FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA

ANTI-CORRUPTION REFORMS IN GEORGIA

5TH ROUND OF MONITORING OF THE ISTANBUL ANTI-CORRUPTION ACTION PLAN

PILOT

OECD

Anti-Corruption Reforms in Georgia

Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan

OECD

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Foreword

This pilot monitoring report was prepared within the framework of the Istanbul Anti-Corruption Action Plan (IAP), a peer review programme of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN).

The programme covers ten countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Ukraine and Uzbekistan. Other countries in the region, OECD countries, international organisations and non-governmental partners participate in the implementation of the IAP as experts and donors.

The first four rounds of monitoring under the IAP were completed in 2019 and prepared the ground for the 5th round of monitoring using newly developed, indicator-based methodology. This pilot report, along with other pilot reports on Armenia, Azerbaijan, Moldova and Ukraine tests the new monitoring tool which comprises indicators, a guide to the indicators and the results-based monitoring methodology before the launch of the 5th round of monitoring.

This report is supported by the OECD component of the EU for Integrity Programme which covers Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

The Pilot Performance Indicators for the 5th round of monitoring adopted by the OECD/ACN Steering Group in May 2020 and amended in November 2020. The pilot monitoring covered 13 Performance Areas comprising performance indicators and benchmarks. Indicators and pilot procedures are available at https://www.oecd.org/corruption/anti-bribery/corruption/acn/istanbul-action-plan.htm.

The pilot assessment of Georgia was launched in December 2020. Georgia provided replies to the questionnaire and supporting materials (laws, statistics, etc.) in February-March 2021. The virtual on-site visit to Georgia took place on 12-23 April 2021 and included sessions with governmental and non-governmental representatives. Civil society organisations, business and international representatives provided replies to the monitoring questionnaire, participated in the on-site visit, and commented on the draft assessment report. Following bilateral consultations, the draft report was presented to the plenary meeting of the OECD ACN held on 26-28 October 2021. However, during the plenary Georgia requested additional bilateral consultations to finalise outstanding issues. Following additional bilateral consultations between the Georgian delegation and the monitoring team during November-December 2021, many outstanding issues were resolved, however several issues remained, especially on PA 5 on Independence of the Judiciary and PA 5 on Independence of the Public Prosecution Service. At that stage the OECD proposed to Georgia to organise high level negotiations to resolve the remaining issues. The high level negotiations between the OECD and the Georgian government were completed on 9 and 10 March 2022. The pilot monitoring report of Georgia is expected to be adopted through written procedure in April 2022.

Revaz Javelidze, Deputy Head of the Government Administration of Georgia was the key negotiator for Georgia. Ketevan Tsanava from the Government Administration acted as the National Coordinator for the ACN since this function was transferred from the Ministry of Justice. The Ministry of Justice's Analytical Department (Tamar Rostiashvili, Pelagia Makhauri, Mariam Tabatadze, Nino Taganashvili, Gulisa Kakhniashvili) acted as the National Coordinator at the preparatory stage.

Drago Kos, Chair of the OECD Working Group on Bribery, under which the OECD/ACN is one of regional programmes, led the high level negotiations with the assistance of Olga Savran, ACN Manager. The pilot monitoring team that was responsible for the report until the high level negotiations included: Ivan Odeljan (Croatia), Anthony Hooper (UK), Inese Kušķe (Latvia), Vitaliy Kasko (Ukraine), Stana Maric (EBRD), Dirk Plutz (EBRD), Luka Moljk (Slovenia), Michael Redmann (USA), Daniel Thelesklaf (Switzerland). From the OECD/ACN secretariat, Dmytro Kotlyar was team leader for the pilot monitoring, Arianna Ingle provided communications and editorial support and Paloma Cupello provided administrative support.

Acronyms

AC	Anti-corruption
ACA	Anti-Corruption Agency
ACC	Anti-corruption council
ACN	Anti-corruption network for Eastern Europe and Central Asia
ACU	Anti-Corruption Unit
AML/CFT	Anti-money laundering and combating the financing of terrorism
CC	Criminal Code
CEO	Chief executive officer
COI	Conflict of interest
CPC	Criminal Procedure Code
CSB	Civil Service Bureau
CSO	Civil society organisation
DRC	Public Procurement Dispute Resolution Council
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FMS	Financial Monitoring Service of Georgia
GEL	Georgia Lari (GEL 100 = EUR 26)
Ge-GP	Georgian Electronic Government Procurement System
GRECO	Group of States against Corruption
HCJ	High Council of Justice
IDFI	Institute for Development of Freedom of Information
IFRS	International Financial Reporting Standards
JSC	Joint-stock company
MoJ	Ministry of Justice
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NAPR	National Agency of Public Registry
NASP	National Agency of State Property
NBG	National Bank of Georgia
OECD	Organisation for Economic Co-operation and Development
OSCE/ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe
PA	Performance Area
PEPs	Politically Exposed Persons
PGO	Prosecutor's General Office
PPL	Public Procurement Law
PSG	Prosecution Service of Georgia
SOE	State-owned enterprise
SPA	State Procurement Agency of Georgia
SSSG	State Security Service of Georgia
TI-Georgia	Transparency International Georgia
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme

Executive summary

The pilot 5th round monitoring covers 13 areas of anti-corruption activities (performance areas) split into indicators which, in turn, consist of benchmarks. The report is based on the pilot monitoring indicators and methodology approved by the participating countries and available on the OECD/ACN web-site.[1]

Georgia updated its anti-corruption policy documents in 2017 and 2019. The new strategy and action plan for the period starting from 2021 were not available as of mid-2021. Less than half of the measures of the 2019-2020 action plan were fully implemented. In 2021, the secretariat of the Anti-Corruption Council, a policy coordination body, was moved from the Ministry of Justice to the Government's Administration.

In 2017 Georgia reinforced its asset and interest disclosure system by introducing verification of declarations of public officials. The innovative approach of selecting declarations for verification and engaging civil society has failed, as the respective independent commission did not operate for several years because of the low stakeholder interest. The Civil Service Bureau actively applied administrative sanctions for violations related to asset declarations, although mainly for minor offences, and referred only one case for criminal investigation. The government launched an online platform for submitting reports of wrongdoing and informed about a significant number of such reports filed each year; however, it is not clear how many of them represented actual whistleblowing. There were no cases of protection provided to whistleblowers.

Georgia has implemented several essential reforms of the judiciary and public prosecution system, including through constitutional changes. The reforms increased transparency and independence of the justice sector, strengthened self-governance bodies of the judiciary and prosecution service, provided for the gradual removal of the probationary appointment of judges and a competitive selection of the Prosecutor General. Despite the reforms, certain non-governmental organisations remained critical of the situation with the independence and integrity of the judiciary, prosecution office, and respective governance bodies.

Georgia continued to operate a transparent electronic public procurement system that encompasses the significant part of the public sector economy. The volume of single-source procurement remained high in practice, and stakeholders raised the issue of fairness related to procurement preferences. Machine-readable data of procurement was not updated since 2019. Georgia started a corporate governance reform and planned to adopt a code for listed companies according to international standards. Corporate governance and anti-corruption mechanisms of SOEs are in the early stages of development. Georgia did not introduce disclosure of beneficial owners of legal persons. Business Ombudsman operates but lacks resources.

Georgia has routinely applied proportionate and dissuasive sanctions, confiscation of corruption proceeds for corruption offences. According to certain non-governmental organisations, high-level corruption remained the main problem and has not been properly investigated and prosecuted; they also question

[1] Istanbul Anti-Corruption Action Plan 5th Round Monitoring: (2021), "Pilot Performance Indicators"; (2021), "Pilot Overview and Procedures"

the independence of agencies fighting corruption. In view of the authorities, the analysis of relevant factors, including crime statistics and safeguards for the independence of the anti-corruption bodies, demonstrated the independence of these bodies and that all forms of corruption have been properly investigated and prosecuted. The authorities also referred to the recent public survey, showing the increased public trust towards the Prosecutor's Office, which is the key anti-corruption body.

The liability of legal persons is well-established in the law but has not been enforced in practice. Georgia conducts proactive financial investigations into corruption crimes and ensures effective tracing of corruption proceeds. According to the Georgian authorities, there are dedicated specialised practitioners dealing with identifying and tracing of corruption proceeds. According to the monitoring team, there are no specialised practitioners or bodies for the management of seized assets. No assets were recovered from abroad in the past three years. There is no stand-alone anti-corruption body in Georgia, but there are specialised investigators and prosecutors within the Prosecutor's General Office and State Security Service.

Georgia retains high positions in the international anti-corruption and good governance rankings. According to the 2020 Transparency International's Corruption Perception Index, Georgia had a score of 56 holding 45th place worldwide and leading in Eastern Europe and Central Asia.[2] According to the 2021 World Justice Project Rule of Law Index, Georgia was the strongest rule of law performer in Eastern Europe and Central Asia and globally holding 49th place among 139 states. In the dimensions of the Absence of Corruption Georgia ranked first in the region and 31st globally; in the dimension of Open Government – first regionally and 45th globally.[3] The 2020 Business Bribery Risk Index by Trace International ranked Georgia 28th among 194 countries.[4]

[2] Transparency International (2020), "Corruption Receptions Index"
[3] World Justice Project (2021), "Rule of Law Index"
[4] Trace International; Anti Bribery Compliance Solutions (2021), "TRACE Bribery Risk Matrix"

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1 Anti-corruption policy

Georgia has updated its anti-corruption policy documents in regular policy cycles. The government adopted the latest anti-corruption strategy and action plan for 2019-2020 in October 2019. Authorities have not conducted a substantial review of anti-corruption policy at the end of the policy cycle, and there have been significant time gaps between policy documents. The monitoring found that the evidence sources for formulating anti-corruption should be more comprehensive. There is no justification for selecting priority areas that duplicate from one anti-corruption strategy to another. Policy documents do not explicitly acknowledge and address the problem of high-level corruption. Although, in the opinion of authorities, a number of anti-corruption activities included in the policy documents address this problem preventively.

Draft policy documents are published online, but public consultations are limited to the Anti-Corruption Council members without broader consultations and proactive engagement with the public. A low level of implementation of the action plan is confirmed by the government assessment (less than 50% of measures were fully implemented for the last action plan) and stakeholder perception.

Coordination, monitoring, and evaluation functions are assigned to a Council that is supported by staff (a department in the Ministry of Justice) which deals with many other matters and does not have enough members. The function was moved to the Government's Administration in 2021. The coordination body secretariat has sufficient powers, and there are focal points designated in all implementing agencies. CSOs can provide input to the policy documents, but overall, the CSO engagement has not been meaningful.

Indicator 1.1. The anti-corruption policy is up-to-date, evidence-based and includes key corruption risk areas

Background

Georgia has updated its policy documents in regular policy cycles. The Anti-Corruption Council approved in July 2019 and then the Government adopted the latest anti-corruption strategy and action plan for 2019-2020 in October 2019. It replaced the previous strategy and two-year action plan of 2017-2018. The Anti-Corruption Council is responsible for the development of anti-corruption policy, coordination and monitoring of its implementation, implementation of recommendations of international organizations at the national level. Members of the Council represent three branches of power, international and local organizations as well as business sector. Among its 55 members, 17 represent the civil society and business sector. The Council is supported by the Secretariat. The Government of Georgia developed detailed and unified rules for the policy planning (Rules of Procedure for Development, Monitoring and Evaluation of Policy Documents). In 2019, the Anti-Corruption Council approved the Corruption Risk Assessment Methodology, based on which state institutions conduct corruption risk assessment.

Assessment of compliance

Benchmark 1.1.1.

The policy is based on evidence, it is regularly reviewed and updated as necessary, and policy documents are published online

According to the Government, main sources of evidence used for formulating AC policy were analysis of the implementation of the previous AC policy documents, reports and recommendations of international organisations, analytical input from public authorities and CSOs, desk research of statistics, complaints, court decisions, annual reports of state agencies, internal and external audit reports. However, the monitoring team notes that the corruption situation analysis in the strategy should be comprehensive. The latest strategy focused mainly on the stock-taking of the previous achievements. It also appears that the analysis of corruption situation did not consider surveys of the population and various stakeholders. There was no national risk assessment. The Government assured that the strategy was based on analysis of different sources of statistics but only few examples of narrow use of statistics were provided, for example, data on the number of civil servants who require trainings on management skills or the number of registered users of public procurement system. Desk research conducted by the Ministry of Justice was not documented. The impact of the previous policy documents was not measured and not considered when designing the new strategy. CSOs and international stakeholders interviewed by the monitoring team also believed that policy documents were not evidence-based. Some parts of the strategy repeat previous strategies (see next benchmark), and there are very few examples of challenges.

Georgia has regularly updated its anti-corruption policy documents. As to the review, the benchmark requires that a policy review should assess progress and remaining challenges, relevance of existing measures with a view of possible amendments. The ACC secretariat conducted an evaluation of the 2017-2018 action plan implementation[5] which included an overview of measures that were implemented or not fully implemented and recommendations for further action. It appears that the review did not assess relevance of the action plan measures and provided mainly a factual description of the implementation status. However, it is sufficient for complying with the benchmark's requirement of regular policy reviews.

The monitoring team notes significant gaps in between of policy documents. Strategy covering period starting from 2019 was adopted in late 2019, the same situation happened in the previous policy cycles and is also happening with the new policy cycle, because (as of August 2021) little progress has been achieved in approving the new strategy and action plan for 2021 and beyond (see also statement by NGOs[6]). This cannot but impact the effectiveness of the anti-corruption policy implementation in Georgia.

The strategy and its action plan were published and made available online for unrestricted public access.

Benchmark 1.1.2.

The policy addresses high corruption risk areas and sectors

The AC strategy and action plan for 2019-2020 included measures targeting several specific sectors or areas: justice system, customs and tax, health and social sector, political corruption, defence sector,

[5] This report has since been deleted on Georgia's Ministry of Justice website.

[6] Joint Statement by IDFI and GYLA (2021), "Delays in Development of the Public Administration Reform and Anti-Corruption Strategic Documents"

sports, infrastructure projects and others. The Anti-Corruption Council used various sectoral risk assessments conducted with the support of donor-funded technical assistance projects (in particular, concerning public procurement, health sector, higher education, money laundering and terrorism financing). However, such an assessment was sector-level that is it did not provide a cross-sector perspective and could not identify high-risk areas or sectors in comparative perspective. There was no national risk assessment. The strategy also does not refer to any national surveys of population or stakeholders. It is not clear what was the evidentiary basis for choosing specific sector/areas as key directions for the AC strategy and action plan. Furthermore, the list of 16 priority areas of the 2019 strategy is identical to the list of priorities of the previous strategy for 2017 and very similar to the one in 2015 strategy (strategies for 2017 and 2019 only added three more priority areas, namely sports sector, regulatory bodies, and local self-government).

The benchmark requires that the strategy not only includes certain special areas of attention but that such areas are selected based on clearly identified risks, that the selection is justified and explained by the analysis. This is not the case in Georgia.

The Georgian authorities reported that the idea is to cover as many sectors as possible under the same umbrella of the national anti-corruption policy. The Government noted that while agreeing that national corruption risk assessment shall be conducted on the basis of relevant methodology developed by the Anti-Corruption Council, strategic priorities shall not be compromised. Activities under each priority shall reflect new challenges but strategic priorities may remain.

Benchmark 1.1.3.

The policy addresses high-level corruption

The AC strategy for 2019-2020 does not target high-level corruption as a separate policy objective. However, according to the Government, it covers transparency of political party and electoral campaign funding, asset declaration monitoring system of public officials, infrastructural projects, public procurement, as well as the institutions where there is a potential risk of high-level corruption. In the monitoring team's opinion, the relevant strategy objectives are not directly linked to high-level corruption and its problem is not directly acknowledged and addressed.

Various local and international reports pointed to the issue of high-level corruption as an issue to address. For example, the OECD/ACN fourth monitoring round report [7] recommended Georgia to review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues. CSOs also believe that the policy documents do no address high-level corruption despite numerous suggestions by CSOs to do it throughout several policy cycles. The Georgian authorities noted that while policy documents do not explicitly address high-level corruption, a number of activities focus on addressing/resolving this problem.

[7] Georgia – Anti-corruption Reforms, "Monitoring and progress reports for Georgia since 2004"

Indicator 1.2. The anti-corruption policy development is inclusive and transparent

Assessment of compliance

Benchmark 1.2.1.

Draft policy documents are published online

Analytical department of the Ministry of Justice of Georgia, functioning as the Anti-Corruption Council Secretariat, has engaged members of the Council in the discussion of the draft AC strategy and action plan in 2019. Drafts of the strategy and action plan were published online for the public on the Ministry's website on 11 July 2019 and adopted by the Council on 26 July 2019. Publication of the drafts was announced through a press-release published on the Ministry's website. The public had 10 days to provide comments. Georgia published draft policy documents online, but the time allocated for discussion was limited (see next benchmark) and did not provide for meaningful collaboration. There was no reaction to this publication from the public which can be another sign that the process was formalistic and not genuine. However, the drafts were published and some time for feedback was allowed.

Benchmark 1.2.2.

Public consultations are held with adequate time for feedback

Public consultations mean that the Government or body in charge of anti-corruption policy development organize a series of discussions with different stakeholders. The Government or body in charge of anti-corruption policy development should provide draft policy documents to the stakeholders and the general public in advance to allow adequate time to prepare feedback.

Secretariat of the ACC engaged members of the Council in the discussion of draft documents by proactively seeking opinion of CSOs which are members of the Council, disseminating CSO input to public authorities and encouraging them to consider CSO proposals. The time given to CSOs – members of the Council to provide their feedback was sufficient. However, public consultations were limited to publishing draft documents online. The Ministry did not engage with the public and stakeholders in any other forms (meetings, focus groups, etc.) and did not proactively seek input from stakeholders not included in the Council. Since 2016 there is an online form on the Ministry's website, but it appears that it has not been used by the public at all and has a low profile. The Ministry referred to the lectures given in universities during which officials sought input to the policy development; this could be an example of proactive approach but clearly insufficient as students represent only one group with a narrow focus.

As an example of the lack of public consultations, the CSOs also refer to the recent decision to transfer ACC secretariat to the Government's Administration. The issue has not been discussed at the meeting of the Council and public consultations were not held in any other form[8].

[8] Joint Statement by IDFI and GYLA (2021), "Public statement by CSOs"

Benchmark 1.2.3.

Before the adoption of policy documents, government provides a public explanation on the comments that have not been included

Ministry of Justice did not report publicly about the proposals it received through the public consultations after publishing online draft strategy and action plan in 2019. The Ministry explained it by the fact that it did not receive any proposals following these consultations. The Ministry also did not provide written feedback to the received proposals from CSOs – members of the ACC; the discussion of their proposals was limited to a brief session of the Council which, according to CSOs, did not provide an opportunity for substantive discussion. According to CSOs, discussions during working group meetings are also limited and do not provide a venue for substantive debate on policy priorities; most of CSOs proposals were not taken into account. Government disagreed, noting that all CSO proposals were analysed and some of them were reflected in the policy documents.

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

Benchmark 1.3.1.

At least 90% of measures planned for the reporting period were fully implemented according to the government reports At least 80% = 6 points At least 60% = 3 points

According to the Government's assessment of the progress of implementation of the Anti-Corruption Strategy and Action Plan for 2019-2020 (by 31 December 2020), the implementation rate of the activities was the following (out of 108 activities): 47 have been fully implemented (43.5%); 22 mostly implemented (20%); 17 partially implemented (16%); 14 have not started yet (13%); 8 have been suspended (7%). The Government attributed the low level of implementation to COVID-10 pandemic situation.

For the previous action plan of 2017-2018, according to the government's report, 56% of measures were fully implemented.

Benchmark 1.3.2.

There is a wide perception among the main stakeholders that policy documents are properly implemented

CSOs interviewed by the monitoring team believe that the level of implementation of the policy documents is low. They consider most of the measures included in the action plan to be of internal technical nature and their outcomes and impact such that is very hard to track and measure. This is related to the fact that most measures concern activities that can only be tracked internally by implementers (for example, the number of certain events, documents adopted), policy indicators are process oriented, and CSOs do not have access to the respective source documents. The Anti-Corruption Council secretariat shares with

CSOs the Monitoring tool (an excel file) with reports of implementers about the status of implementation and CSOs can provide their input.

Benchmark 1.3.3.

he policy has its estimated budget

According to the benchmark, Government should demonstrate that the policy has its estimated budget. Financial costs of the measures of the action plan should be estimated and included in the state budget. Donor assistance programmes can also be included as source of funding if they are already secured. Georgia's action plan for 2019-2020 mentions sources of funding (for example, donors, administrative costs) but in most cases does not provide an estimate of the budget. Only activities that are not funded by the administrative costs of the respective implementing institutions, such as staff remuneration, have a funding estimate. In the monitoring team's opinion, even in case of administrative costs the estimate of the required funding could be prepared and earmarked, which is not the case in Georgia.

Benchmark 1.3.4.

No anti-corruption measure has been left unimplemented due to the lack of funds

The Government informed that for most activities included in the Anti-Corruption Strategy and Action Plan for 2019-2020, which have not been fully implemented by 31 December 2020, COVID-19 has been a core obstacle indicated by the agencies. Nevertheless, as regards certain activities, the agencies specified lack of funds as an inhibiting factor (mostly caused by COVID-19 situation, since the budgetary priorities has been changed). The Government provided the following examples of the reasons for non-implementation:

- Activity "Implement the system for financial management and control" has not been finalized due to the prolongation of negotiations with a donor.
- Activity "Elaboration of compliance/integrity guidelines for businesses" was not fulfilled due to the lack of financial and human resources available to the Business Ombudsman.
- Activity "To consider results of inventory, in accordance with the requirements of International Financial Reporting standards (IFRS), ensuring preparation of audit report by enterprises on revaluation of all non-current assets and classification of payables and receivables" was not fully implemented due to the lack of available funds caused by COVID-19 situation.
- Activity "Ensure introducing a structural unit responsible for manipulations of sports competitions in up to 5 recognized sports organizations by the Ministry of Education, Science, Culture and Sport of Georgia" was not fully implemented, as the donor funding was not secured.

Indicator 1.4. Coordination and support to implementation is ensured

Background

The Analytical Department of the Ministry of Justice of Georgia serves as the Secretariat of the Anti-Corruption Council. It coordinates activities of the Council, provides analytical support to the Council, organizes its meetings, and prepares relevant working materials and documents. The head of the department is a Secretary of the Anti-Corruption Council; Minister of Justice is the Council's Chair. There

are seven employees in the ACC Secretariat (employees of the Analytical Department of the Ministry of Justice who work on anti-corruption issues). Job descriptions of all staff members envisage different topics related to analytical activities. According to the Ministry, due to the workload of the department related to anti-corruption issues, in practice, a major part of the department's workload falls on the ACC related issues. In March 2021, the parliament adopted an amendment in the Law of Georgia on Conflict of Interest and Corruption in Public Institutions that moved the ACC secretariat to the Administration of the Government of Georgia (at the time of drafting of this report, the move has not been finalized and information on the capacity of the new secretariat was not available).

Assessment of compliance

Benchmark 1.4.1.

Coordination and monitoring functions are assigned to dedicated staff (secretariat) with necessary powers and resources at the central level and carried out in practice

Georgia assigned AC policy coordination, monitoring, and evaluation functions at the central level to a secretariat of the Anti-Corruption Council. The respective functions are formalised and operationalised in procedures and have been implemented in practice. The staff performing these functions is placed in a unit of the Ministry of Justice. It is sufficient because the benchmark does not require a separate body or institution. However, to comply with the benchmark such staff must be dedicated, that is fully focusing on the AC issues and not performing other tasks. This is not the case in Georgia, because all staff members of the Analytical Department are responsible for other issues falling within mandate of the Department. The fact that in practice most of the time is dedicated to AC tasks, does not change the fact that the secretariat is not dedicated and may be diverted any time to other tasks depending on the needs. That most of the time is spent on AC tasks, as claimed by the Government, is also a good reason to remove formally other tasks and dedicate relevant unit fully to the AC policy coordination role. According to CSOs, this affects the time and resources allocated to AC policy functions.

It appears that the ACC secretariat (MoJ's Analytical Department) has sufficient powers that include the following: 1) require information from state bodies; 2) obtain reports of the implementing agencies about implementation of action plan; 3) draft recommendations to state bodies which have to be improved by the Council; 4) directly communicate with non-governmental stakeholders; 5) set up working groups necessary for development and implementation of the AC policy; 6) publish announcements and conduct public consultations.

The number of staff of the Analytical Department does not appear sufficient for performing AC policy coordination, monitoring, and evaluation functions. Even in the AC area, the Department is responsible for numerous tasks going beyond the policy coordination. Staff also have functions in other areas (public administration reform, open government, criminal justice, law drafting, coordination of Georgia's participation in international anti-corruption mechanisms of UNCAC, Council of Europe and OECD). There have been vacancies in the department: 1 January 2021 – 1 vacancy, 1 January 2020 – 2 vacancies, 1 January 2019 – 4 vacancies. There is also a high turnover in the department's staff: in 2019-2020, 10 members of the staff left the Department, 7 new members have been recruited.

In June 2021, the Government set up a new unit of its Administration – Anti-Corruption Secretariat (department). Its aim is to support the implementation of the national anti-corruption policy. The new unit will take over the function of ACC's secretariat, will be responsible for the anti-corruption research and analysis, development of policy documents. The Secretariat will comprise 7 permanent employees (head of the department and 6 senior specialists) who will focus on anti-corruption work and not perform other

functions. The monitoring team welcomes the Government's decision to create a dedicated support unit for the national anti-corruption policy, a long-standing recommendation of the OECD/ACN monitoring. As the unit has not started its operation in practice yet, it cannot affect the compliance assessment in this report.

Benchmark 1.4.2.

Focal points in implementing agencies ensure coordination and reporting to the central coordination body/unit

According to the Government, the focal points are designated in every Anti-Corruption Council's member public agency. With the support of such focal points the ACC Secretariat coordinates and gathers information on anti-corruption matters. The focal points are experts who are involved in the work of the ACC Working Group (usually they are heads of units or departments). The focal points coordinate information gathering within their institutions and provide relevant materials to the ACC Secretariat. There are many municipalities that participate in the implementation of certain activities included in the Anti-Corruption Strategy and Action Plan for 2019-2020, even though they are not officially members of the ACC. Such municipalities have also determined their focal points and they participate in the ACC working group meetings.

Benchmark 1.4.3.

Implementing agencies receive methodological guidance and practical advice to support policy implementation

The Government referred to two examples of methodological guidance provided to support anti-corruption policy implementation, namely distribution in 2019 to ACC members of the Handbook on Policy Planning, Monitoring and Evaluation, elaborated by the Administration of the Government, and preparation and distribution, in 2017, of the Monitoring and Evaluation Methodology. The Ministry of Justice stated that it had provided practical advice by email or phone on request on many occasions. Trainings specifically targeting focal points of the ACC member institutions were not held in 2019-2020. However, in 2018-2019, with the support of the UNDP, the Administration of Government organized trainings for all the targeted groups of the public institutions on the new guiding documents on policy analyses, planning and coordination (Handbook on Policy Planning, Monitoring and Evaluation).

Indicator 1.5. Regular monitoring and evaluation is ensured

Assessment of compliance

Benchmark 1.5.1.

Regular monitoring reports based on outcome indicators are published online

ACC secretariat published monitoring reports for the action plan of 2019-2020 – for the periods of implementation up to September 2019, July 2020 and December 2020.[9] The reports are based on the action plan structure which includes outcome indicators.

Benchmark 1.5.2.

Evaluation reports based on impact indicators are published online

The last available progress report available online covers period up to December 2020. It does not appear to be a final evaluation report; in any case, it does not include an assessment of impact based on the respective indicators. The Ministry of Justice published online an evaluation report for the previous policy cycle (2017-2018) but it did not include impact indicators as required in the benchmark either.

Benchmark 1.5.3.

Reports include information about budget spent

The review of the Georgian versions of the latest available implementation reports (September 2019, July 2020, December 2020[10] shows that the reports do not mention information about budget spent. To comply with the new standards established by the Policy Planning, Monitoring and Evaluation handbook (approved by the Government in December 2019), the ACC Secretariat, during the implementation review of the Anti-Corruption Action Plan for 2019-2020, obtained information concerning budgets spent on activities by the responsible agencies for the period of 2020 (annual monitoring). According to the benchmark, such information must be made public.

Benchmark 1.5.4.

CSOs and other stakeholders are routinely included in the monitoring of the implementation of anticorruption policy

Government involves CSOs and other stakeholders in the AC policy monitoring through activity of the Anti-Corruption Council. CSOs and other stakeholders are provided an opportunity to comment on the self-assessment reports by implementing agencies before the final implementation report is prepared by the

[9] This Report has since been deleted from Georgia's Ministry of Justice website.
[10] This Report has since been deleted from Georgia's Ministry of Justice website.

secretariat. CSOs and other stakeholders can also participate in the discussion of the monitoring reports at the meetings of ACC and its Working Group. However, according to the Government, monitoring reports for the Anti-Corruption Strategy and Action Plan for 2019-2020 were not presented to the ACC and were discussed only once at the Working Group meeting. In opinion of the interviewed CSOs, existing possibilities for engagement in the monitoring do not provide an opportunity for meaningful involvement due to lack of access to detailed reports and documents of the reporting agencies and superficial discussion of this issue at the ACC and Working Group meetings.

Benchmark 1.5.5.

Independent evaluations of policy implementation are used by the government in its assessments

According to the benchmark, the latest government assessment of the anti-corruption policy implementation should consider and reflect an independent evaluation of implementation. The Ministry of Justice refers to the reports by CSOs; however, the government monitoring reports did not mention or explain how it took into account independent evaluation by CSOs.

Benchmark 1.5.6.

IT tools are used to gather and analyse data for monitoring and evaluation

The benchmark promotes software solutions that may be used as an internal tool for the coordination body/unit and focal points in the implementing agencies or as a platform for broader stakeholder engagement and transparency. Such tools could range from report management software to web-based solutions to collect and analyse feedback. No such tools have been used so far in Georgia. At the Government level, it was decided to create a unified electronic Policy Development and Coordination System, which also may take into account specificities related to the anti-corruption issues, but it is not operational yet.

2 Conflict of interests

The laws of Georgia provide only a basic framework for managing the conflict of interest of public officials in individual situations. The Conflict-of-Interest Law includes limited provisions on reporting and resolving COI situations missing several important resolution methods, and not addressing different scenarios. Apparent (perceived) COI is not covered. There are no special COI resolution provisions applicable to the President, Prime Minister and Government members. Institutional capacity is not developed either – policy development function is not implemented, methodological guidance is provided only by very few institutions, no formally assigned function of individual counselling, oversight and other functions are not performed by dedicated agencies (units) with staff specialised on COI matters. The Civil Service Bureau's mandate is limited, and it does not play the role of a central institution. Enforcement of COI regulations is weak. There is no practice of routine application of dissuasive and proportionate sanctions for COI-related violations across the public sector. NGOs made numerous public allegations of possible violations by high-level officials, the respective enforcement authorities did not review or act upon them. Sanctions were not sufficiently dissuasive and were rarely imposed.

Indicator 2.1. Legal and institutional framework on conflict of interests is in place

Background

The Law of Georgia on Conflict of Interest and Corruption in Public Institutions (CoI Law) establishes principles for preventing, reporting, and resolving conflict of interest in public service. It applies to public servants who are defined as state servants, professional public servants and persons recruited for public service based on agreements under public law, which are defined in the Law of Georgia on Public Service, and officials defined in the COI Law. The scope of the law covers political officials (elected or appointed) and their advisors, except for provisions on duty to abstain and resolve ad hoc COI which do not extend to the President of Georgia, the Prime Minister of Georgia, members of the Parliament of Georgia, members of the Supreme Representative Bodies and heads of the Executive Bodies of the Autonomous Republics of Abkhazia and Ajara.

Indicator 2.1.1. concerns only *ad hoc* conflict of interest that is situations which are managed as they arise. It does not cover incompatibilities and other situations which are resolved directly in the law through various restrictions.

Assessment of compliance

Benchmark 2.1.1.

The law assigns roles and responsibilities for preventing and managing conflict of interests (COI) including the duty to report, duty to abstain from decision-making and duty to resolve COI

Provisions on roles and responsibilities for preventing and managing COI are basic and not detailed, cover only limited situations of ad hoc COI. Article 13-4 of the COI Law requires a public servant to a) pay attention to any existing or possible conflict of interest; b) take measures to prevent any conflict of interest; c) declare any conflict of interest before being appointed or elected to the respective position or after being appointed or elected as soon as he/she becomes aware of that fact. A public servant whose duty is to individually make decisions, with respect to which he/she has property or other interests, must self-recuse and inform in writing his/her "immediate supervisor (superior body)" of this fact, who will either make an appropriate decision or assign this duty to other official. Superior official is defined in Article 6 (2), while "superior body", as explained by Georgian authorities during the on-site visit, is a hierarchically higher body according to the existing subordination. However, there is no clarity to whom exactly officials are supposed to report their COI (for example, if they have both an immediate supervisor and a superior body).

Along with the duty to abstain from decision-making, Article 11 includes the following methods for resolving COI: a superior may make the appropriate decision instead of the employee, assign this duty to another official, and provide a written consent to the employee to proceed with the decision-making. There is no explicit duty of the manager to resolve COI, especially in situations when COI was detected from other sources than self-reporting (for example, media, internal control); the mentioned methods for resolution concern only situations when employee with a COI is making a decision and do not cover other work activities and situations not involving decision-making. In situations not involving decision-making, only the Code of Ethics and the general rules on objective performance of duties apply, which cannot be considered sufficient according to the benchmark. The Code of Ethics (article 25) includes an obligation of the civil servant occupying a managerial position to identify areas where a conflict of interests may arise and to try to come up with mechanisms to mitigate such risks and/or their effective management. This provision, however, is aimed at the general prevention and does not determine the course of action in individual cases of COI reporting. The Code of Ethics also applies only to civil servants and does not cover all officials in the scope of the COI Law. In any case, the benchmark requires that respective duties and procedures are set directly in the primary law, not in bylaws.

Persons excluded from the scope of Article 11 COI Law: There are no rules on ad hoc COI management for the President of Georgia. As to other categories, see benchmark 2.1.4.

Benchmark 2.1.2.

The law provides for procedures for COI management, including a range of methods for COI resolution

According to the benchmark, the primary law should clearly envisage procedures for management of ad hoc conflict of interest. Management of COI means the steps and procedures for an official, his/her immediate superiors, leadership of the agency, central body/unit (if exists) to take steps to prevent and resolve COI. The law should provide a range of COI resolution methods that cover all possible situations and offer a proportionate response to COI depending on the circumstances – from the least intrusive methods (for example, a public disclosure of COI) to more intrusive ones (up to resignation or dismissal of

the official when the COI cannot be resolved in other way). Georgian COI Law includes basic provisions that do not provide for a range of COI resolution methods applicable to different situations. Only for decision-making situations, the law provides the requirement to disclose and self-recuse and does not provide for any other resolution methods, in particular in situations when the self-recusal will make a collegial body dysfunctional. Other provisions cover only situations of individual decision-making and do not provide for such methods as removal of the private interest, restriction of access to information, transfer, dismissal/resignation, re-arrangement of duties, and performance of duties under external supervision.

Benchmark 2.1.3.

The definition of COI covers actual, apparent and potential COI and includes a broad definition of private interests

COI Law defines conflict of interest as the conflict of property or other private interests of a public servant with the interests of a public institution. Public official shall pay attention to any existing or possible conflict of interest. This definition is broad, but it does not explicitly cover apparent COI. There is no definition of private interests, the law only mentions “property or other private interests”.

Georgian authorities refer to the Commentary to the Code of Ethics for Public Officials which explains different types of interests that may be involved and mentions “visible” COI. However, the benchmark requires that relevant definitions are clearly stipulated in the primary law and the Code of Ethics covers only civil servants; besides, the notion of “visible” COI as explained in the Commentary does not appear to correspond to the concept of apparent or perceived COI as understood in international standards.

Benchmark 2.1.4.

There are special COI regulations targeting judges, prosecutors, MPs, members of government, members of local, regional councils

Judges

The Organic Law on Common Courts includes several additional restrictions on judicial activity that relate to the COI prevention. These provisions include restrictions on ex parte communication of a judge with a participant to legal proceedings, an interested person, and a public official, which is related to the consideration of a specific case or issue. Among actions that are considered disciplinary misconduct are: political or social influence or influence of personal interests when a judge exercises judiciary powers; judge’s interference in other judge’s activities for the purpose of influencing the outcome; public expression of an opinion by a judge on a case currently handled by court; disclosure of the outcome of a case to be heard by a judge in advance; judge’s refusal to recuse oneself or satisfy a request for recusal when clear legal grounds for recusal exist; establishment of personal and intense (friendly, familial) relations with a participant in a process, which results in the judge’s bias and/or placement of a participant in a process in a favourable position, etc. There are provisions on recusal of judges in the procedural codes. There are additional requirements on COI prevention included in the draft new Code of Judicial Ethics that was endorsed by the High Council of Justice.

Prosecutors

The Law on Prosecution Service, under COI regulation, includes incompatibility requirements which are not covered by this Indicator. The Code of Ethics for the Employees of the Prosecution Service of Georgia repeats provisions of the COI Law but also provides that employee of the Prosecution Service, who has property-related or other personal interest towards any issue falling within the competence of the Prosecution Service of Georgia, is obliged to file for self-recusal in accordance with the procedure defined by law and not participate in discussions and decision-making process on that specific issue. There is also a general rule requiring prosecutors to refrain from any kind of activities that could objectively question their independence or influence their service-related activities, as well as the authority and good name of the Prosecution Service. Prosecutors should not have any private interests that are incompatible with performance of official duties and should not pursue activities incompatible with the interests of the Prosecution Service in the office and/or outside of its limits. There are also additional specific rules on COI management in the Criminal Procedure Code (articles 59, 62-64, 66). Office of the Prosecutor General of Georgia issued a Commentary to the Ethics Code and the Disciplinary Proceedings for the Employees of the Prosecution Service, which includes examples of conflict-of-interest violations.

Parliament members

The Code of Ethics for MPs includes one special COI provision, namely that a member of parliament must inform in writing the designated Committee about his or his family members' special interest in entrepreneurial activity and that the Committee will publish this information on the Parliament's website. In its compliance reports of the Fourth evaluation round GRECO reviewed this provision and found it to be a too limited approach to the issues.[11]

Government members

There are no special COI regulations.

Members of local councils

There is one provision of the Local Self-Government Code that requires a member of a municipality Sakrebulo, during its session, refrain from participation in the decision-making and voting that concerns an issue with respect to which he/she has personal interest, or if there are other circumstances that may affect the decision on the matter.

Members of regional councils (Supreme Representative Bodies of the Autonomous Republics of Abkhazia and Ajara)

There are no special COI regulations.

[11] GRECO, Fourth Evaluation Round (2021), "Second Compliance Report" paras.19-24

Benchmark 2.1.5.

The functions of policy development, oversight of the implementation of COI regulations, including the application of sanctions, methodological guidance and individual counselling are assigned to a dedicated agency or unit(s) with the sufficient number of specialized staff and powers to perform their mandate and are applied in practice.

According to the Government, Anti-Corruption Council is responsible for policy development on COI matters; however, there is no information that this mandate is performed in practice. The only example that was provided (development of corruption risk methodology for the use in public institutions) cannot be considered a policy-making activity in this area.

Oversight over COI enforcement, including application or initiation of sanctions, is decentralized in Georgia and performed by General Inspections of the State Security Service, Ministry of Internal Affairs, Ministry of Justice, State Inspector's Service, Prosecutors Office, as well as by internal audit units of ministries, Tbilisi city council, Monitoring Department of the Revenue Service, Ethics Commission of the National Bank, Disciplinary Panel of Judges for common court judges. It appears that these bodies have sufficient powers and resources to oversee COI compliance by relevant officials.

According to the Government, the same units carry out methodological guidance and individual counselling; however, there is no evidence that this happens in practice in all these institutions. Examples of methodological guidance were provided for the General Inspections of the Prosecution Office and State Security Service. As to individual counselling, according to the Government replies, consultations are provided by the HR units of ministries, if needed. However, individual counselling on COI matters is not formally assigned to HR units. Individual requests for clarifications are also submitted to the Civil Service Bureau which provides advice to civil servants. For all these oversight functions, the staff is not specialised and deals with many other issues.

According to the available information, the monitoring team concludes that violations of COI rules are not identified properly, and monitoring of COI situations is not sufficient in the civil service. The situation is better in law enforcement bodies (particularly in PSG and SSSG). To improve the situation, specialisation and guidance is needed in public institutions overseeing COI rules to be able to identify COI situations and prevent them or, if necessary, sanction violations of COI rules.

Benchmark 2.1.6.

Individual counselling and sanctioning functions are separated among institutions or within one institution

Individual counselling and sanctioning on COI matters are not separated among institutions or within one institution in most cases. Individual counselling and sanctioning are decentralised and these functions (if performed at all, because some units are responsible only for oversight of compliance) are found in the same units (for example, General Inspections, internal audit units). According to the Government, HR units carry out individual counselling in ministries and some other public authorities (for example, the State Security Service); however, there is no proof that this is the case based on the available regulations and evidence of practice.

"Individual counselling" means providing practical advice and guidance in individual cases upon request. "Sanctioning" here means detecting COI related violations, preparing, proposing, or imposing sanctions for such violations.

Indicator 2.2. Unbiased and vigorous enforcement of regulations is ensured

Assessment of compliance

Benchmark 2.2.1.

All public allegations of violation of conflict of interests or other restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions) by high-level officials were investigated and grounded decisions were made public

NGOs reported about numerous cases when alleged violation of conflict of interests or other restrictions (that is restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions) by high-level officials were not investigated. See relevant allegations: alleged violations of post-employment restrictions[12], alleged violations of restrictions on holding business interests or incompatibility of office[13], alleged violation of restrictions on gifts and other anti-corruption restrictions[14]. The authorities informed that they checked these public allegations for signs of criminal offences, and none were established because relevant violations are not criminally punishable. It appears that outcomes of these checks were not made public. This cannot be considered sufficient for compliance with the benchmark which is not limited to criminal investigation but covers any enforcement action that is applicable to the respective violation. Violations covered in the benchmark are not criminal in Georgia but are punishable with disciplinary and administrative sanctions and measures under the COI Law and other non-criminal laws and regulations. For compliance with the benchmark, all public allegations had to be checked by the respective enforcement authorities (which are not criminal investigation bodies in this case), administrative investigations or other types of review procedures had to be started and grounded decisions had to be made public.

Benchmark 2.2.2.

Dissuasive and proportionate sanctions for violations of COI rules or other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, postemployment restrictions) are routinely applied in practice

Government replies include very limited data on sanctions for COI and other restrictions (one case in the Prosecution Service of Georgia where a prosecutor was dismissed for "unbecoming behaviour" – an offence which is not directly linked to the violation of anti-corruption restrictions – for having a dinner at the restaurant with a party to the criminal proceedings; data for State Security Service employees - 9 cases of

[12] Transparency International Georgia, correspondence with the Civil Service Bureau (2019), "Shortcomings of legislation and enforcement"
[13] Transparency International Georgia (2019), "Business Activities and Related Violations of Ministers and their Deputies"
[14] Transparency International Georgia (2018), "Gifts received by public officials need to be studied further"

sanctions for incompatibilities in 2019 and 7 sanctions for incompatibilities in 2020). The Civil Service Bureau data on asset declarations is not relevant for this PA. Therefore, there is no evidence that sanctions are routinely applied in practice across the public service.

Applicable sanctions are only of disciplinary nature according to the general Law on Public Service and laws on different types of officials. Prohibited incompatibility is punished with dismissal under article 13 of the COI Law, which appears to be disproportionate as the list of incompatibility requirements is very diverse and includes breaches of various severity. For some incompatibility restrictions (for example, post-employment), dismissal or disciplinary measures are not applicable at all. No cases of dismissal based on article 13 were reported (except for one case reported by the State Security Service). There are administrative sanctions under Code of Administrative Offences only for the violation of the conditions and procedures for avoiding conflict of interests in public procurements. One protocol on this violation was issued in 2020 with the court imposed fine of 1,500 GEL (about 370 EUR).

Benchmark 2.2.3. – 2.2.10.

BENCHMARK	GEORGIA 2020	
	Total number of cases	Per 1 million of population
2.2.3. Track record of cases referred to law enforcement bodies based on the verification of declarations	1	0.3
BENCHMARK	Total number of cases or persons sanctioned	Per 1 million of population
2.2.4. Track record of sanctions imposed on high-level officials for violations of COI rules or other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions)	0	0
2.2.5. Track record of sanctions imposed for failure to report or resolve COI	0	0
2.2.6. Track record of sanctions imposed for violation of post-employment restrictions including terminated employment contracts	0	0
2.2.7. Track record of sanctions imposed for violation of incompatibilities	7	1.9
2.2.8. Track record of sanctions imposed for violation of the rules on gifts and hospitality, including confiscated illegal gifts	0	0
2.2.9. Track record of imposed ban on holding public office for serious or repeat violations of COI rules and other anti-corruption restrictions	0	0
2.2.10. Track record of invalidated decisions/contracts as a result of COI	0	0

Indicator 2.3. Information on COI is published

Assessment of compliance

Benchmark 2.3.1.

Information about the resolution of the reported COI in specific cases is regularly published online

Government did not provide proof of regular online publication of information on resolved conflict of interest situations.

Benchmark 2.3.2.

Information about gifts reported by officials in specific cases is regularly published online

Government referred to the gift disclosure covered by the asset declarations of public officials. However, this benchmark concerns gifts reported by the officials in specific cases. The benchmark requires that as a part of the framework for regulating acceptance of gifts by public officials there is a requirement for the central body or individual agencies to disclose publicly gifts reported by officials. This can be achieved through publicly accessible gift registers or other forms of online publication.

According to article 5-2 of the COI Law, if the public servant or his/her family member ascertains after receiving a gift that its value exceeds the limits under this law and/or it was impossible to refuse the gift due to certain reasons (a gift received by mail, a gift given publicly), he/she shall, within three working days after receiving the gift, submit to the Civil Service Bureau information on the name of the received gift, its assessed or exact value/amount and the identity of the grantor, and shall transfer the gift prohibited under this Law to the Legal Entity of Public Law – the National Agency of State Property of the Ministry of Economy and Sustainable Development of Georgia. Article 13-5 COI Law requires reporting of gifts which are prohibited by this law, also in cases when the official is uncertain whether he/she has the right to accept any offered gift or benefit and/or service. Therefore, the law stipulates separate mechanisms for reporting gifts (outside of disclosure in asset declarations) but there is no requirement and no practice of publishing information on such reporting.

Benchmark 2.3.3.

Detailed enforcement statistics on violations of COI rules and other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions) is regularly published online

Government referred to various reports, including annual report by the Civil Service Bureau, which mention the number of disciplinary sanctions but do not provide detailed statistics on violations of COI rules and other anti-corruption restrictions (that is restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions).

3 Asset and interest disclosure

Georgia has a developed system of asset and interest disclosure of public officials. In 2017, legislative amendments reinforced it by the verification of submitted declarations performed by the Civil Service Bureau. The scope of declarants is broad but omits several categories of high-risk officials. The content of the disclosure form is broad but not sufficiently comprehensive, as it excludes several important categories (for example, the source of income, unpaid activities, indirect control of assets). The form covers indirect ownership in companies, but the respective definition falls short of the required standards regarding disclosure of beneficial ownership in legal entities.

Georgia uses an electronic filing system and provides public access to most of the information in the declaration forms. However, the scope of restricted access to information is not narrowly defined, and some exemptions from access are not justified (namely, information related to the period before the first appointment and the period after dismissal). Published data is not machine-readable. Cross-checks with government registers are functional. Georgia has ensured unbiased verification of asset and interest declarations, but the respective agency lacks powers for effective verification. Verification is not risk-based and cannot be triggered by anonymous complaints. There is a very low track record of cases referred to law enforcement agencies. While administrative sanctions are actively applied, including to high-level officials, they mainly concern insignificant infringements.

Indicator 3.1. Asset and interest disclosure applies to high corruption risk positions

Background

The system of asset and interest disclosure of public officials is regulated in the Law on Conflict of Interest and Corruption in Public Service (COI Law). The Civil Service Bureau of Georgia oversees the collection and verification of asset and interest declarations. The Government adopted the rules for submission and the list of public office positions obliged to file declarations, as well as the rules for the monitoring (verification) of declarations.

Assessment of compliance

Benchmark 3.1.1.

At least the following officials are required to declare their assets and interests: the President, members of Parliament, members of Government and their deputies, heads of executive authorities and their deputies, the staff of private offices of political officials (such as advisors), regional governors, mayors, any other public officials defined as PEPs under the national law

The staff of private offices of political officials (advisors or assistants to political officials) are not covered by the obligation to declare assets and interests in Georgia, unless they hold an administrative position. All other senior public officials and domestic official designated as PEPs in the anti-money laundering law of Georgia are covered.

Benchmark 3.1.2.

At least the following high corruption risk positions are required to declare their assets and interests: judges, prosecutors, members of the judicial and prosecutorial governance bodies, anti-corruption investigators, officials responsible for public procurement, members or board members of independent regulators and supervisory authorities, and top executives of SOEs

The following categories do not submit asset declarations: prosecutors who do not hold certain administrative positions; anti-corruption investigators (unless hold administrative positions); members of the Disciplinary Panel of Judges (unless covered under another type of filers); members of the Prosecutorial Council (unless covered under another type of filers); procurement officials (unless heads of units, persons holding leadership positions in the State Procurement Agency, members of the procurement Review Board).

Indicator 3.2. Asset and interest disclosure is comprehensive and regular

Background

The scope of asset and interest disclosure is defined in the COI Law and in the Technical Instruction for Correct Completion of Asset Declarations of Public Officials approved by the Government.

Assessment of compliance

Benchmark 3.2.1.

Scope of disclosure is broad and allows detection of conflict of interests and illicit enrichment (unjustified variations of wealth) covering at least: moveable and immovable assets in the country and abroad, vehicles, income including its source, gifts, corporate shares, securities, bank accounts, cash inside and outside of financial institutions, financial liabilities including private loans, outside employment, paid or unpaid activity

The asset and interest declaration in Georgia does not explicitly cover two elements required by the benchmark. There is no explicit requirement to disclose a source of income and unpaid activities. For the source of income, the authorities refer to the requirement to disclose a source of cash holdings; the form also requires disclosure of income received from specific entrepreneurial activity or paid activity with details about such an activity (which is equivalent to the source of that type of income). However, a source of income from entrepreneurial or paid activity does not cover other types of income; the declaration form's section on any income above 3,000 GEL does not include the requirement to disclose income's source; the COI Law (Article 15.m) requires disclosure only of the person who received income, the type and amount (value) of income. As to the source of cash holdings (for example, savings from salary or gift), it is not equivalent to the source of income, as it does not indicate the person or legal entity that provided it. The monitoring team also notes with regret that according to April 2019 amendments official's failure to include in the declaration his/her interest in a company which has been inactive for the past six or more years no longer constitutes a violation.

As to the property located abroad, the Georgian authorities refer to the Government's Instruction on Correct Submission of Asset and Interest Declaration and practice of disclosure of property registered abroad. The monitoring team recommends explicitly stipulating this requirement in the primary law.

Benchmark 3.2.2.

Scope of the disclosure includes information on beneficial ownership of companies domestically and abroad (at least in case of politically exposed persons)

The form covers indirect participation in enterprises which is defined as setting up and managing an enterprise, exercising supervisory and/or representative powers, and holding an enterprise's capital through another enterprise in which the official/family member has such a direct participation. Only companies of the second level are covered. Companies which are controlled not through companies directly owned or controlled by the declarant or family members are not covered but the definition. This is a narrow definition that does not conform to the minimum level set in international standards (for example, FATF definition). This definition is also narrower than the one used in the Anti-Money Laundering Law of Georgia (art. 13.2: "a beneficial owner of a legal person shall be one who possesses, directly or indirectly, 25% or more than 25% of the holdings or voting shares of said legal person, or otherwise provides ultimate control over said legal person").

Benchmark 3.2.3.

Scope of the disclosure includes information on indirect control (beneficial ownership) of assets (at least in case of politically exposed persons)

The asset declaration does not cover indirect control or beneficial ownership of assets.

Benchmark 3.2.4.

Scope of the disclosure includes expenditures

The declaration form covers expenses the amount (value) of which exceeds GEL 5,000 in each case, except for expenses that must be reflected in other parts of the forms. The relevant section includes data on the declarant or family member who made an expense, the type and amount of expense.

Benchmark 3.2.5.

Scope of the disclosure includes trusts to which declarant or a family member has any relation

Trust agreements, irrespective of their value, are explicitly covered in the asset declaration form's section on agreements concluded by the declarant or family members in Georgia or other country. The form, however, is not adjusted to capture special details about trusts (for example, to capture trust's settlor, trustees and beneficiaries when trust is established abroad), which is an issue for Georgia to address.

Benchmark 3.2.6.

Scope of the disclosure includes virtual assets (e.g. cryptocurrencies)

According to the Government replies, some declarants disclose cryptocurrencies under the asset declaration form's section on securities. However, neither the COI Law, nor official regulations to it require it explicitly. The fact that some declarants decided to disclose this type of assets cannot make it mandatory for other declarants; it is doubtful that the enforcement agencies will be able to hold declarants liable for non-disclosure of virtual assets for the lack of clear legal basis for such an obligation. Virtual assets have a different nature than the traditional securities; therefore, the monitoring team cannot assume that they belong to securities unless it is explicitly stated in the law or regulations.

Benchmark 3.2.7.

Asset and interest disclosure covers information on family members, at least spouse and persons living in the same household

Asset and interest declarations in Georgia cover family members who are defined as declarant's spouse, minor child, stepchild, or a person permanently residing with the declarant. According to the Government regulations, persons permanently residing with the declarant include relatives or non-relatives permanently residing in the declarant's residence, who have a special relationship with the declarant and are engaged in a family household (household), which implies sharing the place of residence, its maintenance, provision for the subsistence means for the household and disposal of those means for the household's benefits.

Benchmark 3.2.8.

Assets and interests are disclosed in one form

Assets and interests are disclosed in one form in Georgia.

Benchmark 3.2.9.

Declarations are submitted before or upon entering the office, annually while in office, before or immediately upon leaving the office and at least one year later after the termination of employment

According to the COI Law, officials must submit an asset declaration to the Civil Service Bureau within two months after appointment, annually during the term of office, within two months after dismissal, and one year after the dismissal. Candidates for certain positions (members of parliament, judges) must submit asset declarations too.

Indicator 3.3. An electronic system is in place and publication of information from declarations is ensured

Background

Public officials In Georgia fill and submit asset and interest declarations through the Online Asset Declaration Electronic System on a dedicated website (www.declaration.gov.ge). The Civil Service Bureau has recently upgraded the system to allow electronic authentication of public officials using electronic signatures. All declarations are made public on the official webpage of the Bureau within 48 hours after submission.

Assessment of compliance

Benchmark 3.3.1.

Declarations are filed through an online platform

The declaration forms are filled in and submitted through an online platform run by the Civil Service Bureau.

Benchmark 3.3.2.

Information from asset declarations is public by default and access is restricted only to narrowly defined information to the extent necessary to protect privacy and personal security

According to the COI Law (article 17), the public availability of information that contains state or official secrets or represents other confidential information is restricted and shall be reflected only in the special (secret) field of the declaration with an indication of the type of property received from the respective source, the connection of the official and his/her family members to the property, and the market value and/or amount of the property. Legislation does not include a clear definition of "other confidential information". Article 19 (1) of the COI Law states that any person my request to receive a copy of a completed official's asset declaration and review it, except for the personal number, address of the place of permanent residence and telephone number, information related to the period before first appointment and/or the period after dismissal, and the secret field of the declaration, also except for declarations of those officials whose positions are assigned security classification markings according to the Law of Georgia on State Secrets.

Public by default is ensured. However, the scope of information that is restricted in access is not narrowly defined, because it allows the declarant to determine himself what information should be made confidential by referring, for example, to the confidential commercial information and quoting a provision of the Civil Code or another applicable law. The law also restricts access to information on the paid work performed before the first appointment and the period after dismissal, which appears excessive and not justified as it does not allow meaningful public scrutiny of asset declarations, in particular concerning possible conflicts of interest.

Benchmark 3.3.3.

Declarations are available online in a machine-readable (open data) format and are searchable

Searchability of declarations is ensured on the website where they are published. Declaration forms are published in PDF format and are not published in a machine-readable (open data) format.

Benchmark 3.3.4.

Functionalities of the electronic system include automated risk-based ('red flag') analysis of declarations

Electronic system of declarations in Georgia does not provide for the automated risk-based (red flag) analysis of submitted declarations.

Benchmark 3.3.5.

Functionalities of the electronic system include automated cross-checks with government databases, including at least registers of companies, civil acts, land titles, vehicles and tax database

During the verification process of asset declarations, the respective department of the Civil Service Bureau can use the electronic system to cross-check data from declarations with electronic databases administered by public authorities. E-declarations system connects to other registers and databases and allows authorised officials to cross-check data and see discrepancies. According to the authorities, the following data sources are available: register of immovable property, database of the Ministry of Internal Affairs on vehicle registration, Revenue Service tax payment database, company registers, public procurement database, register of notary services. The authorities also confirmed that the Civil Service Bureau's monitoring department has access to the database of civil acts which is integrated and available for automated data cross-checks.

The Bureau has recently upgraded the system that now is able pre-fill the declaration form with data retrieved from other government registers and databases, allowing more accurate and quicker completion of declaration. This is a commendable achievement.

Indicator 3.4. Unbiased and effective risk-based verification of asset and interest declarations is ensured with a follow-up

Background

Asset and interest declarations verification mechanism was established in 2017 through amendments in COI Law. The amendments granted the Civil Service Bureau (CSB) the authority to monitor declarations, verify accuracy and completeness of the declared information and compliance with other legislative requirements. If detected violations, the Bureau must notify relevant law enforcement body or issue an administrative fine in case of non-intentional offence of the asset declaration rules. According to the Government regulations, CSB is supposed to verify approximately 10% of all declarations, including 5% randomly selected by the Declaration Electronic System and 5% selected by an independent commission comprising CSO and academia representatives. The Independent Commission must select half of its quota for verification from political public officials and the remaining part is selected based on corruption risk, high public interest and violations identified through the monitoring. The third ground for verification by CSB is the justified written request.

Assessment of compliance

Benchmark 3.4.1.

Verification of asset and interest declarations is assigned to a dedicated agency or unit which has a sufficient number of specialized staff and powers to perform its mandate

Verification of asset and interest declarations is assigned to the dedicated unit of the Civil Service Bureau (Declaration Monitoring Department). Staff of the department deal only with the asset declaration verification. In 2021, the department had 7 in-staff employees and one vacancy. The department verified 596 declarations in 2019 and 349 declarations in 2020. The scope of verification covers accuracy of information and financial analysis to check for unsubstantiated assets; conflict of interest checks are limited or not conducted at all during the verification.

The scope of powers of the verification unit is limited. In particular, the department has no access to bank information, unless provided by the declarant. Failure to provide such information by declarant upon department's request is punished with an administrative fine, which, however, cannot be considered dissuasive to ensure cooperation and cannot replace direct access to financial data (with or without a court authorization). Private individuals and legal entities are not obliged to provide information to the department upon request. The department cannot commission an appraisal of the asset's value if there are doubts that the value indicated in the declaration is accurate. The department also has no access to data on family connections and border crossings of the declarant. The verification is effectively limited to information provided by the declarant in the form or through additional explanation on request.

Benchmark 3.4.2.

The following declarations are routinely verified:

- Declarations of persons holding high-risk positions or functions
- Based on external complaints and notifications (including citizens and media reports)
- Ex officio based on irregularities detected through various, including open, sources

From the grounds for verification mentioned in the benchmark, Georgia does not use ex officio detection based on the monitoring of open sources by the Civil Service Bureau; only written justified external signals sent to the Bureau can trigger the verification. Verification of declarations of officials in high-risk positions or functions is not triggered automatically (by default due to position held) but only if selected by an independent commission or during random selection. The approach used in Georgia for selecting high-risk declarations for verification by the independent commission could be considered equivalent to the one required in the benchmark. However, the independent commission was convened only once in 2018; the commission could not be formed in 2019 and 2020 for the lack of membership applications from CSOs and academia.

Benchmark 3.4.3.

Risk-based (red-flag) analysis is used to choose declarations for verification

There is no automated risk-based (red flag) analysis of declarations.

Benchmark 3.4.4.

Anonymous complaints that include verifiable information trigger the verification

Written justified complaints may trigger the verification, but anonymous complaints are not allowed. The Government regulations on the monitoring procedure refer to the General Administrative Code of Georgia (article 78) which requires identity and address of the claimant to be disclosed in the application.

Benchmark 3.4.5.

Verification is prioritised to ensure a reasonable number of verifications considering available resources

There is no prioritization among declarations selected for the verification, they are verified according to schedule based on the alphabetical order. However, the system for selecting declarations can be said to have a built-in prioritization that is sufficient taken together with the limited total number of declarations that have to be verified (10% of all submitted declaration plus verification based on external complaints).

Benchmark 3.4.6.

There is a wide perception among the main stakeholders that verification is unbiased and free from political or any other undue interference

CSOs and other stakeholders in general are positive that the verification of declarations is unbiased and free from political or other undue influence. Although, they raise the issue of effectiveness of the conducted verifications, which they believe in practice are mainly limited to the checks of accuracy of declared information. CSOs also report about unsatisfactory response to public allegations of asset declaration rules[15]; the monitoring team, however, has no evidence that such a response is due to political bias or interference.

[15] Transparency International Georgia (2019), "Civil Service Bureau's Statement Raises Questions Regarding Effectiveness of Asset Declarations Monitoring System and Bureau's Political Neutrality"

Benchmark 3.4.7.

BENCHMARK	GEORGIA 2020	
	Total number of cases	Per 1 million of population
3.4.7. Track record of cases referred to law enforcement bodies based on the verification of declarations	1	0.3

Indicator 3.5. Dissuasive and proportionate sanctions are enforced

Background

As a result of verification, the Civil Service Bureau may directly apply an administrative fine and warning. Failure to submit declaration on time is subject to a fine in the amount of GEL 1,000 (about EUR 250). Failure of an official to submit declaration after imposition of the administrative fine results in the criminal liability. A minor violation in the official's asset declaration (incorrect or incomplete information) is punished with a warning. The COI Law explicitly defines thresholds when incorrect data is considered minor. Fine is applied if the official did not submit to the Bureau requested information during the verification or if there is incomplete or incorrect data in the declaration above thresholds. The fine amounts to 20% of the official's salary, but not less than GEL 500. If incomplete or incorrect data are entered into the official's declaration wilfully (and the error does not qualify as a minor violation), the Bureau refers the case to the relevant law enforcement body. According to the Criminal Code (article 355), a failure to submit the declaration or an intentional entry of incomplete or incorrect information in the declaration is punishable by a fine or corrective labour with deprivation of the right to carry out activities for up to three years. Disciplinary sanctions apply if administrative or criminal sanctions are not applicable.

Assessment of compliance

Benchmark 3.5.1.

Dissuasive and proportionate sanctions for violating asset and interest disclosure rules are routinely applied in practice

Georgia applies disciplinary, administrative, and criminal sanctions for violation of asset declaration rules. Administrative sanctions appear proportionate and dissuasive, they establish clear classification of offences and different levels of sanctions depending on the gravity. Administrative sanctions are also routinely applied. In 2020, CSB verified 349 declarations, out of which it assessed positively 134 declarations, fined 177 declarants, and warned 29 declarants.

There were no cases of application of criminal sanctions in 2018-2020. In 2020, one declaration was forwarded to the Prosecution Service of Georgia for investigation which was still pending as of mid-2021; in 2018-2019, there were two referrals to the prosecutor's office and in both cases the review did not find signs of a criminal offence; there were no cases detected by PSG or other investigative agencies on their

own. Administrative sanctions concern only minor offences and there were no sanctions for significant breaches punishable with criminal sanctions.

The monitoring team also raises the issue of proportionality and dissuasive nature of criminal sanctions for intentional false information in the declaration. First, criminal sanctions apply to any intentional false statement if it is above thresholds set in the COI Law for minor administrative offences (which do not exceed 1,000-2,000 GEL for different types of assets). Therefore, false statement of any amount above the minimum thresholds, including misreported asset of any value, will attract the same sanction. Second, a fine and corrective labour do not appear to be sufficiently dissuasive for cases of intentional false information in the declaration in significant amount.

The monitoring team also notes the concern of CSO representatives that CSB has discretion in deciding whether the violation was intentional or not, which affects qualification of the offence. The monitoring team recommends addressing this through legislative changes or by issuing clear guidelines on the offence qualification.

Benchmark 3.5.2. - 3.5.7.

BENCHMARK	GEORGIA 2020	
	Total number of measures	Per 1 million of population
3.5.2. Track record of sanctions imposed for non-submission or late submission of declarations	10	2.7
3.5.3. Track record of sanctions (measures) imposed for conflict of interests (including for violation of rules on incompatibilities, gifts, divestment of corporate rights, post-employment restrictions) based on the detection through verification of declarations	0	0
3.5.4. Track record of sanctions (measures) imposed for illicit enrichment (unjustified assets) based on the detection through verification of declarations	0	0
3.5.5. Track record of administrative sanctions for false or incomplete information in declarations imposed on high level officials	59	15.9
3.5.6. Track record of criminal sanctions for false or incomplete information in declarations imposed on high level officials	0	0
3.5.7. Track record of sanctions following verification of declarations based on media or citizen reports	57	15.4

Benchmark 3.5.8.

Detailed statistics on the verification of declarations and applied sanctions is regularly published online

Civil Service Bureau publishes online annual results of the performed monitoring of declarations, including data on the violations and sanctions applied.

Box 3.1. Civil society engagement in asset declaration verification

Georgia has introduced an innovative approach to selecting asset declarations for verification and engaging civil society in the process. According to the legislation, the Civil Service Bureau verifies approximately 10% of all declarations, including 5% randomly selected by the Electronic Declaration System and 5% selected by an independent commission, composed of five members (three representatives of NGOs and two representatives of academia). The Independent Commission must be formed annually by 15 December through an open call for applications. Commission members serve pro bono. NGOs are eligible to nominate candidates if they operate for more than five years, have a website, its activities included monitoring of asset declarations, the organisation was not held criminally liable. Member of the Commission must not be a public official or a relative of a public official, not be under indictment and – for academic representatives – conduct a study on the anti-corruption topic. The same person cannot be a Commission member twice in a row. If more than three NGOs and more than two academic representatives applied, the Bureau selects them drawing lots. The Commission selects declarations for verification by 15 January each year. Half of the selected declarations under its quota should be declarations of political officials, the other half – declarations selected because of the particular risk of corruption, high public interest and violations identified through the monitoring.

The Independent Commission convened only once in 2018. There were no sufficient applications from NGOs and academia to fill in the commission in other years, and it did not operate in practice. Interlocutors referred to various possible reasons for this failure, including the following: NGOs can submit an individual complaint that triggers the verification and have no interest in participating in the Commission; NGOs may be reluctant to participate because in the Commission they have to agree on the common list of officials whose declarations should be verified; the Civil Service Bureau did not proactively reach out to NGOs; a short period for submitting applications; prohibition against serving as commission member twice in a row which limits the pool of candidates; civil society not sufficiently mobilised and proactive; narrow eligibility requirements that exclude investigative journalists and NGOs without experience in asset declaration monitoring.

4 Protection of whistleblowers

Georgia included explicit provisions on whistleblower protection in its law and afforded several essential protection safeguards to whistleblowers. But there are substantial limitations, and the system does not appear to operate in practice. The law limits protected disclosure with conditions of good faith, public interest, and lack of self-interest. Whistleblower protection does not cover reports within the private sector. There are significant exceptions from the coverage of the public sector by whistleblower protection (Ministry of Defence, Ministry of Internal Affairs). The safeguard of shifting the burden of proof on the employer is not fully implemented. Protection of personal safety is limited to the protection of participants of criminal proceedings. Pre- and post-retaliation protection measures are not provided. All three types of channels for reporting are available in the law, namely internal, external, and public disclosure. The law also allows anonymous reporting.

There is no dedicated authority in Georgia that would be responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers. CSOs believe that reporting channels are not trustworthy and that the whistleblower protection system in Georgia is not effective. There is also a low awareness and trust in the system's effectiveness among public officials. Authorities report a high track record of disclosures submitted through internal channels (primarily through the central online portal). Still, the numbers may be inaccurate for the lack of proper reporting and statistics collection. There were no criminal cases on corruption offences started because of whistleblower reports.

Indicator 4.1. The whistleblower protection is guaranteed in law

Background

The legal basis for whistleblowing and whistleblower protection in Georgia is a section of the Law on Conflict of Interest and Corruption in the Public Service (COI Law). Chapter V[1] "Whistleblower Protection" sets out the principles for making disclosure internally within employing institution (or within civil service), externally to an investigator, a prosecutor and/or the Public Defender of Georgia and to media and the public. The law includes a prohibition of retaliation and protection guarantees.

Assessment of compliance

Benchmark 4.1.1.

The law guarantees protection of individuals who reported about a corruption-related wrongdoing that they believed true at the time of reporting and who disclose this information using internal or external channels

The law defines whistleblower as a person making disclosure about a violation by public servant of legislation of Georgia or the general rules of ethics and conduct, which covers corruption-related wrongdoing. The law covers the use of internal or external channels to make the disclosure.

The disclosure shall be made in good faith and shall be intended to prevent, discover, or eliminate violations of the legislation of Georgia and the general rules of ethics and conduct and/or to protect the public interest. There is also a condition that the disclosure should concern a violation which prejudices or may prejudice the public interests and the reputation of a respective public institution. As explained by the Government, public interest criteria do not constitute an obstacle to review a report on crime and it is rather aimed at excluding personal complaints and minor disputes at workplace. The report is also excluded from protection if the whistleblower acted for his/her own or another person's distinction (except when being granted with a special award determined by the legislation of Georgia). All these conditions contradict the benchmark which allows only the condition that the person had a reasonable belief of wrongdoing.

Benchmark 4.1.2.

The whistleblower legislation extends to both the public and the private sector employees

According to the COI law, any person can be a whistleblower. It covers public and private sector employees; however, the report can be only about wrongdoing committed by a public servant, which excludes whistleblower protection in the private sector (when a private sector employee reports internally or externally about wrongdoing within the private entity).

As to the public sector, Article 2011 of the COI Law excludes from its scope disclosures within the system of the Ministry of Defence of Georgia, the Ministry of Internal Affairs of Georgia and the State Security Service of Georgia which are supposed to be regulated by special legislation. Whistleblower protection provisions for the State Security Service are included in the Annex to the Code of Ethics for the Employees of the State Security Service of Georgia (order no. 5 of 1 August 2015) and provide for a detailed regulation similar to the one included in the COI Law. As to the Ministry of Internal Affairs, authorities referred to provisions of the Police Code of Ethics and the Law on Police, which, however, do not provide detailed provisions on whistleblower protection. They are limited to the duty to report unlawful order, report acts of corruption and prohibition to apply disciplinary or other sanctions to the police officer, who refuses to perform illegal action. There is no special regulation available in the Ministry of Defence. Exclusion of these entities creates a big gap in the coverage of the public sector. Moreover, that according to CSOs and international community, the highest number of potential whistleblower reports happened in these institutions and there were cases, when reporting persons from these sectors were not protected and had to emigrate.

Benchmark 4.1.3.

The law puts on the employer the burden of proof that any measures that were taken against a whistleblower were not connected to his or her report

According to COI Law (Article 204), where coercive measures are applied and administrative, civil and criminal proceedings are conducted against a whistleblower, the respective public institution shall substantiate that they are not connected to the act of disclosure and these measures and proceedings are conducted on grounds provided for by the legislation of Georgia. This guarantee is limited to the proceedings where coercive measures are applied and administrative, civil and criminal proceedings are conducted against a whistleblower. They do not cover proceedings where the whistleblower or another institution on his/her behalf appeal against the coercive measures (for example, an appeal against a wrongful termination of employment). Also, this safeguard is not included in the procedural codes which can make it ineffective, as it regulates the burden of proving certain circumstances which is the core of the procedural rules and should be reflected in the special legislative procedural acts.

Benchmark 4.1.4.

The law provides for the following key whistleblower protection measures:

- protection of whistleblower's identity
- protection of personal safety
- release from liability linked with the report
- protection from all forms of retaliation at the workplace.

Articles 203 and 204 of the COI Law provide the following protection guarantees: protection of identity, release from liability and protection from various forms of retaliation at the workplace. As to the protection of personal safety, the Law stipulates that "if, in the course of criminal procedure, at any stage of proceedings connected to the act of disclosure, the life, health or property of a whistleblower, his/her close relative or witness is prejudiced due to being involved in these proceedings, the whistleblower, his/her close relative, witness or the body in charge of the review of whistleblower's applications may apply to the Prosecutor's Office of Georgia to apply special protection actions provided for by the Criminal Procedure Code of Georgia." It appears that this protection is limited only to the situations when the criminal proceedings have been started in relation to the whistleblower report. Moreover, the Criminal Procedure Code (Article 67) limits the special protection measures to participants of criminal proceedings and does not extend it to whistleblowers who do not have a status of the participant of criminal proceedings (for example, witness).

Benchmark 4.1.5.

The law provides for the additional pre-retaliation protection measures:

- consultation on protection
- provisional protection
- state legal aid.

The COI Law does not provides for all of the pre-retaliation measures mentioned in the benchmark. The Civil Service Bureau operates a web-platform for submitting online internal whistleblower reports and also runs a hotline for civil servants. But consultations provided by the Bureau are limited to the issues of how to use the reporting platform and do not cover protection issues. According to the benchmark, consultation on protection means that the law provides mechanism(s) where a potential whistleblower can get advice confidentially and free of charge on the scope, protections, remedies, procedures and channels provided in law to whistleblowers. This could be done for example by the creation of a physical or virtual information platform or the designation of a responsible body. Provisional protection and state legal aid are also not provided in Georgia.

Benchmark 4.1.6.

The law provides for the following post-retaliation remedies:

- appropriate compensation
- reinstatement
- medical and psychological aid.

The law does not provide for the post-retaliation remedies stipulated in the benchmark. Authorities also do not keep centralised statistics on the administrative complaints filed by whistleblowers. Judiciary reported that there were no cases related to whistleblowers adjudicated in courts in 2019-2020.

Indicator 4.2. Effective mechanisms are in place to ensure that whistleblower protection is applied in practice

Assessment of compliance

Benchmark 4.2.1.

All three types of channels for reporting are available, including:

- internal at the workplace (at least in the public sector),
- external (to specialized, regulatory, law enforcement or other relevant state body),
- possibility of public disclosure (to media, public associations).

The COI Law provides for all three reporting channels. Internal reports can be made to “a body in charge of the review of whistleblower's applications”, that is a structural division in charge of internal control and/or

official inspection of a respective public institution. The Law separately regulates internal reporting channels if the disclosure concerns an employee of the internal control or inspection division of the public institution, head of such a division or head of the public institution.

There is also an online reporting channel (mkhileba.gov.ge) that was set up in 2016 and is run by the Civil Service Bureau. The monitoring team considers it an internal channel of reporting because it is used to submit a report to a specific public institution (the website lists about 181 institutions; although, according to CSOs, the list of institutions has not been kept up to date and some of the institutions which should have received reports through the platform stated that they did not receive any whistleblower disclosures, which may show that the platform is not operating properly[16]). The monitoring team also could not establish whether the platform can be used for external reporting (by addressing the report to the law enforcement agency or Public Defender) and whether the whistleblower can use the platform to submit report to the superior institution or choose at what internal hierarchical level the report should be received within his/her employing institution (taking into account, for example, that according to the Georgian law reports concerning the head of the internal control unit should be addressed to the head of the institution). The impossibility to submit a report to the superior body or different officials within the employing institution based on the report's content would be a significant problem, as it would discourage the reporting and even put the whistleblower in danger of retaliation.

External reports can be made to an investigator, a prosecutor and/or the Public Defender of Georgia. A report about the head of public institution is made to a superior official. There are no pre-conditions for making an external disclosure. As to public disclosure (disclosure to the public or mass media), it can be made after the body in charge of the review of whistleblower's applications, an investigator, a prosecutor, or the Public Defender of Georgia "makes a relevant decision". Disclosure may be made in writing, orally, electronically, by telephone, fax, through the website administered by the Bureau or other means.

Benchmark 4.2.2.

Anonymous whistleblower reports are accepted and protection is granted to anonymous whistleblowers when they have been identified

Article 203 of the COI Law explicitly allows anonymous whistleblower reports.

Benchmark 4.2.3.

There is a dedicated authority responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers that has sufficient number of specialised staff and powers to perform its mandate

There is no dedicated authority in Georgia that would be responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers. The Civil Service Bureau's role is limited to maintaining the web-platform for disclosures (www.mkhileba.gov.ge), providing consultations on how to use the platform and collecting statistics on the platform's operation. According to TI-Georgia, absence of a central authority is the primary reason why the whistleblower protection mechanism in Georgia is not functioning.

[16] Transparency International Georgia (2020), "The dysfunctional whistleblowing mechanism in the Georgian public service"

Indicator 4.3. The public is aware of and has trust in existing protection mechanisms

Assessment of compliance

Benchmark 4.3.1.

There is a wide public perception among the main stakeholders that reporting channels are trustworthy and efficient.

CSOs believe that reporting channels are not trustworthy and that whistleblower protection system in Georgia is not effective. According to an opinion poll conducted by UNDP Georgia in 2019, 44% of civil servants believed that they can be punished for filing a complaint about a violation within the agency[17]. According to CSOs, high-profile whistleblower cases are rare in Georgia, suggesting that there is very little public awareness about what whistleblowing is and low trust that it can be used effectively. In existing high-profile cases, persons who reported violations were not qualified as whistleblowers and were unable to make use of protection guarantees. Research and survey of civil servants by CSO IDFI revealed a lack of awareness about whistleblowing system, a sense of insecurity, and a distrust of the authorities coupled with the belief that the whistleblower confidentiality will not be fully protected[18].

The Government objected to this assessment stating that whistleblowing mechanism in Georgia has been subject to several evaluations of international missions and OECD/SIGMA experts that explicitly underlined Georgia's progress in this area.

Benchmark 4.3.2.

Detailed statistics and other information on whistleblower reports and whistleblower protection is regularly collected, analysed and used as a basis for reform of anti-corruption policy, aggregated information is also published

Detailed statistics and other information on whistleblower reports and protection is not collected, analysed, and used as a basis for reform of anti-corruption policy, aggregated information is not published. According to TI-Georgia and IDFI, there is no unified standard on gathering whistleblower related statistics in Georgia and statistics on disclosures and protection are not gathered at the national level. The Georgian definition of "disclosure" can be understood to be broader than just work-related reporting (and include any reports of corruption offences regardless of who submits them); however, definition of "coercive measures" is limited to work-related retaliation. Public institutions collect statistics on the total number of complaints or notifications received without separating genuine whistleblower reports as understood in this Performance Area; detailed statistics on the number of whistleblower disclosures made and whistleblower protection measures provided within the meaning of the COI Law are not regularly collected.

[17] UNDP (2019), "Public attitudes toward Public Administration Reform"
[18] IDFI (2021), "Challenges of Whistleblowing in Georgia – Legislation and Practice"

Indicator 4.4. The whistleblower protection system is operational and protection is ensured in practice

Assessment of compliance

Benchmark 4.4.1.- 4.4.4.

BENCHMARK	GEORGIA 2020	
	Total number of cases	Per 1 million of population
4.4.1. Track record of whistleblower reports received by public authorities through internal channels	90 (81 reports submitted through the central online platform, 3 reports in the State Security Service, 3 reports in the Ministry of Economy, 2 - Ministry of Health, Labour and Social Affairs of Georgia, 1 - Ministry of Finance of Georgia)	24.3
4.4.2. Track record of whistleblower reports that were received by the central authority	24.3	
4.4.3. Track record of consultations to whistleblowers provided by the central authority	0	0
4.4.4. Track record of criminal cases for corruption offences that were started as a result of whistleblower reports	0	0

Notes: Most institutions do not record separately whistleblower reports submitted internally and combine them with all external complaints about wrong doing by institution's employees. For the calculation of compliance with the benchmark, the monitoring team considered only cases which were clearly attributed to the internal reporting. Reports from the Ministry of Defence and Ministry of Internal Affairs were not considered, as there are no regulations on whistleblower disclosure in these institutions.

81 reports submitted through the Civil Service Bureau's website were treated as internal reports under benchmark 4.4.1., because even though it is a central portal the reports are forwarded to the internal units of the respective bodies, so in substance these are internal reports. While for benchmark 4.4.2., these reports were not considered, because the Bureau is not a central authority, and benchmark 4.4.2. is about external reports made through central body (see draft Guide to the monitoring indicators).

The monitoring team also notes that it did not verify whether all reported whistleblower disclosures indeed qualify as such and whether there was no double reporting under the numbers of individual institutions and the number of reports submitted through the online platform.

The population of Georgia was 3.7 million in 2020 Source: https://data.worldbank.org/country/georgia)

Benchmark 4.4.5.

Protection is provided to all whistleblowers that require such protection and fulfilled preconditions for granting a protection

CSOs report about at least three cases of possible whistleblower situations (all three related to the Ministry of Internal Affairs). However, two cases concern 2015 and in one case of 2020[19] the person did not seek protection and the court upheld his dismissal from the Ministry due to reorganization and evaluation of the personnel. The monitoring team notes, however, that the person in question could not technically obtain a status of whistleblower as there are no regulations on whistleblower protection applicable to the Ministry of Internal Affairs. This underlines the serious gap in the legal regulation and that the system of whistleblower protection in Georgia is not effective.

Benchmark 4.4.6.

BENCHMARK	GEORGIA 2020	
	Total number of measures	Per 1 million of population
4.4.6. Track record of at least one of the protection measures from those listed under 4.1.4-4.1.6.	0	0

Benchmark 4.4.7.

All known cases of breaches of confidentiality of whistleblower identity were sanctioned

The monitoring team is not aware of any cases when the confidentiality of whistleblower identity was breached.

[19] Mtvari Arkhi Facebook video (2020), "Case of patrol inspector"

Box 4.1. Online platform for whistleblower reports

In 2016, Georgia set up an online reporting channel (mkhileba.gov.ge) run by the Civil Service Bureau. Reporting persons can use it to submit a report to the respective employing institution. The platform acts as a tool for internal reporting. The website lists about 181 institutions. Although, according to CSOs, the list of institutions has not been kept up to date. CSOs also reported that some of the institutions which should have received reports through the platform stated that they did not receive any whistleblower disclosures or the number of reports they registered did not match those sent to them by the portal. CSOs questioned whether the portal operated properly and whether the institutions actually received and processed reports forwarded to them. According to the authorities, 81 reports were submitted through the platform in 2020. It is not clear how many of them were genuine whistleblower reports, because in Georgia definition of whistleblowing includes reports of wrongdoing from any person, even if not work-related.

5 Independence of judiciary

Georgia has implemented several waves of judicial reforms in the past years, with the most recent changes adopted in April 2021. Judicial tenure is guaranteed in practice, and until 2025, Georgia plans to phase out the initial (probationary) appointment of judges of local and appellate courts. High Council of Judges (HCJ) and Disciplinary Panel are judicial self-governance bodies responsible for all judicial career and discipline issues. Their composition includes a majority of judicial members selected by their peers through a general vote of all judges. However, the monitoring team is concerned that voting procedures do not ensure the substantial participation of non-judicial members, and such members are not selected transparently and based on merit. The monitoring team also heard the views of non-governmental stakeholders that the judicial governance bodies are not genuinely independent and impartial. The Georgian authorities contest this assessment and state that it does not represent the real attitude of the Georgian society and other stakeholders.

The role of the HCJ in the appointment of the Supreme Court judges remains limited with significant discretion of the political body (the Parliament) that does not ensure the transparent and merit-based appointment of these judges. There are also certain deficiencies in the selection and promotion of other judges as well as in the selection of court presidents, e.g. the Parliament, not a judicial body, elects the Supreme Court Chairperson. The funding received by the judiciary is sufficient to ensure its autonomy.

The monitoring team noted that NGO reports raised significant concerns about the transparency and objectivity of the case distribution system in Georgian courts. Following a Constitutional Court decision, the judicial decisions are not published online.

The law clearly stipulates grounds and procedures for the disciplinary liability and dismissal of judges. There is no evidence that the application of disciplinary and dismissal procedures to judges was not impartial in the past year or that authorities did not investigate allegations of corruption of judges. Judges have due process guarantees in the disciplinary process. Public justification of disciplinary decisions is limited because the name and position of the judge are redacted from the decisions. There are very few cases of disciplinary liability of judges and no routine practice of proportionate and dissuasive sanctions applied to them.

Indicator 5.1. Judicial tenure is guaranteed in law and practice

Background

Article 63.6 of the Constitution of Georgia sets the rule for appointment of judges of common courts until they reach the age established by the organic law. The 2017 law that introduced the new wording of the Constitution of Georgia also established a temporary provision until 31 December 2024 that, in case of the first appointment, the judge may be appointed for three-year term. According to the Organic Law on Common Courts, the 3-year probationary period was preserved for judges of district (city) courts and the court of appeals; judges of the Supreme Court are elected until the legal retirement age without probationary period.

Assessment of compliance

Benchmark 5.1.1.

Judges are appointed until the legal retirement age

Benchmark 5.1.2.

If not, clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the law and used in practice

In 2017, Georgia adopted important constitutional amendments and preserved only temporarily (until 31 December 2024) the initial (probationary) appointment of judges for certain positions. According to the authorities, the reason for such a decision was that the High School of Justice was not sufficiently equipped with necessary resources at the time to prepare the needed quantity of qualified professional judges ready for a life-tenure appointment.

Procedures for confirming judges for the life tenure after the initial 3-year period are set in the Organic Law on Common Courts. The criteria for confirmation (integrity and competence) are explained in the law and appear to be sufficiently clear. The High Council of Justice (HCJ) decides on the confirmation following 3 assessments conducted during the 3-year initial term by two evaluators chosen by lot from among HCJ members. Assessments are made public. During the process, the judge has access to the evaluators' reports. The law includes a very detailed procedure for assessment of judges. Once the decision is made, HCJ publishes a justification including a description of the procedure, the number of points the judge scored and a report on the judge's integrity. The assessment materials remain closed for public access until the expiration of the three-year term and afterwards but only if the judge failed to obtain permanent appointment and requested that his/her assessment remains closed. The judge may appeal the refusal of the HCJ to confirm him/her for life in the Qualification Chamber of the Supreme Court. According to the Government, no judge has been refused to be appointed for life tenure after completion of three-year term of office.

Benchmark 5.1.3.

Judicial irremovability is ensured in practice and judges are not removed from office (including through ad hoc vetting or assessment) unless based on the law and objective grounds in exceptional case

It appears that the judicial irremovability is ensured in practice, because no judges were removed from office other than based on the grounds stipulated in the primary law.

Indicator 5.2. Judicial appointment and promotion are based on merit, the involvement of political bodies is limited

Assessment of compliance

Benchmark 5.2.1.

An independent Judicial Council or a similar body plays a decisive role in the appointment and dismissal of judges, the discretion of political bodies (if involved) is limited by the decisions taken by the Judicial Council or a similar body

The High Council of Justice is responsible for the appointment and dismissal of judges of the district (city) court and court of appeals, which is in line with the benchmark.

As to appointment of judges of the Supreme Court, while HCJ plays an important role in the selection and nomination of candidates for these positions, the Parliament of Georgia has a broad discretion in making the decision on the appointment. The Parliament is limited by the decision of the HCJ only in terms of HCJ's power to nominate the candidates to the Parliament (that is the Parliament is entitled to elect a judge of the Supreme Court only from the candidates nominated by the HCJ). The "decisive role" in the benchmark means that the judicial council or a similar body either makes the final decision on the appointment and dismissal of judges, or prepares a proposal for the relevant decision that is submitted to the political body which has to approve the proposal or reject only in exceptional cases on clear and justified grounds. If rejected, the judicial council or a similar body should be able to reconsider its proposal and, if confirmed again, the political body should approve the proposal. According to the constitutional provisions, this is not the case in Georgia.

According to the Georgian authorities, the Parliament of Georgia adopted legislation regulating the process of selection and election of judges of the Supreme Court on the highest standard of democracy with utmost openness, publicity, transparency, and inclusiveness, guaranteeing the appointment of the Supreme Court judges under the competence and integrity criteria. The participation of the two constitutional bodies – the HCJ and the Parliament – in the formation of the composition of the Supreme Court guarantees the election of the Supreme Court judges with the proper competence and integrity. According to the authorities, the existing model and procedures for appointment of the Supreme Court judges are also justified by the Constitutional Court of Georgia's judgment of 30 July 2020[20].

The HCJ is not involved in the impeachment procedure for judges of the Supreme Court; the Constitutional Court plays an important role in this process. According to the Constitution of Georgia and Organic Law on Common Courts and Rules of Procedure of Parliament, at least one third of the full composition of the Parliament of Georgia may raise an issue of impeachment of the chairperson of the Supreme Court and a judge of the Supreme Court on the grounds of violating the Constitution of Georgia and/or presence of elements of crime in the action. The Parliament of Georgia may, after an appropriate report of the Constitutional Court of Georgia is received, dismiss a judge of the Supreme Court by majority of the full composition of the Parliament. If the Constitutional Court does not find the violation of the Constitution by the impeached judge of the Supreme Court or presence of an element of crime in his/her conduct, the impeachment procedure is immediately terminated.

[20] Constitutional Court of Georgia, "საქართველოს სახალხო დამცველი საქართველოს პარლამენტის წინააღმდეგ"

Benchmark 5.2.2.

Judges are selected and promoted based on competitive procedures clearly set in the law and based on merit

Selection of judges of district (city) courts and the court of appeal is conducted by HCJ based on competitive procedures clearly set in the primary law. However, in July 2018 the NGOs raised the issue of transparency and merit basis of the process[21]. As noted by GRECO with reference to NGO concerns[22] despite the criteria now included in the law, the HCJ is alleged to have broad discretion regarding judicial appointments, in particular as not necessarily candidates with the best assessment results are appointed (candidates are instead being voted on), it is not clear what weight the interview has in the overall assessment, it is not defined in detail on what information the HCJ members should base their decisions when deciding on the competency and integrity of candidates (with – despite the introduction of a point system – there not being any obligation to substantiate the assessment of a candidate). The monitoring team shares these concerns and considers that the judicial reform amendments on merit based selection should be further improved.

The Georgian authorities consider this element of the benchmark satisfied because the law sets competitive and merit-based procedures, and following the "fourth wave of the judicial reform" accomplished in 2019 the requirement were established for the HCJ to provide reasoning for all decisions, including the decisions on appointment of judges. The HCJ decisions include the information about the overall assessment results the candidate obtained during the evaluation under the competence and integrity criteria, the background checks (is public upon request of an interested person), and the interview. During the last years there have been no cases when the judicial candidates for the first instance courts having received the highest scores had been refused to be selected for the position of a judge.

International observers and Georgian NGOs raised serious concerns as to transparency and competitiveness of the procedure for **selection of the Supreme Court judges**. In its October 2020 opinion[23], the Venice Commission found problematic several aspects of the provisions amended earlier that year. In particular, the Commission pointed to the fact that HCJ members may deviate from the earlier vote on the candidates that was based on the evaluation scores, which appeared to be inconsistent with a merit-based evaluation system. The Commission recommended disclosing the identity of the HCJ members together with their votes as it would enable public scrutiny of the behaviour of the single members of the HCJ. The Commission also objected to the provisions which allowed the HCJ to reiterate its selection decision which was annulled by the Qualifications Chamber following an appeal, without the possibility to appeal this second HCJ decision.

The OSCE/ODIHR in its 2020 report raised similar issues[24]. It noted recent reforms of the appointment system for Supreme Court judges in Georgia represented a significant step toward enhancing the independence of the judiciary. However, the legal framework did not sufficiently prevent the influence of partisan politics in the process nor guarantee that decisions are taken on the basis of objective, merit-based criteria, contrary to international standards and good practice. A number of key shortcomings in the

[21] Transparency International Georgia (2018), "Coalition addresses Parliament with legislative proposal concerning selection/appointment of judges"
[22] GRECO, Fourth Evaluation Round (2019), "Compliance Report" para.26
[23] European Commission for democracy through law, Venice commission (2020), "Opinion on the draft organic law amending the organic law on common courts"
[24] ODIHR (2019), "Second report on the nomination and appointment of supreme court judges in Georgia"

legal framework remained that undermined the aim of a merit-based selection process, including the use of secret votes and the lack of obligation for substantiated decisions, insufficient provisions on conflict of interest, the absence of safeguards against arbitrary decision-making, the granting of unfettered discretion to parliament. See also 2020 note by the Georgian NGO IDFI[25].

The monitoring team agrees with these concerns about selection of the Supreme Court judges. April 2021 amendments in the Law on Common Courts[26] addressed some of these concerns, namely by: requiring publication of identity of HCJ members linked to the assessments of candidates; removing an additional vote in HCJ after the initial assessment and by advancing to the next stage candidates with the highest score under the competence criteria and with sufficient assessment under integrity criteria (at the same time there is still another vote by 2/3 of HCJ members for each candidate in the sequence of highest score which can overturn previous assessment); allowing one additional appeal against HCJ decision on nomination. In the follow-up urgent opinion in April 2021[27], the Venice Commission welcomed the above changes, but noted that it is difficult to base an efficient merit-based appointment on a voting procedure; however, the level of transparency proposed together with an appeal process should be of some help. In July 2021, the parliament of Georgia appointed six candidates as the Supreme Court judges based on the procedure started in 2020. The coalition of Georgian NGOs criticised the new selection, in particular noting that the justification used during the evaluation of candidates was pro-forma and did not provide a meaningful reasoning[28]. The independent monitoring by the OSCE/ODIHR was also critical, in particular of the issues with the procedures related to the applications, background checks, interviews, equality of candidates, conflict of interest, quality of reasoning[29].

The benchmark requires that the judicial selection is competitive and merit-based not only according to the law but also in practice. In the monitoring team's opinion, this has not been the case in Georgia in 2019-2021.

The Georgian authorities disagree with this assessment and consider that legislative amendments of April 2021 addressed all issues and there have been no deficiencies in the selection procedure of Supreme Court judges. The authorities noted that the assessment of the OSCE/ODIHR and other relevant international actors were generally unsound and insufficient to question the highest standard of the process and existing procedures of selection and election of the Supreme Court judges in Georgia. Besides, the authorities noted that it should be taken into consideration that the authors of those assessments mostly relied on the Venice Commission's opinions which have already been implemented in Georgia's domestic legislation. Therefore, according to the authorities, in Georgia judges are selected and appointed based on competitive procedures clearly set in the law and based on merit.

Even setting apart the deficiencies of the HCJ procedures for selection of the Supreme Court judicial candidates, proceedings in the parliament do not allow a transparent and merit-based selection. The parliament conducts de facto a second evaluation following the one by HCJ and has unlimited discretion

[25] IDFI (2020), "Submission to the Third Cycle of Universal Periodic Review"

[26] Council of Europe, Venice Commission (2021), "Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts"

[27] Council of Europe, Venice Commission (2021), "Urgent opinion on the amendments to the organic law on common courts"

[28] IDFI (2021), "The Selection of Candidates for the Supreme Court Judges is Arbitrary and Unfair"; (2021), "The Coalition Reacts to the Competition of Supreme Court Judicial Candidates"

[29] OSCE/ODIHR (December 2020 – June 2021), "Report on the nomination and appointment of supreme court judges in Georgia". See also statement by the EU of 31 August 2021: "…the selection for Supreme Court judges proceeded in the absence of legislative changes needed to ensure full compliance with all recommendations made by the Venice Commission. The process also failed to guarantee equal treatment of all candidates. Several further legal changes aimed at increasing transparency of the court system have not been adopted." Source: Delegation of the Europe Union of Georgia (2021), "Remarks by EU Chargé d'Affaires ad interim, Julien Crampes on the notification by the Georgian Government to refrain from requesting the payment of EUR 75 million EU macro-financial assistance"

in deciding on the selection. The problems became evident in the appointment of Supreme Court judges in December 2019 which was heavily criticized by observers (see, among other sources, cited reports).

Finally, contrary to the benchmark, main procedures, and criteria for decisions on **judicial promotions** to the court of appeals are set in the HCJ bylaws, not in the primary law. While the law allows a direct recruitment to the court of appeals and regulates in detail the selection procedure (similar to the one for selection of judges to the district (city) courts), promotion of sitting judges to the court of appeal is regulated by the HCJ rules.

Georgia noted that the selection of judges is a very important matter where clear recommendations are needed; it is therefore important to further study these issues in the next report.

Benchmark 5.2.3.

Judicial vacancies, with the terms and conditions, and results of all stages of the judicial selection and promotion are announced online with the publication of relevant decisions and their justification

Judicial vacancies for all positions, including terms and conditions, are published online in Georgia. The High Council of Justice also announces on its website results of all stages of the selection procedure, including the final decision. Following the 2020 reform of the law, the law provides that each HCJ vote must be accompanied by a written reasoning which is made public.

Certain NGOs criticize the new provisions for they require only a formal justification without explanation of the material reasons for choosing a certain candidate, especially with regards to the integrity assessment[30]. They also pointed to the issue of not disclosing individual votes of HCJ members during several rounds of voting when selecting judicial candidates which does not allow a public scrutiny.

Following the recent selection of the Supreme Court judges in 2020-2021, the local NGOs repeated their concerns regarding the lack of proper justification of the respective decisions[31]. The OSCE/ODIHR[32] also noted that, while the recent legislative amendments significantly strengthened the accountability and transparency of the process, the evaluations by individual HCJ members varied widely in the quality of their reasoning in both the competence and integrity categories. In many cases, the assessment of candidates' compliance with the high integrity criteria were substantiated only with a sentence stating that a referee had confirmed they met all the integrity sub-criteria, without explaining the specific substance of the referee's comments. Moreover, most of the evaluations made only short and superficial reference to the candidates' interview performance, at times neglecting to note significant incidents that may reflect on their character or fitness for high judicial office". As to the final HCJ voting justifications, the OSCE/ODIHR noted that such justifications "lent legitimacy to the votes and represented a major improvement on the previous system of secret voting", but that they were "generally short and superficial (none exceeding 1.5 pages), with the majority of the HCJ members using identical text for each candidate, changing only the name and score. ." Similar concerns exist with regard to the first and appellate court judges[33].

Promotion of judges is regulated in the HCJ regulations and does not provide for online publication of results of the main stages of the procedure. Decisions on promotion are adopted by secret ballot. Final decisions are published according to the law; however, they do not provide a sufficient justification and are

[30] Georgian Young Lawyers' Association (2021), "Monitoring report of the high council of justice №9" p.14
[31] IDFI (2021), "The Selection of Candidates for the Supreme Court Judges is Arbitrary and Unfair"
[32] OSCE/ODIHR, "Third report on the nomination and appointment of supreme court judges in Georgia" p.20-21
[33] Georgian Young Lawyers' Association (2021), "Monitoring report of the high council of justice №9" p.14

limited to one or two paragraphs stating formal grounds and listing qualifications of the candidate for promotion.

The monitoring team notes that the justification for selection decisions does not explain why the candidate was chosen when compared with other candidates or otherwise provide meaningful and consistent explanations to justify the merit-based candidate selection, there is no online publication of results of all the main stages of the promotion procedure and justified decisions, results of personal votes of HCJ members during selection and promotion of judges are not disclosed.

Georgia contested the assessment, arguing that this critical analysis goes beyond the scope of the requirements of the benchmark.

Indicator 5.3. Court presidents do not interfere with judicial independence

Assessment of compliance

Benchmark 5.3.1.

Court presidents are elected/appointed by the judges of the respective court or by the Judicial Council or similar judicial body based on merit and transparently

Since 2020 there is a new procedure for appointment of chairpersons in district (city) court and court of appeals. The chairperson of a district (city) court is appointed from among judges of the respective court, and where judicial panels are set up – including from among the chairpersons of the judicial panels, for a five-year term by the High Council of Justice based on a reasoned decision. Prior to the appointment of the chairperson, the HCJ holds consultations with the court's judges. According to the HCJ practice, the information on vacant positions of court chairpersons is announced on the judicial branch intranet and any judge is entitled to apply.

The monitoring team has concerns regarding selection of court presidents as there is no sufficiently detailed regulation of the respective procedures in the law, some steps are not covered even in the HCJ bylaws and are based on practice or ad hoc decision-making. The Organic Law on Common only speaks of consultations held with judges. There are no clear criteria used for selecting court chairpersons against which candidates can be assessed.

The report by the local NGO Georgian Young Lawyers Association[34] confirms these conclusions. It noted, in particular, that only one candidate was nominated per position in 2020 and no interviews were held with the nominees.

The monitoring team also notes that the Organic Law on Common Courts (article 32.3) allows sidestepping the procedure for selecting court chairpersons. It allows the HCJ, until the chairperson of a district (city) court is appointed, to delegate the powers of the court's chairperson to one of the judges of the same court and to terminate such delegated powers at any time based on any ground.

As to the Supreme Court, the law reserves the power to appoint its chairperson to the parliament, and not to judges of the respective court or to the Judicial Council or similar judicial body.

[34] Georgian Young Lawyers' Association (2021), "Monitoring report of the high council of justice №9" p.20-21

The Georgian authorities disagree with this assessment and note that the current procedure of selection of court chairpersons, which had been reformed recently, ensures transparent and merit-based selection.

Benchmark 5.3.2.

Court presidents do not influence the judicial remuneration or other benefits received by judges

Judicial remuneration consists of the main salary part and increment. The salary rates for judges of different level are set directly by the Organic Law on Common Courts, while the amount of increment is established by the High Council of Justice. This complies with the benchmark.

As to other benefits, according to the Organic Law on Common Courts, the HCJ decides on providing judges of the court of appeals and district (city) courts with living accommodations. Similar decisions for the chairperson and members of the Supreme Court are made by the chairperson of the Supreme Court. The latter provision contradicts the benchmark.

Indicator 5.4. Judicial budget and remuneration guarantee financial autonomy of the judiciary and judges

Background

The High Council of Justice, based on the proposals of the Department of Common Courts, submits a draft judicial budget for Common Courts (other than the Supreme Court) and the Department of Common Courts to the Government of Georgia. Before the Parliament of Georgia hears a revised version of the draft Law on the State Budget, the HCJ may submit opinions to the Parliament of Georgia on the draft judicial budget. The Supreme Court's chairperson submits a draft budget for the Supreme Court to the Government of Georgia according to the procedures laid down by law. The State Budget expenses allocated to common courts may be reduced compared to the amount for the previous year only with a prior approval of the HCJ.

Assessment of compliance

Benchmark 5.4.1.

The funding received by the judiciary is sufficient to ensure its autonomy

In the past 3 years, the amount of state budget for the judiciary was close to the judiciary's budgetary request. In 2020, almost 23% of the judicial budget was not actually disbursed to the judiciary by the end of the year, which was explained by COVID-19 pandemic. The judicial budget has been increasing in the past 3 years. There is no evidence that the judicial budget is insufficient to safeguard the autonomy of the judicial branch. A 2020 report by Transparency International Georgia on the national integrity system did not raise the issue of insufficient budget or resources for the judiciary, except for the number of judges in the system[35].

[35] Transparency International Georgia (2020), "Georgia National Integrity System Assessment" p.52,54

Benchmark 5.4.2.

The level of judicial remuneration is fixed in the law, is sufficient to ensure judicial independence and reduce the risk of corruption and excludes any discretionary payments

The benchmark requires that the primary law regulates the amount of remuneration received by judges of different levels completely excluding discretionary payments (for example, bonuses, allowances distributed through discretional decision-making). The Georgia's Organic Law on Common Courts sets the salary rates for judges of different levels. However, the High Council of Justice sets the increment part of the judicial remuneration by its bylaws; the increment for judges of the Supreme Court is set by the Plenum of the Supreme Court. HCJ determines the amount of monthly salary increment in advance with respect to all judges of first and second instance courts; judges may be also given an (additional) increment taking into consideration the workload of a certain judge (court) or for their function as an internship coordinator of justice listeners (judicial candidates) of the High School of Justice. According to the HCJ, in practice, additional increments are not assigned to individual judges, but to all judges. Similar increments may be assigned by the Supreme Court's Plenum to all judges of the Supreme Court.

The level of fixed increments set by the HCJ is relatively high in proportion to the basic salary rates set in the law (for example, 33% of the salary rate set in the law for the judge of a district (city) court not holding an administrative position). According to the 2020 decision of the HCJ on additional increments, all judges of first and second instance courts were given an additional salary increment of 60%, taking into consideration the workload of the common courts. In 2019, the Supreme Court's Plenum determined an additional increment of 100% for all judges of the Supreme Court.

TI Georgia in its 2020 report on the national integrity system noted with reference to opinion of HCJ members that despite the fact that the judicial salary is significantly higher than the average salary in Georgia, it is believed that, given the status of a judge, the salary is still low and needs to be raised[36]. In the 2018 assessment of corruption risks in the judicial system, TI-Georgia recommended that in order not to endanger the independence of individual judges, the Supreme Court Plenum and the High Council of Justice must be obligated by law to determine the amount and rules for issuing salary supplements in accordance with predefined procedures and based on objective criteria. Alternatively, it was recommended to abolish salary supplements altogether and have all Common Courts judges receive their legally defined monthly salaries alone[37].

Strategy for the Judiciary in Georgia for 2017-2021, prepared by the judiciary itself, noted the problem of inadequate judicial pensions and lack of protection of salaries and pensions from inflation. The strategy called for a fixed amount of a judge's salary and for salary supplements to be stipulated in the law. It also stated that judicial pensions should be in the amount close to the most recent wage of a judge and required eliminating disproportional difference between the amounts of salaries of judges of the Supreme Court and those of lower instances.

The monitoring team considers this sufficient because the salary and its increments are not set by the executive branch, the main risk this benchmark aims to avoid. Existing increments are not assigned arbitrarily to individual judges but are established for a group/category of judges. However, the monitoring team recommends Georgia to consider stipulating all parts of the judicial remuneration in the primary law.

[36] Transparency International Georgia (2020), "Georgia National Integrity System Assessment" p.53
[37] Transparency International Georgia (2020), "Corruption Risks in Georgian Judciary" p.51

Benchmark 5.4.3.

The level of remuneration of the court staff and judicial assistants is sufficient to reduce the risk of corruption.

According to the Government replies, the average amount of monthly salary of judicial assistants (only basic salary) was GEL 1,783 in 2020, average salary of other court staff was GEL 1,215. The minimum salary of a local court judge is GEL 4,000. The average monthly salary in Georgia in 2020 was GEL 1,227[38].

The 2020 report by TI-Georgia noted that the salary of judicial aides was very low, considering their workload[39].

The monitoring team also notes the significant number of vacancies of judicial assistants and judicial secretaries, which may be attributed to the low remuneration. There were 55 vacancies of judicial assistants and 29 vacancies of judicial secretaries as of January 2021 (and a similar number of vacancies in 2020); compared with 362 judges of the common courts of Georgia (each judge is supposed to have a personal assistant and a secretary of the judicial session). It may also mean that there is additional workload on the existing assistants and secretaries, which taken together with relatively low salaries, may create additional corruption risks. The High Council of Justice commented that vacancies among judicial assistants and secretaries were explained by the vacancies among judges (99 judicial vacancies as of January 2020, except the Supreme Court judges) and that there is no correlation between the vacancies and workload of the existing judicial support staff.

Indicator 5.5. Status, composition, mandate and operation of the Judicial Council guarantee judicial independence and integrity

Background

According to the Constitution of Georgia, the High Council of Justice of Georgia (HCJ) is a body of the common courts system that is established to ensure the independence and efficiency of the common courts, to appoint and dismiss judges and to perform other tasks. The HCJ consists of 14 members appointed for a term of 4 years, and the Chairperson of the Supreme Court. More than half of the HCJ members (8) should be members elected from among judges by the self-governing body of the common courts' judges. Other members include one member appointed by the President of Georgia and members elected by a majority of at least three fifths of the full composition of the Parliament. The Organic Law on Common Courts regulates the operation of HCJ.

There is another body of the judicial governance that operates in Georgia, namely the Disciplinary Panel. It is not mentioned in the Constitution of Georgia but is regulated in detail in the Organic Law on Common Courts. The Disciplinary Panel consists of five members; three of them are judges of Common Courts of Georgia, and two of them are not judges. The judge members of the Disciplinary Panel are elected by the Conference of Judges of Georgia. Non-judicial members of the Disciplinary Panel are elected by the Parliament of Georgia. The procedure and term for nominating candidates to the Parliament of Georgia, determining compliance with the established requirements, considering and submitting them to a parliamentary plenary session, and electing them as members of the Disciplinary Panel are determined by

[38] Geostat, "ხელფასები"
[39] Transparency International Georgia (2020), "Georgia National Integrity System Assessment" p.54

the Regulations of the Parliament of Georgia. A member of the Disciplinary Panel is elected for a two-year term.

Evaluation of benchmarks under this Indicator will cover both the HCJ and the Disciplinary Panel.

Assessment of compliance

Benchmark 5.5.1.

The Judicial Council or other similar bodies are set up and function based on the Constitution and law that define their powers and mode of operation

The Constitution of Georgia and the Organic Law on Common Courts regulate the powers and mode of operation of the High Council of Justice, including such matters as how meetings are held, decisions are made, rules of recusal and conflict of interest, transparency of work, publication of decisions, safeguards of fair proceedings.

The composition, powers, and mode of operation of the Disciplinary Panel are set in the Organic Law on Common Courts.

Benchmark 5.5.2.

The composition of the Judicial Council or other similar bodies includes not less than half of judges elected by their peers representing all levels of the judicial system

High Council of Justice

8 out 15 members of the HCJ are judges elected by a self-governing body of judges of the common courts of Georgia (the Conference of Judges) according to the procedure determined by the law. According to the Organic Law on Common Courts, at least one judicial member of the HCJ should represent a court of every. More than half of the members elected by the Conference of Judges of Georgia may not be the chairperson of a court, his/her first deputy or a deputy, or the chairperson of a judicial panel or a chamber. 87.5% of the total 298 judges participated in the meeting of the Conference of Judges (held on 30 October 2020) that selected judicial members of the High Council of Justice, which is sufficient to assume that HCJ's judicial members were selected by their peers representing all levels of the judicial system.

Disciplinary Panel

3 out of 5 members of the Panel are judges elected by the Conference of Judges of Georgia. The Conference of Judges of Georgia is a self-governing body of the Common Courts judges. It consists of the Supreme Court judges, judges of courts of appeals and district (city) courts. The Conference elects judicial members of the Disciplinary Panel by a 2/3 majority present at its meeting. 80.7% of the total 302 judges participated in the meeting of the Conference of Judges (held on 5 October 2019) that selected the judicial members of the Disciplinary Panel, which is sufficient to assume that the Disciplinary Panel's judicial members were selected by their peers representing all levels of the judicial system.

Benchmark 5.5.3.

Members representing the judiciary in the Judicial Council or other similar bodies are elected through a general vote of all judges

Judicial members of the High Council of Judges and the Disciplinary Panel are elected by the Conference of Judges of Georgia which includes all judges of the common courts. According to the Organic Law on Common Courts, the meeting of the Conference of Judges should be open. The Conference may consider a matter and make a decision if more than half of the judges of the Common Courts of Georgia are present. When electing the HCJ and the Disciplinary Panel members, the Conference of Judges decides by secret ballot. In all other cases, decisions are made by open vote, by a majority of the members present at the meeting. As there is no system of delegates at the Conference of Judges, all judges can participate in the Conference (see numbers for actual participation in benchmark 5.5.2.).

Benchmark 5.5.4.

The composition of the Judicial Council or other similar bodies includes a substantial number of non-judicial members who represent the civil society or other stakeholders that have public trust (e.g. academia, law professors, human rights defenders, NGO representatives), have an appropriate legal qualification and are selected through a transparent procedure based on merit

High Council of Justice

Non-judicial members of the Council represent 6 out of 15 members which is more than 1/3 of the Council's composition. According to the Organic Law on Common Courts, the Parliament elects 5 members of the HCJ on a competition basis, by secret ballot, by majority of 3/5 of the total number of members, under the procedure established by the Rules of Procedure of the Parliament of Georgia. Candidates for HCJ membership are selected from among professors and scholars working in higher education institutions of Georgia, members of the Bar Association of Georgia and/or the persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia. One of the fields of activity of the said legal entities shall be, for at least the last two years before the announcement of the competition, participation with representative authority in court proceedings. Each of such organisations may present maximum three candidates to the Parliament. A member of the Parliament, judge or prosecutor may not be nominated as candidate for HCJ membership. The procedure and a time-limit for nominating candidates, determining their compliance with the Law's requirements, reviewing the nominees, and presenting them to the plenary session of the Parliament is determined in the Rules of Procedure of the Parliament of Georgia. The Law determines mandatory legal qualification of the HCJ member candidates. The President of Georgia appoints one member of the HCJ by competition from among candidates who must comply with the same requirements as candidates reviewed by the Parliament and the same organisations may nominate.

"Substantial number". 6 out 15 HCJ members can be considered a substantial number if the non-judicial part is substantial enough to influence the decision-making of the council (for example, votes of at least several lay members should be required to make a decision). HCJ takes decisions by the majority of members present except for decisions on disciplinary matters, appointment of judges for initial or permanent tenure, dismissal of judges which require at least 10 votes. It means that for the said important decisions of the Council only one vote of a non-judicial member is required. For other matters, HCJ decides by the majority of its members present; even if all 15 members are present, the decision can be taken by

8 votes, thus not requiring any votes from the non-judicial HCJ members. Among such other matters, is the selection of the Independent Inspector (who has an important role in the initial investigation of disciplinary complaints against judges), determining specialisation of judges, selecting Qualification Examination Commission, and others. Furthermore, quorum for HCJ meetings is 8 members, which allows the judicial members to decide on matters (except those requiring 10 votes) without non-judicial members even being present. Because of these voting requirements the monitoring team does not consider that the non-judicial part of the HCJ has a substantial representation.

“represent the civil society or other stakeholders that have public trust”. The law limits the scope of candidates who must represent professors, academia or lawyer organisations. The monitoring team has no evidence that these stakeholders do not have public trust.

“appropriate legal qualification”. The law sets necessary legal qualifications.

“selected through a transparent procedure based on merit”. The selection procedure is regulated in the Organic Law on Common Courts and the parliament’s Rules of Procedure. In the monitoring team's opinion, the provisions on transparency of the process are very limited, as only the announcement for submission of nominations is published and proposed candidates are announced just before the vote, no other steps are disclosed (for example, the list of candidates who passed the committee and transferred to the parliament’s bureau). Neither the law, nor the parliament’s regulations require merit-based selection and determine criteria and procedure for evaluation of the candidates. The same assessment is valid for the selection of the HCJ member by the President of Georgia, where there is insufficient transparency (only the start of competition is announced) and no proof that the selection is merit-based.

The Georgian authorities disagreed that the selection process is deficient noting that the current legislation of Georgia provides for necessary guarantees of transparency and merit-based election of HCJ non-judicial members. The authorities noted that the main steps of the procedure for election of the HCJ members are the following: a) Timeframe for the nomination of candidates is published on the Parliament’s website by its Chair (Speaker); b) Nomination of a candidate shall include all necessary documents which prove that a candidate conforms with legal requirements; c) Documents submitted to the Parliament are transferred to the Legal Issues Committee of the Parliament, which clarifies the candidate's compliance with the legal requirements; d) The committee meeting is open for public and broadcasted online; e) After the committee meeting, the Legal Issues Committee submits the list of candidates meeting the legal requirements, the attached documents and the committee’s opinion to the Bureau of the Parliament; f) The Bureau of the Parliament transfers the list of candidates and attached documents to parliamentary factions; g) After the expiration of time allocated for parliamentary factions to discuss the issue, the Parliament, at the nearest plenary meeting, starts voting to elect members of the HCJ; candidates are voted for separately; voting is carried out according to the alphabetical order of the candidates’ surnames. Before the vote, a representative of the Legal Issues Committee presents information about the candidates to the Parliament. Parliament elects members of the HCJ by a secret ballot, by a majority of 3/5 of members of the Parliament; h) All materials, documents, and information submitted to the Parliament in relation to the HCJ candidates, and all procedural documents and information linked to the election process are published on the Parliament’s official website. The committee meetings and process of the election of the candidates by the Parliament are public and broadcasted online.

Disciplinary Panel

The Parliament selects two non-judicial members out five members of the Panel using the same or similar requirements for candidates, nominating organisations and procedures as for the selection of non-judicial members of the High Council of Justice.

“Substantial number”. Two out of five Panel’s members are non-judicial member, which is more than 1/3. However, the Panel can make decisions if the majority or members are present (that is, at least 3 members)

and the decisions are taken by simple majority of members present. This means that the participation of the non-judicial members is not required to make a decision and decisions can be made without any votes from the non-judicial part. This renders non-judicial representation in the Panel non-substantial.

"selected through a transparent procedure based on merit". The same assessment is valid as for the selection of non-judicial members of the HCJ.

The Georgian authorities disagree with the assessment and refer to the above arguments concerning election of HCJ members, as the same procedure applies to the election of the Disciplinary Panel's non-judge members by the Parliament.

Benchmark 5.5.5.

The Judicial Council or other similar bodies are responsible for all questions of the judicial career (including selection, promotion, transfer, evaluation) and discipline

The High Council of Justice and the Disciplinary Panel of the Common Courts of Georgia are responsible for all questions of the judicial career (including selection, promotion, transfer, evaluation) and discipline.

Benchmark 5.5.6.

There is a wide perception among the main stakeholders that the Judicial Council or other similar bodies operate independently and impartially without political or other undue interference in their work

There is a perception among certain local non-governmental organisations in Georgia that the judicial governance bodies are not genuinely independent and impartial[40].

In human rights report for 2018, the US Department of State referred to the concerns of non-governmental stakeholders regarding independence of the judicial system[41] and of the HCJ in particular[42].

Criticism of the HCJ continued in the NGO statements in 2021[43]. According to the 2019 survey commissioned by TI Georgia and conducted by the CRRC (NGO) with a total of 2087 respondents being interviewed throughout the country, 35% of respondents considered that the judiciary was corrupt, 26% of respondents considered – not corrupt and 39% refrained from answering. 43% of respondents considered that it was under the influence of the ruling party, 18% that it was not under the influence of the ruling party

[40] See, for example, the following statements and report by NGOs: (2020), "The Coalition is calling on the Parliament to adopt a resolution on the clan-based governance in the court system"; (2020), "The Coalition for an Independent and Transparent Judiciary Reacts to the XXVIII Extraordinary Judicial Conference"; (2019), "Dream Court Anatomy"

[41] US Department of State (2018), "Human Rights Report" p.12

[42] See the following statements: (2019), "The Coalition's Open Letter to the Speaker of the Parliament on the Termination of Authority of Zaza Kharebava, a High Council of Justice Member"; (2019), "დაამტკიცეს თუ არა კანონდარღვევით იუსტიციის უმაღლეს საბჭოში ზაზა ხარებავა"; (2019), "Monitoring Report on the Selection of Supreme Court Judicial" p.7

[43] See, for example, statement by the NGO (2021), "Coalition concerning selection of the Supreme Court judges"

and 39% abstained from answering[44]. Public Defender (Ombudsman) of Georgia's monitoring report expressed concerns regarding HCJ selection of Supreme Court Candidates as well.

The Georgian authorities disagree with the assessment of the above-mentioned organisations and refer to the surveys conducted by IPSOS France, Amicus Curie, Professor Jan van Dijk, and GORBI on behalf of the Ministry of Justice of Georgia that show that 51% of the population in Georgia assesses the Justice System in terms of independence, either very or largely good; the study on "the Views of Businesses on the Judiciary" conducted by the CRRC Georgia in October 2021 (with the support of the USAID) demonstrated that more than half of businesspeople (56%) partially trust courts in Georgia, while 17% report full trust towards them[45]. The enhanced public trust is also evident from the results of the survey on satisfaction of court users, in 2020, 65% of the users declared to be trusting the judiciary[46].

Benchmark 5.5.7.

Proceedings and decisions of the Judicial Council or other similar bodies, including their justification, are transparent for the public scrutiny

Proceedings are considered transparent if meetings of the Judicial Council or other similar bodies and their agenda are publicly announced, if meetings are broadcasted or the media are allowed to attend them (except when a decision is made to hold a closed session on the grounds set in the law). Decisions of the Judicial Council or other similar bodies and their justification should be published online and provided on request. Decisions should include their justification that is an explanation of the reasons for the decision.

High Council of Justice

Interviews with candidates for judicial positions (except for the Supreme Court candidates) are conducted at closed sessions, except when a candidate consents to attendance of interested persons. Interviews are therefore closed by default. The 2020 report by TI-Georgia noted that the High Council of Justice almost never follows the rule of publishing a session agenda at least three business days in advance, and information about the agenda of a session often becomes available the night before[47]. The coalition of NGOs criticised the HCJ selection of the independent inspector in January 2020[48]. According to NGOs, the "fourth wave judicial reform" established the requirement to publish justification of certain HCJ decisions, however such justification includes formal grounds for the decision not substantive explanation of the reasons for taking a specific decision. See also assessment under benchmark 5.2.3. concerning justification of the judicial selection decisions.

The Georgian authorities consider that this assessment goes beyond the requirements of the benchmark and therefore disagree with it.

[44] Transparency International Georgia (2019), "Majority of respondents say that judges with a history of succumbing to political pressure should leave the judiciary"

[45] The USAID Economic Governance Program (2021), "Report on Views of Businesses on the Court System in Georgia"

[46] High council of Justice of Georgia (2021), "საქართველოს საერთო სასამართლოების მომხმარებელთა კმაყოფილების კვლევა"

[47] Transparency International Georgia (2020), "Georgia National Integrity System Assessment" p.58

[48] Transparency International Georgia (2020), "The Coalition Criticizes the Independent Inspector's Selection Process"

Disciplinary Panel

According to the Organic Law on Common Courts, a Disciplinary Panel meeting should be closed, and information related to a disciplinary case hearing should be confidential, except as provided for by article 754 of this Law. Decisions are taken by a secret ballot. Decisions of the Disciplinary panel without identifying information of a judge, unless the judge himself/herself requires the disciplinary proceeding be public, are published on an official website upon their entry into legal force. A decision on dismissing a judge is published in full. The monitoring team believes that a decision which does not disclose the identity of the disciplined judge cannot be considered transparent for public scrutiny (see also assessment under benchmark 5.7.5.).

Benchmark 5.5.8.

Members of the Judicial Council or other similar bodies comply with the conflict of interest rules in their work

High Council of Justice

The Organic Law on Common Courts sets the requirements for preventing conflict of interest of the High Council of Justice members during selection or promotion of judges, decision-making disciplinary liability and consideration of other individual decrees. There are also general rules on conflict-of-interest management in the Law on Conflict of Interest and Corruption in Public Institutions which extend to HCJ members.

The report by the OSCE/ODIHR issued in July 2021[49] pointed to several other more recent cases when the HCJ allegedly did not follow in practice the conflict of interest rules (these cases happened before the pilot monitoring on-site visit in April 2021 and, therefore, affect the assessment) – see below.

The High Council of Justice contested this assessment and argued that the conflict-of-interest rules were not violated in either of the cases. Below is the list of cases related to the three selection procedure for Supreme Court judges that proceeded in parallel in 2020-2021 from the OSCE/ODIHR monitoring report and position of the High Council of Justice for each of them:

1. OSCE/ODIHR report: A HCJ member announced his recusal in reference to the named candidate but without stating that they had a family relationship or the nature of it. Another HCJ member (non-judge member) publicly accused that HCJ member of having failed to announce his cousin relationship with another candidate in the first competition[50].

In relation to these cases the HCJ stated that the HCJ member had recused himself from the selection procedure of the judicial candidate. Secondly, the judicial candidate concerned had refused to participate in the selection procedure before the commencement of the hearing/interview stage. In addition, the allegations about the family ties were groundless.

2. OSCE/ODIHR report: One HCJ member who applied for the second competition (for one vacancy), while recusing himself as an HCJ member from that process, declined to recuse himself from the first process (for nine vacancies) and third process (for one vacancy), in spite of the enormous overlap in candidates in these proceedings, as described in the OSCE/ODIHR report.

[49] Organization for Security and Co-operation in Europe (2021), "Third Report on the Nomination and Appointment of Supreme Court Judges in Georgia" p.14-16

[50] HCJ member (2021), "ეს პროცესი უნდა შეჩერდეს! - ინტერვიუ ნაზი ჯანეზაშვილთან უზენაესი სასამართლოს მოსამართლეების არჩევაზე"

Consequently, this member participated in the interviews of thirteen candidates in the first process against whom who he would soon compete in the second competition. This created both the appearance and objective existence of a conflict of interest, as the member had a direct interest in these candidates' performance, evaluations and/or nomination results in the first process. The member also attended and participated in HCJ sessions at which de-registration of several of his competitors in the second competition was discussed and decided on. Although the member did not cast a vote, he participated in the deliberations, in violation of the legal requirement to recuse himself from competition procedures in which he is participating as a candidate. Moreover, the same member candidate participated in the process of drafting the new procedural rules for the hearing process in which he would soon compete, prompting an adversarial public exchange between the member and another HCJ member, as well as a statement by a group of civil society organizations. The later incident was also criticised in the statement of the NGO Coalition[51].

In relation to this case, the HCJ stressed the following: the Organic Law of Georgia on Common Courts does not provide for the possibility of merging the separate selection procedures. Therefore, if an HCJ member participates in one of the selection procedures, he/she shall be authorised and even obliged to participate in another - separate selection procedures as a member of the HCJ in order to safeguard the decision-making process of the Constitutional body with respect to the issues falling under the jurisdiction of the HCJ. The HCJ member in question had withdrawn his candidacy from the selection procedure before the hearing/interview stage.

The information about participation of the member of the HCJ in the second competition, where the issue of registration of the candidates was discussed and decided on, is inaccurate. Although he attended the session of the HCJ in person, he has neither participated in the deliberations nor casted a vote.

Regarding the guidelines on holding the public hearings of candidates, the document was published on the HCJ webpage to receive comments; the alternative versions of the document including from the judicial candidates participating in the selection procedure were published as well. Furthermore, the judicial candidate could not be restricted to hold his/her opinion on legal issues. Finally, the HCJ member in question did not participate in the discussion of the draft document or its adoption.

3. OSCE/ODIHR report: another conflict of interest arose when one HCJ member whose brother-in-law was a candidate in the first and third competitions recused himself from those rounds, but declined to recuse himself from the second process, despite the significant overlap of candidates in all three competitions. This included the recused members' participation and voting in the sessions that de-registered five candidates in the second process who were competing with his relative in the first and third competitions.

The HCJ noted the following: the HCJ member was recused from the procedure where his relative participated in the nomination procedure as a candidate. Therefore, the fact that he participated in another separate nomination procedure (absolutely independent from the one where his relative participated) could not be considered as the breach of the conflict-of-interest principle.

In view of the monitoring team, at least in the second and third cited example there is a clear situation of conflict of interest. Even if legally separated, the three selection procedures were closely connected and overlapped. Recusal from one of the proceedings while preserving a competing private interest (being a candidate himself or having a relative as a candidate) in the two other proceedings could not but lead to the conflict of interest. The monitoring team finds OSCE/ODIHR report's arguments in this regard justified.

[51] NGO coalition (2020), "The Draft Decree Regulating the Process of Selection of Supreme Court Judicial Candidates by the High Council of Justice is Problematic"

Disciplinary Panel

The Organic Law on Common Courts (articles 7528-7529) includes rules on the conflict of interest of the Panel's members and their recusal. The monitoring team is not aware of cases when the Disciplinary Panel members did not comply with the conflict-of-interest regulations in practice.

Indicator 5.6. Distribution of cases among judges is transparent and objective; judicial decisions are open to the public

Assessment of compliance

Benchmark 5.6.1.

Distribution of cases among judges in all courts is automated and ensures transparent and objective case assignment excluding any undue internal or external interference

The 2017 judicial reform added a new provision in the Organic Law on Common Courts that cases should be distributed among judges of a district (city) court, a court of appeals and the Supreme Court automatically, with an electronic system, by adhering to the principle of random distribution. The procedure for automatic distribution of cases is approved by the High Council of Justice. In case of temporary failure of the electronic system for automatic distribution of cases, cases may be distributed between judges without the electronic system, based on the numerical order, which means that cases will be distributed between judges according to the numerical order of cases received and the alphabetical order of judges. Since the end of 2017, the electronic system has been fully applied within the entire common courts system. The HCJ regulations include an obligation to attach to the relevant case the document demonstrating the result of the assignment of a case to a particular judge. This document is available to the parties to the proceedings upon request. The HCJ regulations on the automatic distribution envisage the following exceptions from the random case distribution principle: (a) there is only one magistrate judge in the respective municipality; (b) there is only one judge of relevant specialization in the district (city) court; (c) there is only one judge of relevant specialization on duty in the district (city) court. In these circumstances, cases are distributed directly to the sole judge.

In 2020, TI-Georgia issued a detailed report claiming that the individual specialization of judges in Tbilisi City Court and Tbilisi Court of Appeals was used to manipulate the system of random case distribution and may at any time change the narrow specialization of a judge without any substantiation. According to the report, the court chairpersons assign judges to narrow specialisations at their sole discretion. According to TI, the practice of appointing judges to narrow specialisation is unsubstantiated and is not based on any pre-defined objective criteria[52]. These issues were brought up also in other TI-Georgia reports[53].

According to the Government information, in Tbilisi City Court, the Panel for Civil Cases is divided into six specialisations (with the number of judges in each of 5 specialisations ranging from 3 to 7 judges, and one specialization with 25 judges), the Panel of Administrative Cases into four (with 5 to 11 judges in each), and the Panel for Investigation of Criminal Cases, Preliminary Hearings and Trials – into six specialisations (with 3 to 9 judges in each). In Tbilisi Court of Appeals, the Civil Cases Panel is divided into four specialisations (with 6 judges in each of 3 specialisations and 15 judges assigned to the fourth specialization), the Administrative Cases Panel – into five (three specialisations with 9-10 judges in each,

[52] Transparency International Georgia (2020), "Forms of Narrow Specialisations in Georgian Common Court System"
[53] Transparency International Georgia (2018), "Corruption Risks in Georgian Judiciary" p.37

one with 19 judges and one with 3 judges), the Criminal Cases Panel – into three specialisations (with 4 to 6 judges in each), and the Investigation Panel with two specialisations (4 judges in each).

This and other issues with the automatic random case distribution system were also highlighted in another report by NGO Human Rights Education and Monitoring Centre issued in 2020. In particular, the report noted the authority of the court chairperson to modify without justification the duty schedule of judges, which, in practice, allowed arbitrariness. Practical ramification of this issue was identified during the court hearings of the cases of persons detained during the demonstration in front of the Parliament of Georgia. The report also noted problems with the transparency of the system, as the researchers could not obtain access to information on workload rates of individual judges and duty schedules of judges[54]. A report by another Georgian NGO (Georgian Young Lawyers Association) raised similar concerns and concluded that the chairperson can practically secure that a specific judge will receive a specific case and in this way, they may indirectly affect the outcome of a particular lawsuit[55].

The Georgian authorities report that judges/judicial candidates are assigned to specialized judicial panels based on their own choice. As to the criticism of certain NGOs about the absence of any pre-defined objective criteria for the appointment of judges to narrow specializations, they explain that these criteria could lead to the difference in treating the judges of the common courts, where this narrow specialization is applied and where it is not applied respectively.

The authorities state that the duty schedule of judges is formed in advance for the period of one month and there might be objective reasons (e.g. the health condition of a judge) which make it impossible to fully prevent changes to the pre-defined duty schedule. In addition, the court chairperson's order on modifying the duty schedule is based on the written memorandum of a judge, indicating the reason for requesting modification of a duty schedule.

In the view of diverging positions presented above, these concerns will need to be further studied and assessed in the next round of monitoring.

Benchmark 5.6.2.

All judicial decisions delivered in open proceedings are published online

The High Council of Justice created a unified webpage of court decisions (www.ecd.court.ge) which was launched in June 2019. Final decisions of all three court instances were published on the website. Access to the webpage, searching, downloading, copying, and printing decisions was free of charge for any interested person. Publication of court decisions is regulated by the High Council of Justice's Rules for Issuance and Publication of Court Decisions by the Common Courts adopted in 2016. Court decisions are published with redacted personal information. The following identification details of a person are not disclosed in published court decisions: (a) name, surname and father's name of a natural person, birth date, address, contact information, workplace, address of the workplace; (b) name, identification code and legal address of a legal person; (c) registration number of a vehicle; (d) any information that enables identification of a person directly or indirectly.

In June 2019 the Constitutional Court of Georgia declared unconstitutional the legislative provisions that limit access to the court decisions made at an open hearing, with the purpose of protecting the personal information contained therein. The Constitutional Court decided that court decisions are of particular public interest and access to them was crucial for controlling the judiciary, raising public trust towards the court system and ensuring a right to a fair trial and legal security. Thus, the personal information enshrined in

[54] EMC (2020), "Electronic System of Case Distribution in Courts"
[55] Georgian Young Lawyers' Association (2021), "Judicial system reform in Georgia (2013-2021)" p.54-55

the court decisions might be covered only in exceptional circumstances for the sake of protecting private life, taking into account the high sensitivity of the personal information given in the decision. However, such exceptions should not be general in nature and the impact of revealing the personal information on the private life and whether it outweighs the public interest towards the access to the court decision should be assessed case by case. New regulations regarding publication of court decisions have not been adopted yet. Since May 2020, no new court decisions were published online. See also statement by NGO IDFI[56].

According to the Government, in July 2021 members of the parliament from the parliamentary majority initiated amendments to implement the Constitutional Court decision.

Indicator 5.7. Judges are held accountable through impartial decision making procedures that protect against arbitrariness

Assessment of compliance

Benchmark 5.7.1.

Grounds and procedures for the disciplinary liability and dismissal of judges are clearly stipulated in the law

Grounds for the disciplinary liability and dismissal of judges are stipulated in the Organic Law on Common Courts and appear to be formulated narrowly and unambiguously. As to procedures, the Law describes in detail the main stages of the disciplinary proceedings (including who can initiate, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision-making is organised, what is the role of the judge in question). Four institutions are involved in the disciplinary proceedings against judges: the Independent Inspector, the High Council of Justice, the Disciplinary Panel of Judges of the Common Courts, and the Disciplinary Chamber of the Supreme Court.

Benchmark 5.7.2.

Application of disciplinary and dismissal procedures to judges is perceived by main stakeholders to be impartial

CSOs state that they do not perceive disciplinary and dismissal proceedings impartial based on the previous cases which date back to 2016-2017. The monitoring team is not aware of any recent cases when the disciplinary and dismissal were used improperly.

[56] IDFI (2020), "Statement on Access to Court Decisions"

Benchmark 5.7.3.

Court presidents, including Supreme Court chief judge, do not have a role in the disciplinary proceedings against judges

Following the judicial reforms, only the Independent Inspector is vested with the power to initiate the disciplinary proceedings against judges. The court chairperson (court president), like any judge of the common courts, is entitled only to address the Independent Inspector with an explanatory note indicating the disciplinary misconduct allegedly committed by a judge. Court chairpersons are no longer among actors who can initiate disciplinary proceedings against judges, as was the case before.

The remaining issue is the ex officio membership of the Supreme Court Chairperson in the High Council of Justice which decides on the launch of the disciplinary proceedings and disciplinary liability of judges. The chairperson of the Supreme Court and his/her deputies are not allowed to chair the Disciplinary Chamber of the Supreme Court (the final body that decides on the appeals against decisions of the Disciplinary Panel).

According to the draft Guide to the pilot monitoring indicators, court presidents, including Supreme Court Chief Judge, should not be able to initiate or start disciplinary proceedings or participate in such proceedings and in the decision-making. In Georgia, Supreme Court's Chairperson is ex officio member of the HCJ and, as such, participates in the decision-making on disciplinary matters. There are no rules that would exclude Supreme Court Chairperson from deliberation on disciplinary matters. However, the role of the HCJ was limited and decision on applying disciplinary sanctions is taken by the Disciplinary Panel.

Benchmark 5.7.4.

There are procedural guarantees of the due process for a judge in the disciplinary proceedings, including the right to be heard and employ a defence, the right of judicial appeal

The Organic Law on Common Courts provides sufficient procedural guarantees of due process for a judge in the disciplinary proceedings, including the right to be heard and employ a defence, the right of judicial appeal.

Benchmark 5.7.5.

The final decisions regarding judicial discipline are published online including their justification

The final decision on judicial discipline in the case of Georgia is the decision of the Disciplinary Panel and the decision of the Disciplinary Chamber of the Supreme Court in case of an appeal. According to the Organic Law on Common Courts (article 7573), decisions of the Disciplinary Panel and the Disciplinary Chamber "without identifying information of a judge, unless the judge himself/herself requires the disciplinary proceeding be public, shall be published on an official website upon their entry into legal force. A decision on dismissing a judge shall be published in full. Copies of the legally effective decisions of the Disciplinary panel and the Disciplinary Chamber shall be handed to any person upon request."

Information that enables identification of a person directly or indirectly is redacted from the disciplinary decision, namely: name, surname, personal ID, address of any natural person (a judge against whom the disciplinary proceedings are in progress, an author of a complaint, other person involved in a case, etc.), as well as name, identification code and legal address of a legal entity under private law. In addition, the information that enables identification of a person is also redacted (for example, if a judge is identifiable based on the number of judges in the relevant court, the name of the relevant court will be covered as well).

Redacting information on the name and position of the judge from the final decision on the disciplinary sanction contradicts the benchmark. As noted in the draft Guide to the pilot monitoring indicators, the benchmark allows redacting sensitive personal data from the disciplinary decision (for example, personal details of natural persons - third parties involved). It should be clear, however, from the published decision what was the alleged disciplinary violation, was it confirmed or not confirmed and why, name and position of the judge who was the alleged offender, and the sanction applied or other decision taken as a result of the disciplinary proceedings.

Benchmark 5.7.6.

There is no criminal or administrative punishment for judicial decisions (including for wrong decision or miscarriage of justice), or such sanctions are not used in practice to exert undue influence on judges

There is no criminal or administrative punishment for judicial decisions (including for wrong decision or miscarriage of justice) in Georgia.

Benchmark 5.7.7.

Proportionate and dissuasive disciplinary sanctions are routinely applied to judges

Sanctions should be proportionate, that is take into account and correspond to the nature and gravity of the offence. For this, different types of disciplinary sanctions should be available and applied for different disciplinary offences. Dismissal of a judge should be possible only in exceptionally serious cases.

The Organic Law on Common Courts includes a range of different disciplinary penalties (reproval, reprimand, severe reprimand, withholding 5% to 20% of salary for no longer than 6-month period, dismissal from an administrative position, dismissal) and one disciplinary measure (a private recommendation letter) that may be applied to a judge. There is also a provision on de minimis offence ("a conduct which formally bears characteristics of some type of conduct described in this law, but due to its insignificance does not cause harm that would necessitate attribution of disciplinary liability, or does not create a risk of causing harm, shall not be considered disciplinary misconduct").

The Law prescribes that when selecting a disciplinary penalty and a disciplinary measure for a judge, the Disciplinary Panel shall consider the nature and gravity of a disciplinary misconduct, consequences it entailed or may have entailed, and degree of the guilt. The Disciplinary Panel may apply only one type of a disciplinary penalty. As to the dismissal, the Law includes an important safeguard requiring that the Disciplinary Panel shall take into account that dismissal of a judge from the post is a measure of last resort, and this measure shall be applied in a special situation. The Disciplinary Panel shall decide on dismissing a judge from the post if, based on the gravity and number of a specific disciplinary misconduct, and

considering a previously committed disciplinary misconduct, it deems it inappropriate that this judge continue to exercise his/her judicial powers.

In 2018-2020, HCJ imposed disciplinary liability on 10 judges; Disciplinary Panel acquitted 3 judges, issued a recommendation letter in 4 cases and a reproval in 2 cases; one decision of the Disciplinary Panel was overturned by the Disciplinary Chamber.

The monitoring team notes the significant number of disciplinary cases initiated by the Independent Inspector and the low number of disciplinary proceedings supported by the HCJ after discussing Inspector's opinion (in 2020 alone, Inspector initiated 46 cases, but HCJ started disciplinary proceedings only in 9 cases which resulted in 2 cases of disciplinary liability). The monitoring team also notes the lenient sanctions that are applied in the very few cases of liability (a recommendation letter or a reproval – two most lenient sanctions available). The review of cases also shows that sanctions applied may not have been commensurate with the seriousness of the offence. For example, in one case of 2020, the judge did not recuse himself when he should have and received a reproval (the lowest disciplinary sanction). Based on this, the monitoring team maintains concerns that that proportionate and dissuasive disciplinary sanctions might not be routinely applied to judges; this matter will need to be studied in the next report.

Benchmark 5.7.8.

All public allegations of corruption of judges were thoroughly investigated with justified decisions taken and explained to the public

The monitoring team is not aware of the public allegations of corruption of judges which were not investigated with justified decisions not taken or not explained to the public.

Box 5.1. Judicial reform in Georgia

In 2016-2020, Georgia implemented two more "waves" of judicial reform. The changes included, among others, the following:

- Phasing out of the initial (probationary) period of local and appellate court judges till 2025; determining clear criteria and procedure for assessing judges after the initial 3-year appointment; selection of the Supreme Court judges until retirement age without any probationary period and through an open competition.
- Possibility for candidates for judicial positions to challenge the High Council of Justice decisions in the Qualifications Chamber of the Supreme Court.
- Introduction of an automated random allocation of cases among judges.
- Setting up an Office of Independent Inspector of the High Council of Justice that reviews complaints against judges and submits disciplinary cases to the High Council of Justice.
- Additional transparency requirements for the High Council of Justice, including online publication of its decision and requirement to justify certain decisions.
- Revising grounds for disciplinary liability of judges, clarifying the standard of proof, an obligation upon the Independent Inspector and the HCJ to reason decisions on the termination of disciplinary proceedings and an obligation upon the HCJ to reason its decisions on the disciplinary liability, improving respective legal proceedings.
- High School of Justice was given the right to hold entrance competitions.

6 Independence of public prosecution service

Georgia implemented an important reform of the prosecution service by changing its constitutional status and separating it from the Ministry of Justice. The Prosecutorial Council has become a constitutional body and played a key role in the last selection of the Prosecutor General. Despite progress made, the monitoring team considers that the representation of the civil society in the Prosecutorial Council need to be increased for further ensuring its independence. The number of non-prosecutorial members in the Council is not sufficient. The Constitution allows an impeachment of Prosecutor General by Parliament which is a political procedure in nature based on broadly defined grounds. Recruitment and promotion of prosecutors are not sufficiently regulated and an exception allows the non-competitive selection of prosecutors. The law does not stipulate sufficiently clear grounds for disciplinary liability and the dismissal of prosecutors. At the same time, proportionate and dissuasive disciplinary sanctions are routinely applied to prosecutors. Corruption among prosecutors is rare and usually entails proper reaction.

Indicator 6.1. Prosecutor General is appointed and dismissed transparently and on the objective grounds

Assessment of compliance

Benchmark 6.1.1.

The body of prosecutorial governance (e.g. a prosecutorial council) or an independent expert committee (formed by professionals who are themselves selected through a transparent procedure based on merit) played a key role in the appointment of the current Prosecutor General, in particular by providing an assessment of professional qualities and integrity of candidates

In Georgia, the Prosecutorial Council nominates a candidate for the position of the Prosecutor General to the Parliament (article 65 of the Constitution). It means that within the existing legal framework the Prosecutorial Council plays a key role in this procedure. This was also the case in practice with the appointment of the current Prosecutor General in 2020.

The benchmark also requires that the Prosecutorial Council reviewed all the candidates for the position of the Prosecutor General and provided its assessment of their a) professional qualities and b) integrity and that such assessment was reviewed by the decision-making body (Parliament) before appointing the Prosecutor General. The Organic Law on Prosecutor's Office requires the Prosecutorial Council to present the selected candidate to the Parliament with the relevant substantiation. The process of the candidate selection in the Prosecutorial Council includes one-month consultations with academic circles, representatives of civil society and law specialists to select candidates, individual interviews with the

candidates and voting. The assessment of the candidate for the Prosecutor General submitted by the Prosecutorial Council to the Parliament in 2020 (recommendation letter No.13/37-44 dated 10 February 2020) indicates that the candidate is a citizen of Georgia, has no criminal record, has higher education in law and is an invited associate professor of international law faculty at Georgian Technical University, and "has an excellent reputation because of his morality and professional qualities" with reference to his experience as a prosecutor ("nine years, two and half years of which he was the Chief Prosecutor of Georgia"). In addition, the document states that the Council took into account the candidate's plan for the development of the prosecution service presented during the interview. The recording of the interview with the candidate was attached to the letter of recommendation as an additional source of information for the Parliament to review the assessment of the Prosecutorial Council.

Following the analysis of the 2020 appointment process, the monitoring team considers that procedure and respective practice for the appointment of the Prosecutor General needs further improvement, especially assessment of professional qualities and integrity of the candidates by the Prosecutorial Council to address any possible public concerns.

The benchmark also requires that the Prosecutorial Council provide an assessment of all candidates for the position of Prosecutor General to the decision-making body for the latter to review it before making an appointment. Even though, according to the Georgian law, the Prosecutorial Council had to submit to the parliament only one candidate, it had to also submit to the Parliament the assessment of professional qualities and integrity of all other candidates, who participated in the selection, but were not nominated for the appointment.

Benchmark 6.1.2.

Prosecutor General is appointed for one long term (at least 5 years) without the possibility of reappointment

According to the Constitution of Georgia, the Prosecutor General is elected for a term of 6 years. The Organic Law on the Prosecutor's Office clearly states that the same person may not be elected as the Prosecutor General for two consecutive terms.

Benchmark 6.1.3.

There is a clear and transparent procedure for dismissal of the Prosecutor General based on objective grounds that exclude political or other undue interference and there were no cases of dismissal outside of such procedure

There are two sets of grounds for early termination of office of the Prosecutor General of Georgia. First, under the Constitution of Georgia (article 48) no less than one third of the Parliament's Members can raise the question of impeachment of the Prosecutor General if his/her "actions violate the Constitution or contain signs of crime". Such an initiative is transferred to the Constitutional Court, which considers the case and submits its conclusion to Parliament within 1 month. If the Constitutional Court's conclusion confirms a violation of the Constitution or signs of crime, Parliament may impeach Prosecutor General by a majority of the Parliament's Members. The Parliament's Rules of Procedure regulate the impeachment proceedings.

In the monitoring team's view, the possibility of impeachment of Prosecutor General by the Parliament makes the procedure politicised. The grounds for impeachment are formulated broadly giving an excessive

discretion to political actors in the Parliament. Violation of the Constitution can include a violation of specific rights and duties stipulated in it or a violation of general principles and provisions which are formulated broadly. These shortcomings cannot be balanced by a guarantee in the form of a preliminary conclusion of the Constitutional Court. The parliament's members and the Constitutional Court are not well-equipped to collect respective evidence and there are no proper regulations ensuring a fair process on par with the criminal procedure. Such proceedings by definition have a political nature. As to the impeachment proceedings, the Parliament's Rules of Procedure set the basic steps of the proceedings without regulating in detail each step of the process. The final discussion of the Prosecutor General's impeachment may be held in a closed session; the ballot is also secret. Therefore, there is no clear and transparent procedure.

Second, the Organic Law on Prosecutor`s Office defines an exhaustive list of grounds for early termination, namely a) a personal application, b) the occupation of a position or performance of activities incompatible with the status of the Prosecutor General, c) recognition by a court as a beneficiary of support, unless otherwise determined by a court decision, recognition as a person with limited legal capacity, or as missing, or as declared dead, d) the loss of the citizenship of Georgia, e) death. All these grounds are objective and clearly formulated.

As to clear and transparent procedures, the primary law does not regulate the process of dismissal on these grounds and does not provide for publication of information on different stages of the process and the final outcome. This may be especially problematic for such a ground as dismissal because of holding incompatible office or engaging in activities, which can become contentious. The law does not provide what authority should establish such an incompatibility and in what proceedings.

Benchmark 6.1.4.

There is a wide perception among the main stakeholders that the current Prosecutor General was appointed through a transparent and merit-based procedure and that the dismissal of the Prosecutor General (if happened) was not politically motivated

There is a strong perception among certain international and non-governmental organisations that the recent process of appointment of the Prosecutor General was not transparent and merit-based. Certain non-governmental organisations highlighted a lack of transparency and clarity regarding the procedure and the criteria that were applied[57].

According to the Georgian authorities, the current Prosecutor General was appointed through a transparent and merit-based procedure. Among the provided arguments they referred to the recent public survey showing the considerable level of trust towards the Prosecutor's Office, which has significantly increased compared to the previous years (20% of the respondents completely trust the Prosecution Service, 43% - rather trust than distrust)[58].

[57] For example, see the public statement by the Coalition of NGOs (2020)
[58] IDFI (2020), "Survey of the knowledge and attitudes of the population of Georgia towards prosecutor's office"

Indicator 6.2. Appointment and promotion of prosecutors are based on merit and clear procedures

Assessment of compliance

Benchmark 6.2.1.

Prosecutors are recruited based on competitive procedure clearly set in the law and based on merit

The recruitment of prosecutors is based on provisions of the Organic Law of Georgia on the Prosecutor`s Office and regulations approved by the Prosecutor General. Pursuant to article 34 of the Organic Law, a person may be appointed to a position of prosecutor in the following ways: a) through internship, 2) through competition, or 3) by a reasonable decision of the Prosecutor General (no internship or competition needed but a candidate should meet specific criteria established by law). The primary law regulates the main steps in the process of recruitment of prosecutors only in general terms – it includes requirements to candidates and grounds for using different types of recruitment procedures without regulating main stages of each of the procedures. Neither the law, nor regulations of the Prosecutor General establish clear criteria for final decision on selecting candidates from among those who passed the appropriate stages of the process and joined the pool of candidates for internship or appointment through competition. Therefore, the legislation does not clearly establish the merit-based selection indicating that persons with the best qualities and experience should be selected at the competition or for the internship.

The monitoring team believes that the existing procedure does not sufficiently ensure competitive and merit-based recruitment also for the following reasons. Both the law and the orders of the Prosecutor General leave excessive discretion to the Prosecutor General in the recruitment process. According to the Prosecutor General`s Order No. 040 of 26 August 2020 (on internship), internship contest may be conducted in several stages: written exam (test) and verbal interview. The Prosecutor General is entitled to decide concerning the number and the type of contest stages, thus depriving the internship procedure of legal certainty and giving a space for discretion and potential unpredictable changes of the rules. Candidates for internship who passed all stages and underwent training are included in the list submitted to the Prosecutor General. Upon recommendation of the Internship Commission with due respect to the needs of the office, the Prosecutor General appoints the internship candidates nominated by the Commission as the interns at the Prosecution Service. There is no requirement that this nomination should be based on the specific results of the competition, which undermines the competitive nature of the selection.

The same approach is applied to recruitment through competitions: based on the results of the competition the chair of the Competition Commission submits data about the candidates that were successful in the competition stages to the Prosecutor General; candidates undergo professional training the result of which shall be taken into account when appointing the candidates. It appears that the commission may refuse to name a candidate for appointment even after passing all stages of competition (the only reservation is that the decision should be “reasonable”). Moreover, the Prosecutor’s General Order allows recruiting prosecutors through internal competition (without external candidates) and gives the Prosecutor General the full discretion to define the format and requirements for such a competition, as well as the number and form of its stages. The regulations do not include clear grounds for carrying out different types of competition (internal or open) and leave the decision in each case to the discretion of the Prosecutor General. Finally, the Organic Law allows recruiting prosecutors without competition or internship by a reasonable decision of the Prosecutor General if the person meets the criteria which are broadly defined.

The monitoring team notes that no prosecutor was recruited in the Prosecution Service of Georgia through any type of competition or through internship programme in 2020. All six prosecutors recruited in 2020 were appointed by a decision of the Prosecutor General with reference to their considerable experience in prosecutorial and investigatory work.

Benchmark 6.2.2.

Prosecutors are promoted based on competitive procedure clearly set in the law and based on merit

The promotion of prosecutors is based on provisions of the Organic Law of Georgia on the Prosecutor`s Office and regulations approved by the Prosecutor General. The primary law does not regulate the main steps in the process of promotion, including principles, main stages, grounds for refusal/rejection of candidates for promotion and clear criteria for decision making. It only mentions the number of years of working experience as a pre-condition for promotion to two types of positions in the Prosecution Service and states that the results of the assessment of the prosecutor's activities should be taken into account when making a decision regarding promotion. It means that the procedure of promotion is not clearly set in the primary law as the benchmark requires.

As to the requirement of merit-based and competitive approach, according to article 27 of the Prosecutor General`s Order No.039 of 26 August 2020, the Prosecutor General decides upon a promotion of a prosecutor of PGO "usually" taking into account the recommendation of the Council for Career Management, Ethics and Incentives based on the following criteria: a) length of service and work experience; b) qualifications; c) personal and work skills; and d) evaluation results. The next provision contains immediate exception from this rule and gives the Prosecutor General a specific right to decide on promotion without the recommendation of the Council based on an employee`s personal application or a motivated proposal of the head of an agency/structural unit of the Prosecution Service or of the Department for the Supervision over Prosecutorial Activities and Strategic Development. Even though such an opportunity is provided only "in extraordinary cases (performing the duties at a high level and/or achieving the best results)", it essentially deprives the competitive promotion of any sense. Moreover, as statistics shows, this "extraordinary" power is actively used in practice. Out of 33 decisions on the promotion of prosecutors made in Georgia in 2020, 12 decisions were made on the recommendation of the Council for Career Management, Ethics and Incentives, and 21 – by the Prosecutor General in an "extraordinary regime" without such a recommendation.

Benchmark 6.2.3.

The vacancies, with the terms and conditions, and results of all stages of the selection and promotion of prosecutors are announced online

The adoption in 2020 of two orders of the Prosecutor General (No. 039 on recruitment and No. 040 on internship) has significantly improved the transparency of information on the recruitment of prosecutors in Georgia. According to Order No. 039, information about the decision made in conformity with this Rule [on recruitment, inspection, competitions, internal competitions, promotion, demotion, and rotation] shall be published on the website of the Prosecution Service. Under Order No.040, all competitions [for internship] shall be announced and information about the results of its stages shall be published via website of the Prosecution Service, press and/or other mass media means. Vacancies are published at https://pog.gov.ge/contest. However, the Government did not provide evidence that relevant information was published in all cases in 2020. For example, no links were provided to publications concerning the

recruitment of 6 persons for the positions of prosecutors without competition and the promotion of 33 prosecutors in 2020.

Indicator 6.3. The budget of the public prosecution service and remuneration of prosecutors guarantee their financial autonomy and independence

Assessment of compliance

Benchmark 6.3.1.

The funding received by the public prosecution service is sufficient to ensure its autonomy

In 2018-2020, the amount of state funding actually allocated for the public prosecution service was close to the budgetary requests of the Prosecutor General`s Office. The budget of the prosecution service has been increasing in the past 3 years. There is no evidence that the funding allocated to the prosecution service in 2020 was insufficient to ensure its autonomy.

Benchmark 6.3.2.

The level of remuneration of prosecutors is fixed in the law, does not depend on the discretion of superior prosecutors and is sufficient to ensure the autonomy of prosecutors and reduce the risk of corruption

Under the Organic Law of Georgia on the Prosecutor`s Office, the salary of a prosecutor consists of an official salary, a salary increment, a monetary reward, and may consist of the salary established for the rank and supplement for years of service, the amount of which is determined by the Prosecutor General. The amount of salary increment is determined by the Prosecutor General, within the limit of the allocated funds, taking into account overtime work and/or additional functions, as well as particularly important functional responsibilities. Thus, the primary law does not set the exact amount of remuneration received by prosecutors at different levels and authorizes the Prosecutor General to regulate the remuneration level of prosecutors through bylaws.

The Prosecutor General's Office of Georgia noted, however, that the Law prohibits reducing the salary of a prosecutor while he/she is in office, except for deducting 30% of salary for no more than 6 months as a disciplinary sanction. The monitoring team considers it an important safeguard, but it does not change the fact that the remuneration level is fixed in the bylaws and not in the primary law.

As to the increments, the benchmark does not prohibit payment of bonuses or other similar payments to prosecutors. However, payment of such bonuses should be based on clear pre-established criteria and following an objective performance evaluation of prosecutors. If bonuses are dependent fully on the discretion of superior prosecutors, the country will not be compliant with the benchmark.

According to the rules set by the Prosecutor General of Georgia, increments consist of several parts. One part of the increments allocated by the Prosecutor General is based on grading system introduced in December 2020. Its amount depends on the grades granted to a prosecutor by the Prosecutor General, however there is no direct link between such increments (determined for a 2-year period) and the objective performance evaluation of prosecutors. Another part of increments (so called monthly increments) is

determined by the Prosecutor General for prosecutors each month following written applications of the heads of structural divisions of the Prosecution Service (in other words, superiors provide reasoning for granting the salary increments to the subordinated prosecutors). Neither the Organic Law on Prosecutor's Office, nor the PGO regulations set clear criteria for increments, and their payment is dependent on the discretion of superior prosecutors. The third type of salary increments is intended for higher management of the Prosecution Service and is fixed by the Prosecutor General annually. This increment also does not depend on the objective performance evaluation. According to the statistics provided by the Government, 100% of prosecutors in the General Prosecutors Office and 96% of all prosecutors in Georgia were receiving salary increments determined by the Prosecutor General in 2020.

There is no evidence that the remuneration of prosecutors in Georgia was insufficient in 2020 to ensure the autonomy of prosecutors and reduce the risk of corruption.

Indicator 6.4. Status, composition and operation of the Prosecutorial Council guarantee the independence of the public prosecution service

Background

Georgia has a Prosecutorial Council which is set up based on the Constitution. According to the Organic Law on the Prosecutor`s Office, the Prosecutorial Council consists of 15 members, 8 of which are elected by the Conference of Prosecutors of Georgia (from among prosecutors), 5 – by the Parliament of Georgia and 2 – by the High Council of Justice of Georgia (from among the judges). Under the law, the Prosecutor General also establishes the permanent advisory bodies to the Prosecutor General called the Career Management, Ethics and Incentives Council and the Strategic Development and Criminal Policy Council. They are managed by the Prosecutor General and have an advisory role. These councils (due to their advisory role and subordination to the Prosecutor General) cannot be considered as independent bodies of prosecutorial governance. The assessment of compliance with benchmarks of this indicator will be limited to the Prosecutorial Council.

Assessment of compliance

Benchmark 6.4.1.

The Prosecutorial Council or other similar bodies are set up and function based on the law that defines their powers and mode of operation

The Prosecutorial Council of Georgia has been set up based on the Constitution of Georgia and operates according to the Organic Law of Georgia on the Prosecutor`s Office. According to the Constitution, the Council is established to ensure the independence, transparency and efficiency of the Prosecutor's Office and consists of 15 members elected in accordance with the procedures established by the organic law. The Organic Law clearly defines the powers of the Prosecutorial Council and regulates the basic mode of its operation (how meetings are held, and decisions are made). The law indicates that the Prosecutorial Council should have its own website. However, the primary law does not define other aspects of transparency of Council's work, including the publication of its decisions, as well as the rules of recusal and conflict of interest for members of the Council. Main issues of the Council's operation are regulated in the Council's Charter.

Benchmark 6.4.2.

The composition of the Prosecutorial Council or other similar bodies includes a substantial part (at least half) of prosecutors elected by their peers from all levels of the public prosecution service. The Prosecutorial Council is independent of the Prosecutor General and the executive branch

The Prosecutorial Council includes a substantial part (8 out of 15 members) of prosecutors elected by their peers. The benchmark requires that these peers should represent all levels of the public prosecution service in the country. The primary law does not require a certain quota for the presence of different level prosecutors at the Conference of Prosecutors but requires the presence of a simple majority of the country's prosecutors for the Conference to have quorum. There are no barriers for prosecutors of different levels to participate in the Conference. The monitoring team notes the positive provision of the law that sets quotas for the representation of different territorial and hierarchical bodies of the prosecution service in the composition of the Prosecutorial Council; further provision that also sets quotas or otherwise ensures presence of prosecutors of different levels at the Conference of Prosecutors would be welcome.

As to independence, the law guarantees independence of the Prosecutorial Council. Following the reform that separated the prosecution service from the Ministry of Justice and removed respective powers and role of the Minister, the whole Prosecution Service became institutionally independent from the executive branch. However, the monitoring team believes that there is a need to further strengthen the independence of the Prosecutorial Council in legislation and respective practice[59]. The monitoring team also supports the recommendation of the Venice Commission that "the Georgian authorities should consider an enhanced representation from the civil society". This is further discussed in benchmark 6.4.3.[60]

Benchmark 6.4.3.

The composition of the Prosecutorial Council or other similar bodies includes a substantial number (if not half) of non-prosecutorial members who represent the civil society or other stakeholders that have public trust (e.g. academia, law professors, human rights defenders, NGO representatives), have an appropriate legal qualification and are selected through a transparent procedure based on merit

The non-prosecutorial part of the Council consists of 7 members, including 5 members selected by the Parliament (including 2 members of Parliament – one from the majority and one from the opposition, one member upon recommendation of the Minister of Justice and 2 members from among professors and scholars working in higher education institutions of Georgia, members of the Bar Association of Georgia or persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia with experience of court litigation) and 2 members elected by the High Council of Justice from among judges of common courts. Only 2 Council members (or maximum 3 if the Ministry of Justice nominates a person from the civil society or a similar group) could be considered non-prosecutorial members who represent the civil society or other stakeholders that have public trust (for example, academia, law professors, human rights defenders, NGO representatives). 2 or 3 out of 15 members is not a substantial number (it is less than 1/3 of the total composition).

[59] Social Justice Center (2021), "Law enforcement statement"

[60] European Commission for democracy through law (2018), "Opinion of the Venice Commission on the provisions on the Prosecutorial Council in the draft Organic Law on the Prosecutor's Office and on the provisions on the High Council of Justice in the existing Organic Law on General Courts" para. 33

Georgian authorities stated that all Council members who are not prosecutors should be counted under this benchmark including MPs and judges. The monitoring team considers that non-prosecutorial members for this benchmark should come from the academia, law professors, human rights defenders, NGO representatives or other similar stakeholders as noted in the benchmark. In any case, to be substantial, the non-prosecutorial part of the Council should also be able to influence the decision-making of the Council (for example, votes of at least several lay members should be required to make a decision). Otherwise, the membership of non-prosecutorial members would be a formality and not provide the balance between prosecutors and lay members as promoted by recommendations of international organisations. According to the Organic Law on the Prosecutor's Office, the Prosecutorial Council adopts most of its decisions by a majority of members present at the meeting. There are two important exceptions from this general rule when a majority of no less than two thirds of the total number of the Council members (that is 10 votes of 15) is needed to take a decision, namely for decisions on imposing disciplinary liability on First Deputy, Deputy Prosecutor General or any prosecutorial member of the Council and for selection of the candidate for the Prosecutor General. The rest of the Council's decisions could be adopted with a simple majority (8 members) potentially leaving the non-prosecutorial part of the Council no levers to influence the decision-making of the Council in this part.

For two members of the Council selected from among the civil society, the Parliament's Rules of Procedure do not provide for a transparent and merit-based selection. See assessment of the procedure of selection under benchmark 5.5.4. of the Performance Area 5 – Independence of Judiciary. The same conclusion applies to the member selected from candidates nominated by the Minister of Justice of Georgia. The Georgian authorities disagreed with this assessment noting that the legislation of Georgia ensures merit-based selection of candidates and high level of transparency of the process as regards the selection in the parliament and by the Minister of Justice.

Benchmark 6.4.4.

There is a wide perception among the main stakeholders that the Prosecutorial Council or other similar bodies operate independently and impartially without political or other undue interference in their work

There is a strong perception among certain non-governmental organisations in Georgia that the Prosecutorial Council is not genuinely independent and that it does not operate impartially without political or other undue interference in its work.

According to the Georgian authorities, the Prosecutorial Council operates independently and impartially, with the proper legislative guarantees in place.

Indicator 6.5. The Prosecutorial Council has broad responsibility for the functioning of the public prosecution service, is transparent and impartial

Background

The assessment of compliance with benchmarks of this indicator is limited to the Prosecutorial Council (see explanation in the Background to Indicator 4). The Georgian authorities contested the assessment under this Indicator because they believe that it should cover bodies established by the Prosecutor General (Career Management, Ethics and Incentives Council, Internship Commission and Contest Commission) which they consider to be other "similar bodies" that should be evaluated under this Indicator. The monitoring team believes, however, that the said bodies (Career Management, Ethics and Incentives Council, Internship Commission and Contest Commission) are not similar to the Prosecutorial Council

because they are advisory bodies established by the Prosecutor General and are not prosecutorial governance bodies similar to the Prosecutorial Council (see Background for Indicator 4 above.

Assessment of compliance

Benchmark 6.5.1.

The Prosecutorial Council or another similar body is responsible for all questions of the career (including selection, promotion, transfer) and discipline of prosecutors

The benchmark requires that decision-making on all issues of the prosecutorial career (including selection, promotion, and transfer) and discipline is assigned to the Prosecutorial Council or a similar independent body of prosecutorial governance. This is not the case in Georgia. The Prosecutorial Council of Georgia does not have the competence in said areas (except for the role in the selection of the Prosecutor General and powers on imposing disciplinary liability on First Deputy, Deputy Prosecutor General or a prosecutorial member of the Prosecutorial Council).

Benchmark 6.5.2.

The Prosecutorial Council or another similar body is responsible for the performance evaluation of prosecutors that is conducted based on clear, objective criteria and transparent procedures

The Prosecutorial Council of Georgia is not responsible for performance evaluation of prosecutors.

Benchmark 6.5.3.

The proceedings and decisions of the Prosecutorial Council or other similar bodies, including their justification, are available for the public scrutiny

The benchmark requires, in particular, that the meetings of the Prosecutorial Council and their agenda are publicly announced, the meetings are broadcasted, or the media are allowed to attend them (except when a decision is made to hold a closed session on the grounds set in the law).

According to the Charter of the Prosecutorial Council, the meetings of the Council are closed and the media are allowed to photograph, record and broadcast only the initial phase of the Council session, following which they shall leave the session according to the instruction of the Chairperson of the Council. A public session of the Council may be held only if majority of the members present at the meeting decides so. Outsiders may be invited to attend a relevant section of a meeting if majority of the Council members decide so and only if their participation is essential for the Council to render a decision. The law or Charter do not provide for live-streaming or other forms of broadcasting of the Council's meetings. The monitoring team notes that according to the Council all its meetings in practice are live streamed on Facebook page of the Council; however, this cannot be considered sufficient as such a practice is not based on the legislation and may be stopped at any time.

As to the publication of decisions of the Council, the Charter stipulates that all decrees of the Prosecutorial Council, as well as the minutes of Council meetings, shall be published on its website. Documents of the Council may also be accessed in written form upon request.

Benchmark 6.5.4.

Members of the Prosecutorial Council or other similar bodies comply with the conflict of interest rules in their work

Compliance with the conflict-of-interest rules means that such rules are clearly established in the legislation and that they are followed in practice by the Council members. There are no separate rules on recusal and conflict of interest designated for the members of the Prosecutorial Council either in the primary law or in the provided bylaws. The Conflict of Interest Law (Article 11) applies only to the Prosecutorial Council members who are public officials due to their main employment (for example, prosecutors, judges, MPs who are members of the Council according to the law) and does not apply to lay members of the Council. While lay members constitute a minority of the Council members (two or maximum three members, if a lay member was selected on the proposal of the Minister Justice, out of 15 total Council members), it still means non-compliance with the benchmark.

Indicator 6.6. Assignment of cases among prosecutors is transparent and objective; prosecutors can challenge orders they receive

Assessment of compliance

Benchmark 6.6.1.

The assignment and re-assignment of cases among prosecutors is based on clear and transparent rules that are set in the legislation and ensure impartiality and autonomy from external and internal pressure

The benchmark requires that the legislation sets clear (unambiguous) rules that are published and regulate issues of assignment and re-assignment of cases among prosecutors. The rules must set an exhaustive list of objective grounds for reassigning the case from one prosecutor to another that is grounds that are based on objective necessity and not personal preferences or undue considerations.

In Georgia, these rules are set up by the Order of the Prosecutor General No. 30-d of 28 February 2019. The fact that there is a special act devoted exclusively to the rules of assignment and reassignment of cases in the prosecution service is welcome. However, as acknowledged by the Georgian authorities, the Order was not published (publicly available) throughout 2020 as required by the benchmark. Several grounds for reassignment of cases to another prosecutor stipulated in the Order appear ambiguous and not sufficiently objective giving potential space for re-assignment based on personal preferences or undue consideration, namely the following grounds: 1) prosecutor made such a mistake which might have an impact on results of the case if the PGO`s General Inspectorate initiated proceedings in this regard; 2) due to the workload of prosecutor and/or difficulty of the case, it is advisable that procedural guidance or support of the state prosecution in this case is conducted by other investigator/prosecutor. The first ground allows to re-assign the case just by initiating proceedings by the General Inspectorate concerning a mistake

that may only potentially have impact (any) on the case. “Mistake which might have an impact on results of the case” can be broadly understood and include minor mistakes. In the second ground, terms “due to the workload” and “difficulty of the case” leave a broad scope of discretion and lack objectivity.

Benchmark 6.6.2.

Prosecutors routinely use the right to challenge orders from their superiors through a judicial or another independent procedure

For this benchmark to be met the legislation shall clearly set the right of prosecutors to challenge orders of their superiors through a judicial or another independent procedure (for example, to the prosecutorial council or a similar independent body) and the practice must show that prosecutors routinely used this procedure during the past calendar year. The legislation of Georgia does not provide for a judicial or other independent procedure for challenging orders of superior prosecutors; the Prosecutorial Council is not authorized to receive such challenges.

Indicator 6.7. Prosecutors are held accountable through impartial decision-making procedures that protect against arbitrariness

Background

Assessment of compliance

Benchmark 6.7.1.

Clear grounds and procedures for the disciplinary liability and dismissal of prosecutors are stipulated in the law

Grounds for disciplinary liability and dismissal of prosecutors in Georgia are established in the Organic Law on the Prosecutor’s Office. All the grounds for disciplinary liability stipulated in the law (“improperly performs his/her duties assigned under law”; “violates official discipline”; “behaves inappropriately for an employee of the Prosecutor's Office”; “fails to perform his/her duties assigned under law”) are not formulated narrowly and unambiguously, there is an overlap or contradiction among different grounds. The Commentary to the Ethics Code and Disciplinary Proceedings for Employees of the Prosecution Service explain these grounds but, in the monitoring team's opinion, do not provide sufficient clarity either. In any case, the benchmark requires that such grounds are clearly stipulated in the primary law.

The monitoring team also notes that GRECO recommended Georgia reviewing the disciplinary regime applicable to prosecutors, including by defining disciplinary offences more precisely and ensuring proportionality of sanctions. In 2021 compliance report on Georgia, GRECO accepted that with the provision of examples of disciplinary offences and applicable sanctions in the Commentary to the Code of Ethics, as well as the removal of the disciplinary offence “breaking an oath” from the law Georgia partly implemented this recommendation. GRECO noted that inspiration for further changes may be found in the

amendments made to the disciplinary regime applicable to judges (which provide a more precise definition of initially quite similar categories of disciplinary offences).[61]

Several grounds for **dismissal** of prosecutors included in the law are also problematic ("gross or systematic misconduct at work", "ineptitude in the position held", "violation of employment requirements", "non-performance or improper performance of duties assigned by law"). They lack clear legislative definitions.

As to **procedures**, the primary law describes the main stages of disciplinary proceedings (including who can initiate, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision making is organised, what is the role and rights of the prosecutor in question). Three entities are involved in the disciplinary proceedings against prosecutors: General Inspection (starts investigation), the Career Management, Ethics and Incentives Council (conducts disciplinary proceedings on merits and takes a decision having recommendatory effect for the Prosecutor General) and Prosecutor General (takes a decision on disciplinary liability). The monitoring team considers that the procedures are determined in the law with sufficient clarity.

Benchmark 6.7.2.

Application of disciplinary and dismissal procedures is perceived by the main stakeholders to be impartial

NGOs interviewed by the monitoring team stated that they do not perceive disciplinary and dismissal proceedings against prosecutors impartial. They consider the existing grounds for disciplinary liability of prosecutors too vague and not clearly defined. The monitoring team is not aware of the recent examples or allegations of undue application of disciplinary and dismissal procedures to prosecutors.

Benchmark 6.7.3.

There are sufficient procedural guarantees of the due process for a prosecutor in the disciplinary proceedings, including the right to be heard and employ a defence, the right of judicial appeal

The right of judicial appeal is provided in article 76(20) of the Organic Law on the Prosecutor's Office. The law also stipulates that an employee of the Prosecutor's Office whose disciplinary liability is being considered may attend a Council meeting to provide statements. However, neither the primary law, nor bylaws provided by the authorities state the corresponding obligations of the bodies in charge of disciplinary proceedings to ensure this procedural right to be heard (that is the duty to timely inform the prosecutor about the time and place of disciplinary hearing, substance of case and ensure enough time to prepare and present the defence in the proceedings). Legislation is also silent about the right of a prosecutor to employ defence counsel specifically for disciplinary proceedings. As the monitoring team learned during the on-site visit, none of the prosecutors brought to disciplinary liability in Georgia in 2020 was represented by a defence counsel in the internal disciplinary proceedings.

[61] GRECO, Fourth evaluation round (2021), "Second compliance report on Georgia" paras. 67-72

Benchmark 6.7.4.

The final decisions or case summaries regarding discipline of prosecutors are published online including their justification

The final decisions or at least case summaries (description of case and its outcome) in individual disciplinary cases of prosecutors should be published online including the justification (facts and grounds) of the relevant decisions. Out of 10 cases of bringing prosecutors to disciplinary liability in 2020, the authorities provided only one link to the PGO`s website, which reported the arrest of the prosecutor for bribery. No links were provided regarding public announcements of the results of disciplinary proceedings against prosecutors in 2020.

Benchmark 6.7.5.

Proportionate and dissuasive disciplinary sanctions are routinely applied to prosecutors

According to the authorities, 10 prosecutors were brought to disciplinary liability in Georgia in 2020. Among them 4 were sanctioned with reproach, 3 – with reprimand and 3 prosecutors were dismissed from office. The analysis of the brief facts of disciplinary cases and follow-up sanctions allows to conclude that in most cases sanctions were proportionate and dissuasive. 2 cases of reprimands for the loss of the official ID card in unknown circumstances do not look sufficiently serious to warrant a reprimand (especially in view of the unknown circumstances of the incidents) but remain within the discretion of the disciplinary body. The only case when the applied sanction appears clearly not dissuasive is the “reproach” of the Head of the Department at the Office of the Prosecutor General for “driving the service vehicle under the influence of alcohol and damaging three vehicles” as a result. However, this cannot change the general conclusion in the light of the applicable criteria that proportionate and dissuasive sanctions are routinely applied.

Benchmark 6.7.6.

All public allegations of corruption of prosecutors were thoroughly investigated with justified decisions taken and explained to the public

The monitoring team is not aware of the public allegations of corruption of prosecutors which were not investigated or where justified decisions were not taken and not explained to the public. According to CSOs and international partners, corruption among prosecutors is rare and usually entails proper reaction.

Box 6.1. Reform of the prosecution service

In 2018, Georgia reversed its previous law that subordinated the prosecutor's office to the Ministry of Justice and, through constitutional amendments, separated the public prosecution service into an independent institution. The term of office of the Prosecutor General was extended to 6 years without the possibility of re-appointment. For the early dismissal of the Prosecutor General, instead of a Special Ad Hoc Prosecutor, amendments introduced an impeachment procedure in the Parliament following a Constitutional Court opinion that confirms a violation of the Constitution by the Prosecutor General or signs of crime in their actions. In addition, the Prosecutorial Council, set up in 2015, was given a new constitutional status and tasks of ensuring independence, transparency, and efficiency of the prosecution service. The primary role of the Prosecutorial Council is to select and nominate a candidate for the Prosecutor General appointed by the Parliament by a simple majority. The Prosecutorial Council consists of 15 members, including eight prosecutors selected by their peers at the Conference of Prosecutors. The law also created two other councils which act as advisory bodies to the Prosecutor General and are responsible for the career and discipline of prosecutors.

7 Integrity in public procurement

Georgia continues to operate a transparent public procurement system that encompasses the bigger part of the public sector economy. Exemptions from competitive procurement are limited and clearly defined; however, the volume of single-source procurement remains high in practice. Procurement is open for foreign bidders. The E-procurement system covers all procurement processes and functions well. Procurement complaints are properly addressed, and the review body operates independently and impartially. Despite these achievements, the non-governmental stakeholders consider that the public procurement system has challenges in terms of fairness and transparency because of the high rate of non-competitive procurement and other aspects. There are few cases of prosecution of corruption offences and enforcement of conflict-of-interest restrictions in the procurement process. Key procurement data and statistics are published online. Data in machine-readable (open data) format has not been updated since 2019, and there is no publication of aggregate machine-readable procurement data.

Indicator 7.1. Public procurement system is comprehensive and well-functioning

Background

Public procurement in Georgia is regulated by the Public Procurement Law (PPL) and overseen by the State Procurement Agency (SPA).

Assessment of compliance

Benchmark 7.1.1.

Primary public procurement legislation covers all areas of economic activities concerning public interests including state owned enterprises, utilities and natural monopolies, as well as the non-classified area of the defence sector

The Law on Public Procurement covers all areas listed in this benchmark, including procurement by state-owned enterprises (SOEs) and SOEs operating in the utilities sector. However, according to PPL, the Government of Georgia, on the proposal of the Ministry of Regional Development and Infrastructure or Ministry of Economy and Sustainable Development, may establish “special procedure” for procurement of goods and services related to the "special aspects of activities" of specific SOEs for no longer than 2 years. According to information provided by SPA, 25 SOEs currently fall under an active government resolution granting them special rules for procurement. This issue was raised in the previous OECD/ACN monitoring report on Georgia which noted that 18 SOEs were exempted as of 2016.[62]

[62] Istanbul Anti-Corruption Action Plan 4th Round of Monitoring (2016), Anti-corruption reforms in Georgia, p. 81.

According to the Georgian authorities, they have prepared a draft law that will exclude the possibility of such exemptions. In addition, the Government has implemented interim measures to decrease the list and the volume of goods and services purchased without open electronic procedures. The monitoring team welcomes the suggested removal of such exemptions and recommends implementing them as soon as possible.

As for the fully private companies operating in the utilities sector, Georgia has an obligation under the EU-Georgia Association Agreement – Deep and Comprehensive Free Trade Areas to approximate with the EU Utilities Directive 2014/25/EU. The State Procurement Agency prepared a new draft PPL, which has a dedicated chapter on the utilities sector, which ensures a gradual transposition of the EU Utilities Directive. According to Georgian authorities, there is no concept of natural monopolies in Georgia.

Benchmark 7.1.2.

The legislation clearly defines specific, limited exemptions from the competitive procurement procedures

The PPL stipulates that competitive electronic means is the primary method of conducting public procurement. Decree no. 13 of the SPA Chairman "On the Approval of the Rule of Conduct of Simplified Procurement and Defining Simplified Procurement Criteria" defines exemptions when direct contracting is permitted instead of competitive procedures. All procuring entities need to seek approval from the SPA through the Georgian electronic Government Procurement ("Ge-GP") system before applying Simplified Procurement. Some of the criteria (for example, unforeseeable, non-attributable, urgent) would benefit from clearer definitions as to their applicability to avoid their misuse.

Benchmark 7.1.3.

Public procurement procedures are open to foreign legal or natural persons

Georgian legislation does not have any provisions restricting foreign companies from participation in public procurement. The legislation does not require foreign companies to register as a domestic entity. The Ge-GP system is available in three languages - Georgian, English, and Russian. Contracting Authorities are obliged to announce a tender and provide full tender documentation in Georgian and English, if the estimated value of a procurement is above the EU monetary thresholds. By 2020, more than 2,000 foreign suppliers from 75 countries were registered in the Georgian Government eProcurement System. In 2019, 61 contracts were awarded to foreign suppliers by means of open electronic tenders (0.2% of all tenders that were announced in the Ge-GP system, with a value of approximately EUR 35 million equivalent (2.8% of the total estimated contract value administered under the Ge-GP system). In 2020, 45 contracts were awarded to non-resident companies from 18 different countries based on open procedures. The value of the contracts totalled approximately EUR 20.1 million equivalent (2.0% of the total estimated contract value administered under the Ge-GP system).

Benchmark 7.1.4.

Electronic procurement system is functional and encompasses all procurement processes

The electronic procurement system in Georgia (Ge-GP system) is functional and encompasses all procurement processes, including single-source procurement. The PPL stipulates that electronic means is the primary method of conducting public procurement. The Ge-GP system covers all stages of the procurement processes – from planning, announcement and proposal submission to contract award and contract management. The following processes are built in the Ge-GP system: ePlan, ePublishing, Notifications, eTendering, eBidding, eEvaluation, Awarding, Contract Management, eMarket, and eComplaints.

Benchmark 7.1.5.

Direct (single-source) contracting represents less than 10% of the total procurement value of all public sector contracts

In 2020, 21% (of the total amount of GEL 1,070,086,317) of all contracts were awarded under the single-source procurement procedure. However, this figure includes agricultural subsidies at a value of GEL 98,642,720, COVID-related procurement at a value of GEL 399,163,598, and procurement transactions below the national monetary threshold (5,000 GEL) in the amount of GEL 72,192,417. According to the Government of Georgia, these three types of direct procurement contracts should be excluded from the calculation which would bring the total value of direct contracting to GEL 500,087,222 or 9.7% of the total procurement value in 2020 (below the threshold set in the benchmark).

In the monitoring team's opinion, agricultural subsidies should indeed be disregarded for the purpose of this benchmark. As to the direct procurement below threshold, it remains direct procurement, even if each operation is of a low value (with such procurement included, the total value of direct procurement in 2020 was 11.1%). For COVID-related procurement, the monitoring team considers it a type of urgent single-source procurement which may be objectively required but should nonetheless be limited. Excluding emergency procurement from the benchmark would contradict its rationale; the benchmark of maximum 10% for single-source procurement includes the permitted direct contracting for small value contracts as well as other permitted exceptions. If the benchmark did not allow for these categories, the benchmark would have to be set at 0%. With COVID-related procurement included, the total value of direct procurement in 2020 was 18.8%. However, the monitoring team recognises the extraordinary circumstances of the emergence of COVID-19 and the necessity for urgent single-source procurement at the onset of the pandemic. With the requirements for the pandemic related procurement of goods, works and services becoming more predictable, a radical reduction of single-source procurement should now follow.

Benchmark 7.1.6.

There is a wide perception among the main stakeholders that public procurement is fair and transparent

Civil society representatives view the Georgian public procurement system as meeting a good standard of transparency. However, NGOs who provided input to the pilot monitoring identify the following remaining issues related to fairness and transparency:

- A high level of single-source procurement.
- Perceived affiliation of a certain number of successful tenderers with the ruling party (as identified in the 2020 report by TI-Georgia[63] and confirmed by NGOs interviewed by the monitoring team). The Government stated that there is no evidence supporting this perception.
- The high standard of transparency is not extended to sub-contracting, market research and the implementation phase of the procurement cycle.
- Lack of full compliance with the Open Contracting Data Standard and non-publication of procurement data in open data format (see also benchmark 7.4.1.).

According to 2020 public opinion survey, 57% of respondents believed that it was "more common than uncommon" and "very common" that companies associated with public officials are given preference during public procurement[64]. A similar survey in 2021 showed that 35% believed that it was "more common than uncommon" and 16% that it was "very common" that companies associated with public officials were given preference during public procurement against 11% who believed it was "more uncommon than common" and 1% who believed it was not common at all (37% did not know or refused to answer)[65].

The Government of Georgia disagreed with this assessment and perception of certain non-governmental stakeholders.

Indicator 7.2. Procurement complaints are addressed

Background

The Public Procurement Dispute Resolution Council (DRC; Administrative Review Body before 1 January 2021) is responsible for reviewing complaints related to public procurement, concessions, and Public-Private Partnership projects in Georgia. Procurement complaints may be submitted by the participants in a procurement process exclusively through the eComplaints system.

[63] Transparency International Georgia (2020), "Public procurement during the state of emergency"
[64] Transparency International Georgia (2020), "Results of Public Opinion Survey"
[65] Transparency International Georgia (2021), "Public Opinion"

Assessment of compliance

Benchmark 7.2.1.

Procurement complaints review body routinely reviews procurement complaints within a reasonable time frame

A total of 1,245 complaints were filed to the DRC in 2019 and 1,044 in 2020. Most of the complaints filed in 2019 (705) and 2020 (559) were resolved in favour of the business sector (fully or partially granted by the DRC), which represented 56.62% (2019) and 53.54% (2020) respectively of the total number of submitted complaints. The average time for reviewing procurement complaints by the DRC is 10 days. According to the PPL, the DRC shall make a substantiated written decision and communicate it to the claimant no later than 10 working days after a complaint is filed. The monitoring team considers this to be a reasonable time frame.

Benchmark 7.2.2.

Procurement complaints review body decisions repealed by courts or other appeal body comprise less than 10% of all cases that have been referred to them

According to the 2019 annual report of the SPA, the Administrative Review Body reviewed a total of 1,245 cases during the year, of which 24 decisions were subsequently appealed to court. Out of them, the court partially repealed only 1 decision (4%). According to the Government's information, in 2020 the Administrative Review Body reviewed 1,044 complaints, 19 decisions of the Body were challenged in court and only in 1 case the court partially overturned Body's decision (5%).

Benchmark 7.2.3.

There is a wide perception among the main stakeholders that the procurement complaints review body functions in an independent and impartial manner without undue interference in its work

In principle, the DRC is perceived to be independent and impartial. However, recent changes to the composition and nature of the DRC have invoked mixed reactions. On the one hand, the DRC has been separated from the SPA and staffed with dedicated board members who are remunerated for their work. On the other hand, the non-governmental stakeholders interviewed by the monitoring team still do not perceive the new DRC to be entirely independent, since its office is a part of the National Competition Agency, and concerns remain about the process of selection of the new DRC members.

The Government of Georgia advised that the 2020 institutional and structural reform of the Georgian administrative review body was designed in close collaboration with SIGMA, WB and EBRD experts. According to the Government, all aspects of the reform were coordinated and confirmed with the European Commission.

The monitoring team notes the concerns described above as well as the achievements presented by the Government and recognises that there is no perception among the interviewed non-governmental stakeholders that the review body does not function in practice independently and impartially.

Indicator 7.3. Dissuasive and proportionate sanctions are enforced for procurement related violations

Assessment of compliance

Benchmark 7.3.1. – 7.3.2.

BENCHMARK	Georgia 2020
	Total number of sanctions / convictions
7.3.1. Track record of sanctions imposed on public officials for violations of COI rules in public procurement	1
7.3.2. Track record of enforcement of corruption offences in the public procurement sector with final convictions	27
Comments: There were about 18,375 public procurement contracts awarded in 2020 in Georgia according to the State Procurement Agency's annual report (source: http://procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/Angarishi_2020_GEO.pdf.aspx).	

Benchmark 7.3.3.

All legal and natural persons convicted for corruption offences were debarred from the award of public sector contracts.

There is no system for debarment of persons convicted for corruption offences from public procurement in Georgia. The monitoring team notes that two previous reports of the OECD Istanbul Anti-Corruption Action Plan monitoring (reports of the third and fourth rounds[66]) recommended Georgia introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. TI-Georgia made a similar recommendation. The monitoring team regrets that Georgia failed to implement these recommendations.

[66] Georgia – Anti-corruption Reforms, "Monitoring and progress reports for Georgia since 2004"

Indicator 7.4. Public procurement is transparent with independent oversight

Assessment of compliance

Benchmark 7.4.1.

Key procurement data are published and regularly updated on-line on a central procurement portal free of charge in open data format, including at least the following:

- procurement plans (=point 2)
- complete procurement documents (=point 3)
- outcome of the tender evaluation, the contract award decision and the final contract price (=point 2)
- appeals and the results of their review (=point 1)
- information on contract implementation (=point 2)

All procurement data listed under benchmark 7.4.1 is published online on the central procurement portal (tenders.procurement.gov.ge). The eProcurement system databases are free of charge and are available for any interested persons. The data include procurement plans, complete procurement documents, outcome of the tender evaluation, the contract award decision, final contract price, appeals and the results of their review. Information on contract implementation is available only for registered users.

Procurement plans are uploaded on an annual basis. All other procurement data/documents listed under benchmark 7.4.1 are uploaded on a regular basis and the deadline for uploading this information on the eProcurement system databases are regulated by the PPL and secondary legislation.

All procurement data (since 2011 up to 1st quarter of 2019) are available in machine readable (JSON) format in two languages (GEO and ENG) on the websites of Georgian Public Procurement open data [67] and Open Procurement Dashboard [68] data is searchable.

Data in machine-readable (open data) format has not been updated regularly (last update was in the first quarter of 2019) and there is no publication of aggregate machine-readable procurement data.

The monitoring team also notes concerns by CSOs in this regard. According to TI-Georgia, the high standard of transparency must be extended to cover all subcontracting information, since this constitutes a major corruption loophole. Publication should also extend to results of market research conducted by contracting entities for single-source procurement.

According to the Government, in June 2021 the SPA, in collaboration with the State Audit Office, tested a new approach on conducting market research. It requires contracting authorities to follow newly adopted, stricter and more transparent rules. After the testing mode, the new regulations will be made mandatory through secondary legislation.

According to TI-Georgia, Government Administration, the State Security Service, the Ministry of Internal Affairs and some of its sub-agencies do not comply with the obligation to regularly upload their single-source procurement contracts. The data published as open data do not include aggregate procurement data and this inhibits anti-corruption monitoring and effective scrutiny of public procurement. TI-Georgia

[67] State Procurement Agency, Georgian Public Procurement open data
[68] Georgia Procurement Data Visualization, Open Procurement Dashboard

also pointed to other technical issues with open data publication of information[69]. The State Security Service contested TI's assessment regarding publication of single-source procurement contracts by the Service.

Benchmark 7.4.2.

Beneficial ownership of all participants in a procurement process is revealed in procurement

Beneficial ownership of participants in a procurement process is not revealed.

Benchmark 7.4.3.

Detailed statistics on public procurement is regularly published online, including key public procurement indicators

Public procurement statistical data are published and updated quarterly or annually. The SPA has a legal obligation to produce and publish annual reports (in Georgian and English) on the SPA official website.[70] The annual reports contain relevant statistical data and are available online. Published statistics cover all main public procurement indicators.

[69] Transparency International Georgia (2020), "Public Procurement Database in Georgia"

[70] State Procurement Agency, "სახელმწიფო შესყიდვების სააგენტო"; "Charts of procurement from 2011 to 2017"

Box 7.1. Reforms in the area of procurement implemented in Georgia in 2016-2020

- The comprehensive Roadmap and 2016-2022 action plan was adopted by the Government of Georgia in order to implement wide-ranging reform agenda in public procurement, concessions and PPP.
- The comprehensive reform of administrative review body including a new institutional set up, legal framework and technology support e-tools, establishing fully operational tribunal dealing with appeals and complaints.
- The procurement practitioners' Ethics Code adopted and widely promoted.
- SPA developed and delivered to the Government new legal provisions to promote further introduction of Sustainable Public Procurement concept.
- New avenues for cooperation with business community were strengthened, collaborating in delivering joint training sessions and workshops, developing video guides and users' guides, useful guidelines and instructions, promoting competitiveness of local SMEs.
- Because of COVID pandemic restrictions, the SPA Training Centre developed new TV-projects, channels and tools to deliver and promote public procurement related knowledge and helpful information in teleworking mode.
- Centralized purchasing practices have been increased, covering thousands of CPV codes of goods, and hundreds of CPV under different G2C services.
- The series of newly developed methods, procedures and tools were implemented into the Georgian Electronic Government Procurement System.
- The newly developed e-services were introduced under the framework of eProcurement system connecting it with other eGovernment services, like eTreasury, eBudget, eRevenue, eMarket.
- Electronic standard questionnaires for procuring of goods, services and works were introduced to standardize tender documentation and extend participation of business community in e-tenders.
- "Supplier Ranking e-Module" has been incorporated that enables contracting authorities to easily search for a potential supplier when conducting market survey, planning a tender or conducting direct procurement action.
- Negotiations on FTA public procurement related chapters and access to internal markets with EFTA countries and UK were successfully completed.

Note: Information by the Government of Georgia.

8 Business integrity

Business integrity is still in development in Georgia, but there are signs of upcoming positive improvements in this area. In 2021, the authorities plan to adopt a Corporate Governance Code for listed companies and establish the applicable regulatory framework. The draft Code was discussed with international partners and is based on international best standards.

The Government adopted a Corporate Governance Code for public corporations. It is welcome as there are many areas to improve in terms of corporate governance and integrity of SOEs: establishing supervisory boards at SOEs whose members are appointed through a merit-based and transparent nomination process and include independent members; introducing merit-based and transparent appointment of CEOs, who should have a reporting line to the Board; adopting an integrated risk management system within these SOEs. Some of the 10 largest SOEs have already incorporated some aspects of the monitoring benchmarks, but much more needs to be done to reach compliance. All SOEs conduct annual external audits in line with international accounting standards by independent external auditors.

There is no mandatory requirement to register beneficial owners of legal entities in a central register and disclose this information publicly. Georgia has a Business Ombudsman function, but it lacks sufficient human and financial resources. Business Ombudsman does not issue policy recommendations as understood by the monitoring benchmarks. The Government has not implemented incentives for companies to improve their integrity and prevent corruption in their operations.

Indicator 8.1. Boards of directors of listed/publicly traded companies are responsible for oversight of the management of corruption risks

Assessment of compliance

Benchmark 8.1.1.

Corporate Governance Code establishes the responsibility of boards of directors of listed companies to oversee the management of corruption risks as a part of integrated risk management

There is no Corporate Governance Code for listed companies in Georgia. Georgia, however, is in the process of reaching compliance. It already adopted a Corporate Governance Code for commercial banks (listed and non-listed banks) and there is an initiative for the adoption of a Corporate Governance Code for Issuers of Public Securities ("Code for Listed Companies") that will cover all listed companies except for banks.

On 8 September 2021, the Government of Georgia adopted a Corporate Governance Code for Public Corporations, a document different from the two mentioned above. Public corporations refer to a type of

SOEs. The new Code is not relevant for this Indicator's assessment, because (according to the Government) none of the Georgian SOEs are listed on a stock exchange.

Code for Listed Companies

The Code for Listed Companies is an initiative from the National Bank of Georgia (NBG). The text was drafted with input from international financial institutions and market participants and is based on, among others, the OECD Principles of Corporate Governance. The draft Code has been published for public consultations and discussed with relevant stakeholders.

The draft Code states that the Supervisory Board is responsible for creating and monitoring a risk management system. Members of Supervisory Boards, individually and jointly, are responsible for, among others, (i) "Determining the ethical principles of the enterprise and steadily evaluating the role of Board of Directors in implementation and maintenance of fair corporative and ethical culture which is not limited to but comprises constant compliance with the existing legislation, including the present Code, Code of Ethics and internal standards of the Enterprise", (ii) "Together with the Board of Directors, determining and approval of the Risk Management Framework of the Enterprise, during developing of which specific environment, possible future regulations, environmental and social governance issues, long-term interests of the Enterprise, efficient risk management, functions of monitoring and internal control shall be considered", (iii) regularly meeting with the Board of Directors and structural units carrying out internal control, including internal audit, individuals carrying out the functions of risk management and compliance "to discuss the issues about important risks related to the policies and control and to identify the matters and segments which need to be improved".

The Code for Listed Companies does not expressly mention that the Supervisory Board is responsible for protecting companies from corruption risks, but according to the Government this is implied considering the overall risk management responsibility. According to the draft Code, each entity should have a Code of Ethics that regulates among others conflict of interest, corruption, money laundering and procedures for suppressing corruption.

Code for Commercial Banks

A separate Code for Commercial Banks (adopted by the NBG in 2018) applies to all commercial banks in Georgia, including Georgian branches and subsidiaries of foreign banks; no distinction is made between listed and non-listed banks. According to the Code, the supervisory board has a primary responsibility for corporate governance. It is responsible for "monitoring and establishing a strong risk management system, which includes strong risk culture, healthy risk appetite, which is set by the risk appetite statement and effectively determined responsibilities regarding risk management and control functions." Although the Code for Commercial Banks does not explicitly mention "corruption risks", this seems implied. The Code mentions that a risk governance framework of banks should include well-defined organizational responsibilities for risk management, including a compliance function and that a bank's supervisory board and senior management are responsible "with the heads of the risk management, compliance and internal audit functions to identify and address significant risks and issues as well as determine areas that need improvement." The Government has explained that the term "significant risks" is not defined and may include corruption risks as well.

Benchmark 8.1.2.

Securities regulators or other relevant authorities regularly monitor how boards of directors of listed companies oversee the management of corruption risks

In relation to the Code for Listed Companies, the relevant supervisory framework is currently not known and will be implemented once the Code is adopted. It is expected that supervision will be assigned to the NBG (Capital Markets Supervision Department) and will be operational by mid-2022.

The Corporate Governance Code for Commercial Banks prescribes the authority of the NBG to supervise the compliance of banks with the Code. The Corporate Governance and Resource Analysis Division, part of the Supervisory Policy Department of the NBG, is responsible for ensuring compliance by the banks. The monitoring team could not determine compliance with the benchmark in practice because Georgia did not provide evidence of regular monitoring by the regulator of corruption risk mitigation by the boards of listed commercial banks.

Indicator 8.2. Public disclosure of beneficial ownership of all companies registered in the country is ensured

Assessment of compliance

Benchmark 8.2.1.

Information about beneficial owners is registered and publicly disclosed online in a central register

Georgian legislation does not contain a mandatory requirement for registration and public disclosure of beneficial owners of companies in a central register. Although there are alternative mechanisms available to potentially obtain information on beneficial ownership of entities established in Georgia (see below), not all are available for the public, or can be relied upon in all cases to provide accurate and current information on beneficial owners (given that there is no requirement to verify information provided on beneficial owners). Available mechanisms also do not provide for a central register of beneficial owners which is a key element of this benchmark.

Public registry

Georgian legislation (the Civil Code of Georgia, Law on Entrepreneurs, Law on Public Registry, Law on Insolvency Proceedings, Instruction on Registration of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities) prescribes that general partnerships, limited partnerships, limited liability companies, joint stock companies, cooperatives, non-entrepreneurial (non-commercial) legal entities, branches of foreign entrepreneurial or non-entrepreneurial legal entities must be registered in the public registry of the National Agency of Public Registry (NAPR). As a part of the registration, these entities must provide information about their direct shareholders or partners (whatever applicable). In case the direct shareholder or partner is a natural person, the information in the public registry will reflect the beneficial owner (although such term is not used in the register). If the direct shareholder is a Georgian legal entity, the chain can be followed until the beneficial owner (if the direct shareholders are Georgian entities).

The NAPR representative explained that legal entities, besides information about their direct shareholder or partner, may include information on beneficial owners if they wish to do so, although there is no specific field where such information can be included. There is no requirement to update such information and, because it is not a mandatory requirement, NAPR will not verify the information on beneficial owners.

The monitoring team notes that this mechanism is not sufficient, as there is no definition of beneficial owners for the purpose of legal entity registration and even if the current system may capture information on formal owners, it will not capture information on persons who – directly or indirectly - control the entity while not being a shareholder or a partner of the entity.

Obliged entities

The Law on Facilitating the Suppression of Money Laundering and Terrorism Financing (AML/CFT law) sets out requirements for obliged entities – financial institutions, designated non-financial businesses and professions – to identify and verify beneficial owners of their customers. The obliged entities are required to conduct customer due diligence and identify the beneficial owner and verify their identity through reliable sources. If a customer is a legal person, non-registered organizational entity, trust or similar legal arrangement, the obliged entity must examine the ownership and control (management) structure of a customer. The information at obliged entities is only available for special parties, such as national criminal and regulatory authorities.

Legal entities

Some legal entities, such as joint stock companies with more than 50 shareholders (or that have issued public securities), must have a register of shareholders maintained by a licensed securities registrar. However, there is no obligation for information on beneficial owners to be universally recorded, only on direct legal shareholders. In some circumstances, this will be the same person. Moreover, under certain circumstances, pursuant to the Law of Georgia on Securities Market, holders of equity securities of the issuer who has issued public equity securities with voting rights are required to submit to the issuer and the NBG notification about the acquisition and disposal of major holdings (specific thresholds). This notification is mandatory in relation to direct and indirect shareholding (under specific circumstances), so in some cases beneficial owners will have this notification obligation. The issuer subsequently must publish this information. Consequently, under some circumstances, beneficial ownership will be de facto recorded.

The Government representatives stated that there is no direct requirement in the Law of Georgia on Accounting, Reporting and Auditing for companies to include information on beneficial owners about a certain threshold, but that the law requires from companies to prepare financial statements in accordance with the IFRS. The International Accounting Standards prescribe that an entity shall disclose the name of the parent and the ultimate parent of the group in the financial statements if this is not disclosed elsewhere.

The monitoring team does not consider this to be a sufficient mechanism for disclosure of beneficial owners, as the ultimate parent is not equivalent to the notion of beneficial owner and the requirement extends only to some legal entities. The same applies in relation to the notification requirement, which only applies if certain thresholds have been met.

Benchmark 8.2.2.

Public disclosure of beneficial ownership information is ensured in machine-readable (open data), searchable format and free of charge

There is no central register containing information about beneficial owner, including in machine-readable, searchable format and free of charge. The NAPR public register may contain limited information on beneficial ownership (see benchmark 8.2.1.). The public registry is accessible online in Georgian (https://napr.gov.ge/dziebakomp), in machine-readable format, and can be accessed free of charge.

Benchmark 8.2.3.

Beneficial ownership information is verified routinely by public authorities

Given that there is no legal obligation to provide information about beneficial ownership and no central register, this information is also not verified routinely by public authorities in Georgia.

Benchmark 8.2.4.

Financial institutions, designated non-financial businesses and professions and other obligated entities under the anti-money laundering legislation have an obligation to identify and verify the beneficial ownership and report discrepancies

Pursuant to the AML/CFT law, financial institutions and designated non-financial businesses and professions must identify and verify beneficial owners of their customers. These obliged entities are required to conduct customer due diligence and identify the beneficial owner and verify their identity through reliable sources. In case a customer is a legal person, non-registered organizational entity, or trust or similar legal arrangement, the obliged entity must examine the ownership and control (management) structure of a customer.

An obliged entity is prohibited from establishing or continuing a business relationship or concluding/carrying out an occasional transaction if it is unable to undertake the due diligence measures and, in such situations, the obliged entity shall consider submitting a report to the Financial Monitoring Service of Georgia (Georgian Financial Intelligence Unit). If there is a suspicious transaction or an attempt to prepare, conclude or carry out a suspicious transaction, the obliged entity shall report this to the Financial Monitoring Service of Georgia.

The monitoring team considers this to be insufficient, because there is no central register of beneficial owners in Georgia against which obliged entities can check information obtained during the customer due diligence and establish discrepancies. The reporting to FIU has different objectives and does not aim to verify accuracy of beneficial ownership information. Finally, the law stipulates that obliged entities “shall consider submitting a report” which leaves discretion to the obliged entities.

Benchmark 8.2.5.

Dissuasive administrative and criminal sanctions are applied routinely for violations of regulations on registration and disclosure of beneficial ownership

Given that it is not legally required to register information about beneficial owners, no administrative or criminal sanctions can be imposed in case of no information or incorrect information on beneficial owners is provided.

Indicator 8.3. There are incentives for all types of companies to improve integrity of their operations

Assessment of compliance

Benchmark 8.3.1.

Government have implemented incentives for companies to improve the integrity of and prevent corruption in their operations

The anti-corruption policy framework of Georgia included prevention of corruption in the private sector as one of the strategic directions of the Anti-Corruption Action Plan for 2019-2020 (priority 9). According to the policy document, the main goal is to promote integrity, transparency, and competition in the private sector; introducing transparent corporate governance and reducing corruption risks by promoting modern mechanisms of business integrity, which contribute to the improvement of investment environment and economic growth. The objectives as set out in the Anti-Corruption Action Plan are the following:

- Improve anti-competitive risk identification mechanisms through raising the awareness;
- Increase the role of the Office of Business Ombudsman in terms of reducing business integrity risks;
- Improve the mechanisms for managing the enterprises created by state equity participation.

From the information provided it seems that in 2020 some training courses and seminars on competition law and anticompetitive risks have been given by the Georgian National Competition Agency to persons employed in public sector carrying out public procurement (400 students participated). Furthermore, the Business Ombudsman was supposed to organize information and consultation meetings with business representatives and trainings modules were prepared (it is not clear from the information provided to what extent the planned activities were conducted).

Although some training in competition law was provided and some awareness raising in relation to the function of the Business Ombudsman, this does not demonstrate that the Government implemented any incentives for companies to improve the integrity of and prevent corruption in their operations. From the Government responses, the monitoring team understands that incentives such as (i) availability of administrative simplifications for companies with compliance programmes, (ii) penalty mitigation in corruption cases involving companies with compliance programmes, (iii) availability of government sponsored training, advice, coaching and promotion of compliance in companies have not been implemented in Georgia.

Indicator 8.4. There are mechanisms to address concerns of all companies related to corruption and bribe solicitation by public officials

Assessment of compliance

Benchmark 8.4.1.

There is a designated institution responsible for receiving complaints from companies about bribe solicitation by public officials and related corruption-related matters, providing protection or helping businesses to resolve legitimate concerns

The function of Business Ombudsman was established in Georgia to protect the rights and legitimate interests relating to the entrepreneurial activities of persons in Georgia (article 1 of the Law on Business Ombudsman). The powers of the Business Ombudsman are quite broad and include supervising the protection of rights and legitimate interests related to the entrepreneurial activities of persons in Georgia, detecting violations of these rights and legitimate interests by administrative bodies, and facilitating the restoration of violated rights. Based on the wording, it seems that the Business Ombudsman would have authority to receive and resolve complaints about bribe solicitation by public officials and other corruption-related complaints from companies. According to the Business Ombudsman, they do not handle complaints of criminal corruption acts, but instead always refer them to relevant law enforcement agencies. The Business Ombudsman can deal with complaints of other violations of legitimate interests of businesses by actions or omissions on the part of the state or municipal authorities (such as tax, inspections, permits and licencing and other matters).

Benchmark 8.4.2.

There is a wide perception among the main stakeholders that the institution operates independently and impartially without political or other undue interference in its work

The Business Ombudsman is appointed by the Prime Minister of Georgia with the consent of the Chairman of the Parliament of Georgia. According to the law, the Business Ombudsman shall be independent in exercising its powers and any interference or exertion of influence in its activities shall be prohibited.

The monitoring team received limited input from international partners and civil society organisations, and did not receive any input from business organisations on this matter. The stakeholders mentioned that in their perception the function of the Business Ombudsman is not (much) visible. They were furthermore of the opinion that the Business Ombudsman is not independent, given that the Prime Minister appoints the Business Ombudsman. Whether the Business Ombudsman has institutional independence is not relevant for this benchmark. In relation to this benchmark “independently” and “impartially” means that the institution reviews complaints and makes decisions based on their merits, without undue influence of public officials or private interests. The stakeholders did not provide an opinion on whether the Business Ombudsman reviewed and decided on complaints without undue influence of public officials or private interest.

Given the limited input from stakeholders and their different interpretation on independence, the monitoring team does not have sufficient evidence to determine there is a wide perception among stakeholders that the Business Ombudsman does not operate independently and impartially.

Benchmark 8.4.3.

This institution has powers and resources that are sufficient to review individual complaints, to provide protection and help businesses resolve their concerns in another legal way

The Business Ombudsman has authority to (i) request and obtain information or documents from administrative bodies, (ii) enter into agreements with administrative bodies for exchange of information and documentation and regarding issues of cooperation, (iii) submit Amicus Curiae briefs in court cases in Georgia, and others. The Business Ombudsman can also (a) issue individual legal acts and (b) enter into contracts with administrative bodies and natural and legal persons.

According to the information provided by the Office of the Business Ombudsman, in 2020 they received 1,253 complaints, 845 of these have been resolved with a positive outcome. No information or amounts were provided about the monetary compensations or damages paid.

The Office of the Business Ombudsman of Georgia is funded from the budget of Georgia. Its budget in 2020 was GEL 700,000 (approximately EUR 182,823). The organization employs 16 people: Business Ombudsman, 2 deputies Business Ombudsman, 2 lawyers, 4 tax specialists, analyst, business analyst, accountant, office manager, driver, and public relations manager.

The Business Ombudsman stated that they have sufficient human and financial resources to complete the task assigned by the law, but that they would need additional financial and human resources to perform additional functions (for example, anti-corruption work). Non-governmental stakeholders stated that there were not sufficient human and financial resources for the Business Ombudsman to conduct their current work. Also, according to the Government report, one of the measures of the national anti-corruption action plan for 2019-2020 related to Business Ombudsman (elaboration of compliance/integrity guidelines for businesses) was not fulfilled due to the lack of financial and human resources available to the Business Ombudsman (see benchmark 1.3.4. in Performance Area 1).

Benchmark 8.4.4.

This or another institution analyses systemic problems and prepares policy recommendations to the government

This benchmark requires the Business Ombudsman function to conduct in practice a regular analysis of problems that local and international companies complain about in relation to corruption in business environment, identify systemic solutions and prepare recommendations for the government in general or to sectoral ministries.

In their response, the Business Ombudsman reported that they provided 34 policy recommendations in 2020. The Business Ombudsman did not provide evidence of such policy recommendation. The office advised that their recommendations and motions issued fall under the tax secrecy provisions and that the Business Ombudsman shall keep the information acquired while exercising his/her powers confidential. The Business Ombudsman provided examples of legal opinions / recommendations (with English summaries) that did not fall under the above restrictions and referred to the Annual report 2020 for information on recommendations.

These summaries, however, do not seem to be policy recommendations as meant by this benchmark, but advise and recommendations in individual matters for which the complainant requested involvement from

the Business Ombudsman. The same seems to apply in relation to the information in the Annual Report 2020 (this was provided in Georgian and could only partially be informally translated).

During bilateral discussions with the monitoring team, the Business Ombudsman informed that they provide policy recommendations under the benchmark. Afterwards, the Business Ombudsman provided two examples of policy recommendation to the Parliament of Georgia, one was a recommendation about the Georgia Labour Code and the other about the Georgia Consumer Protection Law. The Business Ombudsman also provided three examples of legal conclusions prepared by the Business Ombudsman on draft laws on atmospheric air, investment funds, and audit. However, the policy recommendations and the legal conclusions did not include recommendations for systemic solutions against corruption in the business environment in Georgia, which is a requirement under this benchmark.

Benchmark 8.4.5.

At least half of policy recommendations regarding systemic problems related to business concerns about corruption, bribe solicitation and related matters have been implemented or otherwise properly addressed by the government

According to the responses by the Business Ombudsman, in 2020 recommendations issued by the Business Ombudsman were fully or partially taken into consideration in 70% of completed cases. No evidence of implementation was provided. Furthermore, as stated in 4.4 above, the monitoring team could not establish that the Business Ombudsman issued policy recommendations in the understanding of the monitoring benchmarks.

During bilateral discussions with the monitoring team, the Business Ombudsman informed that they provide policy recommendations under the benchmark. Due to the time limits, this information could not be provided in English and verified.

Indicator 8.5. State fulfils its role of an active and informed owner of SOEs and ensures the integrity of their governance structure and operations

Background

The government identified the following entities as “10 largest SOEs” in the country: JSC Partnership Fund, JSC Georgian Oil and Gas Corporation, JSC Electricity System Commercial Operator, JSC Georgian Railway, JSC Georgian State Electrosystem, Tbilisi Transport Company Ltd., Georgian Gas Transportation Company Ltd., Georgian Post Ltd., United Water Supply Company of Georgia Ltd., Engurhesi Ltd. Each SOE from the list must meet in practice each of the requirements of the benchmarks of this Indicator for compliance.

Assessment of compliance

Benchmark 8.5.1.

Government ensures that supervisory boards in at least 10 largest SOEs are established through a merit-based and transparent nomination process, including a minimum one-third of independent members

No supervisory boards have been established at 5 entities (Electricity System Commercial Operator, Tbilisi Transport Company, Georgian Gas Transportation Company, United Water Supply Company, Georgian Post). Supervisory boards with at least one third of the members being independent have been established only at 2 entities (Georgian Railway, Georgian State Electrosystem), but insufficient information was given to confirm independence of these individuals. From the information provided, 4 entities have supervisory boards, but do not have independent members, have less than one third independent members, or it was not clarified how many independent members they have (Partnership Fund, Georgian Oil and Gas Corporation, Enghurhesi). It is also not clear from the information provided how independence is interpreted in Georgia.

There is no uniform procedure in place for the selection and appointment of members of supervisory boards, each SOE has its own procedure. Based on the information provided, members of supervisory boards are either appointed by the Government or the General Meeting of Shareholders / Partners.

In relation to Georgian Railway, the Government replies mentioned that the Supervisory Board establishes a nomination committee, which recommends to the Supervisory Board candidates for appointments. However, no documentary evidence has been provided on how this process works in practice and whether this process has been followed. No further details are set out in the provided documents or no further information was separately provided on the nomination process and whether it is merit-based and transparent in accordance with the benchmark (that is includes online publication of job requirements, selection of qualified candidates based on merits by a nomination committee).

Benchmark 8.5.2.

Boards of at least 10 largest SOEs established integrated risk management systems that include internal controls, ethics and compliance measures that address SOE integrity and prevention of corruption

The information provided for 10 SOEs shows uneven understanding, design and depth of internal controls addressing anti-corruption and business integrity risks, and the degree to which these are integrated in company risk management systems. Based on the available information, the monitoring team concluded that some SOEs on the list do not have supervisory boards, some SOEs do not seem to have in their bylaws clearly assigned responsibility to supervisory boards, some seem to have dedicated departments (internal audit and compliance) and some seem to have to an extent a risk management system.

The monitoring team was not able to assess comprehensively compliance with this benchmark, because several relevant documents were only provided in Georgian and could not be translated and reviewed. Furthermore, no evidence was provided to show compliance with the benchmark in practice, only several SOEs could be considered compliant with some (but not all) elements of the benchmark.

Benchmark 8.5.3.

CEOs of at least 10 largest SOEs are appointed through a merit-based and transparent nomination process and report to the boards

There is no uniform approach on appointment of CEOs and their reporting lines in 10 SOEs. In most instances, CEOs are appointed by the supervisory boards or general meetings of shareholders / partners and report to them (upon occasion there is a joint reporting line to the supervisory board and the shareholder). The Government replies did not demonstrate that regular and ad hoc reporting by the CEO to the board occurs in 10 SOEs.

No information was provided to establish that the nomination process was merit-based and transparent in accordance with the benchmark in all 10 SOEs. In relation to Georgian Railway, the replies mentioned that a nomination committee is established by the supervisory board, which recommends to the supervisory board candidates for appointments. However, no documentary evidence has been provided on how this process works in practice and whether this process has been followed.

Benchmark 8.5.4.

At least 10 largest SOEs conduct annual external audits in line with international accounting standards

The Law of Georgia on Accounting, Reporting, and Auditing obliges the largest SOEs to carry out a mandatory audit of annual financial statements according to IFRS. External audits in line with IFRS have been conducted for all 10 SOEs designated by the Government. For Georgian Gas Transportation Company and Georgian Railways, authorities provided audited annual accounts for 2020. For the other 8 SOEs, authorities provided audited annual accounts for 2019. Some of the SOEs have the annual accounts published on their website, also for earlier years. The monitoring team assumes that the 2020 external audits are being finalized and that audited annual accounts will be published in the course of 2021.

Benchmark 8.5.5.

The boards of 10 largest SOEs routinely deliberate about and decide on the findings of internal audit committees and external audit reports regarding integrity issues

For this benchmark to be met, it needs to be demonstrated that both internal and external audit reports are considered by each of 10 SOEs. Some SOEs do not have supervisory boards, so no routine deliberations on integrity issues can take place by a supervisory board. Some have mentioned that as the external reports did not identify any integrity issues, no deliberations on the topics have taken place. In any event, none of the SOEs managed to establish by reference to supporting documentary evidence that their supervisory boards routinely review external and internal audit reports and take decisions regarding integrity issues in the company's operation. This benchmark has therefore not been met.

From the written response, it seems that the supervisory board of Georgian Railway may review external and internal audit reports and make decisions regarding integrity issues in relation to the company's operations. It is stated that Georgian Railway produces summary records/minutes of the meetings and other board decisions, but no documents showing this in practice were provided.

Benchmark 8.5.6.

10 largest SOEs disclose at least:

- company objectives and activities carried out in the public interest;
- financial and operating results;
- material transactions with other entities;
- remuneration of board members and key executives.

According to the government, under the Law of Georgia on Accounting, Reporting, and Auditing the annual financial statements of the largest enterprises are published annually on the website of the enterprises and by the Service for Accounting, Reporting and Auditing Service.

However, the Government stated that the below information is not disclosed by the SOEs:

- Company objectives and activities carried out in the public interest;
- Material transactions with other entities.

In relation to remuneration of board members and key executives, some SOEs do not provide such information in their annual financial statements, while some SOEs provide only the total amount of remuneration and some SOEs do not provide remuneration to board members. Information on remuneration of board members who are public officials and represent the Government on the boards is disclosed in asset declarations of such officials. However, the benchmark requires that the actual amount of remuneration of each board member and of each key executive is disclosed.

The Government specified that directors of SOEs must declare their remuneration pursuant to the Law of Georgia on Conflict of Interest and Corruption in Public Institutions (article 2), which information is publicly available in the Online Asset Declaration Electronic System of the Civil Service Bureau (www.declaration.gov.ge). This covers only SOE directors; it does not cover other key executives and board members of SOEs.

9 Enforcement of corruption offences

Proportionate and dissuasive sanctions are routinely applied for corruption offences in Georgia. There are no cases of confiscation of unexplained wealth, foreign bribery, or money laundering with the predicate public sector corruption offence. The statute of limitations, time limits for investigation and immunities do not impede in practice prosecution of corruption offences. Authorities collect detailed enforcement statistics but do not analyse them comprehensively on the central level and publish only limited statistics online.

Indicator 9.1. Liability for corruption offences is effectively enforced

Benchmark 9.1.1. – 9.1.8.

BENCHMARK	GEORGIA 2020	
	Total number of convictions	Per 1 million of population
9.1.1. Track record of enforcement of active and passive bribery offences in the public sector with final convictions	28	7.5
9.1.2. Track record of enforcement of active and passive bribery offences in the private sector with final convictions	7	1.9
9.1.3. Track record of enforcement of offence of offering or promising of a bribe, bribe solicitation or acceptance of offer/promise of a bribe with final convictions	5	1.3
9.1.4. Track record of enforcement of bribery offences with intangible and non-pecuniary undue advantage with final convictions	0	0
9.1.5. Track record of enforcement of trading influence offence with final convictions	2	0.5
9.1.6. Track record of enforcement of illicit enrichment offence with final convictions or a track record of cases of non-criminal confiscation of unexplained wealth	0	0
9.1.7. Track record of enforcement of foreign bribery offence with final convictions	0	0
9.1.8. Track record of enforcement of money laundering sanctioned independently of the predicate public sector corruption offence with final convictions	0	0

Indicator 9.2. Proportionate and dissuasive sanctions for corruption are applied in practice

Benchmark 9.2.1.

Proportionate and dissuasive sanctions are routinely applied for corruption crimes

To be compliant with the benchmark, the country must show not only the routine enforcement of the corruption crimes but also that the sanctions that are applied are proportionate and dissuasive. Even if there is a high track record of sanctions applied, but sanctions as such are not proportionate and dissuasive the country will not be compliant. Previous OECD/ACN monitoring reports on Georgia (3rd and 4th rounds report[71]) found that the minimum sanction of 6-year imprisonment for passive bribery in the public sector was not proportionate. Georgia did not implement the previous recommendation of the OECD/ACN in this regard. Provisions of article 338 of the Criminal Code (bribe-taking) were not amended.

However, the high basic sanction in the Criminal Code is balanced by the practice of plea agreements which was analysed in the previous monitoring reports. The high sanction for passive bribery of public officials encourages defendants to enter into plea agreements with prosecutors. In 2020, the average actual imprisonment term imposed by courts under article 338 CC was 3 years and 4 months. Out of the total 25 convictions under article 338 CC, 88 % were rendered based on plea agreements. The monitoring team has no evidence of the abuse of plea agreements.

Benchmark 9.2.2.

At least 50% of punishments for aggravated bribery offences in the public sector provided for imprisonment without conditional or another type of release

According to the Government, none of the total 28 convictions for active and passive public sector bribery in 2020 involved conditional or another type of release from the prison sentence.

Benchmark 9.2.3.

Public officials convicted of a corruption crime are dismissed from public office in all cases

According to the Government, all public officials convicted for a corruption crime have been dismissed from office, because final conviction for any crime is a ground for dismissal form public office according to the various legislative acts of Georgia regulating different types of officials and public service.

[71] Georgia – Anti-corruption Reforms, Monitoring and progress reports for Georgia since 2014

Benchmark 9.2.4.

General effective regret provisions are not applied to corruption crimes

The Criminal Code of Georgia includes the general defence of effective regret in article 68. According to it, a person who has, for the first time, committed a crime for which the maximum sentence provided for by an article or part of an article of the Special Part of the Code does not exceed three years of imprisonment, may be released from criminal liability, if, after committing the crime, he/she voluntarily appears and admits his/her guilty, assists in the discovery of the crime and indemnifies the damage. Such a wording means that the following corruption offences are covered by the general effective regret: basic abuse of office; basic excess of public office; basic offence of bribe-giving in public sector; active trading in influence; basic offences of bribing a participant or organisation in a professional sports or commercial entertaining competition; active bribery in the private sector.

Benchmark 9.2.5.

Any exemption from bribery offence, if stipulated in the law, is applied by courts taking into account circumstances of the case (i.e. not automatically) and with the following conditions:

- voluntary reporting is valid during a short period of time and before the law enforcement bodies became aware of the crime on their own,
- not possible when bribery was initiated by the bribe-giver,
- requires active co-operation with the investigation or prosecution,
- not possible for bribery of foreign officials

The benchmark deals with the special defence exempting from liability perpetrators of active bribery offences when a person was solicited or extorted (forced under duress) to give a bribe and reported it to law enforcement officials. According to article 339 CC of Georgia, a bribe-giver shall be discharged from criminal liability if he/she has voluntarily declared about it to the authorities conducting criminal proceedings. A decision to discharge a person from criminal liability shall be taken by the authorities conducting criminal proceedings. Similar provisions are included for active bribery in the commercial sector and active trading in influence. According to the Georgian authorities, voluntary reporting means that the person should not know that there is an ongoing investigation, and that the person should cooperate with the authorities to be discharged on this ground.

Provisions of the Criminal Code do not explicitly mention all the elements required by the benchmark. There are also no relevant prosecutorial guidelines as confirmed by the authorities. The only element that is explicitly mentioned in the Criminal Code is the non-automatic nature of application of exemption. In Georgian case, decision to apply the exemption is made by "the authorities conducting criminal proceedings." This term is not defined in the Criminal Code or Criminal Procedure Code. According to the Georgian authorities, it means that a prosecutor is competent to apply the exemption when the respective criminal case has not been yet submitted to the court, while the court is competent to apply it when the case is at the trial stage. Even with such an understanding, the system does not fully comply with the benchmark, because the prosecutor (and not the court, as required in the benchmark) decides on the exemption at the pre-trial stage and there is no procedure to verify and confirm this decision by court at later stages.

It appears that from the mandatory elements mentioned in the benchmark, the following elements are missing in the law of Georgia or are covered only partially: application of the defence only by court; report should be made during short time after bribe-giving; discharge should not be possible when bribery was initiated by the bribe-giver; prohibition to apply exemption in case of bribery of foreign public officials.

Indicator 9.3. The statute of limitations period and immunities do not impede effective investigation and prosecution of corruption

Benchmark 9.3.1.

The statute of limitations period and time limit for conducting an investigation, if they exist, are sufficient for the effective enforcement of corruption offences. The law suspends the statute of limitations in certain cases, in particular during the period when the person had immunity from prosecution

According to the Georgian Criminal Code, most corruption offences have an extended statute of limitation of fifteen years, unless the offence is a particularly serious crime which attracts the limitation period of 30 years. The statute of limitations is calculated from the day when the crime is committed up to the day when charges are brought against the person. The statute of limitations is suspended if the offender has absconded and for the period during which the person is protected by immunity. No prosecution of corruption crime was terminated because of the expired statute of limitations in 2020.

The Georgian authorities state that considering the considerable length of time limits for investigation and prosecution of corruption offences, the rules for their interruption, as well as the relevant practice, the existing time limits are sufficient for the effective enforcement of corruption offences. According to article 103 of the Criminal Procedure Code (CPC), investigation shall be conducted within a reasonable time, but not exceeding the statute of limitations for prosecution. The previous OECD/ACN monitoring reports raised the issue of the time limit of 9 months following indictment before the court hearings start (article 169.8 CPC). However, it appears that the time limit does not represent a problem in practice, no case was discontinued due to its lapse and, according to the Georgian authorities, after indictment cases are usually sent to court within 2 months.

Benchmark 9.3.2.

Immunities do not impede the effective investigation and prosecution of corruption crimes committed by persons with immunity, in particular, immunities are lifted based on clear criteria and transparent procedures without undue delay

According to the Georgian authorities, in the past 3 years there were no cases when it was required to lift immunity in corruption cases. Authorities state that immunities do not represent any practical problems for investigation or prosecution of corruption cases.

While there is no evidence that immunities have represented a problem for prosecution of corruption in practice so far, the benchmark also requires formal compliance, namely that there are clear criteria and transparent procedures for lifting immunities. Without such criteria and procedures problems with prosecution may appear in future. “Clear criteria” mean the criteria that are not ambiguous and excessively broad to allow unlimited discretion of the decision-making body. “Transparent procedures” mean that the law regulates main steps in the process of lifting immunity and provides for publication of information about

the outcomes of different steps and its final outcome. The following persons have immunity from criminal prosecution and/or arrest: Auditor General, Public Defender, State Inspector, Judges of Common Court and Judges of the Constitutional Court, Members of Parliament.[72]

The authorities provided information on the procedures for lifting immunity for the State Inspector and judges of common courts. Concerning the State Inspector, the parliament's Rules of Procedure (Article 181) stipulate the respective procedure for lifting immunity, including consideration by the Committee on Procedural Issues and Rules, which drafts a written conclusion reviewed by the Parliament's Bureau and then included for discussion and voting at the Parliament's nearest plenary sitting. These rules provide for some transparency of the process but do not include criteria for deciding on the request to lift immunity.

Concerning the common court judges, relevant procedures are stipulated in the Organic Law on Common Judges (consent to lift immunity should be given by 2/3 majority of the High Council of Justice, as any other HCJ decision decree on lifting immunity should include justification and should be published online). There are no other rules in the law to ensure transparency of the process (in particular, deadline for reviewing application to lift immunity, procedure for its discussion, participation of the requesting authority, openness of the discussion). The law also does not provide for clear criteria for lifting immunity.

The authorities did not provide information on procedures for lifting immunities of other relevant officials.

Indicator 9.4. Enforcement statistics on corruption offences is used for analysis and available for the public

Benchmark 9.4.1.

The authorities, on a central level, collect and analyse enforcement statistics on corruption offences, including the number of cases opened, cases terminated, sent to court, ended with a final conviction, types of punishments applied, type of officials sanctioned

Georgian authorities collect enforcement statistics on corruption offences, including the number of cases opened, cases terminated, sent to court, ended with a final conviction, types of punishments applied and type of officials sanctioned.

The benchmark also requires that the national authorities conduct a regular analysis of such enforcement statistics. Authorities referred to the annual report of the Prosecutor General, which however does not include an analysis of enforcement statistics on corruption crimes, except for money laundering crime. The State Security Service of Georgia described the analysis it conducts regarding its own enforcement actions. While such an analysis by the State Security Service is welcome, it concerns only activities of the Service and is not done on a central level taking into account enforcement statistics of all enforcement agencies and all corruption cases.

The Government referred to the anti-corruption strategy and action plan adopted in 2019 which according to the Government were based on the analysis of statistical data collected by PSG. Also, the Money Laundering and Terrorism Financing National Risk Analysis conducted in 2019 analysed statistical data and assessed the corruption risk level in the country as a low and the risk of money laundering stemming from corruption as a medium-low. The Report of the Prosecutor General of Georgia included sections about fighting corruption and money laundering, which are drafted based on the statistical analysis. The

[72] Istanbul Anti-Corruption Action Plan 4th Round of Monitoring (2016), "Anti-corruption reforms in Georgia" pages 100-102

monitoring team notes, however, that it saw no evidence that corruption crime statistics analysis was documented and was used for drafting the national strategy and action plan; the policy documents do not refer to such analysis either. Certain analysis was conducted for the national risk assessment. In the opinion of the monitoring team, both documents are from 2019 and no similar analysis was conducted in 2020 or later.

As to the Prosecutor General's report, as was noted above, it includes limited statistics on corruption offences (how many investigations were started, criminal prosecutions initiated, judgments delivered) but it does not cover cases investigated by other agencies and contains no analysis[73]. The 2020 report includes limited analysis on money laundering (p. 29), noting the frequent use of legal entities, but this analysis is limited to one corruption offence out of many.

Benchmark 9.4.2.

Detailed enforcement statistics on corruption offences is regularly published online

Information provided by the Georgian authorities does not show that detailed enforcement statistics on corruption offences is regularly published online. Most information provided concerns announcement of individual cases. The annual report of the Prosecutor General has basic numbers about total number of cases investigated and prosecuted by the PSG and the number of convictions, but no further details. The SSSG annual report contains information and statistics on investigations and prosecutions, including description of certain individual cases.

[73] The prosecution service of Georgia (2020), "Prosecutor General's Report" p.32

10 Enforcement of liability of legal persons

The law of Georgia, in general, provides an effective framework of liability of legal persons, including its autonomous nature and broad scope. Monetary sanctions are proportionate and dissuasive. There is no due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions. The main problem lies with enforcement of corporate liability, which is non-existent for corruption crimes.

Indicator 10.1. The law provides for an effective standard of liability of legal persons

Assessment of compliance

Benchmark 10.1.1.

Liability of legal persons for corruption offences is established in the law

According to article 107-2 of the Criminal Code, legal persons are criminally liable only if it is defined by an appropriate article of the Code. Sanctions to legal persons apply for the following offences: vote buying, active bribery in the public sector, active and passive bribery in the commercial sector, money laundering, active and passive trading in influence. Corporate liability provisions cover all corruption offences that could reasonably be applied to legal entities.

Benchmark 10.1.2.

Actions of lower-level employees, agents, third parties or beneficial owners (controllers) of the legal entity may trigger corporate liability

Corporate liability in Georgia is triggered by actions of a responsible person who is defined as “a person responsible for the management and representation of the legal person and for making decisions on behalf of the legal person, and/or a member of the supervisory, monitoring or audit body of the legal person”. According to the explanation of the authorities, two elements (“responsible for the management and representation of the legal person” and “responsible for … making decisions on behalf of the legal person”) are applied alternatively, not in combination. It can be a director, an individual who represents entity based on a power of attorney or by authority defined in the entity’s charter. Authorities state that investigation can

establish that the person had a de facto authority to represent the legal entity, even not being its director or without a power of attorney.

This interpretation, however, is not confirmed in the official guidelines issued by the Prosecutor's Office in 2018. The guidelines refer to the following types of responsible person: 1) A person with management or representative powers; 2) A person with decision-making powers; 3) A member of supervisory, monitoring or audit body. According to the guidelines each type is linked to the official status (for example, a director or partner), official authorization (representative powers determined by the statute of the entity, under the labour contract or by issuing the power of attorney) or position ("A person with decision-making powers may be any person connected to the legal person, who, at the same time, is not a person with management or representative powers, although due to his/her occupied position, his/her powers include making decisions").

Liability also applies when, due to the improper performance of supervision and monitoring by the responsible person, a natural person under the subordination of the legal person was able to commit the crime in favour of the legal person.

Authorities provided an example of a money laundering case where sanctions were applied to a legal person for it was used to launder proceeds of fraud committed by company's beneficial owner.

In view of the real case example and autonomous nature of corporate liability in Georgia (where natural perpetrator may not be identified), as well as based on the explanation provided by the authorities during onsite visit, the monitoring team considers elements of the benchmark to be covered. It recommends authorities to extend the official guidelines on the corporate liability and explicitly stipulate that actions of third parties and agents acting without a formal authorisation, as well as actions of the company's beneficial owner may trigger liability of legal person.

Benchmark 10.1.3.

Liability of legal persons is autonomous, i.e. not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted or convicted

According to the Criminal Code of Georgia (article 107-1), a legal person is criminally liable for a crime provided for by the Code and committed on behalf of or through and/or in favour of the legal person, by the responsible person or due to lack of supervision by the responsible person. A legal person is also criminally liable when the crime has been committed on behalf of or through and/or in favour of the legal person, regardless of whether the identity of the natural person who committed the crime has been established. Releasing the responsible person from criminal liability does not serve as grounds for releasing the legal person from criminal liability. These provisions are the only explicit references to the autonomous nature of the corporate liability. There are special (albeit minimum in scope) rules of criminal procedure applicable to legal persons in the Criminal Procedure Code (Chapter XXIX); for other issues not covered in the special chapter, general rules apply.

Official PGO guidelines on corporate liability state that identification of the responsible person (an offender) is not necessary and the issue of liability of a legal person shall be raised even if the direct offender is not identified, although the fact of commission of crime is evident: (a) on behalf of a legal person; (b) through the legal person; (c) in favour of a legal person. As noted in the guidelines, this provision gives a certain advantage to law enforcement officers to initiate the liability of a legal person without identifying a natural person who committed a crime. It motivates legal persons to collaborate with investigation to identify a natural person.

During the onsite visit, authorities stated that there is no need of prior conviction of the perpetrator for the corporate liability to follow, although there are no practical examples of such cases or cases of prosecution of a legal person when the individual perpetrator was not identified. Authorities also confirmed that proceedings against the legal person can be separate or the same proceedings as for the natural perpetrator. The monitoring team notes this information and lack of negative examples.

Indicator 10.2. Sanctions for legal persons are proportionate and dissuasive

Assessment of compliance

Benchmark 10.2.1.

The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including monetary fines proportionate to the amount of the undue benefit

The applicable sanctions for the corporate liability are liquidation, deprivation of the right to pursue an activity, fine and confiscation. Liquidation and deprivation of the right to carry out activities may be imposed only as the main punishment. A fine may be imposed both as the main and supplementary punishment. Confiscation of property may be imposed only as a supplementary punishment. Sanctions for specific offences are set in the respective articles of the Criminal Code. The minimum amount of corporate fine is 50-fold amount of a fine applicable to the natural person (that is 500 or 2,000 GEL depending on the sanction of the offences, or about 125 and 500 EUR). There is no maximum limit for the corporate fine. The amount of fine is determined by the court taking into consideration the gravity of the crime, benefit obtained from the crime and the material status of the legal person, which is defined by its property, income, and other circumstances. Confiscation covers instrumentalities and proceeds of the crime.

Monetary sanctions can be considered proportionate and dissuasive considering that there is no upper limit for the fine, that the amount of obtained benefits and other circumstances are taken into account and that confiscation of criminal proceeds applies to legal entities.

Benchmark 10.2.2.

Non-monetary sanctions (measures) apply to legal persons (e.g. debarment from public procurement, revocation of a license)

According to the Criminal Code, deprivation of the right to carry out activities means prohibiting a legal person from carrying out one or several types of activities indefinitely or for a term of one to ten years. Deprivation of the right may apply to the activities during or regarding the performance of which the crime was committed. Georgian authorities provided the following examples of activities that can be prohibited: the right to carry out mining activities; importing of goods; perform certain licensed activity; carry out construction or other type of business. Even though such additional measures are limited only to the temporary ban on conducting certain activities, the monitoring team considers it sufficient.

Benchmark 10.2.3.

The law establishes sentencing principles specially designed for legal persons

The Criminal Code of Georgia stipulates that the amount of corporate fine is determined by the court taking into consideration the gravity of the crime, the benefit obtained from the crime and the material status of the legal person, which is defined by its property, income, and other circumstances. There are no other material or procedural provisions on sentencing specifically designated for legal entities.

Government replies to the questionnaire also state: "The nature and graveness of a criminal conduct, amount of inflicted damages, previous criminal records, main activity and capacity of a legal entity, level of internal control and compliance as well the quality of cooperation with LEAs are the factors taken into account during the sanctioning of legal entities."

Even though these provisions are quite basic and could be further elaborated to provide more specific aggravating or mitigating circumstances relevant for legal entities, the monitoring team considers it sufficient for compliance.

Indicator 10.3. Due diligence (compliance) defence is in place

Assessment of compliance

Benchmark 10.3.1.

The law allows due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions

The Criminal Code of Georgia does not provide for the possibility of due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions. The Criminal Code (Article 53 which, according to the authorities, applies both to natural offenders and legal persons) mentions that during the imposition of sanction, the court takes into account mitigating and aggravating circumstances pertaining to the criminal responsibility of offender, which among other factors includes motive, nature and scope of violation, type of conduct and its results. This provision is insufficient as it does not explicitly refer to the defence of due diligence (anti-corruption compliance) that can be applied to legal persons and there are no other materials (for example, court case-law, authoritative explanation of the Supreme Court) that show that due diligence defence is included.

Benchmark 10.3.2.

The law allows the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court

The Criminal Code of Georgia does not allow the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court.

Indicator 10.4. Statute of limitations period and investigation time limits do not impede effective corporate liability

Assessment of compliance

Benchmark 10.4.1.

The statute of limitations period and time limit for conducting an investigation, if exist, are sufficient for the effective enforcement of corporate liability

Statute of limitations and time limits for conducting investigation against a legal person are the same as for the natural person. See analysis of compliance under Performance Area 9.

Indicator 10.5. Liability of legal persons is enforced in practice

Assessment of compliance

Benchmark 10.5.1. – 10.5.5.

BENCHMARK	GEORGIA 2020	
	Total number of convictions	Per 1 million of population
10.5.1. Track record of corporate sanctions applied for corruption offences	0	0
10.5.2. Track record of proportionate and dissuasive sanctions imposed on legal persons, including monetary fines	0	0
10.5.3. Track record of confiscation of direct and indirect corruption proceeds, value-based confiscation applied to legal persons	0	0
10.5.4. Track record of due diligence (compliance) applied in practice as a defence or a mitigating factor	0	0
10.5.5. Track record of non-monetary sanctions applied to legal persons	0	0

Indicator 10.6. Enforcement statistics on corporate liability is used for analysis and available for the public

Assessment of compliance

Benchmark 10.6.1.

Authorities collect, analyse and regularly publish online detailed statistics on detection, investigation, prosecution, trial and sanctions applied to legal persons

Statistics is collected but detailed statistics is not published online. The annual report of the Prosecutor General mentioned that criminal prosecution was initiated against 2 legal entities, which cannot be considered detailed statistics. Also, in their replies to the pilot monitoring questionnaire, the authorities indicated that 27 cases were opened against legal persons for corruption offences in 2020, 0 cases were terminated, 1 case was sent to court and 0 cases of sanctions against legal persons. According to the information available to the monitoring team, these statistics were not published online.

The example of analysis provided by the authorities (also from the annual report of the Prosecutor General) is based on the money laundering risk analysis and not analysis of detailed statistics on detection, investigation, prosecution, trial, and sanctions applied to legal persons. The analysis was, therefore, limited to the use of legal entities in money laundering, one of the corruption offences out of many.

Box 10.1. Corporate liability for corruption

Corporate liability in Georgia is triggered by actions of a company's responsible person who is defined as "a person responsible for the management and representation of the legal person and for making decisions on behalf of the legal person, and/or a member of the supervisory, monitoring or audit body of the legal person". Authorities state that investigation can establish that the person had a de facto authority to represent the legal entity, even not being its director or not having a power of attorney. Liability also applies when, due to the improper performance of supervision and monitoring by the responsible person, a natural person under the subordination of the legal person was able to commit the crime in favour of the legal person. Authorities provided an example of a money laundering case where sanctions were applied to a legal person for it was used to launder proceeds of fraud committed by the company's beneficial owner.

A legal person is criminally liable when the crime has been committed on behalf of or through and/or in favour of the legal person, regardless of whether the identity of the natural person who committed the crime has been established. Official PGO guidelines on corporate liability state that identification of the responsible person (an offender) is not necessary and the issue of liability of a legal person shall be raised even if the direct offender is not identified, although the fact of commission of crime is evident: (a) on behalf of a legal person; (b) through the legal person; (c) in favour of a legal person.

11 Recovery and management of corruption proceeds

Georgia conducts proactive financial investigations into corruption crimes. There are no specialised practitioners or bodies for the management of seized and confiscated assets. In practice, identification and tracing of corruption proceeds are effective. Authorities have direct access to different sources of information (except for information on securities) and use mechanisms to obtain bank data without obstacles. Active and secure exchange of information among financial intelligence unit, investigative and prosecutorial bodies is ensured in practice. Seizure and confiscation are routinely applied to the corruption crime instrumentalities and proceeds. However, there are no cases or a very low number of cases of more complicated confiscation measures (indirect proceeds, value-based confiscation, mixed proceeds, non-conviction based or extended confiscation). No assets were recovered from abroad in the past three years. Comprehensive statistics on the application of seizure and confiscation measures in corruption cases is not available and is not sufficiently analysed and published online.

Indicator 11.1. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Assessment of compliance

Benchmark 11.1.1.

Dedicated bodies, units or groups of specialised officials dealing with identification, tracing and return of corruption proceeds (asset recovery practitioners), as well as with the management of seized and confiscated assets in corruption cases are established and function in practice

"Dedicated bodies, units or groups" mean an agency or a unit or a group of officials that has a clearly established mandate and responsibility to: 1) identify, trace, and organise return of corruption proceeds (asset recovery function); and 2) organise management of seized and confiscated assets in corruption (asset management function). The law may decentralise the asset recovery and asset management functions to several agencies/units/groups of officials. If each of the functions is assigned to an agency that has responsibilities beyond asset recovery (for example, a law enforcement or prosecutorial body) or asset management (for example, a state property agency, enforcement service, law enforcement or prosecutorial body) the asset recovery and asset management functions within such agency (ies) should be assigned to a dedicated unit or group of officials. "Specialised officials" means that relevant officials deal exclusively with asset recovery and/or asset management in criminal cases and do not perform other

duties. If one of the functions mentioned in the benchmark (identification, tracing, return of corruption proceeds, and management of seized and confiscated assets in corruption cases) is not clearly covered by mandate of any agency, unit or specialised staff both in law and in practice, the country will not be compliant with the benchmark.

According to the Government, the Prosecution Service of Georgia (PSG) and the State Secret Service of Georgia (SSSG) Anti-Corruption Agency are responsible for identification, tracing and return of corruption proceeds. They have specialised anti-corruption investigators and prosecutors with proper expertise in financial investigations and asset tracing. These investigators and prosecutors are assisted by financial and IT experts. According to the 2015 regulations, in all investigations of proceed-generating crimes investigators and prosecutors are obliged to conduct parallel financial investigation and trace crime proceeds using all available sources of information.

According to additional information provided by the SSSG, Analytical Division of its Anti-Corruption Agency included 4 analysts whose sole function is the monitoring of various databases to identify and trace criminal assets. The monitoring team had no possibility to verify whether these persons can be considered asset recovery practitioners (in particular, whether they do not perform other functions, whether they participate in recovery of assets) but it appears that at least as regards the identification and tracing of assets they can qualify for this assessment.

According to the PSG, two analysts employed in the Anti-Corruption Unit perform no other functions but identification and tracing of criminal assets. The monitoring team had no possibility to verify it.

There are also no dedicated bodies, units, or groups of specialized practitioners for asset management. For seized and frozen assets, such functions are performed by investigators and prosecutors who deal with the relevant cases. For confiscated assets, the management function is assigned to the National Agency of State Property, for assets confiscated based on MLA request – to the National Bureau of Enforcement under the Ministry of Justice. There is no specialization of asset management of corruption or other criminal assets within these institutions (see relevant definition in the first paragraph).

Indicator 11.2. Identification and tracing of corruption proceeds are effective

Assessment of compliance

Benchmark 11.2.1.

Investigative bodies and asset recovery practitioners use direct access to state databases for corruption investigations and recovery of proceeds of corruption

According to the Government replies, anti-corruption investigative bodies have direct access to all databases that are necessary for investigation of corruption offences and asset recovery, including databases (registers) of credit records, asset declarations of public officials, legal entities, real estate, criminal records, vehicle registration, personal ID, border crossings, tax. For all databases that are not public, PGO and SSSG have direct access where authorized officials use their credentials to login and obtain access to data.

Benchmark 11.2.2.

Investigative bodies and asset recovery practitioners use direct access to financial information, including a central registry of bank accounts, and mechanisms to overcome bank secrecy for corruption investigations and recovery of proceeds of corruption

Access to bank, financial or commercial records is obtained though search and seizure carried out in the respective institutions keeping these records within criminal proceedings based on a court order upon prosecution's motion. Ordinary prosecutors without prior approval of the hierarchy can submit a request to court for access. According to the authorities, in 2020 there were no cases when access to bank data was denied.

There is also a procedure for monitoring the bank accounts according to the Criminal Procedure Code where a prosecutor with the approval of the Prosecutor General or Deputy Prosecutor General is authorized to submit a motion to a court according to the investigative jurisdiction to issue a decision on monitoring of bank accounts. Based on the court decision the bank is obliged to cooperate with investigation and to provide to it an information concerning transactions on one or more bank accounts. There is no central register of bank accounts in Georgia.

For the money laundering investigations, the Prosecutor General, Head of the State Security Service, Minister of Internal Affairs and their authorised deputies are entitled to address the Financial Monitoring Service of Georgia (FMS) with the grounded request to provide confidential information (documents) under its possession. The FMS is authorised to provide this information. However, for investigation of corruption crimes (not money laundering), investigating authorities must obtain a prior court order based on probable cause to request financial intelligence from FMS. FMS may provide financial information proactively.

Information on securities, including on shares in private joint stock companies, is contained in the non-public database to access which investigators must obtain a prior court authorisation. According to the authorities, court authorisation is not required to access customs and tax data. According to the benchmark, access that requires prior authorization is not considered direct.

Benchmark 11.2.3.

Active and secure exchange of information among asset recovery practitioners, financial intelligence units, investigative and prosecutorial bodies is ensured in practice

Active exchange of information means that there are established operational instruments of information sharing, which are systematically and regularly applied in practice. Exchange of information only on an occasional basis would not be sufficient to meet the benchmark. Multi-disciplinary groups or task forces, joint online communication platforms, regular joint meetings, joint investigative teams are among possible examples of tools of active inter-agency cooperation and information exchange. Secure exchange of information means that information sharing takes place through reliable channels or mechanisms with appropriate protections and safeguards that prevent unauthorized access and tampering.

In Georgia, the investigative and prosecutorial bodies and asset recovery practitioners are the same individuals. According to the authorities, there is almost daily communication between the investigators and prosecutors, while the FMS staff is available for consultation whenever it is necessary for detection and investigation of crime. AML/CFT Law of Georgia sets the legal basis for cooperation of the FIU and law enforcement authorities within their competence by exchanging information and experience for the

purpose of facilitating the suppression of money laundering and terrorism financing. The Law authorises the FIU to receive any confidential information from law enforcement authorities, and law enforcement authorities have the power to request the information from FIU in circumstances defined under the law. Such requests can be submitted directly in money laundering cases, and after a court order for other corruption crimes (following MONEYVAL recommendation, Georgia plans to extend direct access to other predicate offences). The PSG and the SSSG Anti-Corruption Agency mainly use Electronic Criminal Case Management System, document management software, secure phone communication and in-person meetings for the exchange of information, which ensures the proper security of communication.

The monitoring team notes the MONEYVAL recommendation to make greater use of interagency teams (especially involving tax and customs investigators) – see benchmark 11.1.1.

Benchmark 11.2.4.

BENCHMARK	GEORGIA 2020	
	Total number of cases	Per 1 million of population
11.2.4. Track record of the use of parallel financial investigations conducted with the involvement of financial analysts or financial investigators and other relevant experts	455	123

Benchmark 11.2.5.

Requests of foreign jurisdictions for the identification tracing, seizure, other restraints or confiscation orders concerning assets in corruption cases, if received, are executed without delay

According to the Government, in 2020, Georgia received two incoming requests mentioned in the benchmark. One request could not be executed as insufficient details were provided. Consultations were ongoing with the requesting state in respect of the second request to seek supplemental information. The monitoring team has no evidence that foreign requests are executed with delay.

Benchmark 11.2.6.

Requests to foreign jurisdictions for asset identification, tracing, seizure or confiscation in corruption cases (including non-conviction based forfeiture, if available) are made without delay

According to the Government, in 2020, one outgoing request was sent to a foreign jurisdiction for legal assistance in corruption cases for the identification, tracing, seizure, other restraints or execution of confiscation orders. In addition, 14 requests for asset tracing were sent to foreign asset recovery offices. The monitoring team has no evidence that outgoing requests were made with delay.

Indicator 11.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Benchmark 11.3.1.

Provisional measures are routinely applied to prevent the dissipation of assets

According to the Government, in 2020, freezing and seizure were applied 56 times to assets in corruption cases (mostly money laundering) with the total estimate value of EUR 22,605,000.

Benchmark 11.3.2.

Confiscation of instrumentalities and proceeds of corruption offences is routinely applied and executed

According to the Government, in 2020, the total estimated value of assets actually confiscated in corruption 4 cases equalled to EUR 380,260 (100% of total assets that had to be confiscated).

Benchmark 11.3.3. – 11.3.8.

BENCHMARK	GEORGIA 2020	
	Total number of cases	Per 1 million of population
11.3.3. Track record of confiscation of derivative (indirect) proceeds of corruption offences	0	0
11.3.4. Track record of confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	0	0
11.3.5. Track record of confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	1	0.3
11.3.6. Track record of confiscation of mixed proceeds of corruption offences and profits therefrom	0	0
11.3.7. Track record of non-conviction based confiscation of instrumentalities and proceeds of corruption offences	0	0
11.3.8. Track record of extended confiscation in criminal cases	0	0

Indicator 11.4. The return and further effective and transparent disposition of the corruption proceeds is ensured

Assessment of compliance

Benchmark 11.4.1.

BENCHMARK	GEORGIA 2020	
	Total number of convictions	Per 1 million of population
10.4.1. Track record of the return of corruption proceeds from abroad	0	0

Benchmark 11.4.2.

There is a wide perception among the main stakeholders that the transparent and effective use, administration and monitoring of returned proceeds is ensured, and their disposition does not benefit persons involved in the commission of the respective corruption offence

In 2018-2020, there were no cases of returned assets from abroad. However, 10 requests were sent and are pending (all in money laundering cases for the total amount of about 5 million USD). There were no cases and no basis for stakeholder perception (absence of cases is also evaluated under benchmark 11.4.1.).

Indicator 11.5. Management of seized or frozen assets is cost-efficient and transparent

Assessment of compliance

Benchmark 11.5.1.

Regular audit of the management of assets subject to provisional measures and confiscated assets in corruption cases, including on its cost-efficiency, is conducted by external independent auditors and its results are publicly available

The monitoring team has no information on the audit of management of assets subject to provisional measures and confiscated assets in corruption cases by external independent auditors with the results of such an audit made publicly available.

Benchmark 11.5.2.

Where possible, contracting of private sector actors as asset managers and disposal of seized or confiscated assets is conducted on a competitive and transparent basis

Outstanding issues

Involvement of private actors in management of confiscated assets, as well as disposal of seized assets, is not organised on a competitive and transparent basis.

It appears that only disposal of confiscated assets is conducted on a competitive and transparent basis through electronic auctions organised by the National Agency of State Property (NASP). NASP may engage private actors to manage certain types of property but not on a competitive basis. The preservation of seized property is organised by investigators; bulky assets that are too expensive to store may be transferred to owner for custody; investigators avoid seizing perishable assets in practice. Private contractors are not engaged in management. The legislation does not allow disposing of seized property before final confiscation order. In Georgia, private actors are not engaged in management of seized assets.

Saying “when possible” the benchmark acknowledges that due to specific features of some assets, their management by private asset managers or their sell or disposal on a competitive basis may not be objectively possible. If the legislation does not provide for engagement of private asset managers or require the use of competitive procedure, it does not mean that it is not possible objectively.

Benchmark 11.5.3.

A database of assets in corruption cases placed under the management of the state, which contains data on location, value, and other relevant information about the respective assets, is maintained and published online

The National Agency of State Property maintains a unified database for the registration of any state-owned assets (including assets owned by the state as a result of confiscation in corruption cases), which is regularly updated. The database is intended for the efficient implementation of the property management process for internal use and is not published online. Georgia is not compliance because the existing database is limited only to confiscated assets and is not published online.

Indicator 11.6. Data on asset recovery and asset management in corruption cases is collected, analysed and published

Assessment of compliance

Benchmark 11.6.1.

Comprehensive statistics on the application of seizure and confiscation measures in corruption cases is collected, analysed and regularly published online

Government referred to the public annual report of the Prosecutor General which contains statistics on seizure and confiscation. However, such statistics concerns only money laundering offence and is limited in scope. No data on seizure and confiscation in other corruption offences is included in the report.

Comprehensive statistics should be collected on a central level and include at least the following data for the previous year: A. Number of final (entered into force) seizure, freezing of other restraint orders in corruption cases and the total estimated value of assets they concern; B. Number of final (entered into force) confiscation orders in corruption cases and the total estimated value of assets they concern; C. Number of confiscation orders in corruption cases actually executed and the total estimated value of confiscated assets; D. Number of different types of disposal methods used for confiscated assets in corruption cases and the value of disposed assets.

According to the authorities, PSG regularly collects and analyses statistics on application of seizure and confiscation measures. For instance, the findings of such analysis were used for developing the Money Laundering and Terrorism Financing National Risk Assessment and drafting the Report of the Prosecutor General. The monitoring team did not see examples of such an analysis. In view of the monitoring team, comprehensive statistical analysis on the application of seizure and confiscation measures in corruption cases has not been carried out.

Benchmark 11.6.2.

Regular, at least annual, reports containing detailed statistics related to the work of officials dealing with identification and tracing of corruption proceeds, as well as with the management of assets subject to restraining measures and confiscated assets, including information on the outcomes of their work, are published online

Government referred to the annual public report of the Prosecutor General, which, however, concerns only money laundering and does not contain information required in the benchmark.

The benchmark requires asset recovery and asset management units to at least annually report to the general public about their activities. The requested reports should contain at least the following data for the previous year: A. Statistics on the number and estimated value of traced and identified illicit assets in corruption cases; B. Statistics on international cooperation in the area of asset recovery in corruption cases, including number, types and value of assets returned to and from foreign jurisdictions; C. Statistics on the number, types and value of assets seized, frozen or restrained in a different way, and confiscated in corruption cases; D. Information about how all confiscated and returned assets in corruption cases were disposed; E. Financial data about budget incomes and expenditures related to the recovery and management of illicit assets in corruption cases; F. Capacities (staff, budget, office, etc.) of the asset recovery and management bodies, units or groups of practitioners; G. Key achievements and obstacles in the areas of asset recovery and management.

12 Investigation and prosecution of high-level corruption

According to certain domestic and external non-governmental organisations, high-level corruption remains a key problem for Georgia. In their view, it is not investigated, prosecuted, and adjudicated independently and impartially without political or other undue interference. The Georgian authorities do not share this opinion. According to them, this position is based on the analysis of the relevant factors, including crime statistics, results of the recent public perception surveys about corruption and established trend of increasing the public trust towards the Prosecutor's Office. FIU referrals and asset declarations were not used to detect high-level corruption cases in 2020. Certain NGOs made numerous public allegations of high-level corruption cases; according to the authorities, several of them are under initial review or criminal investigation started immediately after information became public, while other allegations were checked and did not show signs of crime and investigation was not started. The progress of investigation in high-level corruption cases and decisions on the conclusion of investigations or not to open an investigation in such cases are not routinely communicated to the public.

Indicator 12.1. Fight against high-level corruption is given a high priority

Background

"High-level corruption", according to the pilot monitoring indicators, means corruption offences, which meet both of the following criteria:

- involve in any capacity punishable by criminal law (e.g. as masterminds, perpetrators, abettors or accessories) the high-level officials;
- Involve substantial benefits for the officials or their family members or other persons (e.g. legal persons they own or control, political parties they belong to) and/or significant damage to public interests.[74] "High-level officials" are the following appointed or elected officials: the President, members of Parliament, members of Government and their deputies, heads of executive and other central public authorities and their deputies, the staff of private offices of political officials, governors, mayors of country's capital and regional capital cities, judges, prosecutors, top managers and executive and supervisory board members of the 10 biggest SOEs in the country, any other officials defined as politically exposed persons under the national law.

In Georgia, the following national officials are defined as politically exposed persons:

[74] For the purposes of performance indicators, a substantial benefit or significant damage, if they are of a pecuniary nature, shall mean any such benefit or damage that is equal or exceeds the amount of 3,000 monthly statutory minimum wage fixed in the respective country.

- a head of a state, a head of government, a member of government (minister), deputy minister, a head of a state institution;
- a member of a legislative body (parliament);
- a member of a Supreme Court, a Constitutional Court, or other court of the highest instance;
- a general auditor, a deputy general auditor, a member of a Court of Auditors;
- a member of a national (central) bank;
- an ambassador, or a head of a diplomatic representation;
- a chief officer of defence (military) forces;
- a head of an enterprise operating with the participatory interest of a state, or a member of the management body thereof.

Assessment of compliance

Benchmark 12.1.1.

Convictions in high-level corruption cases are among key criteria for the assessment of the effectiveness of anti-corruption policy

The latest anti-corruption policy documents of Georgia (strategy and action plan for 2019-2020) did not include convictions in high-level corruption cases among criteria for assessing the policy's effectiveness.

Indicator 12.2. Criminal statistics on high-level corruption is published analysed and used in updating policy

Assessment of compliance

Benchmark 12.2.1.

Detailed statistics on the detection, investigation, prosecution and adjudication of high-level corruption is regularly published online and used to change policy or practice if necessary

Government referred to the annual reports by the Prosecutor General and State Security Service of Georgia. They, however, include only general information about investigation of corruption and does not provide detailed statistics on the detection, investigation, prosecution, and adjudication of high-level corruption as required in the benchmark.

As to the use of statistics to change policy or practice, the authorities stated that results of the analysis of the statistical data collected by the PSG were used when developing the anti-corruption strategy adopted in 2019. However, the monitoring team was not provided with the text of such analysis and the strategy itself does not refer to such an analysis. There is also no proof that such analysis was discussed at the meetings of the Anti-Corruption Council. The monitoring team therefore concludes that there is no evidence that the statistics on high-level corruption was used to change policy or practice. This information also concerns 2019 and not the evaluated period of 2020.

The authorities also referred to the 2019 Money Laundering and Terrorism Financing National Risk Assessment which used the statistical data collected by the PSG. The document assessed the corruption risk level in the country as a low and the risk of money laundering stemming from corruption as a medium-low. The monitoring team cannot accept this example either because it concerns money laundering crime and corruption crimes in general as predicate crimes and not high-level corruption and the analysis conducted by PSG of the predicate corruption crimes was not available to the team. This exercise also concerns 2019 and not the evaluated period of 2020.

From the Prosecutor General's annual report, it is not clear how the detailed statistics on the detection, investigation, prosecution and adjudication of high-level corruption was used to change policy or practice.

The Georgia authorities also informed that the PSG and SSSG Anti-Corruption Agency take into account existing corruption statistics for adjusting their policy and practice respectively. The pertaining efforts include putting more emphasis on the prevention and increasing attention over the identified areas. The PSG has included in its action plan anti-corruption awareness raising meetings with the representatives of the State institutions and members of public. Unfortunately, due to COVID-19 pandemic, these meetings were not conducted in 2020.

According to the Government, in the course of analysing investigated cases and especially considering the cases of corruption by local self-government officials the SSSG Anti-Corruption Agency has focused more on conducting corruption prevention activities within the scope of its competence. In this regard, the Corruption Prevention Unit was established within the SSSG Anti-Corruption Agency that is tasked to conduct corruption risk assessments and develop respective recommendations, participate in the elaboration of strategic documents, carry out processing and analysis of investigative statistics as well as organizing information meetings with state and local self-governing entities to raise their awareness on corruption offences.

The main purpose of these awareness raising meetings is to provide information on anti-corruption measures to the representatives of state authorities and self-governing entities, as well as on the role of corruption prevention within the scope of fight against corruption and the significance of their engagement. On policy level this activity is enshrined in the Action Plan 2019-2020 of the National Anti-Corruption Strategy of Georgia. In the course of implementing this activity, an intra-agency working group was established at the SSSG with the lead of the Anti-Corruption Agency and with the involvement of respective SSSG personnel from investigative, analytical, legal and international cooperation directions. The intra-agency group has worked to determine target groups and subject matter for the awareness raising meetings as well as making the necessary arrangements for planning further meetings with the support of international partners (under the EU/CoE Enhancing the systems of prevention and combatting corruption, money laundering and terrorist financing in Georgia (PGG II) project), including regarding COVID-19 situation and regulations.

Indicator 12.3. High-level corruption is actively detected and investigated

Assessment of compliance

Benchmark 12.3.1.

Analytical sources of information, at least FIU reports and asset and interest declarations, are routinely used for the detection of high-level corruption

FIU referrals and asset declarations were not used to detect high-level corruption cases in 2020. There was only one case of referral based on the verification of asset and interest declaration by the Civil Service Bureau (case of false statement) in 2019 but it did not concern a high-level official and investigation is still pending.

Benchmark 12.3.2.

All public allegations of high-level corruption were investigated or justified decisions not to open an investigation were made

TI-Georgia reports numerous cases of alleged high-level corruption that, in its opinion, were not properly investigated and maintains a public list of such allegations[75]. The monitoring team referred 22 of such cases to the Georgian authorities for explanation and obtained replies on each of the case. According to the official response, in 5 cases the Office of the Prosecutor General conducts an ongoing criminal investigation; 6 allegations were examined by the PSG investigation units, the analysis did not show signs of the potential crime and a decision was made not to start investigation; 4 allegations are being reviewed by the PSG investigation units; in 1 case there is an on-going investigation conducted by the Investigation Service of the Ministry of Finance; 6 allegations were reviewed by the SSSG Anti-Corruption Agency, no signs of violations were found and a decision was made not to start criminal investigation. Georgian authorities requested not to disclose details on the status of investigation and review of each of the case.

From the information provided (except for 4 allegations) it was not clear when the review or investigation was started. The authorities clarified that the respective law enforcement review was started without delay, right from the moment the allegations were known to the relevant PSG and SSSG investigators with the time ranging from the day information was uploaded in internet to the next few days.

Benchmark 12.3.3.

Requests of foreign jurisdictions for information or legal assistance in high-level corruption cases, if received, are executed without delay

According to the Government, in 2019-2020, Georgia received two foreign requests in corruption cases involving high-level officials. Georgia provided a description of the requests and actions taken. It appears that both requests were executed without delay in effective manner.

[75] Transparency International Georgia (2021), "Uninvestigated Cases of Alleged High-Level Corruption in Georgia"

Benchmark 12.3.4.

Requests to foreign jurisdictions for information or legal assistance in high-level corruption cases of transnational nature are made promptly and without delay

There were no such outgoing requests in 2019-2020.

Benchmark 12.3.5.

Asset recovery practitioners are routinely involved in the investigation and prosecution of high-level corruption cases

According to the Georgian authorities, asset recovery practitioners, namely two financial analysts working in the PSG ACU and four analysts working in the SSSG's ACA, are routinely involved in the investigation and prosecution of high-level corruption cases. The monitoring team was not able to verify this.

Indicator 12.4. Liability for high-level corruption offences is effectively, independently and impartially enforced

Assessment of compliance

Benchmark 12.4.1.

There is a wide perception among the main stakeholders that the cases of high-level corruption are investigated, prosecuted and adjudicated independently and impartially without political or other undue interference

There is a strong perception among certain domestic and external non-governmental organisations that cases of high-level corruption are not investigated, prosecuted, and adjudicated independently and impartially without political or other undue interference. Main local anti-corruption NGOs stressed the lack of effective investigation of high-level corruption and called on the government to set up an independent agency to address this problem [76].

According to a 2020 public opinion survey by TI-Georgia, the number of respondents who believe that high-level corruption is not investigated effectively in Georgia is higher than the number of those who think it is (47% vs 29%, while 24% of respondents did not know or refused to answer)[77]. A similar survey by TI-Georgia in 2021 showed the following results: 17% of respondents believed that corruption cases were investigated properly when they involved high-ranking politicians or influential people connected with the

[76] Transparency International Georgia (2020), "Non-Governmental Organizations call on the Government of Georgia for Establishment of Independent Anticorruption Agency"; (2021), "Article in the blog"; IDFI (2018), Analysis
[77] Transparency International Georgia (2020), "Results of public opinion survey"

ruling party; 46% of respondents believed that such cases were not investigated properly; and 37% refrained from answering.

The European Parliament noted in its 2018 resolution on the implementation of the EU-Georgia Association Agreement that "high-level elite corruption remains a serious issue" and that "fighting corruption requires an independent judiciary and a solid track record of investigations into high-level cases of corruption, yet to be established"[78].

The Georgian authorities do not share the above-mentioned views about the degree of the challenge related to high-level corruption or lack of its effective investigation. According to their statement, this position is based on the analysis of the relevant factors, including crime statistics, results of the recent public perception surveys about corruption and trend of increasing public trust towards the Prosecutor's Office, which is the key anti-corruption body. Regarding the latter, the authorities referred to the 2020 survey showing that more respondents believed that prosecutor's office was absolutely free or mainly free from political influence (45%) as opposed to 32% believing that prosecutor's office was mainly not free or not free at all; 63% of respondents completely trusted or rather trusted than distrusted the Prosecution Service, while 25% - did not trust at all or rather distrusted than trusted[79].

Benchmark 12.4.2.

The progress of investigation and trial in high-level corruption cases, as well as decisions on the conclusion of investigations or not to open an investigation in such cases are routinely communicated to the public

Analysis of reaction to 22 public allegations of high-level corruption (see benchmark 12.3.2. above) shows that the progress of review and investigation of high-level corruption cases or decisions not to open a criminal investigation are not routinely communicated to the public.

[78] European Parliament, "Resolution of 14 November 2018"
[79] IDFI (2020), "Survey of the population of Georgia"

Benchmark 12.4.3. – 12.4.5.

BENCHMARK	GEORGIA 2020	
	Total number of convictions	Per 1 million of population
12.4.3. Track record of convictions for high-level corruption	14	3.78
12.4.4. Track record of convictions of high-level officials who were in office at the beginning of investigation	11	2.97
12.4.5. Track record of recovery of corruption proceeds from abroad in cases of high-level corruption	0	0

Comments: The definition of high-level corruption and high-level officials is included in the beginning of this PA and consists of two criteria – the level of official and the amount of pecuniary undue benefit obtained or damage inflicted.

Georgian authorities provided the following list of cases as the cases of high-level corruption: cases involving 2 prosecutors; Chairman of Tskaltubo Municipality Assembly; Deputy Head of Vake District of Tbilisi City Hall; Borjomi Municipality Mayor; Chairman of Borjomi Municipality Assembly; investigator offering a bribe to the high-level official of the PSG; person offering a bribe to the high-level official of the PSG; Governor of Oni Municipality; Mayor of Batumi; Head of Financial and Economic Service of Batumi City Hall; Acting Head of the Tbilisi Unit of the Patrol Police. The authorities consider these cases to be high-level corruption because of either the level of official or the significant non-material damage inflicted by the offence.

Note: Population of Georgia was 3.7 million in 2020 (source: https://data.worldbank.org/country/georgia)

Benchmark 12.4.6.

At least 50% of final sanctions for high-level corruption entail imprisonment without conditional or another type of release

According to the Government data, all convictions for high-level corruption in 2020 resulted in imprisonment without conditional or another type of release.

Benchmark 12.4.7.

A prohibition from holding public office is applied to all persons convicted for high-level corruption

According to the Government data, in 2020, all persons convicted for high-level corruption were dismissed from office – either based on the court verdict that prohibited them from holding public office as a sanction or as a general consequence of conviction under applicable laws. According to the Law of Georgia on Public Service, a person shall not be recruited as an official if he/she has a previous conviction for committing an intentional crime. Similar requirements are included in the legislation on different types of public service. Such a restriction is an equivalent of a prohibition to hold public office applied as a sanction.

13 Specialised anti-corruption investigation and prosecution bodies

According to the pilot benchmarks, there are two specialised units for investigation of corruption offences in Georgia – the Anti-Corruption Unit of the Prosecution Service of Georgia and the Anti-Corruption Agency of the State Security Service of Georgia. The prosecution service unit also includes two specialised anti-corruption prosecutors. There is no dedicated unit or body to investigate or prosecute high-level corruption. The appointment of heads of the specialised anti-corruption investigative units is not transparent and not merit-based. There is a sufficient number of specialised anti-corruption investigators and prosecutors for the number of cases investigated and prosecuted. Specialised investigative units have no autonomous powers and expert/technical capacity to conduct on their own covert investigative actions, including wiretapping. Reports on the work of the specialised anti-corruption investigators and prosecutors do not include detailed statistics. No external performance evaluation of the specialised investigative units has been conducted.

There is a strong perception among certain NGOs that agencies investigating and prosecuting corruption are not free from undue political influence. The authorities disagree with these perceptions and refer to the number and type of officials investigated, prosecuted, and convicted for corruption as well dissuasive sanctions imposed which, in their opinion, demonstrate that the Prosecutor's Office and the State Security Service are independent and free from any undue interference.

Indicator 13.1. The anti-corruption specialisation of investigators is ensured

Background

In view of the Georgian authorities, that the Prosecution Service of Georgia (PSG) and the State Security Service of Georgia (SSSG) are the specialised anti-corruption investigative bodies and not the PSG Anti-Corruption Unit and the SSSG Anti-Corruption Agency separately, as the latter two are not the stand-alone bodies but the structural parts of the PSG and SSSG respectively. However, in the monitoring team's opinion, PSG and SSSG in general cannot be considered specialised AC bodies because they deal with numerous tasks other than investigation and prosecution of corruption crimes. It goes against the concept of specialisation ("dedicated bodies") as outlined in this area and explained in the draft Guide. Therefore, the monitoring team will treat in this Performance Area as specialised bodies two specialised units dealing with investigation of corruption in Georgia: Anti-Corruption Unit (ACU) of PSG and Anti-Corruption Agency (ACA) of SSSG. Indicators and benchmarks that concern specialised AC investigators will apply to both these entities.

Investigative competences are delineated by the Prosecutor General's order and provide for a complex set of rules to assign investigation of corruption cases. In a nutshell, the PSG and SSSG have alternative

jurisdiction for corruption offences where the authority that detected the offence has the competence to investigate it. The exception are corruption crimes committed by certain officials[80] where PSG has a priority. A dispute on investigative jurisdiction is resolved by a superior prosecutor.

Assessment of compliance

Benchmark 13.1.1.

Investigation of corruption offences is assigned in the legislation to a dedicated body, unit or a group of investigators, which specialise in combatting corruption

Investigation of corruption crimes is assigned mainly to the Prosecution Service of Georgia and the State Security Service of Georgia both of which have dedicated units for such offences. Competence over corruption crimes is assigned through a Prosecutor General's order that delineates jurisdiction between two entities. While the delineation regulations are complex, they provide sufficiently clear rules to assign investigative competence and settle disputes if they arise.

The investigators of the General Inspectorate of the Ministry of Justice of Georgia also investigate corruption crimes if committed by the employees of the system of the Ministry of Justice of the level of Deputy Minister or lower. The General Inspectorate of the Ministry of Justice may not be considered a specialised body as it deals with other offences committed by the ministry's employees.

"Specialise in combatting corruption" means that relevant body, unit, or investigators deal with corruption offences exclusively and do not investigate other offences. ACU PSG may investigate a non-corruption crime, only if it is related or potentially related to a corruption crime (for example, cases of fraud, falsification of documents, and negligence in public office). Also, if the investigation was started into a corruption crime, which was later re-qualified into a non-corruption crime, ACU PSG will finalise the investigation unless case is transferred to another authority. According to the authorities, there were no cases where non-corruption investigations were transferred to the ACU PSG.

A similar situation exists with the Anti-Corruption Agency (ACA) of the State Security Service of Georgia (SSSG). It may investigate cases which are related to corruption, where, for example, there was an indication of possible corruption crime, but it was re-qualified as fraud, embezzlement, illegal entrepreneurial activity, etc. Cases where ACA SSSG may detect and launch an investigation into a non-corruption crime which is then assigned to the ACA's jurisdiction are mostly limited to cases of fraud.

According to the authorities, up 15-20 % of cases investigated by the said two units may be non-corruption crimes. The monitoring team considers this to be a significant number. However, in view of the nature of such offences and that they are usually closely linked or could lead to corruption offences, it appears that there is a sufficient specialisation of ACU PSG and ACA SSSG in corruption offences.

[80] President of Georgia, a member of the Parliament of Georgia, a member of the Government of Georgia, a judge of Georgia, the Public Defender of Georgia, the Auditor General of Georgia, a member of the Board of the National Bank of Georgia, the Ambassador Extraordinary and Plenipotentiary and the Envoy Extraordinary and Minister Plenipotentiary of Georgia, an employee of the Prosecutor's Office, a police officer, an employee of the State Security Service of Georgia, State Inspector, an investigator and an employee of the State Inspector's Office, an incumbent high-ranking military or top special rank officer or a person equal thereto.

Benchmark 13.1.2.

Corruption cases are not removed or only removed from the specialised anti-corruption body, unit, investigator on legally established grounds, following clear criteria for transferring of such proceedings

Criteria for transferring cases between investigative bodies are set in the Prosecutor General's order on determination of grounds for transferring a criminal case to other investigative authority irrespective of the investigative jurisdiction (order No. 36 of 26 March 2020). To be compliant with the benchmark, the rules must prescribe clear (unambiguous) grounds and criteria for transferring proceedings that ensure impartiality and autonomy from both external and internal pressure. For example, the rules must set an exhaustive list of objective grounds for the case removal that is grounds that are not based on personal preferences or other undue considerations (for example, interference of political bodies).

Some of the criteria included in the Prosecutor's General order raise issue of clarity, namely the following grounds: 1) the transfer will significantly reduce procedural costs; and 2) the transfer better ensures conduct of comprehensive, complete, and objective investigation. There is no clear guidance or explanation of these two grounds. During the on-site visit, representatives of the PGO mentioned that the first ground concerns situations when an investigative body is not functioning in the respective locality; however, such situation is covered by two other grounds for transfer, especially the one in point "b" ("Majority of investigative or/and procedural actions necessary for criminal case shall take place on the territory under the jurisdiction of other investigation authority"). As to the second mentioned ground, authorities explained that it covers situations when there is a conflict of investigative powers, one episode of a multi-episode case is investigated by a different body, to avoid conflict of interest, to ensure that case is investigated by the investigators with the more appropriate competence. While such cases appear reasonable, they are not clearly spelled out in any document and the grounds themselves are formulated very broadly and leave too wide a margin of discretion.

Also, the following two grounds for the transfer may undermine the specialization of investigative jurisdiction in corruption cases: 1) another investigative authority conducted urgent investigative actions on the criminal case and transfer of the case will result in delay of rendering a final decision or/and will otherwise hinder the interests of the investigation; 2) the employees of another investigative authority detected the crime. Although there were no such cases in practice, but it can potentially result in a situation when a case of high-level corruption was detected by an agency other than PSG or SSSG (for example, the police) but is not taken over by the specialised AC investigative entity.

While there are issues with clarity of criteria for transferring cases, there were no situations when cases would be taken from ACU PSG or ACA SSSG and transferred to another authority.

Benchmark 13.1.3.

A specialised task force, unit or body to investigate and/or prosecute high-level corruption is established within the criminal justice system and there are no cases of breach of its jurisdiction

The benchmark requires exclusive investigative and/or prosecutorial jurisdiction for high-level corruption cases in law and ensuring strict observance of such jurisdiction in practice. Such investigators and/or prosecutors do not investigate and/or prosecute other offences. If a dedicated unit or group of investigators and/or prosecutors is included in the body with a broader mandate, the relevant unit or group of investigators and/or prosecutors should deal only with the investigation and/or prosecution of high-level

corruption offences. In other words, if a body or unit deals with anything else than investigation or prosecution of high-level corruption (for example, investigates or prosecutes other crimes), then it does not qualify as a specialised body under this benchmark. The benchmark does not require that there is only one such body/unit, there can be several dedicated bodies/units that deal exclusively with high-level corruption.

There appears to be no such body/unit in Georgia. While PSG in general deals exclusively with corruption crimes committed by certain, including high-level, officials, there is no requirement that only staff of PSG's Anti-Corruption Unit deal with the high-level cases. Such cases may also be investigated by the Investigative unit of PSG, General Inspectorate of PSG, regional investigative units of prosecutor's office, or by SSSG (which is confirmed by the provided statistics). Investigative unit of PSG, General Inspectorate of PSG, regional investigative units of prosecutor's office, or by SSSG also deal with other cases, not only high-level corruption. Therefore, there is no unit/body that would deal exclusively with high-level corruption.

Indicator 13.2. The anti-corruption specialisation of prosecutors is ensured

Background

The prosecutors of the PSG Anti-Corruption Unit and prosecutors of other PSG Investigative Units are competent to prosecute corruption cases investigated by the PSG investigators. The prosecutors of the PSG Public Corruption Crimes Unit are competent to prosecute corruption cases investigated by the SSSG Anti-Corruption Agency.

Assessment of compliance

Benchmark 13.2.1.

Prosecution of corruption offences is assigned in the legislation to a dedicated body, unit or a group of prosecutors, which specialise in combatting corruption

The benchmark requires that there is a dedicated body or unit prosecuting corruption cases. Relevant prosecutors must deal with corruption offences only and not prosecute other types of offences or perform other functions of prosecutors. It appears that prosecutors of the PSG Anti-Corruption Unit can qualify as prosecutors dedicated to prosecution of corruption offences. PSG's ACU includes one prosecutor and a deputy head of the unit who also acts as a prosecutor. Prosecutors from other prosecution units may be involved in the prosecution of complicated corruption cases along with prosecutors of ACU. Prosecutors of other PSG investigative units and PSG Public Corruption Crimes Unit cannot be qualified as a dedicated body/unit because they also prosecute other offences.

Benchmark 13.2.2.

High-level corruption cases are presented in court by the specialised anti-corruption prosecutors

The same prosecutors from ACU PSG who oversaw (provided procedural guidance) the investigation will represent high-level corruption cases in courts, if needed with involvement of the prosecutors from other units but under coordination of the ACU prosecutors.

Indicator 13.3. Appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit based with their tenure in office protected by law

Background

In view of the Georgian authorities, the PSG and SSSG are the specialised anti-corruption investigative bodies and that rules and procedures applied to the selection of the Prosecutor General and the Head of the State Security Service should be considered under this indicator. According to the authorities, the appointment of the heads of the PSG Anti-Corruption Unit and the SSSG Anti-Corruption Agency would be relevant, if they were managing the standalone bodies, outside of the PSG and SSSG structure and hierarchy. However, in the monitoring team's opinion, PSG and SSSG in general cannot be considered specialised AC bodies because they deal with numerous other tasks other than investigation and prosecution of corruption crimes. It goes against the concept of specialisation as outlined in Indicator 1 of this area and explained in the draft Guide. As with the previous indicators, this report considers PSG's Anti-Corruption Unit and SSSG's Anti-Corruption Agency as specialised AC units and reviews the following benchmarks accordingly.

Assessment of compliance

Benchmark 13.3.1.

The current head of the specialised anti-corruption investigative body or unit was selected through a transparent and competitive selection procedure, using clear criteria based on merit

From the available materials, it appears that the head of the PSG's Anti-Corruption Unit and head of SSSG's Anti-Corruption Agency were not appointed to the respective administrative positions through a transparent and competitive selection procedure, using clear criteria based on merit.

Benchmark 13.3.2.

An independent expert selection committee played a key role in the selection of the head of the specialised anti-corruption investigative body or unit

An independent expert selection committee was not involved in the selection of the head of the PSG's Anti-Corruption Unit and head of SSSG's Anti-Corruption Agency.

Benchmark 13.3.3.

There is a clear and transparent procedure for dismissal of the head of the specialised anti-corruption investigative body or unit based on grounds that exclude political or other undue interference and there were no cases of dismissals outside of such procedure

There is no clear and transparent procedure for dismissal of the head of the PSG's Anti-Corruption Unit and head of SSSG's Anti-Corruption Agency based on grounds that exclude political or other undue interference.

Benchmark 13.3.4.

The current head of the specialised anti-corruption prosecutorial body or unit was selected through the transparent and competitive selection procedure, using clear criteria based on merit

Specialised anti-corruption prosecutors constitute one unit with the specialised investigators (Anti-Corruption Unit of PSG). Therefore, assessment for benchmark 13.3.1. applies to this benchmark.

Indicator 13.4. The staff of the specialised anti-corruption investigative body is impartial and autonomous from external and internal pressure

Assessment of compliance

Benchmark 13.4.1.

The assignment and re-assignment of cases among specialised anti-corruption investigators is based on clear and published rules that are set in the legislation and ensure impartiality and autonomy from external and internal pressure

The benchmark requires that the legislation sets clear (unambiguous) rules that are published and regulate issues of assignment or re-assignment of cases among specialised anti-corruption investigators. The rules must set an exhaustive list of objective grounds for reassigning the case from one investigator to another that is grounds that are based on objective necessity and not personal preferences or undue considerations.

Rules for assigning and re-assigning cases among specialised anti-corruption investigators of the prosecutor's office are set in the Prosecutor's General order (No. 30 of 28.02.2019). Several grounds for reassignment of the case to another prosecutor stipulated in the Order appear ambiguous and not sufficiently objective giving potential space for reassignments based on personal preferences or undue consideration, namely the following grounds: 1) investigator made such a mistake which might have an impact on results of the case if the PGO`s General Inspectorate initiated proceedings in this regard or a decision to impose disciplinary sanction on this investigator has been made; 2) due to the workload of investigator and/or difficulty of the case, it is advisable that investigation in this case is conducted by another investigator. The first ground allows to re-assign the case just by initiating proceedings by the

General Inspectorate concerning a mistake that may only potentially have impact (any) on the case. “Mistake which might have an impact on results of the case” can be broadly understood and include minor mistakes. In the second ground, terms “due to the workload” and “difficulty of the case” leave a broad scope of discretion and lack objectivity.

Rules for assignment and re-assignment of cases among investigators of the Anti-Corruption Agency of SSSG are established by the Order no. 45780 of the Head of Anti-Corruption Agency of SSSG approving the Regulation of Some Organizational Issues for the Distribution of Criminal Cases among the Investigators of the SSSG Anti-Corruption Agency. The head of the ACA can assign a case, but only a prosecutor can re-assign it to another investigator. The rules for re-assignment include one ground that is problematic – “due to the workload of the investigator and / or the complexity of the case, it is advisable for another investigator to conduct the investigation of the given case”. It is too broadly formulated and is not sufficiently objective. There is another ground which is similar to the one in the rules for PGO investigators (“the investigator has made a legal mistake that may affect the outcome of the case, if concerning this fact the General Inspection of the State Security Service of Georgia decides to impose a disciplinary sanction on the investigator”); however, because in this case there should be a disciplinary decision related to the legal mistake before the case is removed from the investigator (and not just an initiation of proceedings as in the prosecution service), this ground for re-assignment does not appear problematic.

Benchmark 13.4.2.

Specialised anti-corruption investigators routinely use the right to challenge orders from superiors through a judicial or another procedure

The Criminal Procedure Code (Article 37) allows challenging a decision of the prosecutor to a superior prosecutor. As head and deputy head of the Anti-Corruption Unit of PSG are prosecutors, their orders can be appealed to the superior prosecutors by investigators working on corruption cases. Investigators can also complain about misconduct of their superiors to the PSG’s General Inspectorate. Investigators have the right not to fulfil illegal orders.

As to investigators of the Anti-Corruption Agency of the State Security Service, they can also challenge procedural orders of prosecutors to a superior prosecutor. According to the authorities, the head of the ACA is not authorised to re-assign cases, only assign them initially.

However, there were no cases in 2020 where specialised anti-corruption investigators challenged orders from their superiors through a judicial or another independent procedure.

Benchmark 13.4.3.

There is a wide perception among the main stakeholders that the specialised anti-corruption investigative body or unit operates independently and impartially without political or other undue interference in its work

There is a wide perception among the main stakeholders that the specialised anti-corruption investigative body or unit operates independently and impartially without political or other undue interference in its work

There is a strong perception among certain NGOs that agencies investigating and prosecuting corruption are not free from undue political influence. They criticised the appointments of the former Prosecutor

General and the Head of the State Security Service and referred to several criminal cases as examples of alleged undue political influence.

Transparency International Georgia collects and publishes online information about cases of alleged high-level corruption in Georgia, which have been revealed in recent years and, according to TI-Georgia, have not been investigated[81]. Another organisation (IDFI) noted that analysis of the practice of combating corruption in Georgia showed that the independence of the agencies fighting against corruption is the most challenging issue. In IDFI's opinion, it is necessary to reform the system since it cannot effectively respond to cases of high-level corruption[82].

The monitoring team notes that most allegations of lack of independence and impartiality concern cases of high-level corruption and not petty or administrative corruption.

According to a 2020 survey by TI Georgia, 47 percent of the respondents believe that high-level corruption is not being investigated properly (as opposed to 29 percent who think that it is; 24% of respondents answered "do not know" or refused to answer)[83]. According to 2020 population survey, 45% of respondents believed that prosecutor's office was absolutely free or mainly free from political influence, while 32% believed that prosecutor's office was mainly not free or not free at all; 63% of respondents completely trusted or rather trusted than distrusted the Prosecution Service, while 25% - did not trust at all or rather distrusted than trusted[84]. According to another 2020 survey, 57% trusted prosecutor's office (increase from 40% in 2019 and 51% in 2018) and 26% did not trust the prosecutor's office of Georgia (decrease from 38% in 2019 and 36% in 2018). 20% of respondents believed that abuse of power by prosecutors was frequent, 36% that it was rare and 13% that it never happened[85]. The 2021 national poll by IRI showed that 31% of respondents had a favourable opinion of the prosecutor's office, 52% had an unfavourable opinion, 17% did not know or refused to answer[86], the 2020 poll showed similar results[87]. According to the 2021 survey by TI-Georgia, 4% of respondents fully trusted prosecutor's office, 16% rather trusted than distrusted, 33% partially trusted and partially distrusted, 17% rather distrusted than trusted, 10% fully distrusted, and 20% did not know or refused to reply[88].

The Georgian authorities do not share the above-mentioned allegations of NGOs about the lack of independence and impartiality. In their view, the number and type of officials investigated, prosecuted, and convicted for corruption as well dissuasive sanctions imposed, demonstrate that the Prosecutor's Office and the State Security Service are independent and free from any undue interference. The authorities also referred to the recent public surveys, which showed the increased public trust towards the Prosecutor's Office, which is the key anti-corruption body.

[81] Transparency International Georgia (2021), "Uninvestigated Cases of Alleged High-Level Corruption in Georgia"
[82] IDFI (2020), "Activities and Existing Challenges"
[83] Transparency International Georgia (2020), "Results of Public Opinion Survey"
[84] IDFI (2020), "Survey of the population of Georgia"
[85] IDFI (2020), "Perceptions of the Prosecutor's Office"
[86] IRI (2021), "Public Opinion Survey" p.57
[87] IRI (2020), "Public Opinion Survey"
[88] Transparency International Georgia (2021), "Public opinion"

Benchmark 13.4.4.

There is a wide perception among the main stakeholders that the specialised anti-corruption prosecutors operate independently and impartially without political or other undue interference in their work

As anti-corruption prosecutors are not separated from investigators within Prosecution Service and constitute one specialised unit (Anti-Corruption Unit), this benchmark is assessed based on findings for benchmark 13.4.3.

Indicator 13.5. The specialised anti-corruption investigative and prosecutorial bodies have adequate human and financial resources

Assessment of compliance

Benchmark 13.5.1.

Specialised anti-corruption investigative body or unit has the number of staff and resources sufficient to carry out functions within its mandate

Anti-Corruption Unit of PSG is composed of the Head of the Unit, Deputy Head (prosecutor), one prosecutor, 4 investigators and 2 financial analysts. According to the Georgian authorities, additional staff may be available from other PSG units as needed. Authorities also refer to 90 other investigators assigned to investigative units of the Prosecutor's General Office and regional prosecution offices and that they can also work on corruption cases. However, as they are not specialised in investigation of corruption (because they deal also with other types of cases) they are not considered for this benchmark.

The investigators of the PSG Anti-Corruption Unit started corruption investigations on 12 cases in 2019, on 7 cases in 2020 and on 9 cases in 2021. The PSG Anti-Corruption Unit prosecuted one person in 2019 for corruption (in one case), in 2020 - 2 persons (in 2 cases) and in 2021 - 8 persons (in 4 cases). All prosecutions ended up with convictions for corruption, except 2 prosecutions of 2021 (in one case), which are pending. A prosecutor and an investigator of the PSG Anti-Corruption Unit participated in joint investigation teams together with other PSG investigators. In the cases investigated by these teams, 16 individuals were prosecuted for corruption in 2019 and 5 individuals - in 2020.

In view of the number of cases investigated and prosecuted by the PSG ACU, its number of staff and available resources appear to be sufficient.

As to the Anti-Corruption Agency of SSSG, it included 216 staff members (including 27 investigators) in 2018, 194 staff members (including 27 investigators) in 2019 and 182 staff members (including 26 investigators) in 2020. In 2020, investigators of the Anti-Corruption Agency of SSSG investigated 357 cases (335 cases in 2019, 271 cases in 2018). The number of staff and available resources of the ACA SSSG appear to be sufficient.

Benchmark 13.5.2.

There is a sufficient number of specialised anti-corruption prosecutors to ensure prosecution of corruption cases

The authorities referred to 60 anti-corruption prosecutors assigned to various units of the PSG, in addition to 2 prosecutors working in the PSG ACU. However, as they are not specialised in prosecution of corruption (because they deal also with other types of cases) they are not considered for this benchmark. Statistics on the number of cases prosecuted is presented in benchmark 13.5.1. above. In view of the number of cases prosecuted by the PSG ACU, the number of prosecutors appears to be sufficient.

Benchmark 13.5.3.

The funding received by the specialised anti-corruption investigative body or unit is sufficient to ensure its autonomy

Government provided information concerning PSG and SSSG in general. Their institutional funding appears sufficient. However, specialised anti-corruption units are the Anti-Corruption Unit of PSG and Anti-Corruption Agency of SSSG. Information on their level of funding was not available because they do not have separate budgets from the PSG and SSSG respectively.

The benchmark does not require an autonomous budget of the specialised anti-corruption investigative body or unit, and the monitoring team has no evidence that the funding of the two units is insufficient.

Benchmark 13.5.4.

The level of remuneration of the specialised anti-corruption investigators is fixed in the law and is sufficient to ensure their independence and reduce the risk of corruption

The primary law should regulate the amount of remuneration of specialised anti-corruption investigators. It is not the case for investigators of the Anti-Corruption Unit of PSG and Anti-Corruption Agency of SSSG. For investigators of the Anti-Corruption Unit of PSG, their basic salary and increments are determined by decision of the Prosecutor General. The Law, however, prohibits reducing the salary of an investigator of the prosecution service while he/she is in office, except for deducting 30% of salary for no more than 6 months as a disciplinary sanction. This is an important safeguard, but it does not change the fact that the remuneration level is fixed in the bylaws and not in the primary law.

For investigators of the Anti-Corruption Agency of SSSG, the amount, procedures, and conditions for paying salaries (remuneration for the position occupied and for the rank awarded) and the supplement to salaries (monetary remuneration) and compensation of a Service employee are determined by the Government of Georgia.

Indicator 13.6. The specialised anticorruption investigative body has necessary powers, investigative tools and expertise

Assessment of compliance

Benchmark 13.6.1.

Specialised anti-corruption investigative body or unit has powers, expert and technical capacity to conduct analytical work, financial investigations and covert operations, including wiretapping

To ensure the integrity, independence and effectiveness of anti-corruption investigations, the benchmark requires that listed powers and capacity are granted directly to the specialised body, unit or staff both in the legislation and in practice. To comply with this benchmark, the specialised anti-corruption investigative body or unit should have powers and expert/technical capacity to conduct: analytical work, financial investigations, and covert operations, including wiretapping. The powers should include, as a minimum: carrying out covert surveillance, intercepting communications, conducting undercover investigations, accessing financial data and information systems, monitoring financial transactions, freezing bank accounts, and protecting witnesses. Relevant expert/technical capacity includes, as a minimum: in-house non-legal experts in economic and financial investigations, other experts in-house or available on request from other entities, for example, forensic accounting, IT, technical capacity (equipment, etc.) to conduct covert operations, including wiretapping.

In Georgia, the structural units of the Prosecutor's Office do not carry out covert investigative actions by themselves. Pursuant to Article 1431 of the Criminal Procedure Code, conducting covert investigative actions such as: 1) wiretapping and recording of phone conversations, 2) retrieval and downloading data from the communications channel; 3) real-time establishment of geolocation; 4) monitoring of mail falls under the exclusive authority of Legal Entity of Public Law "Operative-Technical Agency of Georgia". The PSG, as well as other investigative bodies in the country, carry out the covert investigative actions only through Operative-Technical Agency. Where it is necessary to carry out the intelligence actions such as "video and/or audio and/or photo surveillance" and "electronic surveillance through technical means", the PSG requests assistance from other law enforcement authorities (State Security Service, Ministry of Internal Affairs and Ministry of Finance Investigation Service).

The specialised anti-corruption investigative units have no autonomous powers and expert/technical capacity to conduct on their own covert investigative actions, including wiretapping.

Indicator 13.7. Work of the specialised anticorruption prosecutors and anticorruption investigative body or unit is transparent and audited

Assessment of compliance

Benchmark 13.7.1.

Periodic, at least annual, reports containing detailed statistics related to the work of the specialised anti-corruption investigators and prosecutors, including information on the outcomes of cases are published online

There are no separate reports of the Anti-Corruption Unit of PSG; information in the report of the Prosecutor General is not detailed. Report on the activity of Anti-Corruption Agency of SSSG is included in the general report of SSSG but does not include detailed statistics on the work of the unit.

Benchmark 13.7.2.

External performance evaluation of the specialised investigative body or unit by an independent expert committee (formed by professionals, who are selected through a transparent procedure based on merit) is conducted regularly against a defined set of criteria and its results are published

No external performance evaluation of the specialised investigative units has been conducted.

Indicator 13.8. Specialised anti-corruption investigators and prosecutors are held accountable

Assessment of compliance

Benchmark 13.8.1.

All public allegations of corruption perpetrated by the specialised anti-corruption investigators have been thoroughly investigated, with justified decisions taken in the end and made public

The monitoring team is not aware of any public allegations of corruption perpetrated by the specialised anti-corruption investigators which have not been properly investigated.

Benchmark 13.8.2.

All public allegations of corruption perpetrated by the specialised anti-corruption prosecutors have been thoroughly investigated, with justified decisions taken in the end and made public

The monitoring team is not aware of any public allegations of corruption perpetrated by the specialised anti-corruption prosecutors which have not been properly investigated.

Benchmark 13.8.3.

Specialised anti-corruption investigative body or unit has functioning mechanisms for public oversight, such as public councils, which include key stakeholders selected on clear criteria and through a transparent procedure

There are no special oversight mechanisms for specialised anti-corruption investigation units in Georgia. Bodies and mechanisms referred to by the Georgian authorities concern Prosecution Service and the State Security Service in general and are not applicable for this benchmark.

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