



EUROPEAN NEIGHBOURHOOD POLICY

MONITORING GEORGIA'S
ANTI-CORRUPTION COMMITMENTS 2010

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Executive summary

This report assesses the degree to which the Georgian government has complied with its 2006 European Neighbourhood Policy Action Plan. It monitors particular aspects of judiciary and rule of law (part of Priority 1 of ENP AP), civil service reform (part of Priority 1), and the continuation of fight against corruption (part of Priority 2) through compliance with the recommendations made by GRECO. The focus of this report is to highlight progress or lack thereof since the publication of TI Georgia's first ENP Monitoring report in May 2010. To this end, this report is based on research of changes in legislation and practice in the calendar year 2010.

Our analysis shows that insufficient independence of the judiciary and civil service continue to weaken Georgia's governance potential. Compared to 2009, the only significant improvement observed has been the introduction of an electronic procurement platform. Aside, no significant improvements have been observed in civil service administration or judicial reform.

Objectives	2009 Compliance Score (Actual/Maximum possible)	2010 Compliance Score (Actual/Maximum possible)
1. Strengthening the Judiciary	43/62 (69%)	43/60 (72%)
2. Civil Service/Public Sector Reform	25/50 (50%)	34/50 (68%)
3. GRECO Recommendation Implementation	9/14 (64%)	11/14 (79%)

Judicial System

- Judiciary remains among the least trusted public institutions in Georgia. Georgia's 0.04% criminal case acquittal rate in 2010 is a potential explanation.
- While reported bribery and corruption are rare, and the rules of judicial communication are almost universally upheld, judicial independence still remains a challenge.
- The High Council of Justice, the body appointing and disciplining justices, continues to be politicized, despite having over half of its members representing the Judiciary. The requirement of presidential and parliamentary approval of all appointees continues to be a problem.

Civil Service

- Georgian civil service remains politicized and lacking independence.
- Appointment and promotion are regulated by law, but are highly subjective in practice.
- Public sector remuneration, particularly bonuses, is not based on transparent criteria.
- Similarly, the financial declarations of civil servants are not properly overseen and no effective sanctioning mechanism exists for offenders.
- A new electronic procurement system is in its pilot stage and promises full transparency if properly implemented.

Recommendations

Implementation of GRECO recommendations

- Access to public information is limited due to gaps in legislation which allows for varied interpretation and enables authorities to keep certain information classified.
- Progress has been made regarding the criminalization of corruption and bribery, including instances involving legal persons.

In order to deliver on its ENP commitments and improve the domestic governance situation, TI Georgia encourages the government of Georgia to consider the following recommendations:

Judicial System

- Increase transparency of judicial appointments, including the interview process; (HCoJ)
- Enhance administration of disciplinary proceedings, including specifying the grounds for disciplinary action; (HCoJ)
- Re-evaluate the judicial transfer/re-assignment process, including adding new provisions specifying the methods for selecting judges for re-assignment and requiring a judge's consent for the transfer; (HCoJ)
- Create clear criteria for judicial bonuses and salary supplements, including full disclosure of their allocation; (HCoJ)
- Improve public access to court hearings and court information, including but not limited to, Freedom of Information requests and court web pages. (HCoJ)

Civil Service:

- Elaborate and adopt civil service reform strategy/code based on participatory consultations; (CSB)
- Set clear criteria for appointment and promotion of civil servants, including bonuses and salary supplements
- Introduce effective mechanisms for reviewing civil servants' financial and asset declarations. Device accompanying penalties for misinformation. (CSB)
- Increase access to public information by setting minimum standards for the data to be posted on government web pages. Impose stricter sanctions for violating FOI regulations;(CSB)
- Develop robust mechanisms of controlling civil servant involvement in electioneering. (CSB, Parliament, CEC)

GRECO:

- Fill legislative gaps to ensure access to information and ensure adequate penalties for unlawful refusal to release public information; (MoJ)
- Improve training of tax inspectors, particularly in the field of detecting corruption.; (MoF)

Background

The European Neighbourhood Policy (ENP) is a framework for bilateral agreements between the European Union (EU) and its neighbours to the south and east.¹ It has the stated objective of “avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned”.² Within the framework of the ENP, certain states³ have signed “Action Plans” that are designed to outline the specific commitments of that state in the context of its relationship with the EU. Amongst many other policy areas (e.g. environmental and energy policies, immigration and border control, human rights, economic development, conflict resolution), anti-corruption and good governance feature prominently in all of the Action Plans signed to date.

Monitoring Methodology

While the European Commission (EC) carries out periodic reviews of implementation of ENP Action Plans, many civil society organisations, including TI national chapters, have also been actively monitoring their government’s work in relation to the Action Plans. The impact of this work has generally been somewhat limited, due to the lack of an analytical monitoring framework, clear benchmarks and timelines. This report is part of a regional project funded by the Foreign Ministry of Norway, currently being implemented in Armenia, Azerbaijan and Georgia, which aims to monitor ENP implementation. It seeks to maximise the impact of the monitoring work by using a solid indicator-based framework to assess progress in the ENP areas related to anti-corruption, namely the judiciary, the public sector and the implementation of international conventions. It is the second annual report on ENP implementation, the first having been published in May 2010.

The indicators were developed by the Transparency International Secretariat, in consultation with TI national chapters in Armenia, Azerbaijan and Georgia. The wording of each Action Plan was analysed and common objectives related to governance and anti-corruption were identified. Three core areas emerged, which all of the Action Plans address to a greater or lesser extent: judicial reform, reform of the public sector and implementation of international conventions. For each of these objectives, specific sub-objectives were identified related to the principles of independence, transparency, accountability and integrity. Relevant indicators were developed (using international standards and best practices) to measure progress in these areas. Each indicator was scored on a three-point scale of compliance from 0 to 2 (where 0 is non-compliance and 2 is full compliance), based on the collected information which is summarised in an adjacent note. The scoring systems allows for aggregation across indicators to obtain an overall score for each dimension.

The data on which the assessment was collected using a desk review of legislation and relevant policy documents, as well as through key informant interviews between November 2010 and March 2011, and covers progress in terms of ENP implementation until end of 2010.

¹ Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia, Ukraine.

² See ‘The Policy: What is the European Neighbourhood Policy?’ http://ec.europa.eu/world/enp/policy_en.htm.

³ All ENP countries except Algeria, Belarus, Libya and Syria have signed an Action Plan.

Indicator Scale:**2: Full Compliance with Objective Indicator****1: Partial Compliance with Objective Indicator****0: None**

Objective 1: Strengthening the Judiciary

	2009 Compliance Score	2010 Compliance Score
Overall Score	43/62 (69%)	43/60 (72%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<i>Independence of Judiciary</i>	17/24	14/20
<i>Judicial Human Resources</i>	3/4	3/4
<i>Access to Justice</i>	2/4	3/4
<i>Judicial Resources</i>	6/8	7/8
<i>Transparency</i>	8/12	7/12
<i>Enforcement</i>	4/6	6/8
<i>Code of Ethics</i>	3/4	3/4

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: To what extent are there legal provisions in place requiring that the selection and promotion of judges be based on merit?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Selection and promotion of Judges is regulated by the Organic Law on Common Courts of Georgia, adopted on December 4, 2009. However, the legislation is full of loopholes and opportunities for abuse. The minimum prerequisites for being appointed as a judge are Georgian citizenship, at least 28 years of age, higher legal education and 5 year professional experience in law (Law on Common Courts, Art. 34). The candidate must pass the judicial qualification examination and complete the full 12 month course of study at High School of Justice (HSoJ). The highest achieving graduates are then interviewed by the panel composed of High Council of Justice members to fill specific vacancies. The interview process and assessment criteria are however unregulated and highly opaque.

There are important exceptions to applicability of minimum qualification standards, however. Art. 34.4 exempts the presidential nominees to the Supreme Court, including the Chairman of Supreme Court, from the need of passing the judicial exams. All current and future members of the Constitutional Court are also exempted from both the exam and HSoJ courses (Art. 34.6).

Articles 20.1 and 20.2 of Organic Law of Georgia on the Supreme Court add some specification to this, maintaining that the person exempted from examination must be a reputed lawyer. However, there are no criteria or procedures specified for determining the degree of reputation or merits of the candidate.

Given the role of Supreme and Constitutional Courts to Georgia's legal system in setting precedent and interpreting the law, exemption of their judges from objective minimum criteria is both a professional concern and an opportunity for excessive politization of the judicial positions.

Judges may be promoted after minimum of 2 years of service. (Art 41.1) The criteria for promotion are set by HCoJ and include:

- a. Ranking in the qualification list of justice students
- b. Moral reputation
- c. Qualification
- d. Professional skills
- e. Skills of argumentation and expression
- f. Skills of analytical-logical thinking and decision making
- g. Manners of a judge
- h. Skills of conducting court hearings

Again, however, there is an exception to the minimum service limit before promotion. Judges may be promoted earlier than after 2 years for demonstrating high qualification and skills during service and upon significant contribution to development of justice, uniform judicial practice and timely and effective justice. (Art. 41.2)

The grounds for speedy promotion do not necessarily exceed the normal requirements for judicial practice. Further objectively proving such contributions could be questionable.

The regulations for both selection and promotion lack on true transparency and openness and raise significant questions on objectivity and true meritocracy, and incidentally, make objective evaluation even harder.

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: In practice, to what extent is the selection and promotion of judges based on merit?

Compliance Score: 1

2010 Update:

The practice of judicial appointment and promotion has not changed substantially since last year.⁴ The process remains largely lacking transparency and accountability.

2009 Note:

The fact that the interviews are conducted by a panel of HCoJ does provide for diversity in the selection process. (HCoJ is composed of 15 members –8 members are elected from the conference of judges, upon nomination by the Supreme Court chair; 2 members are appointed by the President and 3 members are elected from the members of Parliament and one of them must be a representative of opposition. HCoJ has two ex officio members - chair of the Parliamentary Legal Affairs committee and the chair of the Supreme Court, who also serves as the chair of HCoJ.) However, the composition of HCoJ alone, in absence of clear criteria and transparent process, cannot guarantee the impartial meritocracy.

⁴ Interview with Tamar Chugoshvili, Chair of Georgian Young Lawyers' Association, February 25, 1011

Although HCoJ indeed has majority judicial representation, political appointees have an effective veto power on appointments. Art. 50.3 of the Law on Common Courts stipulates that judges are appointed by a majority decision of those present, with quorum requirement of 1/3 of full composition of the Council. But at least one member each from the parliamentary and presidential appointees must be in favour of the decision for it to be passed. This gives quite some room for politization of judicial appointment.

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: To what extent are there legal provisions which provide for security of tenure (to prevent judges from being threatened with arbitrary termination of their contract)?

Compliance Score: 1

2010 Update:

Currently all Georgian judges are appointed for 10 year terms. Judges of the Common Courts may serve additional terms, while Constitutional Court judges are limited to one term of service. The relatively short-term appointment has been used as a lever against judicial independence. The government has been consistently urged to change the regulation.

The Constitutional amendments of August 15, 2010 (Article 86) state that all judges are appointed indefinitely, until they reach a set retirement age. However, this rule is not devoid of exception. Article 86 also states that before being appointed for life judges may first be appointed for a trial period, not exceeding three years. This three year term is a source of concern. The threat of termination upon the completion of this period could easily be used for influencing justices. Additionally, the amendments are to enter into force in October 2013, when a new President is sworn in.

2009 Note

The law on Common Courts and the Law on Supreme Court specify that judges are appointed for a term of exactly 10 years; common court judges may serve additional terms (Law on Common Courts, Arts. 49.1-49.2; Law on Supreme Court, Art. 21.1). Unlike common court judges, Constitutional Court judges are limited to serving one term (Law on Constitutional Court, Art.8).

According to the US State Department's Human Rights Report for 2009, many observers see the 10-year term as mitigating against the independence of judges. President Saakashvili and other top officials have announced their intention to change the system to allow judges to be appointed for life. According to the Parliamentary Legal Affairs Committee, this issue has been discussed in Parliament but is now being considered by the State Constitutional Reform Commission.⁵ The Constitutional Reform Commission is in the process of drafting a new Constitution and will release its findings in summer 2010. However, according to a report prepared by a coalition of Georgian NGOs this process must take place with full public scrutiny in order to build trust in the judiciary.⁶

According to representatives from the Supreme Court, the law regulating disciplinary procedures for judges was amended in September 2009, in line with Venice Commission recommendations⁷. Written complaints against judges are submitted to the HCoJ, which conducts an investigation. Decisions taken by the disciplinary panel of the HCoJ can be appealed at the Disciplinary Plenum of the Supreme Court. Judges facing disciplinary action are entitled to be present throughout all proceedings.

⁵ Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010

⁶ Georgian NGO Coalition, Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan, 2009, p13

⁷ Interview with Besik Beginishvili, Head of the Bureau of the Chair of the Supreme Court, 18 March, 2010

The disciplinary panel is composed of three judges of the common courts elected by the Conference of Judges, and the three members from the HCoJ are elected by the HCoJ itself.

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: In practice is it the case that judges are not removed from office for anything other than misconduct or incapacity to carry out judicial functions?

Compliance Score: 1

2010 Update:

HCoJ reports receiving 1053 appeals to initiate disciplinary proceedings against judges in 2010.⁸ Of these, 30 cases have been heard and 28 judges disciplined. One judge has been given a notice, one a reprimand, and one has been fired. Two cases were dropped because the judges in question were “dismissed from their positions”, presumably at their own request. The other 25 cases are still ongoing.

2009 Note:

The disciplinary hearings and the decision on disciplining judges are confidential to public according to legislation. This effectively makes it impossible to monitor the grounds for disciplining and make judgements on proportionality of the punishment.

The cases of removing judges are not frequent, and the removals are presumed to be mostly for reasons of bribe-taking and other serious misconduct.

In addition to these, interviews suggest that transferring judges from central locations to more remote regions of Georgia, while not an official disciplinary tool may in practice be used as a tool for pressure and discipline of independent-minded judges. It is notable, that reassignment to over court does not require the judge’s consent. The disciplinary purposes of transfers to unpopular districts are suspected especially since there have been cases documenting⁹ effective exchange of judges between courts in Tbilisi and regions. While the legislation stipulates that judges may be temporarily assigned to help out overloaded courts, the inconsistency of practice is obvious.

Transfer of judges became especially problematic since reorganization of court system that led to closure of many courts. The judges not reappointed were placed on a reserve list and paid a stipend of GEL 500 (approx. USD290) per month. The decision making process of HCoJ on transfers and reserve placement was not at all transparent and the criteria and reasoning have not been revealed.

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: To what extent are there legal regulations in place to ensure that judicial salaries are comparable to those of other high level government employees?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Law of Georgia on Wages of Common Court Judges, Art.1 regulates judicial salaries. The current range is from GEL 2 300 for magistrate judge (approximately USD 1 350) to GEL 5 650 for chair of Supreme Court (approximately USD 3 324) per month. The amounts specified are not tied to salaries of other

⁸ Letter from the High Council of Justice #113/262-03, 18.02.2011

⁹ Georgian Young Lawyer’s Association (2010) Justice in Georgia. pp.15-21

state employees, nor is there specific legislative guarantee of them being higher or compatible to any indicator.

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: In practice, are judicial salaries comparable to the salaries of other high-level government employees?

Compliance Score: 2

2010 Update:

While judicial salaries are comparable to the salaries of other high level government employees, the concern is for the transparency of overall remuneration¹⁰. In particular, bonuses and other salary additions are the greatest concern.

2009 Note:

Current judicial salaries are in practice comparable with salaries of highest state officials. To illustrate, salary of a deputy minister is regulated at GEL 2 720 (approximately USD 1 600) monthly, while judicial salaries range from GEL 2300 to GEL 5650 (approximately USD 1 350 to USD 3 324). Further, chairs of both the Supreme Court and Constitutional Court are paid more than the President.

Besides the regulated salary, all state employees are also eligible for salary additives (bonuses). Georgian legislation however does not provide standard regulation regarding grounds for bonuses and the rules for their calculation. Rather than being used as a performance related reward, bonuses tend to be allocated purely on subjective and opaque grounds.

According to the articles 18.2 (J) and 69.3 of the Organic Law on Common Courts of Georgia the Plenum of the Supreme Court of Georgia defines and allocates bonuses to the members of the Supreme Court. The bonuses for the judges at the common courts (except of the Supreme Court) are defined by the HCoJ (Article 69.3 of the Organic Law on Common Courts of Georgia).

The government has not been responsive to civil society's calls for increased transparency and has repeatedly denied public's right to information on bonuses for civil servants on privacy grounds.

General guidelines on bonuses in the judiciary suggest, that bonuses are allocated based on the overall number of cases handled by a judge and on how many of these were "complicated". However, since there are no criteria for evaluating the level of complexity, application of it offers considerable flexibility. Anecdotal reports suggest that amount of bonuses is equal for all judges; however there is no reliable mechanism for determining the actual practice¹¹. Freedom of information requests on this account have been denied, citing concerns for privacy.

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: Is the judiciary legally entitled to propose, allocate and manage its own budget?

Compliance Score: 2

2010 Update:

No new developments in this area.

¹⁰ Local NGO Institute for Development of Freedom of Information (IDFI), along with GYLA, TI Georgia and other organizations has repeatedly highlighted the problems of accessing information on civil servant bonuses. IDFI has launched a web page www.opendata.ge as a searchable database of FOI requests and the official answers.

¹¹ Interview with Tamar Chugoshvili, Chair of Georgian Young Lawyers' Association, February 25, 1011

2009 Note:

Department of Common Courts, part of HCoJ drafts the budget request for the courts. The draft is submitted and approved by HCoJ and then sent to the Government of Georgia (Law on Common Courts, Art. 67.2). The Supreme and Constitutional Courts however draft their own individual budgets requests and submit them to the Ministry of Finance for approval. The drafts supported and approved by the Ministry then become part of the state budget which is sent to the Parliament for approval, as the normal budgetary procedure of Georgia dictates.

There is an additional safeguard in the legislation for protecting judicial finances from arbitrariness or “punishment” from the executive side. The budget of the judiciary may not be decreased year on year without the consent of the Conference of Judges (Law on Common Court, Art. 67.3).

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: In practice, does the judiciary propose, allocate and manage its own budget?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Judiciary exercises autonomy in proposing, allocating and managing its budget in practice as well. The only critical observation, however, has been made regarding the centralization of finances by the Department of Common Courts which drafts and allocates the finances within the court system. More decentralization and increased participation of individual courts is advised instead¹².

Sub-Objective 1: Ensure Independence of Judiciary

Indicator: To what extent are there regulations regarding the assignment of cases to judges by an objective method administered by the judiciary?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Assignment of cases is determined by the Law of Georgia on the Rules of Assigning Cases in Common Courts and Imposing Responsibility to Other Judges (Art. 4 -12). The method entails listing all judges in a given court in alphabetical order and then matching them with cases according to order of their receipt by the Court.

The law also stipulates the conditions for reallocation of cases by the Court Chair when judges are overburdened.

Legal provisions are also in place regarding the recusal of judges (Code of Civil Procedure Art. 29 and 31; Code of Criminal Procedure Art. 105). In cases of recusal, the Chair of the court may reallocate the case at own discretion.

Sub-Objective 1: Ensure Independence of Judiciary

¹² Interview with Giorgi Paichadze, legal expert at German Technical Cooperation (GTZ). October 8, 2010

Indicator: In practice, are judges assigned to cases by an objective method, in a process administered by the judiciary?

Compliance Score: 1

2010 Update:

The system has generally been given high marks by analysts. Georgian Young Lawyers Association has pointed out; however, that court Chairs often defer themselves because of heavy managerial workloads.¹³ This trend has effectively left the court short of one judge. The introduction of court managers (as directed in the 21.07.2010 amendments to the Law on Common Courts) should relieve judges of the administrative workload and reduce self-deferrals. Given the recent adoption of this new position, its effects have not yet been determined.

2009 Note:

The American Bar Association has found that this system works well in practice, although some suspicion remains, especially surrounding high-profile cases being given to judges who are former prosecutors¹⁴. GYLA also reported that this system works well, but pointed out that court Chairs often defer themselves in practice because of heavy managerial workloads¹⁵.

Sub-Objective 2: Improve training of judges, prosecutors and officials in the judiciary (Human Resource Management)

Indicator: To what extent are there legal provisions to ensure that judges, prosecutors and officials are regularly trained in new judicial practices and procedures and new and/or changing laws?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

There are no legal requirements for judges, prosecutors or other officials to continuously undergo trainings in new judicial practices and procedures. However, the judicial reform strategy document¹⁶ posted on the Supreme Court web page mentions the goal of putting in place a system for continuous training and education for sitting judges. There are no specific time tables, targets or benchmarks identified.

Sub-Objective 2: Improve training of judges, prosecutors and officials in the judiciary (Human Resource Management)

Indicator: In practice, is it the case that judges, prosecutors and officials are regularly trained and given access to new judicial practices and procedures and new and/or changing laws?

Compliance Score: 2

2010 Update:

According to HSoJ, in 2010 28 persons underwent judicial training.¹⁷ Furthermore, the Ministry of Justice reports four rounds of comprehensive trainings to familiarize prosecutors with changes to the

¹³ Georgian Young Lawyer's Association (2010) Justice in Georgia. pp.28

¹⁴ American Bar Association Judicial Reform Index 2008, p.43

¹⁵ Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010

¹⁶ http://www.supremecourt.ge/default.aspx?sec_id=92&lang=2

¹⁷ Letter from the High Council of Justice #113/262-03, 18.02.2011

criminal code.¹⁸ According to Otar Kakhidze, all 380 prosecutors in Georgia underwent a week-long training on the new Criminal Procedure Code. All participants were then tested on the material. The 20 prosecutors who failed the examination (even at the second try) were terminated. Additional trainings were given in legal writing, jury trials, presentation skills, and the newly introduced electronic case management system. According to Justice Ministry, the electronic system will be fully operational by the end of April, 2011.

2009 Note:

In practice judges and other key personnel in the judiciary frequently have training opportunities to keep up with new amendments and practices. These are organized by domestic state institution like the Ministry of Justice and the HCoJ as well as by GTZ, USAID, American Bar Association, UNDP and other donors.

Sub-Objective 3: Improve access to justice

Indicator: To what extent are there legal provisions which provide for free public defense for persons without means to cover procedural costs?

Compliance Score: 1

2010 Update:

There have been no changes in legislation during 2010. The Ministry of Correction and Legal Assistance reports providing free legal assistance in 9367 cases at 14 regional locations. Of these almost a quarter were in Tbilisi.¹⁹ Despite the higher figures than in previous years the Ministry acknowledges the need for further expansion of the service's capacity.

2009 Note:

Law of Georgia on Legal Assistance was adopted in June 2007, guaranteeing the right to free legal assistance. Ministry of Correction and Legal assistance was created in February 2009, incorporating the preexisting department into a larger unit.

Beneficiaries of free legal assistance are identified by the Law on Legal Assistance and the Criminal Procedural Code of Georgia. The former (Article 46) defines instances of the defense with public expense for the persons unable to afford legal counsel at own expense.

Art. 45 of Criminal Procedure Code stipulates the cases when legal counsel is obligatory (e.g. the defendant is under age, there is a possibility for a plea bargain, the alleged crime entails imprisonment for life, etc.). In these cases the state provides free legal aid when the defendant does not have a lawyer.

Sub-Objective 3: Improve access to justice

Indicator: To what extent are there adequate interpretation services (e.g. for non-native language or deaf court users) in place in the court system?

Compliance Score: 2

2010 Update:

No new developments in this area.

¹⁸ Interview with Otar Kakhidze, head of Analytic Department, Ministry of Justice. March 2, 2011

¹⁹ 2010 Annual Report of the Ministry of Correction and Legal Assistance <http://www.mcla.gov.ge/content.php?id=9&lang=geo> (in Georgian only) retrieved on Feb. 20, 2011

2009 Note:

Georgian is the official language of all state communication and proceedings. However, the state provides for free interpretation of court proceedings and translation of trial documents in cases of need. The legislation also provides for interpretation services for the deaf/mute persons. The quality of interpretation and translation however, is difficult to assess, given no data is publicly available. Anecdotal evidence suggests high standards of interpretation quality and great ease of its access in Tbilisi, the situation in the regions, however, is more difficult to assess.

Sub-Objective 4: Ensure judicial sector has adequate resources to carry out its functions

Indicator: To what extent are changes in the overall judicial budget commensurate with the growth of the national budget and also reflect changes in demands for judicial services?

Compliance Score: 1

2010 Update:

The judiciary's budget grew steadily between 2003 and 2009, almost quadrupling from GEL 11 million to 44 million (approximately USD 6.5 mln and USD 25.8 mln respectively). In 2010 the funding was reduced to GEL 39 million (approximately USD 23 mln). Similar reductions in the budget of other ministries occurred in 2010 as a result of an overall tighter fiscal policy. For the judiciary the higher budgets in previous years reflected renovation costs that are now completed. Within this budget the share of salaries increased from 60 to 73 percent.

In general the highly centralized system of judicial financial planning and distribution may alienate lower courts. This is a concern when considering their own budgetary planning.

2009 Note:

Between 2007 and 2010 there was a 7% increase in overall government expenditures. During that time the Constitutional Court budget went up 2%, the Supreme Court budget went up 7%, and the Common Courts budget went up 9%, though the 2010 budget for the Common Courts represents a 12% reduction from 2009.

Sub-Objective 4: Ensure judicial sector has adequate resources to carry out its functions

Indicator: Are there procedural rules in place to discourage excessive adjournments; ensure judges have adequate time to hear cases and prepare judgments; and to ensure that appeals are heard without undue delay?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Civil cases are required to be heard within two months, or in exceptional circumstances, five months. Criminal cases must be heard within nine months of charges being filed. Detainees may be held in pre-trial detention for 9 months.

Sub-Objective 4: Ensure judicial sector has adequate resources to carry out its functions

Indicator: In practice, are cases heard and judgments handed down without lengthy delays and excessive adjournments?

Compliance Score: 2

2010 Update:

According to Tamar Chugoshvili the cases are usually handled without undue delays.²⁰

2009 Note

According to the US State Department's Human Rights Report for Georgia, all courts strictly adhered to the time limits set²¹. However, on city courts large numbers of cases can often cause delays in the system, which according to representatives from GYLA means that legal deadlines for hearing cases can be missed²².

The Supreme Court reported that judges in Tbilisi had an average of 70 pending cases at any one time. There is no legal maximum for the number of cases judges can have²³. The US State Department has said that the high number of judicial vacancies at the trial court level might have contributed to increasing delays²⁴.

Sub-Objective 4: Ensure judicial sector has adequate resources to carry out its functions

Indicator: To what extent does each judge have the basic tools necessary to do his or her job, e.g., sufficient office space, adequate support staff, word processing equipment, a law library (whether physical or online), etc?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Georgian courts have adequate infrastructure, equipment and numbers of support staff. The number of computers, photocopiers and fax machines has increased and in many courts all judges and staff members have internet access. However, questions on the technical qualifications of both staff and judges are still raised. Legislation is indexed and available through an electronic database to all judges and judicial personnel who have computer access.

Sub-Objective 5: Improve transparency of judiciary

Indicator: To what extent are courtroom proceedings are required by law to be open to the public and the media?

Compliance Score: 1

2010 Update:

No new developments in this area.

²⁰ Interview with Tamar Chugoshvili, Chair of Georgian Young Lawyers' Association, February 25, 1011

²¹ State Department (2009) Human Rights Report: Georgia (<http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm>)

²² Interview with Tamar Chugoshvili, GYLA parliamentary secretary, 18 March, 2010

²³ Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Court, 18 March, 2010

²⁴ State Department (2009) Human Rights Report: Georgia (<http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm>)

2009 Note:

Georgian legal framework only contains basic requirements to ensure transparency of court proceedings. Constitution (Art.85) states that court proceedings are open, and may only be closed in cases specified by law. However, all court decisions are to be announced publicly.

However, at the same time Law on Common Courts (Art.13.4) prohibits photo or video recording of the proceedings to anyone but authorized court personnel. Judge's permission is needed for audio/video recording and transcripts.

The court may produce transcripts and audio material, but is not required to do so.

Sub-Objective 5: Improve transparency of judiciary

Indicator: In practice, are courtroom proceedings generally open to, and can accommodate, the public and the media?

Compliance Score: 1

2010 Update:

There have been no observable changes in the transparency of courtroom proceedings.

2009 Note:

While court proceedings are usually open and anyone may attend, the limitations of recording the proceedings is especially curbing media coverage and analysis of cases. In this regard, ban on audio and video recording is particularly influencing the level of openness and public scrutiny, since television is the largest single source of information in Georgia.

While the courts may be making own audio or video recording, they are not required to do so, even at parties' request. Further, judges have used their discretion in prohibiting audio/video recording without providing grounds for the decision.

This is especially troubling given the past experiences of inaccurate/unreliable protocols, and hence the risks of fraud remain.

Another limitation on practical openness of courtroom proceedings is often the size of the court room. Space limitation has been cited as reason for not letting interested parties attend hearings of some highly publicized cases. While court room may objectively be varied in size, the current excellent state of infrastructure does allow the judiciary to change to larger rooms where considerable interest to a particular case is known and clear.²⁵

Sub-Objective 5: Improve transparency of judiciary

Indicator: To what extent does the law require that judicial decisions be published and open to public scrutiny?

Compliance Score: 2

2010 Update:

No new developments in this area.

²⁵ Interview with Tamar Chugoshvili, Chair of Georgian Young Lawyers' Association, February 25, 1011

2009 Note:

Courts are required to publicly announce all of their decisions. There is no requirement of publishing the decisions in a gazette or on official web page, however the Supreme Court and Constitutional Court do put their decisions on their respective web pages, because of high significance of their rulings. While Georgian law does not recognize power of precedence, the Supreme Court rulings bear mandatory power over lower courts.

Sub-Objective 5: Improve transparency of judiciary

Indicator: Are judicial decisions published?

Compliance Score: 1

2010 Update:

During 2010 judicial openness has been largely reduced.²⁶ Courts, at all levels, have denied FOI requests, including information regarding decisions, from civil society. Courts commonly argue that fulfilling FOI requests are not a priority given the limited administrative resources.²⁷ This new trend is concerning given that the judiciary has traditionally upheld the law and protected legitimate public information requests. In the past it has done so when such requests were refused by other state bodies. The stated motivation for the refusal, that the courts lack administrative resources conflicts with the stated opinion of the judiciary on the sufficiency of its own administration.^{28,29}

2009 Note:

Court's decision is automatically given to parties in writing. There are no requirements for further publishing individual decisions for common courts and despite the fact that all courts have web pages only Supreme Court and Constitutional Court publish their decisions on the web page.

However, all court decisions are a matter of public record and must be given to any person interested upon written request, as directed by Georgian freedom of information regulations.

Sub-Objective 5: Improve transparency of judiciary

Indicator: To what extent does the law require that a transcript of courtroom proceedings be maintained and made available to the public?

Compliance Score: 1

2010 Update:

No new developments in this area.

²⁶ TI Georgia, Georgian Young Lawyers Association and others have publicly spoken out against this on numerous occasions.

²⁷ Transparency International Georgia (2010) Plea Bargaining in Georgia: Negotiated Justice p.14 report available for download at: http://transparency.ge/sites/default/files/post_attachments/Plea%20Bargaining%20in%20Georgia%20-%20Negotiated%20Justice.pdf (last retrieved March 31, 2011)

²⁸ One recent example was letter from Tbilisi City Court # 104, 03.05.2010

²⁹ Radio Tavisupleba (Radio Liberty Georgian service) interview with Supreme Court Chair Kote Kublashvili on 22.07.2010 audio file (in Georgian) available on: <http://www.radiotavisupleba.ge/audio/audio/274693.html> (last retrieved March 31, 2011)

2009 Note:

Georgian legislation requires that minutes of trials be taken, rather than a full transcript (Code of Civil Procedure Art. 287-291; Code of Criminal Procedure Art.195; In administrative law case hearings the rules of civil procedure are applied).

The minutes are not published but are considered public information and are therefore available to public upon request. The text may however be redacted to protect private and confidential information.

Sub-Objective 5: Improve transparency of judiciary

Indicator: Is a transcript or some other reliable record of courtroom proceedings maintained and available to the public?

Compliance Score: 1

2010 Update:

Despite the government's assurance that transparency would be increased with the development of court web pages there has been little improvement.

Record keeping standards of the courts are also difficult to assess given the frequent refusal to disburse material upon request.

2009 Note:

There is no explicit requirement to make the minutes of trials available to public, except in administrative cases. Copies must be available to parties involved, however. No explicit public right to access minutes of criminal cases is a legislative gap, conflicting with the Georgian freedom of information regulations. According to a representative of the Appeals Court, audio recordings are made of many trials, which are available to the parties involved on request.³⁰

Chiora Taktakishvili of the Parliamentary Legal Affairs Committee said last year, Common Courts did not publish their decisions because they did not have the technical capacity. She then said that as individual courts build their own web sites, this material would be available³¹.

Sub-Objective 6: Increase the effectiveness of enforcement of judicial acts

Indicator: To what extent are there provisions in place which describe the role, organisation, status and training of enforcement agents, i.e. those responsible for carrying out the enforcement process (e.g. bailiffs, enforcement judges, sheriffs, court executors and court or judicial officers)?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

The role, organization, status and training of enforcement agents are regulated by the Law of Georgia on Enforcement Proceedings. Further regulations are put in place with the decrees of Minister of Justice.

³⁰ Interview with Irakli Adeishvili, Judge of the Appeals Court, 18.03.2010

³¹ Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23.03.2010

Enforcement of the judgments of the courts is regulated by the Georgian law on "Enforcement Proceedings" and "Instructions on Enforcement Proceedings". Enforcement is carried out by the LEPL National Bureau of Enforcement, which is under the governance of Ministry of Justice of Georgia.

Sub-Objective 6: Increase the effectiveness of enforcement of judicial acts

Indicator: In practice, to what extent are enforcement agents well trained in enforcement practices and procedures?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

The training sessions are regularly organized by the Training Center at the Ministry of Justice. Additionally, National Bureau of Enforcement (NBE) cooperates with different international organizations and regularly organizes trainings. (NBE) is currently participating in EU TWINNING project, SIDA program and GTZ programs.

NBE provides free legal consultation and also has a free hotline by which citizens can report complaints. NBE has a tracking system in place for enforcement processes and has good statistical data available on its web page.

Besides the state enforcers, private enforcer/executor services are now recognized in law. The license for this is issued by the Ministry of Justice to, private person with legal education. Private enforcers may only deal with civil cases.

While the state enforcement services covers a large majority of cases, existence and strengthening of private enforcer services can be considered as a step facilitating greater competition and incentive for continuous quality improvement.

Sub-Objective 6: Increase the effectiveness of enforcement of judicial acts

Indicator: To what extent are enforcement agents bound by ethical and professional standards as outlined in a written code of ethics?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Code of ethics for enforcement agents has been in place since 2007 with the order of the Minister of Justice and a 2009 order of the Minister of Enforcement and Legal Assistance.

Sub-Objective 6: Increase the effectiveness of enforcement of judicial acts

Indicator: To what extent is this code followed in practice?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

The cases of disciplinary proceedings for breach of codes are known to be rare. There are no reliable statistics of these publicly available however, given that such information is regarded as personal information.

Sub-Objective 7: Establishment of a code of ethics for prosecutors and judges

Indicator: To what extent are judges, court officers, lawyers, legislators, and other government officials governed by written codes of ethics which cover issues such as conflicts of interest, inappropriate political activity etc?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

The provisions on ethics and regulations on conflict of interests and corruption are part of the Georgian Civil Service Code. Additionally, judges and prosecutors have specific ethics codes in place. Implementation of these codes and rules and judicial integrity is overseen by HCoJ.

Lawyers practice is regulated by the Georgian Law on Attorneys and Georgian Bar Association's code of ethics.

Sub-Objective 7: Establishment of a code of ethics for prosecutors and judges

Indicator: To what extent is this code of ethics applied in practice?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

The Commission of Ethics is established at the Georgian Bar Association. The Commission supervises and controls behavior of an attorney and hears the complaints against them. The sanctions are not prescribed by the code of ethics, and the Commission follows the Law on Common Courts and the Law on Disciplinary Action. There are no statistics available to judge the actual extent of application, however. The grounds for disciplining are considered personal information and are not open to scrutiny.

Objective 2: Civil Service/Public Sector Reform

	2009 Compliance Score	2010 Compliance Score
Overall Score	25/50 (50%)	34/50 (68%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<i>Independence, Accountability and Transparency of Civil Service</i>	6/16	8/16
<i>Human Resources</i>	5/10	6/10
<i>Integrity</i>	5/8	4/8
<i>Public Procurement</i>	9/16	16/16

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent are there regulations which prevent undue political interference in the appointment and promotion of civil servants?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Civil Service Code provides the basic principles for recruitment and promotion. Presidential orders #46 (On Approval of the Rules for Holding Competition for Recruitment and Appointment on Positions in Civil Service) and #47 (On Approval of Appraisal Rules on Civil Servants) of February 5, 2009. The regulations are basic and vague, allowing for a great leverage of individual organizations in hiring. The vacancy must be announced publicly and at least two weeks period must be allowed for application. However, none of these documents and regulations is applicable to Legal Entities of Public Law (LEPL), semi-independent organizations under ministries or government/president. LEPLs are sole service providers in many policy areas, including the civil and public registries, accreditation of educational institutions among others.

There are no clear rules and criteria for promotion in place.

Both recruitment and promotion are decided by the institution in question, with the head or deputy head as the chair of the decision-making commission. Other members are also chosen by the leadership of the organization, with the head/representative of Civil Service Bureau also a member according to legislation.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent are recruitment and promotion regulations effective in preventing political interference (e.g. are selection committees able to work without political interference)?

Compliance Score: 1

2010 Update

Official appointments are often still dictated by political interference. Although the Civil Service Code guarantees civil service appointments for life, government reshuffling can result in massive uncertainty. Arrival of each new minister tends to result in a major reorganization.³² In general, staff members are “asked” to sign a letter consenting to possible termination due to reorganization. . The letter protects the government against legal retribution and financially, as no compensation must be given. . This practice was introduced after the state lost a number of cases for unlawful dismissal of employees. Subsequently, the state had to pay former employees lost salaries and reinstate them to old positions.³³

Promotion and rewarding/bonuses are thinly regulated and generally politicized. Political influences is evident when filling newly vacant position after reorganizations. A recent example from the Ministry of Education and Science (MES): the current Minister, Mr. Shashkin has extensively staffed the MES with his former employees from the Ministry of Penitentiary and Corrections. Mr. Shashkin is the third Minister of Education in three years.³⁴ Thus, such reshuffling has the potential to drastically reduce the effectiveness of the Ministry of Education.

Mr. Shashkin is also accused of removing a sizable body of mid-senior level civil servants soon after his arrival. Many of those terminated were senior employees who had been part of the state-funded program taking them to Harvard and Columbia Universities for master’s level studies in education policy and management. Program participants were obliged to work at MES for several years, or pay a heavy fine, reimbursing the costs of their participation in the program. However, upon Mr. Shashkin’s appointment, almost all of them left MES. Some of them have admitted in private conversations that they were effectively forced out – offered demotion from their high level posts, to be replaced by Mr. Shashkin’s cadre from the Ministry of Penitentiary. Anecdotal evidence suggests that no one was made to pay the penalties for the breach of contractual obligation to work for MES. Given the notoriously closed nature of MES and their consistent violation of Freedom of Information obligations, official verification of this information is impossible challenge.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent are there comprehensive regulations regarding political activities of existing civil servants (e.g. political party membership, expression of political views)?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Georgian legislation does not restrict civil servants’ membership in political parties. Exception to this rule are the police, military servicemen, prosecutors and judges (Law of Georgian on Political Unions of

³² Transparency International Georgia (2006) Reforming the Georgian Civil Service: Grand Corporation or a Competitive Market? Available at: <http://transparency.ge/sites/default/files/Reforming%20the%20Georgian%20Civil%20Service.pdf>, and Institutions of Internal Control in Georgia: Internal Police vs. Internal Auditing. Available at: <http://transparency.ge/sites/default/files/Institutions%20of%20Internal%20Control%20in%20Georgia.pdf> (last accessed on March 31, 2011)

³³ 2004 Parliamentary Report of the Ombudsman (in Georgian), Chapter on Social and Economic Rights, available at: <http://ombudsman.ge/files/downloads/ge/szounjmrncjpwcvdgasn.pdf> (last accessed on March 31, 2011)

³⁴ The sequence in the Ministry of Education was the following: Ghia Nodia (Jan.2008 – Dec. 2008), Nika Gvaramia (Dec. 2008 – Dec.2009), Dimitri Shashkin (Dec.2009 - present).

Citizens, Art.10), due to the nature of their work, and impartiality that is of even higher order. Party members who are appointed to these positions must relinquish their membership for the duration of their service. All civil servants are precluded from using their work for party activities (Civil Service Code Art.61). The Unified Election Code (UEC) clarifies how the two roles of impartial civil servant and a party activist may be reconciled. It states that civil servants may participate in campaign activities when not fulfilling their official duties (UEC Art. 76.1). The regulation however is minimal and full of possibilities for abuse.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent are these regulations enforced?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Practical enforcement of the regulations on separating the official state and party duties and activities is problematic³⁵. Misuse of administrative resources by the ruling party is consistently documented. State-funded events are used for political agitation and high state officials routinely accompany candidates/are present at campaign-related events and meetings, while not on leave, and using state vehicles and security for transportation.

While the ruling party officials have been more careful during recent elections to adhere to rules due to extensive publicity and monitoring efforts by civil society, the loopholes in the legislation and the uneven political playing field contribute to less than effective enforcement.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent are there legal requirements for the disclosure/declaration of personal assets, income, financial interests for public sector employees?

Compliance Score: 1

2010 Update:

The Civil Service Bureau has introduced an electronic platform (www.declaration.ge, in Georgian only) for filing online financial declarations. Eligible civil servants receive individual identification numbers and passwords to access the system. Prior to 2010 handwritten declarations were filed.

2009 Note:

The regulation for disclosure of personal assets and interests of public sector employees are in place, in the Civil Service Code of Georgia and the Law on Conflict of Interest and Corruption in Civil Service. All civil servants must submit a declaration to the Civil Service Bureau upon their appointment. Only high officials are required to submit a specific declaration on annual basis. The list of the high level civil servants is approved by the Presidential order.

³⁵ Transparency International Georgia (2010) Use of Administrative Resources for Election Campaign – 2010 Local Self-Government Elections available at: <http://www.transparency.ge/en/post/report/final-report-use-administrative-resources-election-campaign>

There is however, no agency responsible for checking accuracy and comprehensiveness of the declarations. The Bureau acts largely as a depository only. The declarations are public and are currently available on the web page of the Bureau for free download.

The gaps in the disclosure requirements have been evident and left unaddressed for several years now.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent does disclosure of personal assets, income, financial interests of public sector employees occur in practice?

Compliance Score: 2

2010 Update:

The Civil Service Bureau has a full database of the civil servant declarations available on its web page www.declaration.ge. The documents submitted prior to 2010 in handwritten form have been digitalized and are available in pdf form from the Bureau's web page www.csb.gov.ge.

Note:

The declarations are largely submitted. The failure to file within the deadline results in an administrative fine of GEL 1000. However, those fined must still submit the declaration. Further non-compliance may result in criminal proceedings.

Despite these efforts, and given the gaps in the disclosure requirements and absence of a monitoring body, the extent of disclosure remains questionable.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: To what extent are there legal regulations protecting civil servants against arbitrary dismissals or political interference?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Civil servants are legally protected from arbitrary dismissal and political interference by the Civil Service Code. They further have legal possibilities for appeal and whistle-blowing in cases of such attempts. However, the legislation also allows dismissals due to downsizing or "liquidation of the agency". These could give the management considerable flexibility.

Sub-Objective 1: Independence, Accountability and Transparency of Civil Service

Indicator: In practice, are the regulations protecting civil servants from arbitrary dismissal effective?

Compliance Score: 0

2010 Update:

No new developments in this area.

2009 Note:

Although the Civil Service Code guarantees certain security and officially the civil service appointments are for life, all government reshuffles result in massive uncertainty for staff of all ranks. Arrival of a new minister tends to by default signify a major reorganization. The staff is effectively forced to sign a letter saying that they understand they might be let go as a result of ongoing reorganization and they consent. This letter has two functions – it officially attests that the civil servant quit on own accord and that there is no need of financial compensation. This letter of consent further removes the prospects of possible legal action from the fired former employees. The practice of consent letters has been introduced after the state lost large numbers of cases for unlawful dismissal of employees, and had to pay them lost salaries and reinstate them to old positions soon after 2003 Rose Revolution.

Sub-Objective 2: Human Resources

Indicator: To what extent are wages in the public sector competitive enough to sustain an appropriate standard of living for public sector employees, in accordance with the country's economic situation?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

The official salary ranges are not defined by any law and the actual salaries are negotiated by individual Ministers and general spending ceiling is negotiated with the Finance Ministry annually. Salaries therefore can vary considerably from ministry to ministry. Only salaries of Ministers, deputy Ministers and heads of departments are defined by a Presidential Order (#43 of 24.01.2005)

In general, the salaries have significantly improved in recent years. While they may well be enough for adequate standard of living at higher levels of bureaucracy, the civil service salaries alone cannot be appropriate at lower levels, where average salary is reported to be about GEL 700 (approximately USD 410) monthly.

But official salaries alone do not give a full picture of civil service remuneration. Bonuses are a major part of that in Georgian civil service.

Georgian legislation does not provide a clear and impartial systematic method of performance assessment that bonuses are normally associated with. Nor is the size of the bonus – absolute or relative to monthly salary, defined anywhere.

Rather than being a tool for rewarding exceptional performance of employees, bonuses are difficult to tie any indicator in practice. The trend is to give “salary additives”, often in the amount of official monthly salary, to all staff at least once a year, and at times, at the end of each quarter. However, bonuses larger than monthly salaries are not infrequent either.³⁶

Beyond that, there are instances when “bonuses” are paid to certain staff every month. Since the agencies cannot pay salaries over the set amount for a given position, they tend to pay competitively only through these monthly additives. This is of course not official, but rather a verbal agreement made upon hiring. The grounds for such agreement may be varying. On one hand, it may be that civil service

³⁶ Transparency International blog Caitlyn Ryan and Rusudan Khotivari – Tracking Top-Level Ministry Officials' Income and Bonuses 01.02.2011 available at: <http://transparency.ge/en/blog/tracking-top-level-ministry-officials%E2%80%99-income-and-bonusesp> (last retrieved March 31, 2011)

is attempting to recruit and sustain highly qualified staff but on the other – it could also be favourism and corruption

Department heads are usually the persons in charge of allocating the lump sum for bonuses. And not only do they decide who to pay more, but can also decide that they themselves deserve the incentives. One case has been reported to TI Georgia, when an official allocated all of the bonus funds to himself, citing the renovation of his apartment as justification.³⁷

Sub-Objective 2: Human Resources

Indicator: To what extent are there legal provisions to ensure that civil servants are regularly trained to improve their technical and managerial competencies?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

There are no legal provisions on regularity or substance of trainings to civil servants. However, there are considerable training opportunities at different agencies. These tend to be largely foreign donor financed.

The government also operates a special fund for sending Georgian students abroad for graduate education. Here preference is traditionally given to acting civil servants, and the fellows are encouraged to work in civil service upon return.

The state, however, decides on the areas of study –for 2011 the areas are engineering, information technology and exact sciences, and the list of universities the applicants must first be accepted to, to be eligible for state funding.

Sub-Objective 2: Human Resources

Indicator: In practice, is it the case that civil servants are regularly trained to improve their technical and managerial competencies?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

In the absence of any central planning, the level and content of training offered or received varies considerably across the ministries. There is no guarantee of training and the opportunities largely depend on determination and luck of individuals in finding opportunities.

As mentioned above, considerable training is also offered by international organizations and foreign governments under varying technical assistance efforts. Among the more extensive programs, the Georgian Foundation for Strategic and International Studies (GFSIS) has offered public policy training evening courses across civil service since 2003.

³⁷ Anecdotal information is based on numerous discussions with civil service employees from various Ministries/agencies.

EU, USAID, UNDP, World Bank and national governments have offered technical assistance and training involving every aspect of Georgian government. Many programs have targeted the Parliament as well, particularly on the staff's professional development.

Sub-Objective 2: Human Resources

Indicator: To what extent are there provisions to ensure that civil servants are regularly trained about ethics, integrity and codes of conduct in the public sector?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

The Civil Service Code includes a chapter on the code of conduct for civil servants (chapter 6). This however, is only a general guideline and may different ministries and agencies have own codes of ethics and conduct. Employees are expected to familiarize themselves with these regulations and follow them, but there are no legal provisions for ensuring training on these.

Sub-Objective 2: Human Resources

Indicator: In practice, is it the case that civil servants are regularly trained about ethics, integrity and codes of conduct in the public sector?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

There is no coordinated training system in place for ethics, and that has been consistently cited as a concern by OECD ACN, among others. The trainings in place are largely ad hoc and inconsistent.

Sub-Objective 3: Integrity

Indicator: To what extent are there legal provisions in place to protect whistle-blowers in the public sector?

Compliance Score: 1

2010 Update:

Otar Kakhidze, the Head of the Analytical Department of the Ministry of Justice says that several corruption cases have been uncovered with the help of whistle blowers and calls the model "successful". According to Kakhidze, investigators often use whistle blowers in their investigation by equipping them with hidden cameras to collect incriminating material about a civil servant accused of corruption.³⁸ Incriminating video footage is often published by the police and aired on national TV when a suspect is arrested (before the trial).

³⁸ Interview with Otar Kakhidze, Head of the Analytical Department of the Ministry of Justice, March 2, 2011.

2009 Note:

Whistleblower protection framework has been introduced to the Law on Conflict of Interests and Corruption in Civil Service through addition of Chapter 5¹ to the law in 2009. As long as whistle-blowing is done honestly, the law requires that whistleblowers may not be subjected to any criminal, civil, administrative or disciplinary sanctions. Exerting pressure, dismissing or temporarily discharging whistle-blowers is prohibited. Identity of the whistleblower and the witness may remain secret to the person about whom the information was revealed. Further, whistleblowers may request and be granted special measures of protection.

However, the body the whistleblower is supposed to approach is the internal audit/inspection unit of the agency in question (Art. 20¹) or the head of the agency.

Further caveat in the legislation is that public interest protected should be greater than the costs of whistle-blowing (Art.20². 1, section b). Who is to determine this and how is not specified and hence is open to interpretation on case by case basis.

Sub-Objective 3: Integrity

Indicator: To what extent are whistleblowers in the public sector protected in practice?

Compliance Score: 1

2010 Update:

The legal framework has obvious gaps when it comes to implementation. Internal audit/inspection units are not independent, and universally rely on the agency leadership (i.e. Political appointees) for the mandate to take action on specific issues. And the leadership of the agency will not necessarily be the most impartial arbiter and protector of public interest in face of misconduct within the agency, given the extent of the politization of civil service in practice.

There has been no awareness-raising activity on whistle-blowing issues within the civil service or the public at large.

Ministry of Justice believes³⁹ that the system is working well however, citing the numerous cases of cooperation with investigation, especially on corruption related crimes. The informants often wore hidden cameras and microphones provided by the Ministry of Interior to record the dealings with corrupt officials. These informants/whistleblowers however are usually private citizens, not public sector employees.

2009 Note:

The OECD ACN analysis of this issue, which was largely based on government interviews, suggests that no information was provided about internal awareness-raising on the protection of whistleblowers and no evidence was offered to demonstrate its effectiveness.⁴⁰

Sub-Objective 3: Integrity

Indicator: To what extent are comprehensive codes of conduct regarding conflicts of interest, rules on gifts and hospitality, post-employment restrictions etc for public sector employees in place?

Compliance Score: 1

³⁹ Interview with Otar Kakhidze, head of Analytic Department, Ministry of Justice. March 2, 2011

⁴⁰ Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia, OECD Paris, France.

2010 Update:

No new developments in this area.

2009 Note:

The rules on conflict of interest and gifts are laid out in the Civil Service Code (Chapter 6¹) and the Law on Conflict on Interests and Corruption in Civil Service.

There are no regulations concerning post-employment restrictions in place for senior civil servants in general. However, there are regulations concerning the president and board members of the National Bank of Georgia. Art. 14 of the Organic Law on National Bank of Georgia restricts their employment in financial sector for 6 months only, and guarantees that they receive their pre-retirement salary for that period.

It should be further noted, that the restrictions do not apply if the person in question has resigned at own will.

Sub-Objective 3: Integrity

Indicator: To what extent are these codes of conduct followed in practice?

Compliance Score: 1

2010 Update:

No new developments in this area.

2009 Note:

Practical implementation of the regulations in place is extremely difficult to assess. While civil servants file declaration of assets and interests, the Civil Service Bureau is only the depository, without powers or resources for checking authenticity and exhaustiveness of the declarations' content. Chief Prosecutor's Office may undertake such check as part of an ongoing investigation against an offending civil servant, on ad hoc basis. But the declaration alone has never yet become a source for prosecution. Besides this, there is no mechanism in place for the review.

While all Ministries and some other major public institutions have internal control units and as well as hotlines, these cannot initiate the inquiry without prior authorization of the head of the agency. In case of an actual investigation these units forward their findings to the prosecution for further investigation. There is, however, some data regarding prosecution of civil servants on corruption charges based on media reports, but no overall statistics and no indication of how well these might reflect the overall situation.

Sub-Objective 4: Public Procurement

Indicator: To what extent do public procurement regulations exist requiring open competitive bidding as a general rule with exceptions regulated in the law kept to a minimum?

Compliance Score: 2

2010 Update:

The procurement process is regulated by the Law on Procurement, the technical administration of the process itself is defined in by-laws that are issued by the head of the State Procurement Agency (SPA).⁴¹ Since December 2010, all procurements are conducted electronically.⁴²

According to the SPA, there are more than 5,000 entities that will conduct their procurements electronically.⁴³ The Law on Procurement applies to legal entities of public law, institutions belonging to the national government, local governments as well as the autonomous Republic of Adjara, institutions that are financed through public funds and enterprises with more than 50% state ownership.

Procurements exempted from using competitive online bidding are tenders that concern state secrets (in practice, this not only contains Defense and Interior Ministries spending but also e.g. the hiring of government lobbyists) the reserve funds of the Georgian President, the Prime Minister and Mayor of Tbilisi (spending from these funds, each containing GEL 50 million in 2011, remains generally opaque), the fiscal policy implementation by the National Bank of Georgia, religious organizations, the procurement of utilities, spending regarding diplomatic visits and meetings, the hiring of temporary staff, broadcasting licenses, and the financing and use of educational, healthcare and social insurance vouchers.^{44 45}

All procurement of goods and services with the value of more than GEL 200,000 has to be conducted through competitive e-procurement starting August 2010. Tenders are open for at least 20 days. Goods and services valued at less than GEL 200,000 can go through a simplified e-procurement procedure where the tenders are only open for two days.⁴⁶ Price offered, and not service quality, is the only criteria for determining the winner, the rationale being that by reducing somewhat subjective criteria, opportunities for corruption are eliminated.

Besides the open tender, Georgian legislation also recognizes two additional forms for procurement: competitive price quotation and single source procurement. Price quotation can be used as a method for procuring goods and services valued at less than GEL 100,000 and works valued less than GEL 200,000.⁴⁷ Single source negotiation can be applied to procurement of goods and services valued less than GEL 50,000 and works valued at less than GEL 100,000.⁴⁸

From January 1, 2012 the new threshold for applying simplified procedures will be GEL 5,000. However the procurement of goods/service up to GEL 20,000 performed by Georgia's foreign missions, Ministries of Interior and defense related to defense, security and maintaining public order can also be performed through the simplified procurement process.⁴⁹

⁴¹ Georgian Law on State Procurement (unofficial translation), [http://procurement.gov.ge/files/_data/eng/normative/legislative_acts/Law_on_State_Procurement_\(Unofficial_Translation\).pdf](http://procurement.gov.ge/files/_data/eng/normative/legislative_acts/Law_on_State_Procurement_(Unofficial_Translation).pdf), accessed February 10, 2011.

⁴² <https://tenders.procurement.gov.ge/>

⁴³ http://procurement.gov.ge/index.php?lang_id=ENG&sec_id=10&info_id=136, accessed on March 4, 2011.

⁴⁴ Civil Georgia: Parliament Approves 2011 State Budget, <http://civil.ge/eng/article.php?id=22972>, accessed on March 4, 2011.

⁴⁵ Georgian State Procurement Agency: State Procurement in Georgia, April 2010, <http://siteresources.worldbank.org/INTECACOSUPROC/Resources/776023-1271709540888/Georgia.pptx>, accessed on March 4, 2011.

⁴⁶ Law of Georgia on State Procurement, Article 3

⁴⁷ Rules of Organizing State Procurement, approved by Order#1 of the head of State Procurement Agency, 03.01.2006 Article 22

⁴⁸ Ibid, Article 23

⁴⁹ Law of Georgia on State Procurement, Article 3.1 S¹

2009 Note:

The procurement process is regulated by the Law on Procurement, but details of the process are prescribed in the Rules of State Procurement, approved by the head of the Agency. This currently allows for three types of procurement: an open tender, a competitive price quotation and a single source negotiation. The main governing principle of the different categories is price, though under a new law this is currently in the process of coming into effect, the ceiling above which an open tender is required has been substantially lowered.

In November 2009 the Georgian government adopted a new law on public procurement. This will significantly lower the value of procurement that can be awarded with no bidding procedure from GEL 50.000 (USD 29.410) to GEL 2.000 (USD 1.180) for goods and services, and from GEL 100.000 (USD 58.820) to GEL 5.000 (USD 2.940) for works.

According to GYLA, competitive tenders currently are required for most public procurement. However, there is a significant number of exceptions to this rule⁵⁰. For example, open tenders are not necessary in emergency situations (such as 2008 war), or when time pressure is a factor.

The State Procurement Agency says that of funds allocated to 680 organizations in 2009, 75% was spent through tenders, 20% on price quotations and 3% on sole source procurement⁵¹.

However, GYLA also argues that the practice allows significant abuse to the general idea of "open" tender. For examples, it is fairly commonplace for tenders to be released with a very short time window for application⁵².

Sub-Objective 4: Public Procurement

Indicator: In practice, to what extent is open bidding the general rule for public contracts, with exceptions regulated in the law and kept to a minimum?

Compliance Score: 2

2010 Update:

In practice, many companies, especially those located outside Tbilisi, were not interested or prepared (largely due to low penetration of internet access and credit cards) to participate in electronic procurement.⁵³ As a consequence there are fewer interested bidders.

2009 Note:

Given the exceptions to the rules of competitive procurement given in the law, in practice they are often used to make the procurement process much less transparent. The argument of emergency situations was used frequently following the 2008 war with Russia, and the argument of time pressure is often cited as well to justify shorter time windows for applications.⁵⁴

Sub-Objective 4: Public Procurement

Indicator: To what extent are there detailed formal rules (weighting evaluation criteria, use of price lists, certified quality standards, awards set by committees etc.) to ensure objectivity in the contractor selection process?

⁵⁰ Interview with Tatuli Todua, GYLA, 19 March, 2010

⁵¹ Email exchange with the State Procurement Agency, 19 March, 2010

⁵² Interview with Lina Ghvinianidze, GYLA, 18 March, 2010

⁵³ Georgian State Procurement Agency: State Procurement in Georgia, April 2010,

<http://siteresources.worldbank.org/INTECACOSUPROC/Resources/776023-1271709540888/Georgia.pptx>, accessed on March 4, 2011.

⁵⁴ Interview with Lina Ghvinianidze (GYLA), March 18, 2010

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

It is the responsibility of the procuring entity to provide all necessary details and specifications of a good or service to be procured. These details are included tender announcement and supporting documentation. The lowest price is automatically used as the only criteria to reward a contract.⁵⁵ This focus on price is supposed to ensure objectivity in the contractor selection process by eliminating room for subjective decisions. The only exceptions from this rule are tenders that involve major design or architectural components, in these cases a special commission is involved in evaluating bids.⁵⁶

Sub-Objective 4: Public Procurement

Indicator: To what extent are these rules followed in practice?

Compliance Score: 2

2010 Update:

As of November 2010, when Georgia switched from paper-based to e-procurement, the SPA had referred 23 cases of violations by procuring entities to prosecutors. During this time courts imposed penalties on 57 individuals totaling GEL 85,500 (to be paid by officials from their personal income), while 30 cases are still pending.⁵⁷

2009 Note:

GYLA has highlighted a number of problems with the tender process. These include altering selection criteria for tenders after applications have already been received, and not releasing defined selection criteria at all. Tender committees are obliged to publish justifications of their decisions, but this often does not happen.⁵⁸

Sub-Objective 4: Public Procurement

Indicator: To what extent does the law provide for a procedure to request a review of and appeal against a procurement decision?

Compliance Score: 2

2010 Update:

The rules to review or file an appeal against a procurement decision are defined in Article 23 of the Law on State Procurement. The SPA has set up an appeal and dispute resolution board to which any person or company can appeal if they suspect a violation of procurement rules. The board is composed of six members. Three members are representatives of civil society, chosen by interested NGOs. The other three members are representatives of the SPA – the head and two employees of his choosing. In

⁵⁵ TI Georgia meeting with the head of the State Procurement Agency, Tato Urjumelashvili, October 2010.

⁵⁶ Georgian State Procurement Agency: Order Nr. 3: http://procurement.gov.ge/index.php?sec_id=40&lang_id=GEO, accessed on March 4, 2011.

⁵⁷ Georgian State Procurement Agency: Cases Filed Referred to the Court with regard to Tenders, Held in Violation of Law in 2010, November 21, 2010, http://procurement.gov.ge/index.php?lang_id=ENG&sec_id=10&info_id=136, accessed on March 4, 2011.

⁵⁸ Interview with Tatuli Todua (GYLA), March 18, 2010

2011, the board includes representatives of the Georgian Young Lawyers' Association, the Business Association of Georgia and the Association of Oil Product Importers and Distributors of Georgia. Members of the board are selected for a one-year term (Disclosure: TI Georgia dropped out of the 2011 race and supported GYLA's candidacy for the board and has stated its interest in being represented on the board the following year).⁵⁹

2009 Note:

Parties can request a review of the procurement process from the head of the state agency involved. On completion of this review, or if a criminal prosecution is possible, the case can be taken to court. However, according to a recent OECD CAN report⁶⁰, one of the problems with the old system was that there was no independent review body for assessing the complaints. This shortcoming has largely been addressed in 2010.

Sub-Objective 4: Public Procurement

Indicator: To what extent are these review mechanisms effective in practice?

Compliance Score: 2

2010 Update:

Appeals can now be filed electronically from the SPA's website. If the board finds that a complaint is legitimate, it is entitled to demand the revision or revocation of the decision made by the procuring entity, as well as to appropriate authorities to launch an investigation.⁶¹ The dispute resolution board's sessions are open to the public and its decisions are posted on the SPA's website.⁶²

2009 Note:

According to State Procurement Agency 10 complaints were received in 2009: four were denied, four were reviewed and two were overturned⁶³.

Sub-Objective 4: Public Procurement

Indicator: To what extent is there a system in place to monitor public procurement as well as to detect misconduct and apply sanctions accordingly?

Compliance Score: 2

2010 Update:

The procurement process, starting with the public announcement of a tender, can be publically monitored by entering the procurement website as a guest user. Information available includes the procuring agency, the name of the procurement officer, all tender documents, the names of all bidders, technical/financial documentation they submitted and the contract signed between the successful bidder and the procuring entity.

A major challenge for the procuring agencies is to monitor the delivery and implementation of goods and services provided, as price is the only criteria used to reward tenders. Looking forward quality

⁵⁹ http://procurement.gov.ge/index.php?lang_id=ENG&sec_id=10&info_id=209, accessed on March 4, 2011.

⁶⁰ Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010) Istanbul Anti Corruption Action Plan: Second Monitoring Round, Georgia

⁶¹ http://procurement.gov.ge/index.php?lang_id=ENG&sec_id=10&info_id=209, accessed on March 4, 2011.

⁶² http://procurement.gov.ge/index.php?lang_id=GEO&sec_id=12, accessed on March 4, 2011.

⁶³ Interview with Tamar Buadze, head of the Legal Department, State Procurement Agency, Interviewed on March 23, 2010

control will be key to the successfully and proper implementation of electronically procured infrastructure projects.

2009 Note:

The State Procurement Agency is responsible for monitoring public procurement. However, the old law was not considered to have sufficient oversight, as it did not offer an independent process for reviewing complaints. In 2009 the SPA brought nine cases of administrative infringement to the court, all of which were satisfied⁶⁴.

Sub-Objective 4: Public Procurement

Indicator: To what extent does this monitoring system function effectively in practice?

Compliance Score: 2

2010 Update:

Within the first two months of the new appeals board being in place, 13 complains had been addressed by the board, and their findings and decisions were published on the SPA's website.⁶⁵ A GTZ survey among business people indicated very low trust in the old, paper-based procurement system and its appeal mechanism, resulting if very few complaints being filed.⁶⁶ The significantly increased number of complaints filed under the e-procurement system is an indication for increased trust in the new appeals board.

The SPA keeps a public, constantly updated "black list" of companies and individuals that have been banned from participating in the procurement process due to violations of contracts or fraud. Each entry includes a brief explanation for the listing. Three months after the introduction of the e-procurement system, 89 suppliers had been black-listed.⁶⁷

2009 Note:

Only nine complaints were brought to the State Procurement Agency in 2009, though 69 were taken to court⁶⁸. This seems to suggest that the formal complaint process in the form of the SPA is not trusted as a place where changes can be affected.

⁶⁴ Ibid.

⁶⁵ http://procurement.gov.ge/index.php?lang_id=GEO&sec_id=14, accessed on March 8, 2011.

⁶⁶ State Procurement Agency, November 15, 2010: State Procurement in Georgia, http://procurement.gov.ge/files/_data/geo/publication/SPA_E-Proc_Presentation_11_11_2010_Eng.pps, accessed on March 5, 2011.

⁶⁷ http://procurement.gov.ge/index.php?lang_id=GEO&sec_id=14, accessed on March 7, 2011.

⁶⁸ Interview with Tatuli Todua, GYLA, interviewed 18 March, 2010

Objective 3: GRECO Recommendation Implementation

	2009 Compliance Score	2010 Compliance Score
Overall Score	9/14 (64%)	11/14 (79%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<i>Public sector Audit</i>	1/2	2/2
<i>Access to Information</i>	1/2	1/2
<i>Code of Ethics</i>	1/2	1/2
<i>Conflict of Interest</i>	1/2	2/2
<i>Anti-bribery legislation</i>	2/2	2/2
<i>Public Sector Human Resource Management (Criminal Liability)</i>	2/2	2/2
<i>Public Sector Human Resource Management (Tax)</i>	1/2	1/2

Sub-Objective 1: Public Sector Audit

Indicator: Has the GRECO recommendation on the (i) development and implementation of a common methodology and standards for carrying out audits in respect of the public sector, bearing in mind the particularities of its various components; (ii) strengthening the auditing of local authorities, and (iii) ensuring effective auditing of state enterprises been implemented?

Compliance Score: 2

2010 Update:

In 2010, strengthening the skills, professionalism and impact of the Chamber of Control (CCG) was a priority of international donors. Numerous capacity building seminars and professional exchanges for the CCG's leadership, as well as its auditors, were held. This support has helped to strengthen the role of the CCG and to make it politically more independent.

In 2010, the CCG discovered corruption cases in the Ministry of Finance, the Ministry of Health Care and the Ministry of Education, which resulted in the prosecution of several high-level officials, including deputy ministers. The CCG has also increased the transparency of its work by releasing more information on its website.

The Rules of Procedure for the Chamber of Control of Georgia regulates internal procedures of the CCG and describe how audits should be conducted.⁶⁹

In September, the Georgian CCG introduced a Code of Ethics that is in line with the standards of the International Organization of Supreme Audit Institutions.⁷⁰ The code addresses issues such as political

⁶⁹ Chamber of Control: The Rules of Procedure: <http://www.control.ge/files/upload-file/pdf/regulation.pdf>, accessed on March 7, 2011.

⁷⁰ <http://www.control.ge/eng/news/id/48>, accessed on March 7, 2011.

neutrality, confidentiality, conflicts of interests and also envisages the creation of an ethics commission to monitor compliance with the code.⁷¹

The CCG's 2010 audit plan included several local municipalities and state enterprises.⁷² The CCG's 2009 Annual Report states that the majority of state owned companies are not fulfilling their main functional obligations. Therefore, the State cannot obtain the results expected at the time of creation of the companies. The report states that in some cases, this was an "obvious result of inefficient management" and lists shortcomings identified in the audits of several state-owned firms.⁷³

The CCG is not conducting performance audits yet, but plans to introduce them in 2012, according to its Capacity Development Plan.⁷⁴

2009 Note

The Chamber of Control continues to be the main external audit body for the Georgian government. The Chamber of Control operates under a new law adopted in December 2008 that expands its responsibility to include local government audit. The law also foresees the introduction of performance audit, but this provision will enter into force in 2012.

However, the law provides little information on methodology and auditing standards, and for the time being the institution continues to combine the role of the limited compliance audit with an investigatory component. Currently the Chamber of Control and the Ministry of Justice are in the process of developing a more detailed methodology and standards. It is not yet known when this work is going to be completed. Meanwhile, there has been little movement to develop the institution or the skill sets necessary to create a fully fledged National Audit Office.⁷⁵

Sub-Objective 2: Public Sector Access to Information

Indicator: Has the GRECO recommendation on assessing the implementation in practice of the provisions of the General Administrative Code on access to information to ensure that the public's right to access information is not unduly limited, and to provide training to those civil servants designated to respond to requests for information been implemented?

Compliance Score: 1

2010 Update:

Access to public information remains problematic. The Institute for the Development of Freedom of Information (IDFI), a Georgian NGO, tested the responsiveness of 23 public authorities on freedom of information (FOI) requests by submitting a total of 539 applications for the release of public information. Forty-six percent of all requests were answered. Only 33 percent of all requests were fully answered, while in other cases information was refused. More than half of the replies were received after the 10-day deadline envisaged by the Administrative Code. The survey also indicates that while some institutions make an effort to respond to FOI requests, others largely refuse to release information. Among the least transparent institutions were the Ministry of Interior, the Ministry of Refugees and

⁷¹ Code of Ethics of the Auditors of the Chamber of Control of Georgia, <http://www.control.ge/eng/legal-basis/code-of-ethics-of-the-chamber-of-control-of-georgia>, accessed on March 2, 2011.

⁷² Chamber of Control: 2010 Audit Plan, <http://control.ge/files/upload-file/pdf/2010.pdf>, accessed on March 9, 2011.

⁷³ Chamber of Control: Annual Report 2009, <http://www.control.ge/files/upload-file/pdf/annual-report-2009.pdf>, accessed on March 9, 2011.

⁷⁴ Chamber of Control: Capacity Development Plan 2010-2011, <http://www.control.ge/files/upload-file/pdf/cdp-eng.pdf>, accessed on March 9, 2011.

⁷⁵ George Welton (2009) The Role of the International Community in Facilitating Financial Reform in Georgia. Budgetary Planning and Oversight, International Budget Partnership

Accommodation, the Ministry of Education and Science, the Ministry of Economy and Sustainable Development and the President's Administration.⁷⁶

According to IDFI, gaps in the legislation and incomplete definitions of legal frameworks have allowed public institutions to refuse requested information.⁷⁷

In the past year, several public institutions have made an effort to improve the amount and quality of information available on online.⁷⁸

2009 Note:

There have been no major changes in the implementation of the Freedom of Information (FOI) Act. While officially there is certainly a commitment to it in principle, officials still demonstrate considerable discretion in their interpretation of what information is privileged and often fail to respond in a timely manner or acknowledge requests for information at all.

According to the Administrative Code of Georgia, Chapter 3, in order to obtain public information an interested individual/group must submit a written request. The applicant is not required to specify purpose for requesting the information. The government agency that receives the request must respond to it within a maximum of 10 days. The 10-day maximum can be used if the requested information is not readily available and the agency needs time to put it together. If the information is readily available, then the response must be given immediately. If the government agency does not have the requested information, it still must say so in a response to the applicant. If the requested information is within the mandate of a different government agency, then the agency that received the application must forward it to the respective agency and inform the applicant about it. If the government agency fails to respond, the applicant may appeal to a higher body or to a court.

In practice it is common for government agencies to wait 10 days to respond even if the information is readily available, to ask applicants to explain why they need the requested information (this is particularly common in regional offices), or to provide incomplete answers to the requests, even if the request is very detailed, and then ask for another request for additional information. Some government agencies fail to respond to the requests without giving any explanation; this is especially true for the following agencies: Ministry of Interior, Ministry of Defense, Ministry of Economic Development (requests on privatization contracts) and the Tbilisi Mayor's Office.

Court appeals are possible, but at GEL 100 (USD 58) they are expensive in local terms, take considerable time and even favourable decisions may be hard to execute.⁷⁹

Sub-Objective 3: Public Sector Code of Ethics

Indicator: Has the GRECO recommendation to have code(s) of conduct adopted for all employees in the public sector, both at local and state level, in order to clarify and complement the rules on inter alia conflicts of interests, gifts and reporting on corruption been implemented?

Compliance Score: 1

⁷⁶ IDFI: Access to Public Information in Georgia, Information Bulletin Nr. 2, <http://www.opendata.ge/userfiles/files/opendata%20EN.pdf>, accessed on March 4, 2011.

⁷⁷ Ibid.

⁷⁸ IDFI (2011) Electronic Transparency in Georgia. information available at: <http://www.idfi.ge/?cat=main&topic=46&lang=en&header=Electronic%20Transparency%20in%20Georgia>

⁷⁹ Interview with Tamuna Karosanidze, Board Member, TI Georgia, 28 March, 2010

2010 Update:

No new developments in this area.

2009 Note:

The Civil Service Law, which covers both the local and state level public sector, contains a section on general rules of behavior for civil servants. This section includes elaborations conflicts of interest, gifts and the requirement to report any illegal or criminal act of another civil servant to a supervisor.⁸⁰

The Law on Conflict of Interests and Corruption in Public Service elaborates on how conflicts of interests and corruption in the public sector are defined and how they can be prevented. The law regulates the acceptance of gifts as well as the submission of property declarations by officials.

No separate code of conducts for all employees in the public sector has been adopted.

Sub-Objective 4: Public Sector Conflict of Interest

Indicator: Has the GRECO recommendation to amend the provisions on corporate liability in the Criminal Code to ensure that legal persons can be held liable in cases where lack of supervision or control by a natural person has made possible the commission of active bribery, money laundering or trading in influence been implemented?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Article 73⁵ of the Law on Civil Service requires an employee in the public sector to report another civil servant he/she suspects of illegal or criminal wrongdoings to that person's supervisor if there is evidence or well-founded doubt. If there is no direct supervisor for civil servant suspected of an illegal act, this report has to be made to law-enforcement agencies.⁸¹

Article 20 of the Law on Conflict of Interest and Corruption in Public Service establishes the protection of whistle blowers. It prohibits intimidating or threatening a whistleblower in discriminatory ways and establishes that a whistleblower may not be subject to disciplinary or administrative procedures, civil action or prosecution until the end of the investigation. In extraordinary circumstances, the law also grants special measures of protection to a whistleblower.⁸²

Otar Kakhidze, the Head of the Analytical Department of the Ministry of Justice says that several corruption cases have been uncovered with the help of whistle blowers and calls the model "successful". According to Kakhidze, investigators often use whistle blowers in their investigation by equipping them with hidden cameras to collect incriminating material about a civil servant accused of corruption.⁸³ Incriminating video footage is often published by the police and aired on national TV when a suspect is arrested (before the trial).

⁸⁰ Law on Civil Service, <http://www.csb.gov.ge/uploads/Civil%20Service%20Law%20-ENG.pdf>, accessed March 9, 2011.

⁸¹ Law on Civil Service, <http://www.csb.gov.ge/uploads/Civil%20Service%20Law%20-ENG.pdf>, accessed March 9, 2011

⁸² Law on Conflict of Interest and Corruption in Public Service, <http://www.csb.gov.ge/uploads/Law%20of%20Georgia%20on%20conflict%20of%20interests%20in%20Public%20Service.pdf>, accessed March 9, 2011.

⁸³ Interview with Otar Kakhidze, Head of the Analytical Department of the Ministry of Justice, March 2, 2011.

Sub-Objective 5: Public Sector Human Resource Management – Criminal Liability

Indicator: Has the GRECO recommendation to amend the provisions on corporate liability in the Criminal Code to ensure that legal persons can be held liable in cases where lack of supervision or control by a natural person has made possible the commission of active bribery, money laundering or trading in influence been implemented?

Compliance Score: 2

2010 Update:

No new developments in this area.

2009 Note:

Article 107 of the Georgian Criminal Code was amended in February 2008 and it now allows for the prosecution of legal persons for bribe-taking, trading in influence and money laundering. These provisions have been tried in multiple cases but have never gone to court. Consequently, interpretation of the provisions in practice remains to be seen.

Sub-Objective 6: Public Sector Human Resource Management – Criminal Liability

Indicator: Has the GRECO recommendation to provide appropriate training on criminal liability of legal persons to all officials concerned with a view to ensuring that full use of these provisions is made in case of active bribery, trading in influence and money laundering been implemented?

Compliance Score: 2

2010 Update:

According to a Ministry of Justice, several trainings were held in 2010 for the country's 380 prosecutors. A week-long training focused on the new criminal procedure code, corruption, money laundering, and the criminal liability of legal persons. Following the training, all prosecutors were required to take an exam. About 20 prosecutors were terminated after they repeatedly failed the exam. Further seminars addressed legal writing, presentation skills and a new electronic case management system for criminal cases, in place since April 2010.⁸⁴

2009 Note:

According to a representative of the Ministry of Justice, fighting money laundering and corruption has been one of the priorities of the government since 2006⁸⁵. Based on the information provided by the Ministry of Justice, after the provision on criminal liability of legal persons was added in 2008, there were two training supported by the Council of Europe. The trainings, which covered issues related to the new provisions in the Criminal Code, included a total of up to 85 prosecutors/investigators, as well as 12 Ministry of Interior employees.

Sub-Objective 7: Public Sector Human Resource Management - Tax

Indicator: Has the GRECO recommendation to develop guidelines and effective training to improve the ability of tax inspectors to detect corruption offenses, in particular as regards bribes concealed as legitimate expenses, been implemented?

Compliance Score: 1

⁸⁴ Interview with Otar Kakhidze, Head of the Analytical Department of the Ministry of Justice, March 2, 2011.

⁸⁵ Interview with Tamar Tomashvili, Head of Public International Law Department, Ministry of Justice, March 24, 2010

2010 Update:

No new developments in this area.

2009 Note:

Minister of Finance approved specific guidelines in 2009. No trainings have been reported on this, however.

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