foreseeably defined in the law.

12.7. Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

Government report

This issue has been envisaged by the new AC-AP 2017-2018 (as well as the Strategy of the judiciary 2017-2021) which states that the issue of bonuses shall be dealt with during 2018 in accordance with the OECD-ACN recommendations.

NGOs report

GYLA noted that the provision which is established by the regulation of the HCoJ and which allows the HCoJ to decide on the bonuses of individual judges according to their in-service evaluation has not been removed. TI Georgia agreed that recent reforms have not included any changes regarding the allocation of salary “supplements” to judges which continue to be paid arbitrarily.
**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 12.

**Assessment of Progress**

With regard to Recommendation 12.1., progress can be noted as the Third wave reform package amended the law to increase transparency in the work of the High Council of Justice (HCJ) and improve regulation of the conflict of interests of the Council’s members. However, it is also important to address concerns of the NGOs that state that in practice the HCJ often does not substantiate its decisions, formally interviews with judicial candidates remain a closed procedure and conflict of interests procedures do not cover all issues considered by the HCJ.

On Recommendation 12.2. progress was achieved by introducing in the law specific criteria for selection of judges and regulating procedure of transfer of judges. NGOs, however, criticise the substance of amendments, view selection criteria not objective enough and susceptible to abuse, criticise lack of transparency and justification of decisions in practice.

No progress with regard to implementation Recommendation 12.3.

Progress can be acknowledged with regard to Recommendation 12.4., as the power of direct administration of court staff was transferred to court managers from court chairpersons. However, it is regrettable that court chairpersons still have significant powers and that the latest judicial reform amendments did not exclude court chairpersons from the HCJ.

Significant progress was achieved under Recommendation 12.5. as the “Third Wave” judicial reform introduced automated case assignment in courts in the law; the system was piloted in one court and is planned for the universal roll-out in the end of 2017. At the same time, the Government should address concerns about security and reliability of the new system to ensure public trust and confidence in the system and results of automated case allocation.

There was progress under recommendation 12.6. as well, as the position of independent inspectors has been introduced to lead investigation into judicial misconduct and by separating “investigation” and “prosecution”. However, there are concerns about the independence of such inspectors. Grounds for disciplinary liability of judges have not been revised as recommended.

As important steps were taken to move forward with the judicial reform and there was some progress under each of the recommendation’s part, according to the progress updates methodology, the overall assessment under Recommendation 12 is that Georgia made **Significant progress**.
12.1. Increase transparency of the High Council of Justice activities, ensure that all Council’s decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.

Within the framework of the Judicial Strategy and the Action Plan, the HCJ continues working on further improvement of the regulations regarding the Conflict of Interest. In March 2018, the members of the HCJ were introduced to the report prepared by the international expert concerning the conflict of interest regulations with respect to the procedures for appointment, transfer and evaluation of judges as well as disciplinary proceedings. Based on the plan, the work in this respect is anticipated to be finalised by the end of 2018.

With regard to justification of the HCJ decisions, no further action has been taken at this stage.

12.2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.

The constitutional reform of 2017 created stronger guarantees for the judicial independence by setting forth the rule of appointment of judges of common courts (including the Supreme Court judges) for a life tenure until they reach the age determined by law. As an exception, the constitution stipulates that “until 31 December 2024, in case of the first appointment, before the appointment for a life tenure, a judge may be appointed for a trial period of three years” (the provision will enter into force after taking an oath for office by the President of Georgia in the succeeding elections). This exception was justified by the planned reform of the High School of Justice, which will ensure as a consequence to have properly trained graduates.

It is important to note that the new edition of the constitution defines the criteria for selection of judges (honesty and competence) and requires majority of votes of the HCJ for choosing the right candidate. Unlike from judges of first and second instances, election by the Parliament is maintained with regard to the judges of the Supreme Court. According to the new amendments to the Constitution, the HCJ will be entitled to submit candidates of judges of the Supreme Court to the Parliament.

Additionally, the aforementioned amendments created guarantees for irremovability of judges. The constitution repudiates the restructuring and liquidation of a court as grounds for dismissal of a judge appointed for a lifetime.

Currently, the HCJ is working on implementation of the Constitutional changes. The regulations regarding selection process is planned to be finalised by the end of 2018. In respect of the promotion of judges, please see Rec. 12.3.

12.3. Introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.
In March 2018, in the course of a workshop the members of the HCJ were introduced to the practice of European Countries regarding the promotion of judges as well as analysis of Georgian legislation in that regard. Based on the recommendations made by the international expert, the working group has already finalised the changes to the law which will be presented to the council in the nearest future.

12.4. Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.

Tangible changes occurred in January 2018 with regard to the involvement of court chairpersons in the case assignment process. On 8 January 2018 the HCJ adopted a decision further detaching the court chairpersons from the process. The court chairpersons have been wholly removed from the process of allocation of cases to judges. Pursuant to the mentioned decision, the authority of sequential case distribution during the delays of the electronic system has been transferred to the specifically authorised employee of a court registry who allocates cases according to the special rules determined for the sequential case distribution (case assignment according to the order of enrolled cases and the alphabetical order of the names of judges).

Noteworthy, after eradication of a temporary delay, a relevant authorised employee of a court registry submits a memorandum (information about cases allocated in sequential order during the period) to the Management Department of the HCJ. Such a regulation ensures any possibility to evade the mentioned rules to be eliminated.

Additionally, the Judicial Strategy and the Action Plan envisage making a clear distinction of functions among chairpersons and managers. In this respect, recommendations of the international expert is planned to be presented to the working group by mid-2018.

12.5. Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.

Since 31 December 2017, the electronic system of automatic case allocation has been fully applied within the entire Common Courts System. The results of the case assignment are available for everyone through submitting public information application to the HCJ.

12.6. Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.

Since 2017, the HCJ together with the Supreme Court, the Parliament, the Ministry of Justice and the International organisations, has been involved into the “Fourth Wave Reform”. Within the framework of the working group, the HCJ has been participating in the process of drafting legislative proposals, which, among other issues, includes further improvement of the disciplinary proceedings and the grounds of disciplinary responsibility.

Totally 5 working meetings were conducted in 2017. In the course of a meetings, the issues related to the disciplinary proceedings were discussed. The working group was introduced to the recommendations/comments regarding the existing grounds for disciplinary responsibility as well as the amendments to the law on “Disciplinary Liability of Judges of Common Courts of Georgia and
Disciplinary Proceedings” made by the international experts. The work in this respect is planned to be finalised by mid-2018.

12.7. Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

With the aim of implementing OECD Recommendations as well as activities determined by the new AC-AP 2017-2018 and the Judicial Strategy 2017-2021, the HCJ prepared changes to the law of Georgia on Common Courts (LGCC), which envisages fixed salaries for judges. According to the changes, remuneration of a judge will be increased with the amount of existing bonuses.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 12.

NGOs report – IDFI

12.1) The HCOJ used institution of the conflict of interest in such a way that hindered free fulfilment of the functions of members of the Council and expression of critical opinion within the Council.

At the 6 February 2018 session of the High Council of Justice, the majority of the Council members decided to challenge Anna Dolidze, a non-judicial member of the Council, and removed her from the process of lifetime appointment of the several Judges.

All the sessions at which the issue of challenge was considered were closed, due to which the interested persons did not have an opportunity to hear the legal arguments of the Council regarding the reasonableness of challenging the non-judicial member of the Council. However, according to the explanations that the member of the Council, Anna Dolidze, made in the media, she was challenged because of a critical statement she had made publicly before the start of the interviews with the judges to be appointed for life.

NGOs believed that the removal of Anna Dolidze from the process of lifetime appointment of judges due to her critical opinion undermines the quality of the ongoing process, prevents the member of the Council from fulfilling her obligation, and once again demonstrates the problem of intolerance to dissenting opinion in the judicial system. The aforementioned public statement of Anna Dolidze was not directed against any concrete judges whose lifetime appointment the Council was to consider at its session.

In addition, this practice forces members of the Council to make a very dangerous choice between refraining from talking about problems in the judicial system and distancing themselves from the process of making concrete decisions.

In all the aforementioned cases, the High Council of Justice deliberated on the issue of challenge at closed sessions. Neither the law nor the regulations established by the Council provide for examination of the issue of the conflict of interests in the process of appointment of judges at a closed session of the Council. The HCOJ did not publicise all decisions on challenging Anna Dolidze, a non-judicial member of the Council, and their justification.
12.2) According to the Law, if during the evaluation based on the integrity criterion, more than half of the evaluators considers that the judge does not fulfil this criterion, this constitutes a sufficient condition for refusing to admit the judge to the interview stage.

In addition, if the sum of the points gained by the judge based on competence criterion does not amount to 70% of the maximally available points, the Chairperson of the High Council of Justice of Georgia issues a legal act on the refusal by the High Council of Justice of Georgia to review the issue of lifetime appointment of a judge.

The mentioned regulation violates the principle of judicial independence, since the question of lifetime appointment of a judge appointed for a probationary period is not discussed if at least three evaluators assess the judge negatively based on the integrity criterion or if the judge fails to obtain a 70% score on the competence criterion.

The mentioned decision of the Council cannot be appealed to the Chamber of Qualification of the Supreme Court of Georgia. Certainly, the conclusion of the evaluator is later discussed by the Council, however, the discussion does not extend beyond the Council and no other independent institution can discuss the issue, therefore, this cannot be considered as an effective appeal mechanism.

It should be taken into account that this already represents the lifetime appointment process. Judges appointed for a probationary period are subject to legal guarantees of judicial independence. The fact that the issue is not discussed on a Council session directly jeopardises judicial independence, especially as the act of refusal can be appealed in the Council only once and, if dismissed, is not subject to further appeal.

Furthermore, the Law does not prescribe interviews with judges until the Council refuses to discuss his or her lifetime appointment. The Law does not guarantee that appropriate process will be carried out and the judge will be heard before the decision that negatively affects the judge is made.

12.4) We believe that court chair must be elected by judges of the same court through a secret ballot. Furthermore, the law must exclude the possibility of the same person being elected for two consecutive terms.

The role and functions of a court chair must be limited to representative, instead of the current managerial activities. In addition, the court chair must not have the authority to instruct a judge to take a case on a different specialised panel in the same court.

The law must also establish that the composition of specialised panels must be defined by the High Council of Justice and not the court chair.

The membership quota for court chairs in the High Council of Justice must be abolished. More specifically, upon election of a new member of the Council, who also happens to hold the position of a Court Chair / Deputy Chair or Chamber / Panel Chair, the new member must immediately be removed from their administrative position.

12.5) The Coalition for an Independent and Transparent Judiciary was concerned by the April 30 decision of the High Council of Justice that established narrow specialisations for judges at Tbilisi Appeals Court and gave the unilateral power over appointing judges to these specialisations to the Chair of the Court, Mikheil Chinchaladze. Despite the fact that the legislation does not specifically
give such authority to Court Chairs, since 2006, the Tbilisi City Court has had the flawed practice of the Chairs appointing judges to specialisations. This creates significant risks because of the Chairs’ influence on the case allocation process.

The Third Wave of Judicial Reforms introduced new rules for case allocation, which went into effect throughout the country on December 31, 2017. Establishing the new system for case allocation is one of the most significant reforms of recent years, and should be a response to numerous challenges to judicial impartiality and independence. The rules for case allocation must first of all exclude all outside intervention into this process.

In the new model of case allocation, the Court Chairs’ power to appoint judges into specialisations is troubling. The case allocation program randomly selects which specialised judge gets assigned to a specific case, but which judge is specialised in a legal area is decided by the Court Chairs. The problem is further exacerbated by the fact that the Chairs can change the judges’ specialisation without the need for any justification, in a short period of time. This creates a significant risk of the Court Chairs’ influence on case allocation.

The narrow specialisation of judges is particularly problematic at the Appeals Court level, where as a rule the cases are heard by a collegium of three judges. With the current rules, the electronic case assignment system only choses one judge: the speaker judge in the panel of three judges. Hence, there is a great risk that by simply shuffling judges’ narrow specialisation without any substantiation one could influence the formation of the panel of three judges.

The Coalition has repeatedly criticised the role of Court Chairs, who are appointed by opaque rules and are a privileged group viewed as superiors to judges and as controlling them. Given this, the Coalition considers further expansion of the Court Chairs’ authority a negative development, and believes that if narrow specialisations are created the legislation must give the power of specialising judges to the High Council of Justice, rather than the Court Chairs.

12.6) Considering the fact that current disciplinary proceedings have been numerous criticised by domestic and international organisations, the NGOs proposed several amendments to the Parliament, in particular:

In order to increase the guarantees of independence of the Independent Inspector, it is important to amend the procedural rules of appointment/dismissal, as well as the grounds for dismissal and the rules regulating appeal procedure of the dismissal. We believe selection and dismissal of the Independent Inspector should be possible by 2/3 of High Council of Justice (Council) members instead of simple majority. This will increase the influence of the non-judge members of the Council on an institutional level regarding the appointment/dismissal process of Independent Inspector;

The salary of the Independent Inspector should be defined by the law. In addition, Independent Inspector should have a right to determine the number of its staff and their salaries;

Independent Inspector should be granted an access to relevant information (access to certain available electronic databases) in order to properly investigate the cases of alleged disciplinary violations;
Legislation should clearly define that if a criminal offense is detected in the course of the investigation, Independent Inspector should be able to address the Prosecutor's Office directly. The consent of the Council in such instances should not be required;

Law should establish the possibility of an Independent Inspector to address the Council with the recommendation on the launching of disciplinary proceedings;

Law should define an obligation for the Inspector to proactively publish report on own activities every three months and as well as an annual report summarising the whole year. The published information should contain details on the applied grounds of disciplinary misconducts and information on all decisions made by the Council based on the requests of an Independent Inspector.

Apart from that, Reform of the Grounds of Disciplinary Proceedings is still ongoing and current legislation contains important shortcomings. In order to eliminate those problems:

Law should clearly define the goals and scope of the disciplinary liability. Disciplinary proceedings should apply to grave professional violations only and not interpretations of the law or judicial errors;

Provisions of the Code of Ethics, which might cause disciplinary liability, should be clearly and thoroughly defined in the law;

Specific standard should clarify what kind of actions of a judge would qualify as “inappropriate and detrimental to the court reputation”. Current formulation provided by the law is so general and vague that it poses a threat to its selective use in practice.

**NGOs report – TI Georgia**

12.1) No significant new developments

12.2) No significant new developments

12.3) No significant new developments

12.4) No significant new developments

12.5) The random case assignment system is in operation since December 31, 2017. Development of a new system is one of the most important reforms of recent years, which should mitigate number of challenges to the impartiality and independence of the court. Unfortunately the credibility of the system is undermined by the current rules that allow chairpersons to establish and staff the narrow specialisations at the courts.

The program is distributing cases according to the specialisations. The problem is aggravated by the fact that the chairperson of the court can, in a short period of time, without any justification, change the specialisation of judges. This regulation raises serious risks of interference in the case distribution system.

12.6) The special working group on the reform of judiciary has been established in the parliament. The group is currently working on the new law on disciplinary liability.
NGOs report – EMC

12.1) Increase transparency of the High Council of Justice activities, ensure that all Council’s decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.

The civil sector has urged the government to regulate the issues relating to High Council of Justice for years. It is problematic that the Council activities are unregulated in a number of spheres, which gives it unfettered discretion and creates room for arbitrariness.

Analysis of the legal acts governing the work of the High Council of Justice and monitoring of its activities reveal a number of shortcomings in its activities, in terms of principles of transparency and accountability:

- The law does not foresee the scope, rules and procedure for appealing decisions of the Council in court, which effectively rules out review of their legality and reasoning;
- The law does not require that the decisions of the Council are reasoned. This problem is well illustrated by the decisions on admission to the High School of Justice, promotion and transfer of judges, chairmen of courts, chambers and panels;
- Information about the sessions of the Council and the agenda are not published in observance of time limits and drafts/materials on issues to be considered during the session are not accessible either before or during the session. Video recording of the session is only permissible during the opening of the session. Time limits for publishing decisions rendered by the Council are problematic. It has to be noted that decision of the Council are not codified in a consolidated form:
- The procedure for expressing views by persons attending the session of the High Council of Justice are not regulated;
- The procedure for closing the sessions of the High Council of Justice is not regulated.
- Minutes documenting the sessions of the Council are not taken. In the recent period, only an audio-video recording of the sessions is taken. In practice, a number of technical shortcomings were identified, when the recordings was not available for interested parties.

Despite the fact, that non-governmental organisation and one of the non-judicial members of the High Council of Justice, raised initiatives regarding accountability and transparency of the Council in various formats, until now no changes have been carried out either on legislative level or through adoption of a bylaw.

With regard to the recommendation on strengthening the legal framework on conflict of interests, the so-called ‘Third Wave’ reform amended the law to improve existing regulations. However, the positive legal amendment has been used inappropriately in practice against one of the critically disposed member of the HCoJ. She was removed several times from the process of lifetime appointment of judges based on the norms of conflict of interest. The reason cited for the recusal of Anna Dolidze was her public statement made in front of the media about systemic problems in
the judiciary. The HCoJ considered that this statement constituted sufficient grounds for proving a conflict of interest.

The broad definition of conflict of interest that the High Council of Justice used when substantiating the recusal of Anna Dolidze is devoid of a legal basis. Such a definition of conflict of interest constitutes a dangerous trend, which makes it possible to remove a critically disposed member from important processes. Using this mechanism, the Council removed Anna Dolidze from the interviews with 14 out of 50 judges and, accordingly, from voting on their lifetime appointment.

12.2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.

Currently, Organic law on Common Courts of Georgia envisages three different procedures for the appointment of judges:

- Procedures on appointment for the first time for a probationary period;
- Procedures on the lifetime reappointment of those judges appointed for a probationary period;
- The transitional rules on the lifetime appointment of those judges, who have at least three-years of judicial experience.

All these three regimes for selection and appointment of judges contain a number of shortcomings, which in practice revealed that despite the reform, the selection and appointment of judges still do not satisfy the requirements of objectivity, reasoned decision-making, principles of merit based selection and transparency, it allows members of the High Council of Justice to render subjective decisions. In this direction, the state is responsible for maintaining the legal framework that allows the High Council of Justice to appoint a judge through a non-transparent and unsubstantiated procedure, among others:

- A Decision on a judicial appointment is rendered through a ballot (in certain circumstances by a secret ballot), which rules out reasoned decision-making;
- Interview sessions with the judges can be closed, a procedure candidates are inclined to invoke more often;

The monitoring of all stages of selection/appointment of judges leaves the impression that the judicial appointments are based on loyalty towards the Council members and even nepotism. There is reasonable doubt, that the Council uses its powers and the shortcomings in the law for ousting those judges from the system, who may have different views and for strengthening its own positions.

It may well be said, that the belated legislative reforms gave the former composition of the High Council the possibility to render a number of decisions on judicial appointments in a non-transparent manner, without reasoning and in questionable circumstances. Sadly, the new composition of the Council continues the flawed practice of judicial appointments. Past activities of judges appointed for life term do not attest to their principled commitment to justice, rule of law and independent judiciary.
12.3) **Introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.**

The current regulations for the promotion of Judges remain problematic. None of the changes have been carried out either on legislative level or through the adoption of bylaws from September 2017 up until now.

12.4) **Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.**

The excessive powers of court chairpersons and flawed remain a significant problem. Over the past years, court chairs have come to be seen as superiors of other judges, controlling their actions, which is a result of the vague and non-transparent rules for their appointment by the High Council of Justice. In addition, since the same persons usually hold administrative positions in the court, this has facilitated the establishment of privileged groups among judges.

Under the current legislation, the administrative functions inside the court are distributed to several units, but frequently the functions are duplicated. The court chairperson’s status and fair distribution of functions between him/her and managers remains problematic. The changes implemented within the framework ‘Third Wave’ of the judiciary reforms have created fruitful soil to relieve chairperson’s workload and delegate administrative functions largely to a manager. However, the ‘Third Wave’ failed to solve the problem of undemocratic rule of appointment of court chairpersons, which assigns unlimited powers to the High Council of Justice.

The function retained by the Chairperson to allocate judges in the narrow specialisations based on his/her opinion and discretion is especially problematic. Chairperson may change the composition of the judges in the narrow specialisations, in a short period of time, without any substantiation.

12.5) **Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.**

The introduction of the electronic case assignment system represents one of the most significant reforms and a positive step in the recent years. However, the power maintained by the chairpersons of courts to decide unilaterally on allocation of judges across narrow specialisations created within the court is still problematic. This authority of the chairperson has a substantial adverse effect on principle of random case allocation.

Since December 31, 2017 electronic system of case allocation started to function in all courts, without an exception, however, due to shortage of judges, random case allocation system is not applied in 1 district and 13 magistrate courts. Starting from January 2018, in total 43.227 cases were distributed through this electronic program, however, out of this number 27.549 (64%) cases were distributed in compliance with random allocation principle.

The analysis of the acts approved by the Council concerning random and equal distribution of cases, also monitoring of the system in a pilot regime and its subsequent introduction on the national level revealed the following challenges that prevent proper implementation of the random allocation principle:

- Shortage of judges, especially in regions, which prevents random allocation of cases in all courts;
● The procedure of duty shifts of judges, which permits allocation of a case to a particular judge without giving due account to their specialisation and a randomness principle;

● The deficient practice of case allocation in sequential order by the staff of the chancellery;

● Non-systemic and fragmented amendments to the rule on the functioning of the electronic program and increase of exceptional circumstances;

● Particularly problematic is the retained function of the Chairperson to allocate judges in narrow specialisations as he/she wishes;

● Establishment of important rules to be invoked in cases of program disruption at secondary legislative level (bylaws);

● Although the excessive workload of the judges is one of the major challenges in the judicial system, the new rule on case allocation currently in force does not contain the principle of fair and objective distribution of cases based on its difficulty and volume in order to ensure equal distribution of cases.

12.6) Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.

The civil society has positively assessed the independent inspector mechanism introduced by so-called ‘third wave’ reform, however, it also has to be noted that there are not sufficient and firm legislative guarantees, which questions the effectiveness of this mechanism. For instance, inspector is appointed and dismissed by the High Council of Justice through a simple majority vote. Furthermore, grounds for the inspector’s dismissal is rather broad and vague. The independent inspector started consideration of complaints/applications falling under its competence only 11 months after the ‘third wave’ legislative changes had entered into legal force. This was due to disrupting the first election procedure of an independent inspector and announcement of the second competition late. The High Council of Justice elected inspector in November 2017, however, before recruitment of staff, she was unable to carry out its functions. It has to be noted also that the inspector considers only those disciplinary violations, which were identified after the institution started to function.

With regard to the grounds for the disciplinary sanctions, until now no changes have been carried out on the legislative level. It has to be noted, that Parliament of Georgia with the participation of HCOJ and Ministry of Justice are working on the revision of the current legislation on the disciplinary liability of Judges.

12.7) Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

From September 2017 until now, no changes have been carried out either on legislative level or through the adoption of a bylaw.
**Assessment of Progress**

Under Recommendation 12.1 the government only shared that a report drafted by international experts on conflict of interest regulations with respect to the procedures for appointment, transfer and evaluation of judges, as well as disciplinary proceedings was presented to the High Council of Justice in May 2018 – the work in its regard is reported to take place before the end of 2018. This information cannot be assessed as progress at this point in time. At the same time Civil society has raised concerns in regards to HCoJ operations continued to be non-transparent. Also they raised concerns in regards to the so-called ‘Third Wave’ reform, which amended the law to improve existing regulations and was recognised as progress by the experts in September 2017 – stating that the positive legal amendment has been used inappropriately in practice against one of the critically disposed member of the HCoJ (two NGOs provided experts with the same example). This issue will require further follow-up during the next progress update and during the next round of monitoring to ensure that the spirit of the recommendation is upheld and that indeed HCoJ activities have become more transparent and that CoI norms are applied appropriately. At this time, no progress can be noted under this part of the recommendation.

In regards to Recommendation 12.2 and 12.3 the government reports forthcoming finalisation of regulations regarding selection process by the end of 2018, this is aimed to implement Constitutional Changes. Government also reports that established working group has finalised changes into the law in regards to judicial promotion, which will be presented to the Council in the nearest future. However, both reported steps are premature to be recognised as progress as they are both pending. In addition, NGOs, continue to criticise the substance of amendments, and as in the previous reporting period view selection criteria not objective enough and susceptible to abuse, criticise lack of transparency and justification of decisions in practice. No progress can be noted with regard to implementation Recommendation 12.2 and 12.3.

Under Recommendation 12.4 the government reports as new development adoption of the decision further detaching the court chairpersons from the process by HCoJ in January 2018. This is a positive step and could be viewed as limiting court chairpersons’ powers that affect judicial independence and can be viewed as some limited progress. However, the court chairpersons appear to still have significant powers and this part of the recommendation needs serious attention of Georgian authorities.

Under Recommendation 12.5 Georgian government reported that the electronic system of automatic case allocation has been fully applied within the entire Common Courts System, which is an extremely important step and monitoring experts commend Georgia on this achievement and acknowledge progress under this recommendation. However, it is important to look into and address concerns unilaterally raised by civil society in regards to the fact that the system may be undermined due to its functioning within specialisation. Specialisation as such not being a problem, such practice exists in many countries, however, the concerns are raised in regards to this specialisation being assigned to the judges by the court chairpersons.

In regards to Recommendation 12.6 the experts welcome the work of the Working group on the reform of judiciary, which has been established in the parliament. The group is reportedly working on the new law on disciplinary liability and the government foresees that the results will be finalised by mid 2018. Pending completion of the work of this Working Group and what will become of their draft actual progress cannot be yet acknowledged under this element.
Similarly in regards to Recommendation 12.7 some steps on legislative drafting have been taken by the HCoJ but they cannot yet be considered as progress until at least they will be introduced into the Parliament.

Although progress has been noted in regards to two of seven elements of this recommendation – its implementation status is deemed as Progress.

**Progress**

---

**Recommendation 13: Integrity in the public prosecution service**

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

Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.

Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.

Consider revoking the payment of any discretionary bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.

---

**18th Monitoring Meeting, September 2017**

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

**Government report**

At the end of 2016, the Prosecution Service of Georgia (PSG) completed its work on drafting the PSG Strategy and Action Plan 2017-2021, which were first consulted with the relevant state agencies and NGOs and were afterwards discussed at the meeting of the Criminal Justice Reform Council, after which they were adopted on January 31, 2017 and April 12, 2017 respectively.

Recommendation 13.1 was fully incorporated into the newly adopted PSG Strategy and Action Plan. Namely, under the Strategy and Action Plan, the PSG plans to increase the independence of prosecutors and undertake the research of international best practice regarding the role and functions
of the collective bodies in different prosecution services. Based on the respective findings and the current PSG organisation, PSG will elaborate recommendations aiming at increasing the role of its collective bodies. The recommendations will address, inter alia, the possible introduction of legislative safeguards for the said bodies and improvement of their rules and procedures. Besides, the new AC AP 2017-2018 envisages the activities which need to be carried out by the PSG in order to implement OECD/ACN recommendations in this respect. This includes activities aimed at increasing the independence of the prosecutors as well as activities aimed at increasing the role of the Consultative Council of the Prosecutor’s Office.

**NGOs report**

According to GYLA, the Prosecutorial Council has no role in recruitment, promotion, discipline and dismissal of prosecutors (except chief prosecutor and three deputy chief prosecutors). No changes have been introduced in the law to ensure functional independence of the Prosecutorial Council. In 2016 consultative body has been created in the chief prosecutor’s office which is chaired by the Chief Prosecutor of Georgia, deputy chief prosecutors, and heads of departments of the Chief Prosecutor’s Office. According to the official information published by the Chief Prosecutor’s Office, the consultative body has been created with the aim to ensure transparency of the prosecutorial system, in order to make important decisions (including disciplinary matters) collegially rather than individually by the Chief Prosecutor. However, members of the consultative body are only high level officials from the prosecutorial system, the council is chaired by the Chief Prosecutor, no independent representative is a member to the consultative council, the meetings of the consultative body are not open for public, it is not an independent body and its decisions are not published, etc. Therefore, this mechanism cannot be regarded as a transparent, independent mechanism.

In the beginning of 2017 the strategy of the work of the prosecutorial system 2017-2021 and rules of evaluation of prosecutors were adopted by the Chief Prosecutor of Georgia. The strategy of the work of the prosecutorial system was considered by the Interagency Council under the Ministry of Justice chaired by the Minister of Justice. The document envisages increasing the role of collegial bodies, including Consultation Council established by the Chief Prosecutor. Namely, the Council will adopt the code of ethics of PSG staff, procedural regulations on disciplinal liability and proceedings of the staff of PSG. The Council will continue its sessions and will make decisions collegially on punishment and promotion of prosecutors.

13.2. Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.
**Government report**

Recommendation 13.2 was fully incorporated into the newly adopted PSG Strategy and Action Plan as well as in the new AC AP 2017-2018. Currently, the special working group is discussing the possible legislative amendments for improving the procedures of merit-based recruitment and promotion. In addition to that, PSG finalised drafting the new Code of Ethics, which defines in a thorough and precise manner the rules on ethics, the elements of disciplinary violations, disciplinary procedures and grounds for dismissal of prosecutors. The draft Code of Ethics was distributed among the employees of the Prosecution Service and Criminal Justice Reform Council as well as interested NGO-s for discussions. After receiving and analysing the feedback, on May 25, 2017 the Minister of Justice adopted the Code of Ethics. As a next step, PSG intends to elaborate commentary of the Code aiming at clarifying in greater details the elements of specific disciplinary misconducts and relevant sanctions. The newly adopted Code of Ethics was circulated to all PSG investigators and prosecutors. The trainings regarding the new Code of Ethics are currently underway.

**NGOs report**

The Law on Public Service does not apply to prosecutors and investigators of the prosecution system. No changes have been introduced to the Law on Prosecutorial System concerning merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors. The implementation of this part of recommendation is also envisaged in the Strategy of PSG. Practice and implementation should be monitored.

**13.3. Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.**

**Government report**

On 31 January 2017, PSG completed the development of performance appraisal criteria of prosecutors covering the following areas: the quality of supervision over investigation and prosecution, substantiation of procedural documents, quality of work in the Integrated Criminal Case Management System, workload, abiding by the Code of Ethics and outcomes of participation in trainings. The workload is included in the appraisal criteria. It is evaluated in conjunction with other criteria, also taking into account the volume and complexity of cases. The newly adopted performance appraisal system of prosecutors does not envisage the number of acquittals as an evaluation criterion for prosecutors.

**NGOs report**

The document of performance evaluation of prosecutor includes different criteria, including the quality of the work and professional skills. However, the number of cases resolved or the number of acquittals are not the indicators and do not play the role in the performance evaluation process.

**13.4. Consider revoking the payment of any discrentional bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.**

**Government report**

The new AC AP 2017-2018 envisages the activity for the PSG to implement transparent and objective system of remuneration and financial incentives (bonus) of prosecutors. In April 2017, the special PSG working group responsible for monitoring and improving the performance evaluation system of
prosecutors started reviewing the current bonus system of prosecutors. The WG is tasked to undertake the study of international standards and the best practice in relation with bonus system of prosecutors. The conclusions and recommendations of the working group will be presented to the PSG Consultation Council for consideration and practical implementation. Depending on the findings and PSG needs, the WG will prepare conclusions and recommendations about improving the current bonus system of prosecutors or advisability of revoking it.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 13.

**NGOs conclusions**

IDFI noted that the Strategy of PSG was elaborated and adopted. The document gives important guarantees by shifting more powers and functions into the collective/collegial bodies. However, since the document is very recent its implementation and practical results should be evaluated. Overall, there has been progress in the implementation of recommendation 13.

**Assessment of Progress**

There was no progress under Recommendations 13.1.-13.2. as relevant measures have only been planned in the action plan and not implemented. Progress was made under recommendation 13.3. as the new performance appraisal criteria of prosecutors do not include the number of acquittals as one of the criteria. Work started to implement recommendation 13.4. but it is too early to acknowledge it as a progress. Overall, there was **Progress** under Recommendation 13.

---

**18th Monitoring Meeting, September 2017**

**Government report**

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

***Establishment of the Prosecution Service as an independent institution***

Particularly important constitutional reform was carried out in 2018 aiming at further strengthening the independence of the Prosecution Service of Georgia (PSG). The relevant amendments to the Constitution were adopted by the Parliament on 23 March 2018, which will enter into force on the day of inauguration of the newly elected President (the end of 2018).

Notably, before the adoption, the constitutional amendments were reviewed by the Venice Commission and according to the provided recommendations, modified by the Parliament.
One of the important novelties provided for by the constitutional amendments is the significant increase of independence of the PSG, by establishing it as a separate branch of the power, outside the authority of the Ministry of Justice.

*Developing the draft Organic Law of Georgia on the Prosecution Service*

The amendments to the Constitution of Georgia also stipulate the regulation of the status and activities of the PSG by the Organic Law, instead of the current law on the Prosecution Service.

In order to develop the proposals regarding the content of the new Organic Law on Prosecution Service, in April 2018 the high level working group was set up in the Chief Prosecutor’s Office (hereafter, Working Group on Drafting the Organic Law), which was composed of the Chief prosecutor, deputy chief prosecutors, head of the General Inspectorate, head of the Legal Department, head of the Department of Supervision over the Prosecutorial Activities and Strategic Development, head of the HR Department, head of the Department for Supervision over the investigation of Financial Crimes and Prosecution, head of the Unit of EU Integration and Cooperation with International Organisations and head of the Legal Unit of the Chief Prosecutor’s Office.

The representatives of the PSG in charge of implementation of the OECD-ACN recommendations have been included into the Working Group on Drafting the Organic Law, for contributing to its activities by providing input on the basis of the recommendations of the OECD-ACN and other relevant organisations.

The Working Group on Drafting the Organic Law had intensive meetings in the period of April-May 2018. Its proposals, in the form of draft provisions of the Organic Law, were submitted to the parliament at the end of May. Currently, the draft Organic Law of Georgia on the Prosecution Service is discussed in the Parliament.

Notably, the Working Group on Drafting the Organic Law introduced number of provisions to the draft Organic Law based on the pertinent OECD-ACN recommendations. See the details below.

*Prosecutorial council*

In March – May 2018, the Unit of EU Integration and Cooperation with International Organisations of the Chief Prosecutor’s Office carried out the research on the international standards and practice regarding the prosecutorial councils. Particularly, the opinions of the Venice Commission regarding the prosecutorial councils of different European countries were analysed in this regard.

In the framework of the research, the information was obtained on the applicable standards and practices regarding the models of prosecutorial councils, their composition, powers and roles, *inter alia* in the recruitment, promotion, discipline and dismissal of prosecutors.

In May 2018, the research was presented to the Working Group on Drafting the Organic Law. The working group considered the findings of the research and the possibility of assigning the leading role in the recruitment, promotion, discipline and dismissal of prosecutors to the Prosecutorial Council or a similar body of prosecutorial self-governance independent from the Chief Prosecutor.

Based on the existing organisation of the PSG and the fact that there is no international standard or uniform practice, concerning the assignment of the leading role in the recruitment, promotion, discipline and dismissal of prosecutors to the prosecutorial self-governance bodies, the working
group arrived to the conclusion that there was no sufficient justification of the need for assigning the above-mentioned role to the Prosecutorial Council or a similar body of prosecutorial self-governance.

At the meantime, the Working Group on Drafting the Organic Law concluded that there was a need for providing the legislative guaranties to the existing collegial body on the matters of recruitment, promotion, discipline and dismissal of prosecutors and introduced the relevant provisions to the draft Organic Law on Prosecution Service.

13.2. Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.

Merit-based recruitment and promotion

On the basis of the recommendation of the special working group, mentioned during the previous reporting, the Working Group on Drafting the Organic Law introduced the separate Article to the draft Organic Law regarding the merit-based promotion of prosecutors as well as specified criteria for the recruitment of prosecutors.

Trainings regarding the new Code of Ethics

Following the adoption of the new Code of Ethics, PSG developed special training module for its investigators and prosecutors. Based on the above-mentioned module, since July 2017 until June 2018, the PSG trained 498 prosecutors, investigators, advisers and specialists of the PSG through 23 training activities. In addition, 2 groups of PSG interns, 62 persons totally, have been trained in 2017 regarding the Code of Ethics.

Commentaries to the Code of Ethics

The General Inspectorate of the Chief Prosecutor’s Office is currently working on the commentaries to the Code of Ethics. The work is expected to be finalised in the course of the current year.

Disciplinary proceedings and dismissal of prosecutors

In May 2018, the Unit of EU Integration and Cooperation with International Organisations of the Chief Prosecutor’s Office conducted the research and analyses of the opinions of the Venice Commission regarding the disciplinary procedures and dismissal of prosecutors as well as the relevant procedures in other countries. The respective findings and recommendations were submitted to the Working Group on Drafting the Organic Law. Following the deliberations, the working group incorporated into the draft Organic Law, the provisions on disciplinary proceedings and dismissal of prosecutors.

13.3. Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.

According to the existing performance appraisal system, the number of cases resolved and the number of acquittals are not included in the criteria for the assessment of the performance of prosecutors.

Respectively, as during the previous reporting, the said factors do not play a role in the performance evaluation of prosecutors.
13.4. Consider revoking the payment of any discretionary bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.

In the beginning of 2018, the bonus system in public sector, including the prosecutors, has been reformed. According to the amended rules, the majority of bonus funds were transferred into the salaries and thus, resulting in their increase. Meantime, it has been established by Law on Civil Service that bonus can be granted to prosecutor in the exceptional circumstances (good quality of work, working outside of the working hours etc.), based on the motivated request of supervisor in accordance to the criteria. The relevant criteria were developed in parallel with the bonus system reform.

In view of the above-mentioned reform, the special PSG working group, mentioned during the previous reporting, concluded that there was no more need for recommending to the PSG Consultation Council the additional changes to the bonus system.

_Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 13._

**NGOs report - IDFI**

13.1) The Prosecutorial Council does not exercise the powers of recruitment, promotion, disciplining and dismissal of prosecutors. However, in 2016 with the order of the Chief Prosecutor the Consultative Council was established. The Order of the Chief Prosecutor on establishing the Consultative Council is not publicly available. The general information is only available on the PSG webpage in the form of the statement. According to the statement, among other things, the Council deals with the incentives, promotion and disciplining of the employees of the Prosecution Service. Moreover, within its competences the Council discusses the issues related to professional development and career management. The Council is not independent from the Chief Prosecutor, since he/she is chairs the Council. The majority of the members of the Council are high-level officials of the system (deputy Chief Prosecutors, heads of departments and divisions of the Chief Prosecutor’s Office, prosecutor of Tbilisi) and 8 prosecutor members of Prosecutorial Council. Even though the issues mentioned above will be discussed in advisory body the decisions are made by the Chief Prosecutor. The advisory body submits the recommendations to the Chief Prosecutor for the decision. The sessions of the Council is not open and only the summary of the sessions are published on the PSG webpage. Hence, IDFI considers that the standards that was set by the OECD-ACN Fourth Round Monitoring Report is not met and this recommendation cannot be considered as a progress. However, after Presidential Election, the PSG becomes independent body and the period until the election will be most appropriate to work on respective amendments in legal acts to ensure independency of prosecutors and to implement this recommendation.

13.2) The Action Plan of the PSG is not publicly available. According to the Anti-Corruption Action Plan the activity on setting up the working group on discussing the criteria and reasoning for recruitment and promotion and presenting respective legal amendments to the Government is envisaged in 2018 (the reporting period for AC AP 2018 is not yet due). Even though the basis and types of the disciplinary misconduct of the prosecutors is defined in the Code of Ethics the detailed procedure on disciplining the prosecutors is not given in this Code. In addition, the Code does not provide the regulations on dismissal of prosecutors. Hence, IDFI considers that this recommendation was not effectively implemented.
13.3) The status of implementation of this recommendation stays the same as in the previous reporting period.

13.4) According to the AC AP 2017-2018 the activity of PSG to implement the system of remuneration and incentives (bonuses) is envisaged for 2018 (the reporting period for 2018 for AC AP is not yet due).

Overall, IDFI considers that this recommendation should be evaluated as the lack of progress, since from the last reporting period no further steps has been taken for its effective implementation. The PSG should accurately consider implementation of this recommendation in the process of working on legal amendments to harmonise legislation to the constitutional amendments (PSG as an independent body).

NGOs report – TI Georgia

13.1) No significant new developments.

It is worth mentioning that public protests in early June led to yet another controversial resignation of the Chief Prosecutor, following credible allegations of mishandling a criminal investigation due to external influence. This latest development highlights the lingering problems in terms of the independence, impartiality, and integrity of the Prosecutor’s Office.

13.2) TI Georgia has not monitored this area.

13.3) TI Georgia has not monitored this area.

13.4) TI Georgia has not monitored this area.

NGOs report – EMC

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

In spite of the fact that, Individual prosecutors’ impartiality and independence, as well as issues of recruitment, promotion and disciplinary liability, are an integral part of 2017-2021 strategy of PSG, no major systemic reforms have been observed in this regard. Prosecutorial Council has the legal obligation to ensure independence and transparency of the Prosecutor’s Office and to fulfill its functions efficiently. However, the mandate of Prosecutorial Council remains limited in terms of PSG’s recruitment policy. Precisely, Prosecutor’s Councils’ mandate does not apply to the recruitment or dismissal of individual prosecutors and is limited only with the high-ranking prosecutors.

It is important to note, that the Consultative Council has been established in the Prosecutors Office, based on the decision of the chief prosecutor of Georgia. The main authority of the consultative body is to consider the recruitment decisions in the PSG and to consult with the Chief prosecutor. Nowadays, the chief prosecutor heads consultative council and the decisions of the Council are not binding for the Chief Prosecutor.

It should be mentioned that, in 2017 important constitutional amendments were introduced in the Constitution of Georgia. Constitutional reform significantly changed the place of Prosecutor’s
office and totally distanced it from the Cabinet. According to these amendments, Prosecutors’ Office is established as a fully independent body, accountable towards the Parliament. Important changes have been introduced in regard with the structure and status of the prosecutorial council as well. Constitutional amendments increase the role and functions of collegial body - Prosecutor’s Council - within the system of Prosecutors’ office. However, these constitutional changes should be reflected in the law and parliament should amend the relevant legislative acts in accordance with the new constitutional order.

13.2) Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors

Improvement of legislative framework on the recruitment, promotion and disciplinary proceedings, as well as dismissal of prosecutors is an integral part of the Prosecutors office strategy for 2017-2021. However, no systemic or major reforms have been observed in this regard.

It is noteworthy that the code of ethics for prosecutors has adopted by the order of the Minister of Justice of Georgia. The code specifies the bases of disciplinary liability, types of disciplinary misconduct, its meaning and category. As for the issues of promotion and disciplinary liability they are incorporated in the document on the assessment of the work of prosecutors, which was adopted in 2017.

Despite the adoption of these policy documents, they are very general and don’t envisage any precise procedure.

13.3) Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.

As it was mentioned above, Criteria for prosecutors’ performance evaluation has been adopted in 2017 and no major changes have been observed in this regard.

Cases resolved or the number of acquittals are not considered as the direct criteria for the assessment of prosecutorial work. However, one of the indicators of the performance evaluation is the quality of support of the state prosecution in all stages of the criminal procedure. Document does not consist any exact clarification of the criteria, which is in fact quite vague and needs clear definition.

13.4) Consider revoking the payment of any discretional bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.

Assessment of Progress

Georgia is commended on constitutional reform, which was implemented with adoption of Constitutional amendments in March 2018 and will come into force at the end of 2018. These changes envision making prosecution office a distinct separate branch of power – this is significant step forward. The experts also note establishment and the work of the High Level Working group on development of the draft Organic Law on Prosecution Service, which reportedly addresses some IAP recommendations. This draft is being currently discussed in the Parliament and the experts did not have the chance to review and analyse it to formulate their opinion in this regard. However, it is regrettable that Georgia decided against assigning the leading role in the recruitment, promotion,
discipline and dismissal of prosecutors to the Prosecutorial Council or a similar body of prosecutorial self-governance independent from the Chief Prosecutor. Additionally the experts note information provided by civil society in regards to the issues, which may relate to lack of independence in the meantime. Namely recent resignation of the Chief Prosecutor, allegedly following his mishandling of a criminal investigation due to external influence. While noting progress under Recommendation 13.1 the experts would like to stress the importance of further follow up on how constitutional amendments are being translated into the Organic law and how this law addresses the recommendation.

In regards to Recommendation 13.2 reported progress by the Government is contained in the draft Organic Law on Prosecution Service which reportedly addresses recommendation. Monitoring experts did not have the opportunity to review the draft. The draft Organic Law has been submitted into the Parliament and is under discussions. This would constitute progress if the draft Law will indeed the requirements of the recommendation. Once draft law is adopted it should be further analysed to this end.

Recommendation 13.3 has been considered as addressed in the previous progress update and has not been evaluated in this cycle.

Under recommendation 13.4 adoption of the legislation on remuneration in the civil service in 2018 can be considered as progress. As reportedly this legislation reforms the bonus system and most of bonus funds have been transferred into the salaries. The prosecutors are covered by this legislation as part of civil service. It will be important to see if any changes in regards to this issue will take place once constitutional amendments are implemented and the status of prosecutors may change.

There is overall progress on this recommendation.

**Progress**
Recommendation 14: Transparency in the public administration

1. Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test.


3. Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.

4. Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.

5. Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.

18th Monitoring Meeting, September 2017

14.1. Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test.

**Government report**

The draft law on Freedom of Information (FoI) Act was elaborated by the Ministry of Justice (MoJ) in collaboration with the OSGF experts and it was later presented to the MoJ for further improvement. Currently, the draft law is being refined in accordance with the comments and remarks provided by interested parties. Drafting of the FoI Act will be soon finalised and it will be submitted to the Parliament of Georgia for adoption in the Autumn 2017. The draft law implies wide range of amendments to the recent regulations of access to information. Monthly meetings of persons responsible for access to information of the ministries are held at the premises of MoJ to discuss the practical issues related to access to information. The obstacles of current regulations identified through the meetings were taken into account in the process of elaboration the draft law. The draft law complies with the main international standards and best examples of access to information laws. In particular, the draft law sets the harm and public interests tests which should be used when limiting access to information, while also establishing a list of information where the prevalence of the public interest is presumed and to which the access cannot be restricted.

**NGOs report**

IDFI noted that a stand-alone Access to Information Law has not been adopted. Moreover, the draft of the act has not been submitted to the Government for review, hence has not been initiated to the Parliament of Georgia. In May 2017, the MoJ sent Draft Freedom of Information Act (FoIA) to CSOs and other stakeholders for comments. It is notable that the draft was based on the text of the law.
elaborated by a working group composed of representatives from CSOs, MoJ as well as independent experts and sent to MoJ in 2014.

Major part of the guarantees included in the Act elaborated by the working group was maintained in the distributed draft. Such guarantees included establishment of the Office of Freedom of Information Commissioner, introducing administrative sanctions for the violation of freedom of information legislation and including public interest as well as the harm test in the draft law.

The draft law circulated by MoJ also included number of provisions which in case of adopting the law would result in unjustified restrictions to access public information. Such restrictions were linked with restricting access to information on high-ranking public officials, lowering the standards of the process and timeframe of disclosing public information, introducing new category of closed information – documents being in the process of elaboration, widening the scope of executive privilege and limiting the scope of information to be published proactively.

IDFI sent its recommendations to MoJ highlighting the gaps of the draft and suggesting the ways of amending it. It is crucial for the GoG to initiative to the Parliament of Georgia Draft Freedom of Information Act which will address existing gaps in legislation and introduce higher standards of accessing public information, inter alia the notion of Freedom of Information Commissioner, having the function of FoIA oversight. It is also notable, that the new AC Action Plan approved by the ACC envisages implementation of freedom of information legislation according to the OECD-ACN recommendations. In addition, according to the schedule of the action plan the draft law was supposed to be submitted to the Parliament in second half of 2017, on spring session. However, the law is not yet submitted to the parliament.

GYLA also carried out an assessment of the draft law and positively evaluated the public interest test included in the text. However, the draft law does not guarantee effective Institute of Information Commissioner.


Government report

Procedures necessary for ratification of the Council of Europe Convention on Access to Official Documents are underway. In particular, according to the law on international treaties of Georgia, Ministry of Foreign Affairs, in cooperation with the Ministry of Justice and other pertinent agencies, is coordinating the process in order to submit the Convention to the Government, whereupon it will be officially presented to the Parliament for ratification. Currently, remarks and proposals raised by competent authorities in relation to the compatibility of internal legislation to the Convention's certain provisions are considered by the coordinating agencies with the view of preparation of potential legislative amendments.

NGOs report

IDFI noted that there is no information or the expressed willingness/readiness from the Government to ratify the Convention.

14.3. Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.
**Government report**

Draft law of Freedom of Information Act foresees the creation of an independent public authority for supervision of enforcing access to information right. Abovementioned authority will be entitled to issue legally binding decisions and impose fines for the violations of the requirements of the FoI Act.

**NGOs report**

In draft FoIA independent authority for oversight of FoIA rules is included. However, it is important to ensure the draft elaborated by the working group is adopted with all the guarantees.

**14.4. Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.**

**Government report**

As a result of the third wave reform of the judiciary Article 13(31) of the Law of Georgia on “Common Courts of Georgia” sets the obligation for courts to ensure proactive publication of court decisions. Therefore, the High Council of justice made decision7 to adopt the rules regarding online publication of court decisions. The new rule of online publication foresees accessibility of court decisions on an on-line basis, protection of personal data and delivering information to public in compliance with Georgian legislation. The online database has been set up in the framework of the website “info.court.ge” to provide accessibility of the decisions of common courts (all instances). Furthermore, the High Council of Justice launched presentation in July 2017 regarding to the development of new system of server and network infrastructure that ensures the improvement of the electronic case allocation and case management systems at courts, as well as refinement of functioning of web-page “info.court.ge”. Moreover, Tbilisi City Court supported by The European Union Project established new interface of its web-page in order to consolidate database of decisions delivered by Tbilisi City Court. Other Web-pages of common courts will be developed according to the web-page of Tbilisi City Court. In case of limited access to the database “info.court.ge” decisions will be published on the web-sites of courts considering the requirements of the Law of Georgia on “Common Courts of Georgia.”8

**NGOs report**

In 2012 the General Administrative Code of Georgia introduced the notion of proactive disclosure of information. The Code stipulates that public entities shall proactively publish information the list of which is to be regulated by a separate legal act. In 2013 GoG adopted a decree on introducing the list of information to be proactively published. The decree is applicable to central public institutions only. Even though number of self-government entities have adopted decrees regulating the topic on municipal level the issue of proactive disclosure of information remains to be highly problematic in the regions. Till to date no uniform legal act has been adopted which would regulate the process and content of proactive disclosure and be applicable to every public institution in the country. Hence it can be argued that provisions of proactive disclosure enshrined in the General Administrative Code of Georgia are still not been fully implemented.

As of to-date no centralised system for publication of court decisions has been functional in Georgia. While decisions of the Supreme Court of Georgia as well as the Constitutional Court are published on the official websites of relevant courts the practice of publishing first and second instance court

---

7 The High Council of Justice, Decision of 12 September 2016.
8 Article 13, 31 The Law of Georgia on Common Courts of Georgia.
decisions is rare. There is no legislation regulating the topic of publishing court decisions on a centralised system. However, in September 2015 HCOJ adopted a decision on Disclosing and Publishing Court Decision of General Jurisdiction. According to the act all decisions of the courts of general jurisdiction are to be published on the centralised system – info.court.ge. Nevertheless, till to-date no progress has been made in the direction. Moreover, the decision of HCOJ does not have legal effect of law. It is crucial for a chapter on Access to Court Decisions to be added in the FoIA act which would regulate the issue of disclosing court decisions in case of FOI submitted by an applicant as well as the process of publishing court decisions on a centralised system.

The Open Government Georgia’s Action Plan envisages the implementation of unified procedures for publishing court decisions. According to the Action Plan those procedures will be implemented by the end of 2017. The HCoJ adopted relevant resolution. However, to date only old system is functioning on info.court.ge, that is malfunctioning.

TI Georgia noted that no effective centralised system is currently in place for publication of court decisions (only the Supreme Court has an effective system of this type). GYLA added that the High Council of Justice has made the decision regarding the rules and procedures publishing the court decisions on 12 September 2016. According to this rule, the information of private legal entity will be also closed, which is required by the Law on Personal Data Protection that only protects personal information of individual. The information regarding the private legal entity participated in court proceedings is public information based on Georgian Legislation and it is illegal to close it based on the decision of the High Council of Justice.

14.5. Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.

Government report

Systematic training sessions and qualification upgrades will be conducted for information officers and other officials dealing with access to information issues, responsible for the issuance of public information after adopting the Freedom of Information Act. Training of information officers and other officials, including representatives of self-governing bodies and judges is one of the commitments under AC AP 2017-2018.

NGOs report

The new AC Action Plan envisages awareness rising activities for servants responsible on public information delivery.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 14.

NGOs conclusions

Based on the above-mentioned information, IDFI considers that there is lack of progress for recommendation 14.
Assessment of Progress

As regards Recommendation 14.1., it is a welcome step that the Ministry of Justice sent the draft law on Freedom of Information to CSOs for comments. However, it should be remembered that adoption of the stand-alone access to information law has been planned for a long time and there has been a significant delay in the elaboration of the draft text. No progress can be stated under this recommendation unless the draft law is submitted in the parliament and its text conforms with the applicable international standards. Similarly, there was no progress under Recommendation 14.3, concerning the independent oversight authority for access to information, as relevant provisions are included in the draft FOI Act.

The process of Georgia’s acceding to the Council of Europe Convention on Access to Official Documents has started, but as the draft ratification law has yet to be submitted to the parliament, there is lack of progress under Recommendation 14.2.

Concerning Recommendation 14.4., it appears that no centralised system of on-line publication of court decisions has been set up. The decision by the High Council of Justice is welcome as it gives guidance to courts as to how to publish their decisions, even though it is regrettable that according to this decision information about legal entities is limited in disclosure. Implementation of the proactive publication requirements under the General Administrative Code have not been universally and uniformly implemented. Therefore, the provided information is not sufficient to state progress under this Recommendation.

Overall, there is Lack of progress under Recommendation 14.
Government report

14.1. Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test

Initially, the draft law on Freedom of Information (FOI) was elaborated by the Ministry of Justice and the Open Society Foundation – Georgia’s (OSGF) experts and was presented to the Ministry of Justice for further development. The drafting process involved a wide range of NGOs, international organisations and experts, state agencies and judiciary. Starting from the second half of 2017, the Ministry of Justice has launched a final stage of drafting process. Currently, the draft text is being refined according to the comments and remarks provided by governmental agencies.

The draft law on Freedom of Information (FOI) will shortly be submitted to the Government of Georgia for adoption.


No further action has been taken at this stage.

14.3. Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.

Draft law on Freedom of Information Act considers the Public Defender of Georgia as an independent public authority for supervision of enforcing access to information right. The Public Defender of Georgia will be entitled to issue legally binding decisions.

14.4. Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions

In order to ensure effective access to judicial decisions and public information, the Supreme Court of Georgia works to develop innovative IT solutions, through establishing full IT support for court business processes. The Supreme Court of Georgia aims to define strategic guidelines and standards for a long-term, good quality and quick services of the common courts of Georgia. With this respect, the Supreme Court of Georgia has established IT support team that maintains centralised information coordination system within the court instances. With donor coordination and support, IT audit has been conducted to assist development of IT strategy and identify main gaps in the system. Based on the results of the IT audit, the team will adapt strategic provisions on emerged challenges which will ensure the publication of all court instance decisions, integrated statistical data module and develop inter-institutional cooperation, that will increase the quality of justice, speed up court services and ensure efficiency of IT environment of the judiciary. These capacities will be set up in the module of the website - info.court.ge that will enable all the above mentioned services to judges and to the public. The website info.court.ge will be in full operation by the end of the 2018.
14.5. Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.

No further action has been taken at this stage.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 14.

NGOs report – IDFI

14.1) According to the AC AP 2017-2018 the draft law on Freedom of Information (FoI) should have been submitted to the Parliament in 2017 at the Spring Session. This activity was not implemented by the Ministry of Justice of Georgia. It is over 4 years now that the draft law is pending in the MoJ. There have been promises by the MoJ on several instances (including Anti-Corruption Council meetings) that the law would be adopted by the Parliament no later than 2017 but the necessary steps were not taken by the Government. Taking into consideration that the draft law is ready and there is no hindrance left the delay in the proceeding with the submission of the law to the Parliament concerns the civil society. From the last reporting period no further steps has been taken by the MoJ to proceed with the submission procedure of the law.

14.2) The convention is not ratified by Georgia. IDFI considers the status of implementation of Recommendation 14.2 as lack of progress.

14.3) This recommendation will not be fulfilled until adoption of FoI Act. Therefore, IDFI’s assessment is that there is lack of progress for Recommendation 14.3.

14.4) No further steps had been taken to implement this recommendation.

14.5) In total 10 trainings are envisaged in two halves of 2018 according to the AC AP.

IDFI considers that sufficient steps had not been taken to implement this recommendation after previous reporting period. There is lack of progress.

NGOs report – TI Georgia

14.1) The new Freedom of Information Law has not been adopted.

14.2) The Convention has not been ratified.

14.3) No such authority has been established.

14.4) There have been no significant changes in the provisions on proactive publication of information since the last progress update. No centralised system for the publication of court decisions has been established.

14.5) TI Georgia is not aware of any developments in this area.

It should be noted that a package of legislative proposals submitted recently by a group of majority MPs could potentially have a negative impact on access to information about the public administration’s operation. For example, the proposed changes could limit access to audit reports, materials of court cases involving public institutions, and personal data of public officials.
Following criticism from NGOs, these problematic provisions were removed from the version of the law which was approved by Parliament in the first reading, although it remains to be seen what will happen during subsequent readings.

**Assessment of Progress**

Further steps towards finalisation of the long-awaited draft Law on Freedom of Information have been noted. However, until the draft is submitted into the Parliament this cannot constitute progress under parts 1 and 3 of the Recommendation.

No further steps have been reported to implement parts 2 and 5 of the Recommendation.

In regards to part 4 of the Recommendation, Georgia is undertaking various technical steps, including the set-up of the IT support team and the conduct of IT audit with the view to adapt strategic provisions to identified challenges and ensure the publication of all court instance decisions and integrated statistical data. All these steps seem to be geared towards the set up of the module of the website – [www.info.court.ge](http://www.info.court.ge). The website is reported to become operational by the end of the 2018. Once this happens, the progress under this part of the recommendation can be assessed based on the information made available through the new website.

**Lack of progress**

---

**Recommendation 15: Integrity in the public procurement**

Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.

Formally initiate negotiations on Georgia’s accession to the WTO Government Procurement Agreement.

Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.

Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.

Provide for a right to appeal against any procurement-related decisions.

Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.

Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. Strengthen conflict of interests safeguards in the public procurement.
15.1. Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.

**Government report**

In 2015 the State Procurement Agency (SPA) presented to the Government of Georgia relevant draft amendments to the Law of Georgia on “Public Procurement” (the Law), which aimed at reducing both, the list of exemptions foreseen in the Law and the total number of simplified procurement (i.e. Direct Contracting or Single Source Procurement). The Government of Georgia decided to initiate the amendments to the Law, which were considered to be appropriate at a given stage and further reflected in the Law of Georgia on “Public Procurement”. The abovementioned amendments introduced new approach for the conduct of simplified procurement. As of today, contracting authorities shall obtain prior approval from the State Procurement Agency (SPA) in order to further proceed with simplified procurement procedure and award a contract. The decision on simplified procurement shall be agreed with the SPA through eProcurement System. Applications submitted to the SPA, through electronic system are public and any interested person can express their opinions.

In terms of reducing the number of direct contracting, it was essential to abolish the “replacement” as a means of direct contracting. The mentioned amendment entered into force on 30 June 2017. As a result, contracting authorities shall use eProcurement System and announce a tender, when replacing vehicles, computer and electronic equipment, instead of direct contracting. It is worth mentioning that, in order to reduce the number of simplified procurement, SPA holds regular meetings and consultations with economic operators, maintains face to face communications, both in the regions of Georgia and at the headquarter of the SPA in Tbilisi. Additionally, SPA issues guidelines and recommendations for economic operators on the best ways to conduct proper procurement process.

With regard to the regulations on State Secret Procurement, the Government of Georgia adopted a Decree #321 of 11 July 2016 on the list of state procurement objects related to the state secret and the rule for conduction procurement in this respect as defined by the Law of Georgia on State Secrets and the procedure for the conduct of procurement. On 21 April 2017, Georgian Young Lawyers’ Association (GYLA) provided SPA with its remarks on the rule for the list of public procurement objects related to the state secret as defined by the Law of Georgia on State Secrets and the procedure for the conduct of procurement. In this respect, representatives of the SPA held a meeting with the representatives of GYLA in June 2017 and offered them relevant clarifications. In addition to that, this issue was additionally discussed and explained at the meeting in April 2017, organised by the SPA, which was attended by 21 representatives of civil society organisations, Chairman of the SPA, Deputy Chairmen, as well as heads of the departments.

**NGOs report**

According to GYLA, although the government has tightened the regulations on confirmation of the simplified procurement, this did not proportionally impact the amounts of sums, spent on simplified procurements. Therefore, the government needs to make more effective steps to decrease the proportion of simplified procurements. More information on simplified procurements is available in GYLA’s research, available here. State secret procurement remains a problem, despite the
government’s adoption of the regulations on the simplified state procurements (in 2016). A number of problems remain, for example – there is no consistent/uniform practice on issuing public information related to the state secret procurement, electronic platform for procurement management is still flawed. For more information, see GYLA’s research here.

IDFI reported that the list of exemptions from the law has not been reduced. All the controversial points from Art. 1 (3¹) of the Law on Public Procurement have remained and discussion on this matter did not take place. Furthermore, deterioration can be seen concerning removing certain procurements of the Georgian Public Broadcaster from the remit of the public procurement legislation. Over the past 2 months, a new legislative proposal is being pushed in the parliament, according to which The Public Broadcaster will be exempt from regulations of the Law of Georgia on Public Procurement while purchasing services and goods. Only a small part of procurement will remain under the jurisdiction of the Law on Public Procurement. The volume of direct contracting has not been reduced substantially. In terms of value, direct procurement made 37% of total expenditures on public procurement, which is 3% higher than 2015. IDFI has published the policy document on Implementation Assessment of the Georgian Public Procurement Legislation.

Positive steps were made towards regulating state secret procurement. Resolution No. 321 of the Government of Georgia on Approval of the List of State Secrecy Related Public Procurement Objects, as foreseen by the Law of Georgia on State Secrecy, and of Procurement Procedure (dated 11 July 2016) was adopted. The Resolution provides the list of classified public procurement objects, procurement procedures and the procedure for its conduct, the rights and obligations of contracting authorities and suppliers, terms and conditions on control of award, performance and execution of contracts execution.

TI Georgia noted that the exemptions in the law have not been reduced and the volume of direct contracting actually increased in 2016 compared with 2015. No regulations have been adopted on secret procurement.

NGO “Procurement Monitoring and Training Centre” reported that the biggest problem in the state procurement in Georgia remains the simplified procurements and its unprecedented high share in the whole system. For example, in 2016 according to the State Procurement Agency’s report 1 500 000 000 GEL was spent on Simplified Procurements, 37% of the Procurements in total. Besides, standard services are being classified as “Top Secret” to limit transparency, the number of participants and evaluation. There are no specified procedures when the procurements are classified as “Top Secret”. For instance, in the Ministry of Corrections and Legal Assistance the nutrition of inmates has been classified as “Top Secret” since 2015 and the Prosecutor’s Office has started the criminal proceedings concerning embezzlement of public funds and corruption.

15.2. Formally initiate negotiations on Georgia’s accession to the WTO Government Procurement Agreement.

Government report

The feasibility study and analysis of economic benefits of such accession for Georgian companies is at the final stage. In this respect, EBRD provides technical assistance to the SPA. It should be noted that, on 19-20 June 2017, in Geneva, EBRD held a presentation on a draft of the abovementioned research study. Georgian counterparts made comments and remarks, which are due to be reflected in the study. Once all the comments are reflected in the study, the final draft of the study will be sent to the Government of Georgia.
NGOs report

No progress was made in this regard. No developments are mentioned on any of the official websites, such as spa.ge.

15.3. Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.

Government report

According to the EU-Georgia Association Agreement, public procurement regulations will apply to the utility sector in the third phase of the legal approximation process - within six years after the entry into force of the Agreement, i.e. September 2020. Approximation and implementation of the EU Directive 2014/25, will be finalised in the fifth phase of legal approximation process, - within eight years after the entry into force of the Agreement, i.e. September 2022.

NGOs report

Utility sector has not been included in the PPL, as it is still a part of the exception list of Art. 1 of the PPL. However, adopting special law on utilities is planned as according to the Roadmap and Action Plan for the Implementation of the Public Procurement Chapter of the EU-Georgia Association Agreement.

15.4. Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.

Government report

With the aim of implementing OECD Recommendations as well as commitments undertaken by the Government of Georgia in May 2016 at the Anticorruption Summit in London, IT department of the SPA, together with the Analytical Department and other divisions of the SPA are currently conducting intensive methodological research and program-technical works.

On this point, SPA is supported by international experts’ group of the World Bank (WB). WB mission visited SPA in February 2017 in order to facilitate implementation of Open Data principles and Open Contracting Data Standard. Leading experts from the SPA, the Ministry of Justice of Georgia and the Ministry of Finance of Georgia attended a workshop, which was organised by the WB. Experts from the WB introduced a study on the new approaches to the procurement data and ways of introduction and transposition of open data formats. New component of international project was initiated in this context, which ensures introduction and soon after, publication of procurement related data in open data format. The SPA, together with international experts, drafted a gradual plan on transposition-aggregation-publication of open data available in the Georgian eProcurement System, into OCDS.

Following the plan, agreed with the management of the Agency, IT department of the SPA created the special webpage – opendata.spa.ge, which will be accessible for any interested person in the near future. Public information and Data on electronic tenders will be gradually published on this webpage in JSON format.

On 21 April 2017, the Parliament of Georgia adopted the law of Georgia on “Electronic Documents and Electronic Trust Services”, which determines the legal basis for using electronic documents, electronic signature and electronic trust service. Pursuant to the provisions of the new Law, a
qualified e-signature has the same legal force as a personal signature on paper and is considered to be admissible in legal proceedings. Accordingly, until 1 July 2018, all contracting authorities are obliged to gradually move to the e-Government and e-Proceedings when taking part in public procurement. In order to further develop e-services within e-Government, in 2017 new eProcurement services have been introduced by the Revenue Service within the Ministry of Finance of Georgia – “Economic Operators’ Debt to the Budget” and “VAT Payer’s Status”.

**NGOs report**

IDFI noted that the SPA has only started to prepare for creating data in open formats. With the help of the World Bank, the SPA will initially provide procurement data of 2016 in open format, gradually renewing it and updating as new procurements are made.

**15.5. Provide for a right to appeal against any procurement-related decisions.**

**Government report**

Within a complex reform process of Dispute Resolution (Review) Board (DRB) the SPA in cooperation with the Ministry of Economy and Sustainable Development of Georgia drafted relevant amendments to the Law foreseen in Article 143 (2)(b) of the EU-Georgia Association Agreement. It is noteworthy to mention that the Law establishes the right for all interested parties to file a complaint against any procurement related decision either to the relevant contracting authority or lodge an application directly with the court.

**NGOs report**

IDFI noted that there was no change or progress in this regard, as decision to cease or stop the tender still cannot be disputed or appealed against. TI Georgia added that the circle of those who can lodge appeals has been narrowed down to tender participants.

**15.6. Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.**

**Government report**

Pursuant to Article 143 (2)(b) of the EU-Georgia Association Agreement Georgia is obliged to designate an impartial and independent body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts. This obligation must be met in the first phase of the approximation process - within three years from the entry into force of the Agreement, i.e. in September 2017. The SPA in cooperation with the Ministry of Economy and Sustainable Development of Georgia drafted relevant amendments to the Law and presented it to the Government of Georgia for further considerations. As for the remuneration for the work of the non-governmental members of the DRB, SPA’s position is that the introduction of such a commitment will question/undermine the independence of the NGO’ members. Furthermore, it is worth mentioning that given the information provided to the SPA, NGOs usually reimburse the relevant employees working hours spent at the DRB and transportation expenses.

**15.7. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-
related offence by the company or its management. Strengthen conflict of interests safeguards in the public procurement.

**Government report**

The SPA aims to modernise eProcurement System so as to automatically restrict participation in the procurement process of the founders and managers of those companies which have been debarred due to the corruption related offences. In this respect, SPA will cooperate with several government entities, such as: Ministry of Justice of Georgia LEPL National Agency of Public Registry, Ministry of Justice of Georgia LEPL Public Service Development Agency, Ministry of Finance of Georgia LEPL Revenue Service, Prosecutor’s Office of Georgia and Judiciary branch of the Government on exchange of information and/or data.

**NGOs report**

No progress has been made with regard to debarment procedures. The equivalent of debarment – Black List, and the grounds for being black listed remained the same.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 15.

**NGOs conclusions**

According to the IDFI, the list of exemptions from the law has not been reduced. According to the new Anti-Corruption Action Plan, the Public Procurement Agency will only provide recommendations and methodological guidance to procuring entities/authorities on conducting direct procurement. Positive steps were made towards regulating state secret procurement. The SPA has only started to prepare for creating data in open formats. No progress was shown in other parts of the recommendation. Overall, there is lack of progress in the implementation of recommendation 15. TI Georgia concurred that there was no progress.

**Assessment of Progress**

As regards Recommendation 15.1, the efforts made by SPA in reducing the direct contracting are noted. The amendment to the PPL providing for competitive selection of suppliers for a selected range of goods instead of the direct selection is a positive step forward. However, the undertaken measures are yet insufficient to consider the issue of direct contracting resolved, especially given that the overall volume of such procurement remains very high.

As to state secret procurement, the regulations adopted in July 2016 have already been covered in the Fourth Round Monitoring report and cannot be considered as a new development. Moreover, the monitoring report requested regulating relevant grounds and procedures via primary laws, not through the secondary legislation.

As to Georgia’s accession to the WTO Government Procurement Agreement, the preparatory work by the Government in this direction is noted, however, it is yet insufficient to report progress under Recommendation 15.2. SPA is recommended to publish more information of the progress on WTO GPA accession on their web-site.
There has been no progress under Recommendation 15.3 concerning regulation of the procurement in the utility sector in order to encourage competition and reduce corruption in the sector.

Significant progress can be seen with regard to Recommendation 15.4, as SPA carried out significant work on publishing procurement data in machine-readable format, in particular by creating a special web-site opendata.spa.ge. Adoption by the Parliament of a new law on “Electronic Documents and Electronic Trust Services”, which determines the legal basis for using electronic documents, electronic signature and electronic trust service, is a substantial step in achieving the compliance with the Recommendation.

There has been no progress under Recommendation 15.5 concerning the right to appeal against any procurement related decision.

Substantial work by SPA in respect of Recommendation 15.6 is noted, namely efforts to set up an independent dispute resolution board planned for 2017. It is assumed that the new set up will resolve the matter of remuneration of the experts involved. The current view of SPA on remuneration is noted, but not upheld, in view of the fact that given the growing number of disputes, the situation neither seems to provide for a sustainable approach, nor for a firm commitment by NGO experts, as reported after the Monitoring mission. To fulfil the recommendation “to consider” the Georgian authorities need to present the proof that the recommendation to institute the said remuneration was indeed considered (minutes of an official meeting, official decision, etc.).

The plans of SPA under Recommendation 15.7 are noted, however, no actual progress is yet observed. It is recommended that SPA in their work takes into account not only Georgian companies and individuals, but also foreign tenderers debarred for corrupt practices anywhere.

Overall, in view of the above conclusions, Georgia made **Progress** under Recommendation 15.
Government report

15.1. Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.

As of January 1st, 2018, volume of direct contracting for the past year amounted 21% of total public procurement, which is 16% less than data from the 2016. It should be underlined that number of direct contracts were also reduced, in particular: SPA has received 3271 applications for direct procurement in 2017, which is 16% less than data from the same period of 2016 (In total number of applications in 2016 were 3760). Besides this, it is noteworthy to mention that in 20% cases SPA rejected direct procurement applications.

In order to further reduce exemptions and direct contracting in the Public Procurement, the SPA has elaborated two new draft decrees:

“Decree on Determining Criteria and Rules for Conducting Simplified Procurement”

“Decree on Particular Measures for Conducting Public Procurement”, aiming at reducing criteria to determine urgent necessity.

These Decrees are expected to be signed in the nearest future.

15.2. Formally initiate negotiations on Georgia’s accession to the WTO Government Procurement Agreement.

No further action has been taken at this stage.

15.3. Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.

No further action has been taken at this stage.

15.4. Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.

In April 20, 2018, the State Procurement Agency, in partnership with the World Bank and the Open Contracting Partnership (OCP), has organised an “Open Contracting and Open Government Roundtable in Georgia”. The Roundtable was attended by the representatives of Government administration, Ministry of Finance, Ministry of Justice, Ministry of Economy and Sustainable Development, Ministry of Regional Development and Infrastructure, the Municipal Development Fund, the State Audit Office and other interested institutions. The Roundtable focused on the advantages of introducing open contracting standards and ways to further expand openness and transparency. It should be underlined that, a special session, chaired by the representatives of the SPA, EBRD, the World Bank and the OCP, will be dedicated to the open contracting standards at
the OGP annual summit, to be held in Tbilisi in July, 2018. Due to the promotion of public procurement efficiency and transparency, State Procurement Agency together with World Bank, DFID and OCP actively collaborates for the implementation of Open Contracting Data Standard (OCDS). OCDS implies the introduction of open data publication standard that ensures the publication of structured info within each step of contract (from planning until implementation). SPA has completed works for ensuring the implementation of Open Contracting Data Standards that implies systemic publishing of aggregated info as well as info on individual procurement in machine readable format (JSON) at the newly created website (http://opendata.spa.ge/). Additionally, the SPA is planning to fulfil its new OGP commitment, which aims at introducing new e-Plan module, sub-module of e-Procurement system in machine readable, JSON format.

As of now, the SPA has extended coverage of published data and included all available public procurement data from 2011 to 2017 in special machine-readable JSON format.

15.5. Provide for a right to appeal against any procurement-related decisions.

Currently any procurement related decision can be appealed to the Courts of Georgia, which is a fundamental right of any economic operator.

15.6. Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.

The State Procurement Agency of Georgia elaborated draft law on institutional restructuring of Dispute Resolution Council (DRC). Amendments responded to obligation under the DCFTA, article 143 of the Association Agreement. Proposed changes to the law were adopted by the Parliament in December 23, 2017. According to the changes, disputes, which are over the EU monetary thresholds, will be discussed by the newly created DRC, composition of which was enlarged and included three representatives of SPA, three representatives of NGOs, and representatives of the Competition Agency of Georgia, the Georgian Chamber of Commerce and Industry, the Business Ombudsman and academia - 10 members in total. As of March 2017, new DRC that has elected representative of Business ombudsman as a Chairman, conducted several open hearings and discussed 59 cases, among which:

- cases – Granted;
- cases – Not granted
- 20 cases – Partially granted
- 7 cases – Inadmissible
- cases – Withdrawn
According to the amendments, chair will be on a rotation basis for one year period. New law clearly states that independence and impartiality of the Council from any public authority is secured by the Law (article 23).

Based on the amended law of December 23, 2017, a new regulation has been adopted to define functions of the DRC. To reflect new composition of the Council above the EU thresholds, e-Procurement has been upgraded accordingly. New DRC represents a new business process of dispute review, which automatically detects disputes above the EU thresholds and assigns special unique number to each case.

15.7. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. Strengthen conflict of interests safeguards in the public procurement.

No further action has been taken at this stage.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 15.*

**NGOs report**

15.1) NGOs reported that no changes have been made so far, but pointed out that a new law will be introduced to the parliament, where exemptions will be taken out. NGOs also noted that the volume of direct procurement has reduced.

15.2) NGOs did not report any progress regarding this recommendation

15.3) NGOs did not report any progress regarding this recommendation

15.4) The information about public procurement has been made available online in machine-readable format. However, information on direct procurement as well as other modules of the public procurement system and live information on tenders is not integrated into the new website. The e-signature will come into use on 1 July 2018.

15.5) NGOs did not report any progress regarding this recommendation.

15.6) According to new amendment in the PPL, the Dispute Resolution Board (DRB) will be separated from the SPA from 1 July 2018, although the SPA head will still preside over the DRB and representatives of a number of other institutions (such as the Business Ombudsman and the Competition Agency) will only join the DRB in the cases where the value of the contract in question exceeds pre-established thresholds set by EU directives. The question of reimbursement of the work of NGO representatives in the DRB has not been addressed in the latest amendments to the law.

15.7) NGOs did not report any progress regarding this recommendation.

**Assessment of Progress**

The amount of direct contracting has dropped significantly. Draft decrees to reduce exemptions and direct contracting have been elaborated, but not adopted. A website for publication of information on
individual procurement was created and is available in machine-readable format (JSON). The e-signature is to come to use in near future.

The Dispute Resolution Board will be separated from the SPA, but will still include representatives of SPA.

Overall, **progress** was regarding Recommendation 15.

**Progress**

---

**Recommendation 16: Business integrity**

Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.

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

Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.

Explore the possibility of concluding integrity pacts in large publicly funded projects.

Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.

---

**18th Monitoring Meeting, September 2017**

16.1. Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.

**Government report**

With regard to promoting business integrity, due to the complexity of the issue, several public institutions are involved in fulfilling the recommendation. In 2016, Competition Agency of Georgia studied business integrity risks in the passenger air transportation market. It should be noted that the Agency studied business integrity risks not in general but only within its competences - in relation to the competitive environment on the relevant market.

Important steps have been taken for raising awareness on business integrity issues in private and public sectors. In October 2016, the Competition Agency of Georgia organised a meeting with more than 30 SMEs, where detection of business integrity problems in dominant entities and their
subsequent reporting was discussed. Further, the Agency hosted a competition advocacy seminar which was intended for the representatives of the business sector and focused on the issue of competition challenges in the process of public procurement. In June 2017, the Agency organised series of seminars for public officials in cooperation with the State Procurement Agency of Georgia, where one of the main issues was competition in public procurement, associated risks and solutions.

The SPA is also involved in promoting business integrity. The SPA regularly holds meetings and consultations with the representatives of economic operators on various issues including integrity in public procurement. Since September 2016, SPA has held four meetings with a number of business sectors in Tbilisi. Besides, the chairman of the SPA holds regular meetings with the representatives of different business sectors and discusses some of the most important issues concerning the procurement process. Since September 2016, there have been conducted 14 such meetings. SPA also organised two consultations with regional companies. The main topic of these meetings was proper conduct of procurement process, through respecting procurement rules and doing business with integrity. Furthermore, SPA is regularly issuing guidelines and other teaching materials for economic operators on the one hand and contracting authorities on the other. This creates an opportunity for the relevant stakeholders to stay updated with the information about the best ways of conducting proper procurement process, the best international and European practices used in these cases.

Besides, the Secretariat of the Anti-Corruption Council of Georgia is going to adopt business integrity guidelines for the private sector representatives. This obligation is included in the AC AP 2017-2018.

**NGOs report**

Awareness rising on business integrity is envisaged by the new AC Action Plan. There is no information on further activities to study business integrity risks.

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

**Government report**

One of the biggest achievements of the new AC AP 2017-2018 is the involvement of the Business Ombudsman (BO) in the Anti-Corruption activities. BO expanded its capacity to cover the area of business integrity as well. Unlike previous years when the Ombudsman acted only as a partner institution in the new Action Plan BO is now a responsible body having undertaken the Anti-Corruption obligations. Business Ombudsman Office of Georgia aims to raise awareness about the BO and increase the accessibility of the BO Office for the business representatives. Business Ombudsman of Georgia plans to organise meetings and presentations for representatives of the business associations and the members of the Georgian Chamber of Commerce and Industry. First meeting was held on 18 July 2017. Business Ombudsman of Georgia works on the development of the e-portal with the aim to create the electronic communication platform with the business representatives. At the moment, the e-portal is running in the testing regime and it will be launched in September 2017.

**NGOs report**

IDFI reported that the new AC Action Plan does not cover capacity development of the business ombudsman. The representative of business ombudsman mentioned several times, during the working group meetings, that they lack capacity (including staff) to implement any action in the
16.3. Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.

**Government report**

The Order of the Head of the National Agency of State Property (NASP) has been issued to promote transparency and accountability in the large and operational SOEs, which envisages that the latter category of SOEs are obliged to provide their annual report (which also includes financial data) to the NASP; moreover, functional companies are obliged to publish the report on their web-pages. Herewith, in accordance with the abovementioned Order, the person responsible for public information has been appointed in every large and operational state-managed companies and information about these persons is published on the web-pages of the companies and of the NASP. Consequently, significant progress has been made regarding extension of proactive publication requirements to the SOEs. With the aim to raise awareness on Anti-Corruption issues, trainings on the relevant subjects are organised regularly for the managers of SOEs. In addition, draft document establishing ethical standards for employees of SOEs and draft Order of the Head of NASP on promotion and disciplinary procedures of Managers of SOEs has been adopted. Currently, final versions of the draft documents are being reviewed in the NASP.

**NGOs report**

IDFI informed that the activities for the National Agency of State Property (the main public agency that owns and manages the centrally owned SAO-s) in the AC Action Plan do not include elaboration and implementation of integrity and anticorruption plans. One of the activities covers proactive disclosure of public information and elaboration of ethics’ standards for the staff of state owned enterprises. Within the project aimed at supporting the Ministry of Regional Development and Infrastructure (MRDI), the integrity and transparency strategy largely focuses on improving the integrity and accountability mechanisms in the SAOs managed by the MRDI.

GYLA stated that no effective steps were made towards transparency and publicity of the state-owned enterprises. Publication of information on web-pages, contact information, activity reports remain a problem. Despite the declared policy of the state to decrease the number of state-owned enterprises and certain activities in this regard, no tangible impact was observed. The problem is even more acute at the local self-government level. Unfortunately, there is no uniform standard/system available in Georgia, providing access to information regarding the state-owned enterprises. Same applies to the enterprises, owned by the Adjara government. Much more efforts are required from the government to achieve tangible results in this regard.

16.4. Explore the possibility of concluding integrity pacts in large publicly funded projects.

**Government report**

No further action has been taken at this stage.

16.5. Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.
**Government report**

No further action has been taken at this stage.

**NGOs report**

Despite IDFI’s recommendations and strong advocacy on every working group meeting the Government was unable to include the activity in the AC Action Plan on disclosure of beneficial ownership in a central register.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 16.

**NGOs conclusions**

NGOs consider that there was no progress under this recommendation

**Assessment of Progress**

In view of the information presented above by the Government, there was Progress in implementation of Recommendation 16. It is regrettable, however, that no action whatsoever was taken under recommendations 16.4. and 16.5.

---

**19th Monitoring Meeting, July 2018**

**Government report**

16.1. Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures

In order to raise awareness in business sector about fair competition rules, Competition Agency of Georgia organised a conference on 5th December, 2017 on issues of “fair competition and business integrity as necessary elements of sustainable economic development”. The event took place in order to celebrate the World Competition Day. The conference aimed to raise awareness about general principles and obligations of Competition Law in Georgia in order to prevent future breaches of Law. Besides, the conference promoted the European experience of fair competition and advantages of doing business ensuring Fair Competition Rules. Main target groups of the conference were SMEs. The conference was organised with collaboration of Business Ombudsman of Georgia with assistance of the EU Project “Support to the Georgian Competition Agency”. The conference was attended by a member of Lithuanian Competition Council, who also shared Lithuanian experience regarding the Business Integrity in field of competition law.
16.2. Develop capacity of the business ombudsman to promote business integrity measures.

Business Ombudsman (BO) Office of Georgia aims to raise awareness about the BO and increase the accessibility of the BO Office for the business representatives. BO of Georgia conducted a number of meetings with the members of Business Association of Georgia, American Chamber of Commerce in Georgia and Georgian Farmers’ Association in the first half of 2018. In addition, the BO of Georgia organised several meetings and presentations for representatives of the business associations and the members of the Georgian Chamber of Commerce and Industry in Tbilisi on February 2, 2018 and in different regions of Georgia from May 3 to May 6, 2018. The BO of Georgia completed its work on the development of the e-portal with the aim to create an electronic communication platform with the business representatives. The e-portal was launched at the beginning of May, 2018. The portal was presented to the business representatives during the abovementioned meetings in the regions of Georgia. Within this process of raising awareness about the BO and increasing accessibility of the BO office, the Memorandum of Cooperation was signed between the BO and the Georgian Chamber of Commerce and Industry, which aims to facilitate access to the BO office to the members of the Georgian Chamber of Commerce and Industry.

16.3. Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.

In order to promote transparency and accountability, 23 State owned enterprises (SOEs) have established ethical standards for employees of SOEs. The auditing process of the financial statements for 2017 is not complete yet, therefore, SOE’s annual reports (which also include financial data) are not uploaded on SOE’s web-pages. In addition, it should be noted that, according to the order N1/1-284 02/02/2017 of the National Agency of State Property (NASP), it is indicated that the deadline to upload the abovementioned information is 31 August.

16.4. Explore the possibility of concluding integrity pacts in large publicly funded projects.

No further action has been taken at this stage.

16.5. Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.

First steps have been taken with the aim of creating a registry for beneficial ownerships. For this purpose, the National Agency of Public Registry of Georgia carried out a research and studied best practices of the countries which already established the registry of beneficial owners.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 16.*
16.1) Under activity 9.1.1. of the AC AP 2017-2018 the State Procurement Agency conducted in total 15 meetings in 2017. The aim of the meetings, conducted in the first half of 2017, were to present new legal amendments to the law on state procurement and give the information on the innovations implemented in the unified electronic system of the state procurement. The issues of business integrity in the state procurement were also discussed. All the meetings in the second half of 2017 was dedicated to the discussion of ongoing reforms in the state procurement system. Overall, IDFI considers that the meetings in the scope of AC AP was not responding to the focus of this recommendation. IDFI noted in its recommendations for AC AP 2017-2018, that “In addition, the indicator of the result 9.1 includes the study of the risks associated with business integrity; however, the activity includes only awareness raising, which is not in line with the goals of the indicator, and would create problems during the implementation and monitoring process”. Moreover, elaboration of business integrity guidelines in envisaged in the second half of 2018.

16.2) It was recommendation of IDFI to involve Business Ombudsman as a responsible institution in the AC AP to implement OECD-ACN recommendation. First draft of AC AP did not include Business Ombudsman at all and after recommendations received from CSOs the involvement of BO was possible only on the very last stage of elaboration of AC AP. The activities in this part is rather limited and does not cover capacity building of BO. In the second half of 2017, the BO should have launched electronic portal, however due to the deficiencies the portal is not available for third parties and is in the internal testing mode (based on the last monitoring of AC AP).

16.3) There is no progress on the first part of this recommendation, meaning that anticorruption and integrity plans for state owned enterprises is not elaborated. Implementation of this part is not included in AC AP. On the policy level, AC AP monitoring states that the practice of proactive publication is implemented in the large enterprises.

16.4) Lack of progress.

16.5) Lack of progress.

Overall, IDFI considers that there is lack of progress in implementing this recommendation.

NGOs report – TI-Georgia

16.1) No significant new developments

16.2) No significant new developments

16.3) No significant new developments

16.4) No significant new developments

16.5) No significant new developments

Assessment of Progress

It seems that the event reported by the Government of Georgia as awareness raising in line with the first part of the Recommendation was focused on the issues of competition, rather than
corruption/anti-corruption. No other steps, including towards implementation of other elements of this part of the recommendation were not reported.

Progress can be noted in regards to raising capacity of the Business Ombudsman, in particular due to development and launch of the electronic communication platform with businesses.

In regards to 16.3. adoption of ethical standards in 23 SOEs has been reported by the government, the civil society notes that anti-corruption or integrity programmes have not been developed and that this issue is absent in the AC AP. Also proactive publication is still pending until the audit of the SOEs is completed and progress cannot be yet seen in this area. While overall progress is noted under this part of the recommendation, for the next reporting period Georgia is encouraged to provide more detailed information in regards to the ethical standards and their implementation, as the recommendation is requiring.

No progress can be noted under Recommendation 16.4.

Georgia reports some preliminary steps in regards to recommendation 16.5 which cannot be viewed as progress yet.

Overall progress has been made under this recommendation.

Progress

CHAPTER 3: ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

Recommendation 17: Criminal law against corruption

Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.

Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.

18th Monitoring Meeting, September 2017

17.1. Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.

Government report

The new AC AP 2017-2018 envisages the activity of the Ministry of Justice and the PSG to revise criminal sanctions for passive bribery if necessary and in accordance with the OECD-ACN recommendations. Based on the action plan the revision process will start in the beginning of 2018 and be finalised by the end of 2018.
NGOs report

According to GYLA, the sanctions for Articles 332 or 333 of Criminal Code have not been revised during the monitoring period. The only change about sanctions is that a new type of sanctions – a house arrest – was added. This change is a result of the Criminal Code reform which removed restriction of liberty from criminal code and added a new type of sanction – house arrest.

17.2. Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.

Government report

The new AC AP 2017-2018 envisages the activity of the PSG to elaborate detailed guidelines on prosecution of the articles 332 (Abuse of official powers) and 333 (Exceeding official powers) of the Criminal Code in accordance with the OECD-ACN recommendations. The PSG has already carried out important activities in this respect. In April 2017, the Department for Supervision over Prosecutorial Activities and Strategic Development and Investigation Division of PSG started developing guidelines on how to interpret Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. In parallel, the Department for Supervision over Prosecutorial Activities and Strategic Development together with the Legal Department of the Office of the Chief Prosecutor of Georgia started reviewing the compliance of the above-mentioned provisions with the requirements of UNCAC.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 17.

Assessment of Progress

The Government has started some preparatory work on implementing the recommendation, but it is not sufficient to acknowledge progress. Conclusion: Lack of progress.

19th Monitoring Meeting, July 2018

Government report

17.1. Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.

The Ministry of Justice has reviewed the Criminal Code of Georgia, process of public consultations has been finalised and the Ministry is upgraded the draft amendments based on the opinions received from various interested parties. The draft amendments were adopted by the Criminal Justice Reform Council in May, 2018. The sanctions were analysed and at this stage it was decided that the sanctions for bribery and respective crimes do not need any changes.
17.2. Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.

The work of the Department for Supervision over Prosecutorial Activities and Strategic Development, the Investigation Division and the Legal Department of the Chief Prosecutor’s Office of Georgia on developing guidelines on how to interpret Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code and assessment of the compliance of the above-mentioned provisions with the requirements of UNCAC is currently ongoing. It is expected to be finalised in the course of 2018.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 17.*

**NGOs report - IDFI**

17.1) The implementation of this recommendation is envisaged in the AC AP from 2018 (the reporting period is not yet due). On the legislative level, no amendments had been proposed yet.

17.2) The implementation of this recommendation is envisaged in the AC AP from 2018 (the reporting period is not yet due). On the legislative level, no amendments had been proposed yet.

Overall, IDFI considers that there is lack of progress in implementing this recommendation.

**Assessment of Progress**

In regards to implementation of Recommendation 17.1, no progress can be noted, on the contrary it appears that Georgia made decision not to address this part of the recommendation.

Georgia reports that work towards implementation of Recommendation 17.2 is on-going, however it is not enough to be considered as progress.

**Lack of Progress**
Recommendation 18: Liability of legal persons

Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.

Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.

Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.

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

18th Monitoring Meeting, September 2017

18.1. Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.

Government report

Since 2016, practical training sessions focusing on liability of legal persons for corruption offences have been included in the curriculum for newly appointed investigators and prosecutors as well as for in-service training. In September 2016, the PSG conducted the training on investigation and prosecution of offences involving legal persons. International experts were acting as trainers during the training. The attendees were the prosecutors and investigators of the PSG and other investigation agencies. Moreover, the new AC AP 2017-2018 provides that training sessions will be held every year for professionals involved in the relevant field in order to improve the mechanism for prosecution of legal entities.

In the reporting period, the High School of Justice (HSJ) developed a curriculum on “Effective Review of Corruption-related Cases” which also covers the issue of criminal corporate liability. A working group consisting of international expert and Georgian judges identified the topics and elaborated the training materials. The training of trainers was conducted for the Georgian judge-trainers by the CoE expert. In May 2017, the pilot training was conducted for 16 judges from various courts of first and second instances. In the second part of 2017, one more training is planned to be conducted for judges. Based on the Anti-Corruption Plan 2017-2018, similar training will be held for judges at least once a year.

18.2. Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.
**Government report**

In December 2016, the PSG in cooperation with the Council of Europe completed initial process of drafting the manual on effective investigation and prosecution of corruption cases involving legal persons. In the beginning of 2017 manual was submitted to the Council of Europe experts for final expertise. After receiving the feedback, in April 2017 manual was finalised and sent for publication. The manual will be published in September 2017.

**18.3. Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.**

**Government report**

The enforcement of the liability of legal persons, *inter alia*, for corruption offences, was included in the PSG Strategy and national Anti-Corruption Strategy as a part of the policy priorities, the process of discussions has started and this issue will be considered as well.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 18.

**Assessment of Progress**

In view of the information provided by the Government, there was *Significant progress* in implementing Recommendation 18.
Government report

18.1. Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.

Within the framework of the In-service Training Program 2017 for Judges and Other Court Staff, one more training was conducted on the said topic, attended by 14 judges. Within the framework of the In-service Training Program 2018 for Judges and Other Court Staff, 2 trainings were conducted on “Effective Review of Corruption related Cases”, attended by 26 participants (11 judges and 15 other court staff).

In 2017, PSG trained 62 interns on investigation and prosecution of offences involving legal persons. PSG plans to carry out extensive trainings of investigators and prosecutors following the availability of the manual on effective investigation and prosecution of corruption cases involving legal persons.

18.2. Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.

According to the latest agreement between the Prosecution Service and the Council of Europe, the presentation of the manual on effective investigation and prosecution of corruption cases involving legal persons is scheduled for the end of June 2018.

18.3. Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.

No further action has been taken at this stage.

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

No further action has been taken at this stage.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 18.

NGOs report - IDFI

18.1) It is not certain from the AC AP monitoring, whether further trainings had been conducted for investigators and prosecutors on liability of legal persons, after previous reporting period. AC AP envisages training activity in the second half of 2018. In addition, the report for 2017 of the Chief Prosecutor does not provide information on trainings on liability of legal persons.
18.2) Even though the PSG indicated in the previous reporting period of OECD-ACN, as well as in the AC AP first half of 2017 monitoring, the manual should have been published in September 2017 the document is not yet publicly available.

18.3) Due to absence of information, progress cannot be assessed with regard to recommendation 18.3.

18.4) No legal amendments have been introduced for implementation of this recommendation. Therefore, IDFI considers that there is lack of progress for Recommendation 18.4.

Assessment of Progress

According to the information provided by the government, progress can be acknowledged under this Recommendation. Training is continued and now judges are also actively covered by such training, manual should be now put to use; liability of legal persons has been included into the policy priorities previously, so no further steps have been taken in this regard. However, the government is encouraged to provide update in regards to 16.4 at the next progress update.

Progress

Recommendation 19: Foreign bribery

Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.

Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.

18th Monitoring Meeting, September 2017

19.1. Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.

Government report

Since September 2016 until July 2017 eight trainings and five study visits were conducted on the matters of fight against corruption. The 26 PSG investigators and prosecutors were trained in total. Among the number of issues related to investigation and prosecution of different forms of corruption, the training sessions addressed the matters of enforcing foreign bribery offence.
19.2. Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.

Government report

The Anti-Corruption Unit of the Office of the Chief Prosecutor of Georgia is currently working on developing guidelines on effective investigation and prosecution of foreign bribery for all corruption investigators and prosecutors. The fight against bribery, also covering the prosecution of foreign bribery, was included in the PSG Strategy and the National Anti-Corruption Strategy as a part of the policy priorities. The PSG Strategy and the National Anti-Corruption Strategy were adopted on January 31, 2017 and April 24, 2017 respectively.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 19.

Assessment of Progress

From the information provided it is not clear if the training for investigators and prosecutors specifically targeted foreign bribery. No training or awareness-raising for trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement have been conducted or planned. Beginning of work on the guidelines on effective investigation and prosecution of foreign bribery is a welcome step, but it is too early to acknowledge it as a progress. Conclusion: Lack of progress.

19th Monitoring Meeting, July 2018

Government report

19.1. Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.

Since September 2017, PSG carried out 4 trainings on the matters of fight against corruption, including 2 study visits. In the framework of the above-mentioned trainings, 26 prosecutors and PSG investigators were trained totally. In addition, throughout 2017, 62 interns were trained regarding the methodology of investigation and prosecution of corruption. The above-mentioned trainings covered the issues of enforcing foreign bribery offence together with other pertinent matters to fight against corruption.

The Levan Mikeladze Diplomatic Training and Research Institute of the Ministry of Foreign Affairs was not able to deliver the progress by current reporting period reasoning from following factors:

Training of Diplomats residing outside of Georgia requires significant financial resources, as a) the trainings have to be delivered via online platforms, that are not available within the system or b) the diplomats in missions have to come to Georgia, which is also very costly or c) the trainer has to be
deployed to the missions abroad, which is also connected with significant resources. Moreover, it is noteworthy that the change of leadership happened at the institute and these developments hindered the process of drawing up strategy for fulfilment of this obligation.

In this regard, the Diplomatic Training and Research Institute is now starting the process of preparation for the trainings – cooperation with relevant agencies to develop a sufficient training module; mobilisation of resources within the system and among the donors.

19.2. Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.

The work of the Anti-Corruption Unit of the Chief Prosecutor’s Office of Georgia on developing guidelines on effective investigation and prosecution of foreign bribery is currently ongoing. It is expected to be finalised in the course of 2018.

**Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 19.**

**NGOs report - IDFI**

19.1) Lack of progress

19.2) There is only training activity on foreign bribery envisaged in the second half of 2018 in AC AP. Moreover, the Strategy of PSG does not cover foreign bribery separately; one chapter is dedicated to fighting against corruption crimes, the part of which is not foreign bribery.

IDFI considers that, there is lack of progress in implementing this recommendation.

**Assessment of Progress**

In regards to Recommendation 19.1 reported training for law enforcement officials still appears to be of more general nature, although foreign bribery was reportedly covered in the training. Trainings of trade and diplomatic missions officials is at the very initial stage of developing, as originally it could not be done due to financial restraints. Some preliminary steps in regards to Recommendation 19.2 have been reported which do not yet constitute progress. Therefore very limited progress can be acknowledged in regards to this recommendation, however, Georgia is requested to provide more details in regards to how foreign bribery is covered in law enforcement and other training for the next reporting period.
Recommendation 20: Procedures for investigation and prosecution of corruption offences

Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.

Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.

Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.

18th Monitoring Meeting, September 2017

20.1. Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.

Government report

In July 2017, 20 Prosecutors were trained in application of the plea bargaining. Training on the plea bargaining is also included in the curriculum of the PSG interns. In April 2017, one training on the “plea bargaining and safeguards against abuse in its application” was conducted for judges at the HSJ. Georgian and international experts conducted the seminar. 14 judges from various courts of first and second instances participated in the training. The training was envisaged by the In-Service Training Program of Judges and Court Staff 2017. Based on the Anti-Corruption Plan 2017-2018, similar training will be held for judges at least once a year.

NGOs report

IDFI stated that it is indicated in the Strategy of PSG that the recommendations on the circumstances to be considered during plea agreement procedure will be elaborated. The information on the planned trainings is not available.

20.2. Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.

Government report

With the purpose to implement the OECD-ACN recommendation regarding a central register of bank accounts to facilitate tracing of criminal assets the representatives of the National Bank and the Ministry of Justice conducted a meeting facilitated by the First Deputy Minister of Justice of Georgia. They discussed the recommendation and the steps to be taken in order to implement it. The decision was made that the representatives of the Ministry and the National Bank will conduct the study of
international practice and after that the analysis will be made regarding the necessity of creation of such an account. The working group has already started working on the issue.

20.3. Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.

**Government report**

No further action has been taken at this stage.

**Government conclusions**

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 20.

**Assessment of Progress**

According to the information provided, there was Progress under Recommendation 20.

### 19th Monitoring Meeting, July 2018

**Government report**

20.1. Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.

Within the framework of the In-service Training Program 2018 for Judges and Other Court Staff of the High School of Justice, one training was conducted on “Topical Matters of Criminal Process”, which covered also issues related to the plea bargaining. The training was attended by 15 judges of common courts of Georgia.

2 groups of PSG interns, 62 persons totally, have been trained on application of the plea bargaining.

20.2. Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.

The recommendation on establishing the central register of bank accounts was further discussed in the framework of two working meetings with the participation of the representatives of the National Bank of Georgia, Financial Monitoring Service, Ministry of Justice and National Agency of Public Registry. One of the meetings was held in the Ministry of Justice in January 2018 and the other in the Public Service Hall in February 2018.

After these discussions, the National Bank of Georgia developed its position on the creation of the central register of bank accounts in a paper that was shared with the Ministry of Justice and the Ministry of Foreign Affairs. The paper explains the complex and sensitive nature of the topic and
suggests that setting up a central register of bank accounts might be premature in Georgia before carefully studying the underlying causes of its establishment as well as the practice of the EU Member States.

This recommendation was also discussed in the framework of the EU-Georgia Association Sub-Committee on Justice, Freedom and Security in April 2018. As long as not all the EU Member States have introduced central registers yet (e.g. Denmark, Sweden, and Hungary), the discussions on its establishment continues among Georgian authorities and the final decision will be made after carefully observing the experience of other European countries.

20.3. Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.

No further action has been taken at this stage.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 20.*

**NGOs report – IDFI**

20.1) In the Chapter of plea-bargaining of Criminal Procedure Code of Georgia the latest amendments entered into force in 2014. Since then the plea bargaining reform is not reflected on the legislation. If the changes had been taken place on the practical level the relevant information should be presented by the government. Activity 6.2.7 of the AC AP 2017-2018 envisages the trainings for judges on corruption issues. The specific themes, such as plea bargaining is not indicated in the AP.

20.2) No further steps had been taken to implement this recommendation. IDFI can assess the status of this recommendation as lacking progress.

20.3) Lack of progress.

**Assessment of Progress**

According to the information provided, there was *Progress* under two first parts of the Recommendation 20. Training is being continues, consideration of establishment of the central bank of accounts is continued through a number of consultative steps.

*Progress*
Recommendation 21: Anti-corruption criminal justice bodies

Consider removing anti-corruption investigative powers from the Security Service and the Prosecution Service.

Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.

Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.

As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.

18th Monitoring Meeting, September 2017


21.2. Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.

Government report

In May 2017, the working group composed of the representatives of the Legal Department, the Department for Supervision over Prosecutorial Activities and Strategic Development and the Anti-Corruption Unit of the Office of the Chief Prosecutor of Georgia started the research of international standards and best practice regarding the anticorruption investigative powers of the Prosecution Service as well as consideration of possible measures for strengthening the autonomy of the Anti-Corruption Unit. The recommendations of the working group on the above-mentioned matters will soon be presented to the management of the PSG for considering the possibility of removing anticorruption investigative powers from the Prosecution Service and undertaking measures for strengthening the autonomy of the Anti-Corruption Unit.

NGOs report

IDFI informed that it published policy document indicating the necessity of establishing independent Anti-Corruption Agency and describing the challenges in the institutions working on prevention of corruption, including State Security Service, PSG, etc.

21.3. Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.
In April 2017, the Department for Supervision over Prosecutorial Activities and Strategic Development and Investigation Division of the PSG started reviewing guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds. The process will soon be finalised.

21.4. As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.

No further action has been taken at this stage.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 21.

Assessment of Progress

Georgia has started the process of consideration of whether the anti-corruption investigative powers should be removed from the Prosecution Service and how to strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service. Also, the PSG started reviewing guidelines for transferring cases from one investigative authority to another. Conclusion: Progress.

19th Monitoring Meeting, July 2018


Strengthen the autonomy of the anticorruption unit of prosecutors within the Prosecution Service.

Consideration of the removal of anticorruption investigative powers from the PSG

In March 2018, the working group composed of the representatives of the Legal Department, the Department for Supervision over Prosecutorial Activities and Strategic Development and the Anti-Corruption Unit of the Chief Prosecutor’s Office of Georgia submitted to the PSG managements the research on international standards and practice regarding the investigative powers of the Prosecution Service.

According to the research, it has been established that there is no common standard requiring the removal of investigative functions from the Prosecution Service as well as the fact that there are number of countries in Europe where prosecutor’s offices are vested with the investigative powers.
In May 2018, the findings of the research as well as the recommendation of the OECD-ACN on this matter were discussed by the Working Group on Drafting the Organic Law. Considering the finding of the research as well as the advantages and disadvantages of the investigative functions of the prosecution Service, the working group arrived to the conclusion that there was no justified need for the removal of investigative functions from the PSG.

**Strengthen the autonomy of the anticorruption unit**

In March 2018, working group composed of the representatives of the Legal Department, the Department for Supervision over Prosecutorial Activities and Strategic Development and the Anti-Corruption Unit of the Office of the Chief Prosecutor of Georgia recommended the PSG management to remove the Anti-Corruption Unit from the subordination of the Investigation Division of the Chief Prosecutor’s Office. The recommendation was accepted by the PSG management.

Respectively, on 02 May 2018, the Anti-Corruption Unit was removed from the subordination of the Investigation Division and established as an independent structural unit of the Chief Prosecutor’s Office directly subordinated to the Chief Prosecutor and the First Deputy Chief Prosecutor.

**21.3. Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.**

In April-May 2018, 2 consultative meetings were held among the representatives of the Department for Supervision over the Prosecutorial Activities and Strategic Development and the Investigation Division of the Chief Prosecutor’s Office with the managers of different structural units of the PSG aiming at obtaining their opinion regarding the exact list of reasonable criteria to be introduced in the guidelines on transferring cases. The respective proposals have been received in May 2018. The review of these proposals and related consultations is currently under way. The work on the guidelines is expected to be finalised in the course of 2018 as provided by the PSG Action Plan.

**21.4. As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.**

In March 2018, the Chief Prosecutor of Georgia instructed the Investigation Division of the Chief prosecutor’s Office to conduct research on the asset management agencies and elaborate draft legislative amendments concerning its structure, powers and responsibilities.

In May 2018, the Investigation Division has concluded the research and elaborated the draft legislative amendments. The research and the draft amendments are pending review by the PSG management.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 21.*

**NGOs report – IDFI**

21.1) Anti-Corruption investigative powers stays in the Security Service as well as in the Prosecution Service of Georgia. IDFI considers that, without forming an independent Anti-Corruption Agency the implementation of this recommendation will not be feasible.
21.2) No further steps had been taken to implement this recommendation.

21.3) IDFI does not possess information on finalisation of this recommendation as was mentioned by the government for last year’s progress report.

21.4) No further steps has been taken to implement this recommendation.

NGOs report – EMC


The State Security Service of Georgia has broad and incompatible functions, low level of transparency and accountability. Due to the high volume of classified information in the Service and weak oversight over their activities, there is a high risk of abuse of the power for political purposes.

According to the Law of Georgia on the State Security Service, the authority of the Service includes the analysis of crimes falling within the investigative jurisdiction of the Service. Under the same law, the areas of activities of the Service for ensuring state security include carrying out measures for preventing, identifying and eliminating corruption. Unfortunately, the statistical information provided by the State Security Service largely shows the number of cases related to the investigation of corruption and violations by an official.

It is still problematic that the main area of activity of the State Security Service is carrying out measures for preventing, identifying and eliminating corruption.
The above-mentioned mandate of Security Service is in contrary with the International Standards and recommendations, but from August 2015, no fundamental reforms were observed in the security sector.

21.2) Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.

In September of 2017 the government of Georgia has approved national anti-corruption strategy. Strategy emphasised the necessity of changes and strengthening the legal power and functions of Anti-corruption agencies, as well as the challenges the prosecution office faces contemporary in terms of fighting corruption. It is noteworthy that, in the system of chief prosecution service of Georgia, it has been established a special division of criminal prosecution of corruption crimes. The order of the Minister of justice of Georgia (adopted on 2018, second of May N304) considered the status, structure and authority of the special division. No other steps taken to further strengthen the prosecutor’s authority are publicly available.

Assessment of Progress

While Georgia took steps to formally implement some elements of Recommendation 21.1. – in particular by considering removal of investigative powers from prosecution service – regrettably it concluded not to go ahead with such reform. No information was provided in regards to similar steps as to the Security Service by the Government. However, civil society raises concerns that no review of Security Service anti-corruption investigative functions is being undertaken, moreover according to the statistical data that they shared with experts, the highest number of investigations initiated by the Security Service are that of anti-corruption nature; Georgia is urged to look into this part of the recommendation.

Significant progress has been made in regards to implementation of Recommendation 21.2. In particular, the removal of the Anti-Corruption Unit from under the subordination to the Investigation Division and its establishment as an independent structural unit of the Chief Prosecutor’s Office directly subordinated to the Chief Prosecutor and the First Deputy Chief Prosecutor is a welcome step to ensure better independence and autonomy. Now it will be important to see how this structural change plays out in practice.

The work on the Guidelines, which started in the previous reporting period, is continued and is expected to yield results by the end of 2018. This should be followed up during the next progress update.

Steps have been taken to consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation, this can be recognised as certain progress under Recommendation 21.4.

Overall progress under this recommendation can be noted.

Progress
CHAPTER 4: PROCUREMENT FOR INFRASTRUCTURE PROJECTS AT THE NATIONAL AND LOCAL LEVEL IN GEORGIA

Recommendation 22: Procurement for infrastructure projects

1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.

2. Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.

3. Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.

4. Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works.

5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.

18th Monitoring Meeting, September 2017

22.1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.

Government report

No further action has been taken at this stage.

NGOs report

IDFI reported that special procedure for infrastructure projects’ related procurements have been adopted. The procedure is based on the principle of pre-qualification. The bidders submit proposals, qualification documents, and cost breakdown. After evaluating all bidders, if tender terms and conditions are met, contracting authority can invite the bidder with the lowest proposal price, to sign the contract. However, no progress was made in terms of introducing design-build-operate contracts, as legal procurement framework for concession/PPP and turn-key contracts in Georgia is at its initial development stage.
22.2. **Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.**

*Government report*

As for the adoption of a new law on Private-Public partnerships (PPP), the Ministry of Economy and Sustainable Development of Georgia (MoESD) in close cooperation with other relevant state institutions, line ministries and International Financial Institution (IFI) is actively working on implementation of the PPP reform. Currently, draft law on PPP (together with amendments in secondary legislation) has been elaborated and MoESD is coordinating the activities with main stakeholders to submit the draft PPP law to the Government of Georgia for approval. Legal package of the reform is expected to be submitted to the parliament in the Autumn session of 2017.

*NGOs report*

IDFI noted that no significant progress was made in terms of adopting a more comprehensive law on public-private partnership. The Law of Georgia "On the Procedure for Granting Concessions to Foreign Countries and Companies" still requires to be improved regarding the scope of application, as it contains very few provisions regarding the selection of the concessionaire. Hence, the problem of concessionaires being chosen directly remains the same.

22.3. **Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.**

*Government report*

Starting from 2016, Ministry of Regional Development and Infrastructure presented a set of new amendments to the State Procurement Law ensuring the implementation of international obligations and the EU Standards and reflecting the fundamental values of equal treatment and principle of proportionality. The main substance of the amendments to the law could be divided into several directions: a) principles, b) specifications, c) deadlines, d) the rule of appeal, e) technical issues. These amendments aim to bring the procurement law closer to the EU Member States practice by strengthening equal treatment, proportionality and by promoting fair competition in the procurement process. At the same time, in order to ensure fair evaluation of the tender proposals, the Ministry of the Regional Development and Infrastructure of Georgia issued a recommendation introducing the Double Envelope Arrangement for the public procurement. Based on this scheme, starting from 2017 the technical proposals are evaluated purely on their technical merits and ability to meet the advanced technology requirements set out in the bidding applications without being unduly skewed by the financial proposal.

22.4. **Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works.**

*Government report*

As a result of the initiative of the Ministry of Regional Development and Infrastructure of Georgia, the technical designs of the assignments, concurrently with the civil works, will be the subject to comprehensive review process through the accredited supervisory company, while the list of the supervisory companies are approved by the State Accreditation Agency under the Ministry of Economy and Sustainable Development of Georgia. Once the project design is finally concluded and approved, the assignment steps into the implementation phase, where the supervisory company tracks the progress and provides the regular compliance assessments. This institutional enforcement
The proposal is aimed at improving the overall time efficiency and quality control procedures in public project management system, ensuring the effective and efficient public infrastructure project outcomes in the regions.

**22.5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.**

*Government report*

From the 1st September 2016 until August 2017 Training Centre of the Procurement Agency provided training sessions to the 989 employees operating at state institutions, municipalities, local self-governments and public schools from overall Georgia.

*Government conclusions*

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 22.

*Assessment of Progress*

There has been no progress under Recommendation 22.1 concerning procurement of complex contracts for infrastructure projects.

The MoESD took significant effort in respect of Recommendation 22.2 concerning adoption of PPP/Concession awards, which is a progress.

There has been no progress under Recommendation 22.3 concerning introduction of comprehensive contract terms and conditions templates for infrastructure projects. Introduction of the two-part proposal system is a separate matter (which should have been reported under recommendation 22.1) and may only be seen as a mildly positive development if implemented through well secured e-system only, where the financial proposals are protected from manipulation after submission.

The developments with regard to Recommendation 22.4, i.e. introduction of mandatory impartial professional supervision of the works, are seen as progress because such supervision is an essential part of good project management, which safeguards public interests. It is assumed that the supervisors will be appointed and paid by the employers under separate contacts pro rata to the required professional inputs. However, it is also required that appropriate measures be introduced in respect of review and approval of the critical material modifications to the contracts.

The actions by SPA in respect of recommendation 22.5 are very positive and need to be maintained. The Government is following up on the Recommendation well.

Overall, in view of the above conclusions, Georgia made **Progress** under Recommendation 22.
Government report

22.1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.

The State Procurement Agency of Georgia (SPA) continues to gradually introduce new procurement procedures according to the EU Directives. For instance, new procurement procedure, so-called two-stage tender (MEP) was developed, which safeguards principles of transparency and fair and objective decision making process and facilitates identification of economically the most advantageous tender (MEAT). By introducing the “two-stage“ procurement, contracting authorities now have a freedom of choice between using the price as the sole award criteria or considering the price along with other criteria. In this procedure the bidder’s rank is calculated through the system automatically.

Besides, in December 2016, the SPA introduced a new procurement procedure specially designed for procurement of construction works. New procedure was named as DAP tender. According to this procedure, contracting authority evaluates all proposals at the same time, which facilitates tender process. The DAP procedure doesn’t allow reverse auction and tender price is set in the main round.

In order to further streamline procurement process in the construction sector, SPA has elaborated “Methodological Recommendations on Methods to Procure Construction Works.“ Recommendations underline interconnection between the stages of project planning, project design and construction works. With this regard, contracting authority has several options on how to conduct procurement of construction works. Three different methods are outlined in the recommendation:

- Design-Bid-Build (DBB);
- Design-Build (DB);
- Multi-Prime (MP).

In order to fully implement the obligations foreseen under the Association Agreement between EU and Georgia, in September 2017 SPA launched new procurement procedure – Electronic Tender with Prequalification (TEP), which is analogous to restricted procedure.

22.2. Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.

Draft law on Public Private Partnership (PPP) has already been elaborated and approved by the Government of Georgia after which draft law was submitted to the Parliament. The Parliament adopted draft law on PPP on the May 3, 2018 and currently legal procedures are ongoing for publication of the law. In parallel, elaboration of bylaws and guidelines has already started and first working draft of bylaws is already available. Elaborated draft law complies with the best international practice and relevant EU directive on Concessions.

Draft law on PPP establishes legal framework for PPP projects and prescribes responsibilities and powers of different stakeholders involved in the process. In particular, the Ministry of Finance performs evaluation of documents submitted by the competent bodies and conducts: fiscal
affordability assessments; value for money assessments; fiscal risk assessment and other kind of assessments, under its competence. Relevant department within the Ministry of Finance is already created. According to the PPP law "PPP Unit" will be created, which within its competence shall be engaged in the development of PPP and will perform following functions: identify and propose prospective PPP projects; conduct assessment of project concepts; assist competent bodies in the preparation of PPP-related documents including tender documents, draft PPP agreements and prepare standard documentation; undertake capacity building activities and create and manage a database of all PPPs;

According to the draft law, PPPs shall be developed through a defined process that will entail various stages: project identification and initiation, project preparation, selection of the private partner, implementation, and post implementation assessment. According to draft law, the Government of Georgia will be responsible for approving PPP projects on different stages.

A public-private partnership may be implemented in any and all sectors of public infrastructure and public services, unless otherwise determined by the Government of Georgia.

Fundamental Principles of Public-Private Partnership are:

**Transparency** – ensuring that the information about public-private partnerships and public-private partnership opportunities is publicly available;

**Foreseeability** – clear and predictable rules;

**Enhancement of competition and non-discrimination** – fair and equal treatment of all public and private, foreign and domestic entities;

**Value for money** – achieving the best value for money having PPP as an optimal instrument for achieving defined objectives;

**Optimal risk allocation** – reasonable distribution of responsibilities and risks between the parties, considering the public interest, characteristics of the public private partnership and party's ability and reasonableness to manage the respective risk;

**Fiscal responsibility** – undertaking the financial commitments related to public-private partnership without compromising the sustainability of public finances;

**Environmental and social sustainability** – evaluation of the conformity of a public-private partnership project to applicable environmental requirements, and environmental and social impact assessments according to applicable legislation.

Selection of private partner in concession is regulated with the draft law on PPP and in case of non-concession, PPP is regulated with the law on Public Procurement.

**22.3. Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.**

No further action has been taken at this stage.

**22.4. Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works.**
No further action has been taken at this stage.

22.5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.

No further action has been taken at this stage.

*Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 22.*

**NGOs report**

22.1) NGOs did not report any progress regarding this recommendation.

22.2) NGOs consider that significant progress has been made, since a new law on Public-Private Partnership, which fully regulates the PPP related matters, was adopted on 4 May 2018.

22.3) NGOs did not report any progress regarding this recommendation.

22.4) NGOs did not report any progress regarding this recommendation.

22.5) NGOs did not report any progress regarding this recommendation.

**Assessment of Progress**

Georgia has developed new procedures for its e-Procurement system and adopted a Law on Public-Private Partnership, establishing a legal framework for PPP projects and prescribing the responsibilities and powers of different stakeholders involved. Overall, *progress* has been made under Recommendation 22.

**Progress**