

Institute for Development of Freedom of Information



Preventing Corruption in Civil Service

Brief Overview of the National Anti-Corruption Strategy and Action Plan of Georgia

2015–2016

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The opinions expressed in this document belong to the Institute for Development of Freedom of Information (IDFI)

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Introduction

Combating corruption has been one of the main priorities of the Government of Georgia (GoG) for years. In this regard considerable progress has been made by the country, evidenced by various international ratings and indexes, such as Global Corruption Barometer, Trace International, World Bank Doing Business Index, Rule of Law Index, etc.

With the aim of facilitating the process of combating corruption, the National Anti-Corruption Strategy was elaborated and adopted by the President of Georgia in 2005.¹ Bearing in mind the need of renewing the Anti-Corruption Strategy and internalizing the need of better management of the working process, a special Inter-Agency Council of Combating Corruption (hereinafter Anti-Corruption Council) was established.² In 2010 new priorities of combating corruption for the period of 2010-2013 were adopted. Regardless of the success made by Georgia in this period, the country faced new challenges, requiring renewed approach and solutions. The progress made by the country as well as the challenges remaining were also highlighted in the renewed Istanbul Anti-corruption Action Plan prepared within the auspices of OECD. Hence in 2013 Anti-Corruption Council made a decision to adopt a new Anti-Corruption Strategy and Action Plan. As a result, in April 2015 the Anti-corruption Action Plan and Strategy

¹<https://matsne.gov.ge/ka/document/view/95344>

²<https://matsne.gov.ge/ka/document/view/1017686>

for 2015-2016 were approved by the Government of Georgia.³ While the strategy includes general description of existing challenges and the ways of overcoming them, the action plan includes more detailed information on the actions to be taken, names of the state entities responsible as well as precise deadlines for achieving the progress.

The Anti-Corruption Strategy of Georgia 2015-2016 was developed by the Anti-Corruption Council, composed of representatives of the executive, judicial and legislative branches as well as CSOs and international organizations. The Council is headed by the Minister of Justice (MoJ) and its work is facilitated by the Analytical Department of the MoJ, which is the Secretariat of the Agency. The process of elaborating the Anti-Corruption Strategy 2015–2016 has been distinctive with regard to the involvement and active participation of CSOs in the process, which proved to be mutually beneficial for private as well as public sectors.

The 13 priorities of the new Anti-Corruption Strategy and Action Plan developed as a result of close cooperation between the Government of Georgia and representatives of CSOs are:

- 1) Effective interagency coordination for the prevention of corruption;
- 2) Prevention of corruption in public service;
- 3) Openness, access to public information and civil participation in the fight against corruption;
- 4) Education and public awareness raising for the aim of preventing corruption;
- 5) Prevention of corruption in law-enforcement bodies;
- 6) Prevention of corruption in the judiciary;
- 7) Ensuring transparency and prevention of corruption risks in public finance and public procurement spheres;
- 8) Prevention of corruption in customs and tax systems;
- 9) Prevention of corruption in private sector;
- 10) Prevention of corruption in health and social sector;
- 11) Prevention of political corruption;
- 12) Prevention of corruption in defense sector;
- 13) Reduction of corruption risks in regulatory bodies.

Special Expert Level working groups were developed within the Council to work on a wide array of preventative measures related to the prevention of corruption according to their fields of expertise. The working groups are:

- 1) Civil service reform;
- 2) Access to information, civic involvement and raising public awareness;

³ <https://matsne.gov.ge/ka/document/view/2818704>.

- 3) Prevention of corruption in law enforcement bodies and the judiciary;
- 4) Prevention of corruption in the spheres of public finance and public procurement;
- 5) Prevention of corruption in customs and tax systems;
- 6) Prevention of corruption in relation to private sector;
- 7) Prevention of corruption in health and social sector;
- 8) Prevention of political corruption;
- 9) Reduction of corruption risks in regulatory bodies.

It should be noted that the working group of Access to Information, Citizen Engagement and Awareness Raising is chaired by the Director of IDFI, while the working group of Eliminating Corruption in Regulatory Bodies is chaired by the Head of Media and Telecommunications Direction of IDFI.

On April 20, 2015 the Prime Minister of Georgia signed a Government Decree on Adopting the Anti-Corruption Strategy and Action Plan of Georgia for 2015-2016.⁴ The Action Plan included many of the recommendations on the issues that IDFI has been advocating for years. Thus the GoG undertook the obligation to further reform high risk corruption spheres such as public procurement, civil service, whistleblower protection, asset declarations, etc. Work on relevant new legislation has been underway during the previous year, as a result of which a package of legislative amendments was submitted to the Parliament of Georgia. The package includes adopting a new law on Civil Service, elaborating a legislative act on Remuneration in Civil Service, adopting a law on Civil Service Recruitment, drafting a legal act on Certification of Civil Servants, etc., as well as amending various legal acts such as the Law of Georgia on Conflict of Interests and Corruption in Civil Service, Organic Law on Public Procurement etc. The legislative package has been accepted by the Parliament of Georgia on the second hearing in October, which means that the draft will go through no further substantial amendments. Below we present a brief overview of the obligations undertaken by the government of Georgia in the Anti-Corruption Strategy and Action Plan, discuss the recommendations that IDFI has been advocating for, and evaluate to what extent the recommendations have been taken into consideration in the new legislative amendments package that has already been approved by the Parliament of Georgia.

⁴<https://matsne.gov.ge/ka/document/view/2818704>

Preventing Corruption in Civil Service

It should be highlighted that during the past years many important steps have been taken by the government of Georgia in the direction of preventing corruption in civil service. Civil service reform was elaborated, changes were made to civil service recruitment regulations, important amendments were added to whistle-blower protection rules. Moreover all high officials are obliged to submit asset declaration to the Civil Service Bureau on annual basis or upon appointment. The declarations are published on the web-page and are available for anyone interesting for viewing. Nevertheless the issue of fighting corruption in civil service still remains to be challenge.

Civil Service Recruitment

IDFI has been calling on the government to make amendments to the laws regulating civil service requirements for years. Namely, in its legal assessment of civil service requirement procedures the organization highlighted that the composition of selection committees should only be partially permanent and given the specification of every single post the experts in the given sphere should be invited in the committees on an ad hoc basis; IDFI further stressed that the ten days period for submitting an application enshrined in the legislation often may not be enough for making a well prepared application e.g. in the cases when submitting letters of recommendations, certificates and etc. is requested. Thus increasing the period up to two weeks was advised. IDFI recommended that conducting tests in the process of selection should be made obligatory and avoiding the score based assessment should only be possible in exceptional circumstances based on a well-grounded decision. Further, it was highlighted that providing each applicant with a well-grounded decision giving reasons for turning down his/her candidacy should be made mandatory. Furthermore, it was highlighted that the Civil Service Bureau should be provided with more leverage for monitoring the activities of selection committees.

In the Anti-Corruption Strategy the Government of Georgia acknowledged the importance of amending regulations linked with the civil service requirements. Relevant provisions have been included in the new law on Civil Service, although at this point they are of a general character and include the obligation of the government to adopt secondary legislation on the issue, which would include detailed provisions on recruitment and certification of civil servants. IDFI will further monitor the process and advocate for its recommendations.

Whistleblower Protection

In April 2014, amendments were made to the legislation regulating the whistleblower protection in Georgia. A number of recommendations that IDFI had been advocating for were already taken into consideration in February 2014. Nevertheless, a number of important topics were still left out from the legislation.

In its brief assessment of whistleblower protection legislation in Georgia IDFI highlighted positive changes as well as the gaps in the legislation. Firstly, the law introduced the so called 'confidentiality presumption' principle, meaning that the identity of the whistleblower is kept secret unless otherwise indicated by the individual himself explicitly and in written form. Protection from coercion, intimidation, retribution or any other illegal action was granted not only to the whistleblower himself but also to his close relatives. Moreover, individuals were protected even if the information disclosed is incorrect. The ambiguity linked with the form of disclosing information has been addressed. It was explicitly stated that the disclosure can be done in written or in oral form, online, via telephone, fax, etc.

Despite the above, IDFI emphasized that there were a number of fundamental flaws in the legislation that needed to be addressed. In particular, the lack of separate legislation regulating whistleblower protection in Georgia (it is instead regulated by a chapter in the law on the Conflict of Interests and Corruption in Civil Service; hence the issue is fragmentarily regulated). In addition, according to the current legislation, a whistleblower can only be a serving or a former public official. IDFI stressed that the circle of whistleblowers was narrow when compared to the best practices (e.g. UK, USA, Canada, Japan). Namely, the experts, specialists or volunteers working for certain public institutions, as well as private sector employees were exempt from the scope of the law (this was partially due to the fact that the issue is regulated by the law on the Conflict of Interests and Corruption in the Civil Service). It was also emphasized that the restriction of the law, according to which, a whistleblower was allowed to disseminate information through media or civil society only two months after the decision of the authority reviewing the case was unjustifiable, as it was important for the individual to have the freedom of action and proper leverage in cases when the authorities refrained from or unjustifiably procrastinated decision making on the case.

In the Anti-Corruption Strategy 2015-2016 the government has acknowledged the necessity of further amending the whistleblower legislation in Georgia and raising awareness on the issue. It should be emphasized that the legislative package accepted by the parliament in October 2015 addresses many of the above-mentioned issues. Firstly, the restriction, according to which, a whistleblower could only be a serving or former public official, is abolished, and to date any natural person can exercise rights and protections of whistleblowers, regardless whether he/she is employed in the private or public sector. Moreover, whistleblowers are no longer

obliged to wait until the two month period has passed from the moment of a case reviewing authority making the decision, and can disseminate information through media or civil society without the above-mentioned restriction. Unfortunately, what remains to be a problem is fragmented regulation of whistleblower protection issues in the country, i.e. whistleblower protection regulations are included in the Law of Georgia on the Conflict of Interests and Corruption in Civil Service and there is no independent legal act on whistleblower protection in Georgia.

Asset Declarations of High-Ranking Officials

The system of the asset declarations of senior public officials in Georgia is globally seen to be a good practice, setting high standard of the proactive transparency in the country. According to Georgian legislation, high-ranking officials are obliged to submit asset declarations to the Civil Service Bureau annually or upon their appointment. Civil Service Bureau is obliged to ensure that public officials submit asset declarations within the timeframes set by the law.

Nevertheless, until recently there was no mechanism for reviewing the integrity of the information provided in the declarations by the high officials. Unlike the monitoring of the timely submission of the asset declarations, senior officials themselves were the ones who bear the responsibility for the truthfulness of the information declared by them. There were a number of cases when a civil society organization found information submitted in asset declarations to be misleading. These cases of public officials failing to include or deliberately omitting certain information from asset declarations, have made it clear that creating a body that would monitor the system of asset declarations was crucial. Civil society and media organizations do not have access to the same amount of information and/or databases as public entities do. Therefore, instances of incorrect or incomplete information that have been deliberately excluded from asset declarations are left without due attention. This materializes itself in a situation when the process of combating corruption and the development of effective preventive measures are hindered. Hence, civil society organizations including IDFI have been calling upon the Government of Georgia to set up a system of monitoring asset declarations.

Including the obligation of setting up a monitoring mechanism for asset declarations in the Anti-Corruption Strategy could well be seen as one of the most important successes of CSOs in Georgia, who have been advocating for the amendments in legislation for years. It should further be highlighted that Open Government Partnership (OGP) Action Plan of Georgia for the years of 2014-2015 also included the said obligations. As a result, in the recent legislative amendments package submitted to the parliament of Georgia the government has included its obligation to develop a monitoring system, where asset declaration would be reviewed in

depth. Thus Civil Service Bureau will not only be responsible to ensure timely submission of asset declarations, but will also have the responsibility to check that the information included in the declaration is correct and no important data is deliberately left out of the document. According to the amendments, the monitoring of declarations will take place in the following three cases: first, constant verification of the declarations of top-level officials exposed to high risks of corruption; second, by random selection of declarations in a transparent manner through the electronic system based on specific risk-criteria by the Independent Commission; third, on the basis of well-grounded written complaints/information submitted to Civil Service Bureau.

Remuneration in the Civil Service

Another important issue that has been highlighted to have considerable flaws is the legislation regulating civil service remuneration. According to the current Georgian legislation, remuneration of civil servants includes salaries, bonuses and salary supplements. While salaries constitute a fixed amount of income received by public officials on a monthly basis, salary supplements and bonuses are awarded to civil servants on merits. Nevertheless, the legislation does not draw a clear distinction between bonuses and salary supplements, nor did it include any restriction on the amount of salary supplements and bonuses that could be awarded to public servants. In July 2014, the decree of the Government of Georgia was adopted, which only introduced minimum regulations for the issue. In particular, it was ruled that bonuses could only be awarded to public officials on a quarterly basis and that it should be based on merit and shall not exceed the amount of salary. Although the amendments in the legislation were assessed to be a positive step forward, IDFI has been advocating for a uniform approach to the problem and emphasized the need of reforming the system of remuneration as a whole in civil service.

As a result, the obligation has been undertaken by the Government of Georgia to standardize the remuneration system in the Civil Service. An important step in this direction is included in the legislative amendments approved by the Parliament of Georgia. Although the new law on Civil Service does not include in detail regulations on the issue, the government is now obliged to adopt secondary legislation, which would include in detail regulation on remuneration in civil service by September 1, 2016.

Public Procurement

The System of Public Procurement in Georgia is seen to be an example of a best practice worldwide.⁵ It is been assessed as a system guaranteeing transparency of public procurement and eliminating of corruption in the process. Nevertheless, an important challenge that still remained to be addressed were legal loopholes related to the process of simplified procurement. The existence of the problem has been acknowledged by the Government of Georgia and a relevant obligation has been undertaken by the country in the Anti-Corruption Action Plan for 2015-2016.

In this regards important steps have been taken by the country in mid-2015. A number of legislative amendments were made to the regulations on public procurement. In particular, according to the amendments, any proposal of simplified procurement should be agreed with and consented by the State Procurement Agency (SPA) via the Electronic Procurement system. All applications for simplified procurement will be regarded as public information and all interested parties will be given the opportunity to publicly express their objections. Before making a decision, the SPA will take into consideration both the submitted application and objections expressed by the interested parties, including civil society and business society actors.

Conclusion

Elaborating the new Anti-Corruption Action Plan and setting new priorities of the government towards the direction of eliminating corruption should unambiguously be seen as crucial for the further development of the state. The process of working on the draft of the Action Plan should also be assessed positively, as the government has ensured that civil society organizations and other stakeholders had every opportunity to take active participation in the process and have important impact on the work of the Anti-corruption Council. As it has already been highlighted above, the Government of Georgia has undertaken the obligation to reform many of the important spheres of public policy, such as civil service remunerations, asset declarations, public procurement, and etc. in the Anti-Corruption Action Plan. CSOs in Georgia have been advocating for including these obligation in the Action Plan. Many of the similar obligations have also been included in the OGP Action Plan of Georgia for the period of 2014-2015.

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http://csogeorgia.org/uploads/publications/121/PMCG_analysis_of_the_state_procurement_system_of_Georgia-eng.pdf.

<http://www.worldbank.org/en/news/feature/2015/02/18/georgia-an-e-procurement-success>.

<http://www.pymnts.com/in-depth/2015/nation-of-georgia-provides-insight-for-world-bank-s-e-procurement-plans/>.

The recent package of legislative amendments submitted to the Parliament of Georgia took into consideration many of the obligations included in the above-mentioned documents. Nevertheless, there are a number of challenges that still need to be faced both on the substantive and procedural levels.

The Government of Georgia acknowledged in the Anti-Corruption Strategy the importance of amending regulations linked to the requirements of civil service. Relevant provisions have been included in the new law on Civil Service; although at this point they are of general character and simply obligate the government to adopt secondary legislation, which would include detailed provisions on recruitment and certification of civil servants. IDFI will monitor the process further and advocate for its recommendations.

Through the Anti-Corruption Strategy 2015-2016 the government undertook obligations to amend the whistleblower legislation in Georgia and raise awareness on the issue. It should be emphasized that the legislative package accepted by the parliament in October 2015 addresses many of the above-mentioned gaps that IDFI has been referring to for years. Nevertheless, what remains to be a problem is fragmented regulation of whistleblower protection issues in the country. *Id est* whistleblower protection regulations are included in the Law of Georgia on the Conflict of Interests and Corruption in Civil Service and there is no independent legal act on whistleblower protection in Georgia.

Including the system of monitoring asset declarations in the Anti-Corruption Action Plan and further developments in the same direction, i.e. inclusion of relevant legislative amendments in the legislative package submitted to the Parliament of Georgia, should undoubtedly be assessed positively. IDFI will continue to work on the topic of asset declarations and monitor the process of implementing new legislation in practice.

Amendments made to the legislation regulating simplified procurement procedures should also be assessed positively. In this regards, important steps have been taken by the country in mid-2015. IDFI calls on the Government of Georgia to employ the mechanism of simplified procurement in exceptional circumstances only. The Institute will further continue to monitor the simplified procurement process.