

*Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

## **CIVIL SOCIETY REPORT**

on the implementation of  
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN GEORGIA**

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by Institute for Development of Freedom of Information

## **Acknowledgements**

With the aim of contributing to the national UNCAC review in Georgia in its second cycle, this parallel report was written by the Institute for Development of Freedom of Information (IDFI), using the guidance materials and report template designed by the UNCAC Coalition and Transparency International. The production of this report was supported by the UNCAC Coalition, made possible with funding provided by the Norwegian Agency for Development Cooperation (Norad) and the Ministry of Foreign Affairs of Denmark (Danida).

The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of February 1, 2023.

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The Institute for Development of Freedom of Information (IDFI), founded in 2009, is a Georgian non-governmental organization which supports the development of an informed and empowered society for democratic governance.

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## **Abbreviations**

<b>AC</b>	<b>ANTI-CORRUPTION</b>
<b>ACA</b>	Anti-Corruption Agency of the State Security Service of Georgia
<b>ACC</b>	Interagency Coordination Council to Combat Corruption
<b>AC DIVISION</b>	The Division of the Criminal Prosecution of Corruption Crimes at the Office of the General Prosecutor of Georgia
<b>AML</b>	Anti-Money Laundering
<b>AML/CFT LAW</b>	Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism
<b>AOG</b>	Administration of the Government of Georgia
<b>BDD</b>	The Basic Data and Direction (BDD)
<b>CCG</b>	Criminal Code of Georgia
<b>COE</b>	Council of Europe
<b>COI</b>	Conflict of Interest
<b>CSB</b>	Civil Service Bureau
<b>CSO</b>	Civil Society Organization
<b>DRC</b>	Public Procurement Dispute Resolution Council
<b>EAP</b>	Eastern Partnership
<b>EU</b>	European Union
<b>FATF</b>	Financial Action Task Force
<b>FIU</b>	Financial Intelligence Unit
<b>FMS</b>	Financial Monitoring Service
<b>GAC</b>	General Administrative Code of Georgia
<b>GRECO</b>	Group of States against Corruption
<b>HCJ</b>	High Council of Justice
<b>IDFI</b>	Institute for Development of Freedom of Information
<b>LEA</b>	Law Enforcement Agency
<b>LEPL</b>	Legal Entity of Public Law
<b>MIA</b>	Ministry of Internal Affairs of Georgia
<b>MOF</b>	Ministry of Finance of Georgia
<b>MOJ</b>	Ministry of Justice of Georgia
<b>MONEYVAL</b>	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
<b>NASP</b>	National Agency of State Property
<b>NBG</b>	National Bank of Georgia

<b>NGO</b>	Non-Governmental Organization
<b>NRA</b>	National Risk Assessment
<b>NNLE</b>	Non-Entrepreneurial (Non-Commercial) Legal Entity
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>OECD/ACN</b>	OECD Anti-Corruption Network for Eastern Europe and Central Asia
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>POG</b>	The Office of the Prosecutor General of Georgia
<b>PSG</b>	Prosecution Service of Georgia
<b>RIA</b>	Regulatory Impact Assessment
<b>SOE</b>	State Owned Enterprises
<b>SPA</b>	State Procurement Agency
<b>SSSG</b>	State Security Service of Georgia
<b>TI</b>	Transparency International
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime

## **List of Persons Consulted**

<b>Name</b>	<b>Job title</b>	<b>Affiliation</b>	<b>Date of interview</b>
Sophio Asanidze	National Bank of Georgia	Head of Methodological and distance supervision division	13.10.2022
Levan Natroshvili	Transparency International Georgia	Programs Manager	17.10.2022
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## **I. Introduction**

Georgia acceded to the United Nations Convention against Corruption (UNCAC) on 4<sup>th</sup> of November 2008.<sup>1</sup>

This parallel report reviews Georgia's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Georgia was selected by the UNCAC Implementation Review Group in 2018 by a drawing of lots for review in the fourth year of the second cycle.

### **1.1 Scope**

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption measures and asset recovery:

Chapter II:

- Art. 5 Preventive anti-corruption policies and practices
- Art. 6 Preventive Anti-Corruption Body or Bodies
- Art. 7.1 Public Sector Employment
- Art. 7.3 Political Financing
- Art. 7, 8 and 12 Codes of conduct, Conflicts of Interests and Asset Declaration, Art. 8.4 and 13.2 Reporting Mechanisms and Whistleblower Protection
- Art. 9.1 Public Procurement
- Art. 9.2 Management of Public Finances,
- Art. 10 and 13.1 Access to Information and the Public Participation of Society
- Art. 11 Judiciary and Prosecution Services
- Art. 12 Private Sector Transparency
- Art. 14 Measures to Prevent Money-Laundering

Chapter V:

- Art. 52 and 58 Anti-Money Laundering
- Art. 53 and 56 Measures for Direct Recovery of Property
- Art. 54 Confiscation of Tools
- Art. 51, 54, 55, 56 and 59 International Cooperation for the Purpose of Confiscation
- Art. 57 The Return and Disposal of Confiscated Property

### **1.2 Structure**

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Georgia as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

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<sup>1</sup> Resolution of the Parliament of Georgia on accession to the UN Convention Against Corruption. Accession date: 4<sup>th</sup> of November 2008, კორუფციის წინააღმდეგ "გაერთიანებული ერების ორგანიზაციის კონვენციასთან შეერთების თაობაზე | სსიპ "საქართველოს საკანონმდებლო მაცნე", <https://matsne.gov.ge/ka/document/view/45454?publication=0>.

### **1.3 Methodology**

The report was prepared by the Institute for Development of Freedom of Information (IDFI) with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.



## **II. Executive Summary**

This alternative, parallel report presents the view of IDFI on the transposition of UNCAC norms into the national legislation and practices of Georgia. The report covers issues identified by the authors during the parallel review process, based on desk research, interviews conducted with relevant stakeholders, case studies, reports from local and international organizations and answers to Freedom of Information (FoI) requests received from public institutions. The review indicated that most of the UNCAC norms have been adopted by the national legislation of Georgia, with a few exceptions. At the same time, their practical application is not fully satisfactory, as evidenced by sources mentioned above.

### **2.1 Description of the Official Review Process**

The first UNCAC review cycle took place in Georgia in 2012. The second review cycle was going to be carried out in 2018, however, the process was postponed. Both before and during the drafting of this parallel report, IDFI addressed the Administration of the Government of Georgia (AOG), requesting public information regarding the current status/stage of the second UNCAC review cycle, the focal point, and other details. Initially, the FOI requests remained unanswered: IDFI did not receive any response. On July 1, 2022, IDFI filed an administrative complaint to AOG, requesting the provision of public information, based on the obligation to disclose, which was imposed on the entity by law.

On July 14, 2022 in response to the administrative complaint, IDFI received a letter from the AOG. The response indicated that the Self-Assessment Report of Georgia dated May 20, 2020 was completed and the full review report on Georgia's implementation of the UN Convention against Corruption from the second round was under development. The self-assessment checklist of Georgia was attached to the letter from the AOG. According to the AOG, the second cycle of UNCAC implementation review is coordinated by the AOG's own Anti-Corruption Secretariat. It is noteworthy to say that there is no information published online regarding the above-mentioned issues.

### **2.2 Availability of Information**

During the elaboration process of this report, public information related to provisions of the UNCAC was requested from several public entities, within their competencies. Among these entities are: National Bank of Georgia (NBG), Financial Intelligence Unit (FIU), Financial Monitoring Service (FMS), The Office of the Prosecutor General of Georgia (POG), Ministry of Internal Affairs of Georgia (MIA), State Security Service of Georgia (SSSG). Most of the FOI requests were answered within 10 days by public institutions. Notwithstanding the fact that all the institutions have their official web pages, it is impossible to gather information needed for assessment. The webpages are mostly dedicated to demonstrating the structure of the entity, provide news and indicate who the access to information officer is and his/her contact information. There is no possibility to publish or to access statistics, data or policy documents in some cases. Regarding the interviews held with public institutions, NBG, Administration of the Government (AOG) and Civil Service Bureau (CSB) were fast and flexible to communicate with, compared to the Ministry of Justice (MOJ), POG and Ministry of Finance (MOF), which never answered the invitation for an interview.

## 2.3 Implementation in Law and in Practice

**Table 1: Implementation and enforcement summary**

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
<b>Art. 5</b> – Preventive anti-corruption policies and practices	largely implemented	moderate
<b>Art. 6</b> – Preventive anti-corruption body or bodies	largely implemented	poor
<b>Art. 7.1</b> – Public sector employment	fully implemented	moderate
<b>Art. 7.3</b> – Political financing	fully implemented	good
<b>Art. 7, 8 and 12</b> – Codes of conduct, conflicts of interest and asset declarations	partially implemented	moderate
<b>Art. 8.4 and 13.2</b> – Reporting mechanisms and whistleblower protection	largely implemented	moderate
<b>Art. 9.1</b> – Public procurement	fully implemented	moderate
<b>Art. 9.2</b> – Management of public finances	fully implemented	good
<b>Art. 10 and 13.1</b> – Access to information and the participation of society	largely implemented	moderate
<b>Art. 11</b> – Judiciary and prosecution services	partially implemented	poor
<b>Art. 12</b> – Private sector transparency	partially implemented	poor
<b>Art. 14</b> – Measures to prevent money-laundering	fully implemented	moderate
<b>Art. 52 and 58</b> – Anti-money laundering	largely implemented	moderate
<b>Art. 53 and 56</b> – Measures for direct recovery of property	largely implemented	moderate
<b>Art. 54</b> – Confiscation tools	largely implemented	poor
<b>Art. 51, 54, 55, 56 and 59</b> – International cooperation for the purpose of confiscation	largely implemented	poor
<b>Art. 57</b> – The return and disposal of confiscated property	largely implemented	poor

The below summarizes key points under each article:

### **Preventive anti-corruption policies and practices, preventive bodies (Art. 5, 6 and 13.2)**

Georgia's tremendous success in eradicating corruption is unquestionable and widely praised internationally, but over the last two years, there has been absolute stagnation, particularly in the policy-shaping direction. Both articles 5 and 6 of the UNCAC have been adopted and transposed at the national level: policies, laws and institutions are in place; however, their efficiency is questionable. While there is visible progress in fighting petty corruption, high level corruption remains a problem in the country.

An Interagency Coordination Council to Combat Corruption was created in 2008 and anti-corruption policy documents were systematically adopted between 2008 and 2018. Policy documents adopted by resolutions of the Government of Georgia had binding force on the Council members. Participation of civil society was ensured in the Council and in the process of elaboration of policy documents, but the real impact of NGOs in the process was low. Anti-corruption action plans and strategies were published on the official web page of the Ministry of Justice (MOJ).<sup>2</sup>

After 2020, the preventive anti-corruption body and its functions were transferred to the Administration of the Government of Georgia (AOG). However, the AOG has not drafted any policy documents in the past two years. The Anti-Corruption Council (ACC) has not met since 2019 and its Secretariat only exists formally, without real actions having been taken. From September 2023, the Anti-Corruption Bureau will be in charge of the fight against corruption as an independent entity developing policy instead of the ACC and its council (discussed in detail in the relevant section below). No national risk assessment has been carried out prior to the development of any national Anti-Corruption Strategy. The risk assessment methodology was adopted by the ACC in 2019, but there is no evidence proving its implementation in practice.

### **Measures to prevent corruption in the public sector and codes of conduct, declaration of assets and whistleblower protection (Art. 7 and 8, 12, 13)**

Articles 7, 8, 12 and 13 of the UNCAC covering measures to prevent corruption in the public sector and codes of conduct, declaration of assets and whistleblower protection are implemented in the national law: there are codes of conduct for public officials, merit-based eligibility conditions are regulated, continuous training programs are provided, and the rules for financing political parties are established, among other provisions. At the same time, keeping the civil service free from political influence remains a challenge.

The existing common Code of Ethics fails to provide an individual approach for all institutions, and most public institutions in Georgia do not have codes of ethics tailored to the specifics of the institutions.

The asset declaration publication and monitoring system is transferred from the Civil Service Bureau (CSB) to a newly established legal entity of public law, the Anti-Corruption Bureau,

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<sup>2</sup> Webpage of the Ministry of Justice of Georgia, available at: <https://justice.gov.ge/> – საქართველოს იუსტიციის სამინისტრო [23.01.2023].

according to the amendments introduced in mid-December 2022.<sup>3</sup> The law will enter into force from September 1, 2023. The previous Law of Georgia on Conflict of Interest and Corruption in Public Institutions has been renamed as the Law of Georgia on the Fight Against Corruption. The monitoring system for asset declarations itself has not been changed according to the amendments mentioned. It is focused entirely on verifying the accuracy and completeness of the data provided in the declarations. It does not directly reveal or prevent conflict of interest and corruption-related offenses. At the same time, the scope of declarants omits several categories of high-risk officials, such as heads of territorial agencies of Legal Entities of Public Law (LEPLs); for example, the Food Safety Agency of Georgia (LEPL) has nine territorial administrations over the country and heads of administrations are not public officials under the legislation, and therefore are not subject to asset declaration regulations.

Regulations on whistleblower protection are in force, however suffer from loopholes making it difficult to comply with international standards. The CSB still runs an online reporting channel for whistleblowing, (until September 1, 2023) but civil servants' awareness of the electronic portal is low and the rate of use of the platform by civil servants is minimal.<sup>4</sup> After September 1, 2023, the Anti-corruption Bureau will be in charge of operating the same functions the CSB had with regard to whistleblower protection and its reporting channel.<sup>5</sup>

#### **Public procurement and management of public finances (Art. 9)**

Georgia continues to operate a transparent public procurement system that encompasses the bigger part of the public sector economy. Exemptions from competitive procurement are limited and clearly defined; however, single-source procurement remains common in practice. The e-procurement system covers all procurement processes and functions well. Procurement complaints are properly addressed, and the review body operates independently and impartially.

Despite these achievements, non-governmental stakeholders consider that the public procurement system has challenges in terms of fairness and transparency because of the high rate of non-competitive procurement and other aspects. There are few cases of prosecution of corruption offenses and enforcement of conflict-of-interest restrictions in the procurement process. Key procurement data and statistics are published online, but data in machine-readable (open data) format has not been updated since 2019.<sup>6</sup>

As for public finances, there is a clear, precise and transparent process for the adoption of the national budget, with a state budget expenditure system in place. On the other hand, the public finance management system remains weak in broader terms. There is an absence of a

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<sup>3</sup> The Law of Georgia on the fight against Corruption, საქარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე", available at: <https://matsne.gov.ge/document/view/33550?publication=80>, [23.01.2023].

<sup>4</sup> Whistleblower portal, available at: Index <https://mkhileba.gov.ge/> – მამხილებლის გვერდი.

<sup>5</sup> The Law of Georgia on fight against Corruption, საქარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე", available at: <http://www.matsne.gov.ge/document/view/33550?publication=80> [23.01.2023].

<sup>6</sup> Webpage of State procurement office of Georgia, available at: <http://procurement.gov.ge/> – სახელმწიფო შესყიდვების სააგენტო - სააგენტოს შესახებ.

cost effectiveness evaluation mechanism and the State Audit Service has a weak role in the field of public financial management.

### **Access to information and participation of society (Art.10 and 13.1)**

Access to public information regulations have been in force since 1999 in Georgia. The relevant law has been slightly updated over the years, but is not sufficiently in line with international standards. There is no standalone legislation regulating access to information, although the obligation to adopt has been foreseen for several international instruments since 2013, such as the OGP Georgia Action Plans 2014-2015 and 2016-2017,<sup>7</sup> as well as the EU-Georgia Association Agreement 2014.<sup>8</sup> The proactive publication of information is foreseen by the government decree, but the obligation is not entirely fulfilled by public entities.

The IDFI monitors access to information implementation throughout the country. According to data from 2021, the quality of access to public information in the country increased by 2% compared to the previous year. At the same time, delayed answers to FoI requests, as well as poor practice with regard to the interpretation of restrictions remain a challenge. Additionally, local government entities remain weak with regard to granting access to public information. Despite local government agencies being public entities and subject to freedom of information regulations in force, they nevertheless do not comply with the obligations in a satisfactory manner: in 2021, unanswered requests by self-governing units increased by 10%.

As for the participation of civil society in the decision-making process, it has not been obligatory under the legal framework in force until 2022. Despite the absence of legally binding obligations, several public institutions exercised good practices in terms of involving CSOs in the policy making process in previous years.

### **Judiciary and prosecution services (Art.11)**

National legislation provides for a wide range of preventive measures to ensure integrity of the judiciary and prosecution authorities. Nevertheless, the appointment of supreme court judges is not in conformity with international standards and recommendations, as set out by the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) or the Venice Commission. Non-governmental stakeholders often underline that judicial governance bodies are not genuinely independent and impartial.

There are deficiencies in the selection and promotion of other judges as well as in the selection of court presidents: the Parliament, and not a judicial body, elects the Supreme Court Chairperson. Grounds for disciplinary liability and dismissal of prosecutors in Georgia are formulated in a broad and ambiguous manner.

### **Private sector transparency (Art. 12)**

The level of implementation of the relevant provisions of the Convention regarding the private sector and its role in preventing corruption in domestic legislation is extremely low.

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<sup>7</sup> Open Government Partnership Georgia Action Plan, available at: [www.ogpgeorgia.gov.ge/en/action-plan/](http://www.ogpgeorgia.gov.ge/en/action-plan/)

<sup>8</sup> EU Georgia Association Agreement 2014, available at: [www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014A0830\(02\)-20180601](http://www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014A0830(02)-20180601).

The registration procedure for a company is simple and quick, while the obligations for ensuring transparency or regulations on access to information remain a challenge.

According to the law of Georgia on Accounting, Reporting and Auditing, which entered into force on June 8, 2016,<sup>9</sup> companies are divided into four categories, out of which three categories are held responsible for conducting accounting practices and audits in accordance with the law, and also for publishing those documents on a special portal run by the Service for Accounting, Reporting and Auditing Supervision.<sup>10</sup>

The private sector is not fully covered by anti-corruption policy documents: there is a lack of preventive measures in anti-corruption (AC) Action Plans, instead they are exclusively focused on awareness-raising activities. One of the main deficiencies in this field relates to the beneficiary registry, which has not been established yet.

### **Preventing money laundering (Art. 14 and 52)**

A comprehensive domestic regulatory and supervisory regime has been established for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money. The legal framework seems satisfactory in terms of covering appropriate tools in order to deter and detect all forms of money-laundering (ML); which regime shall emphasize requirements for the customer and, where appropriate, beneficial owner identification, record-keeping and reporting of suspicious transactions. The Financial Intelligence Unit is established, and enjoys operational independence, yet lacks adequate human resources. Notwithstanding the sound legal framework in force, potential ML cases are not sufficiently detected, and the overall number of investigations is modest compared to predicate criminality.

The National Bank of Georgia has supervisory functions over financial institutions and the performance level of the organization is assessed to be high. While other accountable entities fall under the authority of different supervisory entities, compliance with the provisions of the Law on Facilitating the Prevention of Money Laundering and the Financing of Terrorism (AML/CFT Law) is not traceable in publicly available sources in those cases.

### **Asset recovery (Art. 51-58)**

Measures for direct recovery of property and confiscation procedures are regulated by international agreements, the Law of Georgia on International Private Law, the Criminal Law of Georgia, the Georgian Law on Enforcement Proceeding, and several bylaws.

Other States Parties are entitled to claim, as a third party in a confiscation procedure taking place in the courts of Georgia, ownership over assets acquired through the commission of an offence. The legal framework of Georgia on International Private Law regulates the recognition of decisions of foreign countries.

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<sup>9</sup> Law of Georgia on Accounting, Reporting and Audit, available at: On Accounting, Reporting and Audit | სსიპ "საქართველოს საკანონმდებლო მაცნე" –

<https://matsne.gov.ge/en/document/view/3311504?publication=4>.

<sup>10</sup> Reporting Portal, available at: <https://reportal.ge/en> – ანგარიშგების პორტალი.

Analyzing the above-mentioned legal framework has led to the conclusion that Georgian legislation is in conformity with the relevant articles of the UNCAC. When it comes to the implementation of these regulations, there is a lack of sufficient information or open data to conduct a proper analysis on this topic.

**Table 2: Performance of selected key institutions**

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
Anti-Corruption Council (ACC)	poor	The council has not met in the last two years and the secretariat has not developed policy documents.
State Procurement Agency (SPA)	moderate	The SPA is an independent legal entity, with adequate resources to perform its activities. At the same time, it has to cope with some challenges, e.g., high rates of direct procurement.
Financial Intelligence Unit (FMS)	good	The FMS is an independent public entity with moderate expertise, but lack of resources to fully perform its supervisory and investigative functions.
Civil Service Bureau (CSB)	good	Generally, the CSB manages to perform its activities in a satisfactory manner. However, it lacks resources in terms of monitoring asset declarations. Its impact on ministries is sometimes undermined, due to its legal nature as a legal entity of public law.
National Bank of Georgia (NBG)	good	The NBG is an independent body supervising financial institutions with regard to anti-money laundering measures. It is characterized by strong expertise and good performance.

#### **2.4 Recommendations for Priority Actions**

1. Ensure the development of ambitious, evidence-based, effective policy documents for the fight against corruption.
2. Establish corruption risk assessment practices in public entities.
3. Introduce senior civil servant (executive secretary) positions, which would clearly delineate political and administrative functions.

4. Adopt standalone legislation on access to public information in conformity with international standards.
5. Establish an oversight body for access to information.
6. Ensure the establishment of a Beneficial Ownership Register with public, timely and verified data in open data format.
7. Improve the law governing conflicts of interests, with clear regulation on revolving door cases.
8. Define the obligation of public institutions to develop codes of ethics and practical instruments for their implementation.
9. Ensure the implementation of an integrity risk assessment system at public institutions.
10. Ensure the revision of the Georgian legislation on whistleblowing to bring it in line with international standards.
11. Ensure full operation of the Civil Service Law of Georgia on Legal Entities of Public Law.
12. Introduce relevant integrity norms concerning subcontractors and ensure that conflict of interest regulations covered by these.
13. Provide for durable limitations on using simplified procedures in public procurement.
14. Conduct comprehensive national risk assessment of money-laundering and terrorism financing, focusing on all relevant aspects.



### **III. Assessment of the Review Process for Georgia**

Since no information on the UNCAC review process in Georgia was publicly available, IDFI sent a freedom of information request to the Administration of the Government of Georgia (AOG) both before and during the drafting of this parallel report. The information requested was information related to the UNCAC focal point, the review schedule, among other details, but IDFI received no reply.

On July 1, 2022, IDFI filed an administrative complaint to the AOG, requesting the provision of public information, based on the obligation to disclose, which was imposed on the entity by law. On July 14, 2022 in response to the administrative complaint, IDFI received a letter from the AOG. The response indicated that the Self-Assessment Report of Georgia dated May 20, 2020 was completed and the full review report on Georgia’s implementation of the UN Convention against Corruption from the second round was under development. The self-assessment checklist of Georgia was attached to the letter from the AOG. According to the AOG, the second cycle of UNCAC implementation review is coordinated by the AOG’s own Anti-Corruption Secretariat. It is noteworthy to say that there is no information published online regarding the above-mentioned issues.

#### **3.1 Report on the Review Process**

**Table 3: Transparency of the government and CSO participation in the UNCAC review process**

Did the government disclose information about the country focal point?	yes	The information is not published. However, in response to IDFI’s complaint due to the AOG’s inaction on the request for public information, the AOG disclosed the information.
Was the review schedule published somewhere/ publicly known?	no	The second review cycle was going to be carried out in 2018, however, the process was postponed. Neither information about the timeline nor information about the schedule have been published. The self-assessment report shared by the AOG with IDFI in response to the administrative complaint is dated May 20, 2020.
Was civil society consulted in the preparation of the self-assessment checklist?	no	According to the self-assessment report shared by the AOG with IDFI in response to the administrative complaint, only public institutions have been consulted in its preparation.
Was the self-assessment checklist published online or provided to civil society?	no	The self-assessment report has not been published nor provided to civil society. The AOG shared it with IDFI only in response to the administrative complaint.
Did the government agree to a country visit?	n/a	The AOG did not confirm this information, adding that it was not in charge of coordinating the UNCAC assessment process neither in 2012 nor in 2018.

Was a country visit undertaken?	n/a	No information available.
Was civil society invited to provide input to the official reviewers?	no	No information available.
Was the private sector invited to provide input to the official reviewers?	no	The AOG did not confirm this information, adding that it was not in charge of coordinating the UNCAC assessment process neither in 2012 nor in 2018.
Has the government committed to publishing the full country report?	n/a	No information available.

### 3.2 Access to Information

The government body that deals with anti-corruption policy is the administration of the Government– Secretariat of the Anti-Corruption Council of Georgia. It is noteworthy that the Anti-Corruption policy documents together with progress and monitoring reports were available on the website of the Ministry of Justice of Georgia until the Analytical Department of the MoJ functioned as the Anti-Corruption Council Secretariat. Upon transition of the Secretariat from the MoJ to the Government Administration of Georgia, these materials were excluded from the ministry’s website, however, nothing is published on the AOG’s website either. Therefore, currently there is no publicly available information on the AOG’s official web page on the general anti-corruption policy, nor on the level of UNCAC implementation in Georgia.

On the other hand, access to information legislation facilitates this process, as it defines public information in the widest sense, with very few restrictions. All public institutions have their official web pages, but the content uploaded there often relates to the structure of the institute, news or contact information. Annual reports are mostly available as well, providing for general information about the institution’s activities. The Georgian experience of publishing open data, statistics or judgments is considerably limited. Based on access to information legislation, the following public entities were requested to issue public information required for the elaboration of this report in Table 4:

**Table 4: List of public entities to which FOI requests were sent**

Administration of the Government of Georgia	Ministry of Internal Affairs
State Prosecution Office of Georgia	Revenue Service of Georgia
State Security Service	National Bank of Georgia
Investigative Service of the MOF	Civil Service Bureau
Financial Monitoring Office	

In most cases, answers to FOI requests were issued in a timely fashion and in a comprehensive manner. An exemption to this assessment is the case of the AOG, which delayed issuing information about the current UNCAC review process and sharing a self-assessment report with IDFI.

During the drafting process for this report, the following institutions or organizations were invited for interviews in order to discuss the enforcement of the relevant articles of the UNCAC, and to provide data/statistics confirming UNCAC implementation in practice:

**Table 5: Institutions and organizations contacted for interviews**

AOG - Policy Planning Department	Agreed to interview and provided information
AOG -Secretariat of Anti-Corruption Council	Did not answer invitation for interview
National Bank of Georgia	Agreed to interview and provided information
Ministry of Justice	Did not answer invitation for interview
Civil Service Bureau	Agreed to interview and provided information
State Prosecution Office	Did not answer invitation for interview
Ministry of Finance	Did not answer invitation for interview
Transparency International Georgia	Agreed to interview and provided information

Additionally, the report relied on other sources like reports of Transparency International (TI), United Nations Development Programme (UNDP), Group of States against Corruption (GRECO), Organization for Economic Cooperation and Development (OECD), Institution for Development of Freedom of Information (IDFI) and others.

## **IV. Assessment of Implementation of Chapter II and Chapter V Provisions**

This chapter analyzes the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Georgia through the application of laws, regulations and practices, and highlights both good practices and areas for improvement.

### **4.1 Chapter II**

#### **4.1.1 Art. 5 – Preventive Anti-Corruption Policies and Practices**

Georgia's Anti-Corruption legislation consists of several legislative and subordinate normative acts. Basic legal acts regulating corruption-related issues in Georgia are the Law on Conflicts of Interest and Corruption in Public Service (COI Law)<sup>11</sup> and the Criminal Code of Georgia.<sup>12</sup> The COI Law contains basic principles for the civil service on preventing corruption and conflicts of interest, detecting and sanctioning the persons violating the law, setting rules for providing financial declarations by public officials and a monitoring mechanism for asset declarations as well as the basics of whistleblower protection, and rules of ethics and conduct. As for the Criminal Code, chapter XXXIX of the Code deals with official misconduct and criminalizes attempted corruption, active and passive bribery, etc. Other legal acts related to corruption include the Government Decree on Defining General Rules of Ethics and Conduct in Public Institutions,<sup>13</sup> the Law of Georgia on Public Service,<sup>14</sup> the Law of Georgia on Public Procurement,<sup>15</sup> the Law of Georgia on the Facilitation of the Prevention of Money Laundering and Financing of Terrorism,<sup>16</sup> as well as other related legislation.

To facilitate the process of combating corruption, the first National Anti-Corruption Strategy was developed and adopted by the President of Georgia in 2005.<sup>17</sup> Internalizing the need for better management of the working process, the Interagency Coordination Council to Combat Corruption (Anti-Corruption Council, ACC) was created in 2008 with the purpose of coordinating anti-corruption activities in the country, developing national policy documents, supervising their implementation, and monitoring their accountability towards international

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<sup>11</sup> Law of Georgia on Conflict of Interest and Corruption in Public Institutions, adopted in 1997, last amended on 30.12.2021, available at: <https://matsne.gov.ge/ka/document/view/16426?publication=241>, [25.05.2022].

<sup>12</sup> Criminal Code of Georgia, adopted in 1999, last amended on 24.05.2022, available at: <https://matsne.gov.ge/ka/document/view/16426?publication=241>, [25.05.2022].

<sup>13</sup> Ordinance №200 of the Government of Georgia of 20 April 2017 on defining General Rules of Ethics and Conduct in Public Institutions, last amended on 31.08.2020, available at: <https://matsne.gov.ge/ka/document/view/3645402?publication=2>, [05.07.2022].

<sup>14</sup> Law of Georgia on Public Service, adopted in 2015, last amended on 24.05.2022, available at: <https://matsne.gov.ge/ka/document/view/3031098?publication=38>, [05.07.2022].

<sup>15</sup> Law of Georgia on Public Procurement, adopted in 2005, last amended on 28.05.2022, available at: <https://matsne.gov.ge/ka/document/view/31252?publication=79>, [05.07.2022].

<sup>16</sup> Law of Georgia on Facilitation of the Prevention of Money Laundering and Financing of Terrorism, adopted in October 2019, last amended on 11.05.2022, available at: <https://matsne.gov.ge/document/view/4690334?publication=3>, [08.07.2022].

<sup>17</sup> Decree №550 of the President of Georgia of 24 June 2005 on the Approval of the National Anti-Corruption Strategy of Georgia, expired on 04.06.2010, available at: <https://matsne.gov.ge/ka/document/view/95344%20?publication=1>, [30.06.2022].

organizations.<sup>18</sup> In 2010, new priorities for fighting corruption were adopted at the national level.<sup>19</sup> In 2013, a decision was made to adopt a new Anti-Corruption Strategy and Action Plan. As a result, in April 2015, the Anti-Corruption Strategy for 2015-2016 and its Action Plan were approved by the Government of Georgia.<sup>20</sup> From this period onwards, the Government of Georgia approves the National Anti-Corruption strategic documents every two years.<sup>21</sup> However, the existence of significant time gaps between the release of new strategic policy documents has become common.<sup>22</sup> Even currently, the new national Anti-Corruption action plan, which was supposed to define the measures to be implemented by the agencies in 2021-2022, has not yet been developed in the fourth quarter of 2022. The ACC Secretariat noted in its letter sent in response to the IDFI FoI request, that the drafting of the new anti-corruption action plan and strategy is currently ongoing. There is no evidence proving that meetings were held between public authorities or any other stakeholders. The tendency for significant time gaps between policy document releases as well as the passivity of the Anti-Corruption Council (the ACC has not met since 2019 and the Secretariat of the Anti-Corruption Council only exists on paper), impact the effectiveness of the implementation of the Anti-Corruption policy in Georgia.<sup>23</sup>

The Anti-Corruption strategic documents are published and available in Georgian on the Legislative Herald of Georgia.<sup>24</sup> However, in the case of the 2010 Action Plan, only the

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<sup>18</sup> Decree №622 of the President of Georgia of 26 December 2008 on the Approval of the Composition and Statute of the Interagency Coordination Council to Combat Corruption, expired on 09.01.2014, available at: <https://matsne.gov.ge/ka/document/view/104218?publication=6>, [07.07.2022].

<sup>19</sup> Decree №376 of the President of Georgia of 3 June 2010 on the a Approval of the National Anti-Corruption Strategy of Georgia, expired on 23.04.2015, available at: <https://www.matsne.gov.ge/ka/document/view/1017686?publication=1>, [30.06.2022]. See also: Decree №735 of the President of Georgia of 14 September 2010 on the Approval of the Action Plan for Implementation of the National Anti-Corruption Strategy of Georgia, expired on 23.04.2015, available at: <https://www.matsne.gov.ge/ka/document/view/1006666?publication=2>, [30.06.2022].

<sup>20</sup> Ordinance №170 of the Government of Georgia of 20 April 2015 on the Approval of the National Anti-Corruption Strategy of Georgia and 2015-2016 action plan for the Implementation of the National Anti-Corruption Strategy of Georgia, available at: <https://www.matsne.gov.ge/document/view/2818704?publication=0>, [30.06.2022].

<sup>21</sup> Ordinance №443 of the Government of Georgia of 27 September 2017 on the Approval of the National Anti-Corruption Strategy of Georgia and 2017-2018 action plan for the Implementation of the National Anti-Corruption strategy of Georgia, available at: <https://www.matsne.gov.ge/document/view/3816224?publication=0>, [30.06.2022]; Ordinance №484 of the Government of Georgia of 4 October 2019 on the Approval of the National Anti-Corruption Strategy of Georgia and 2019-2020 action plan for the implementation of the National Anti-Corruption Strategy of Georgia, available at: <https://www.matsne.gov.ge/document/view/4674422?publication=0>, [30.06.2022].

<sup>22</sup> IDFI, 10 May 2021, Joint Statement by IDFI and GYLA on Delays in Development of the Public Administration Reform and Anti-Corruption Strategic Documents, available at: <https://idfi.ge/en/joint-statement-by-idfi-and-gyla-on-delays-in-development-of-the-public-administration-reform-and-anti-corruption-strategic-documents>, [07.07.2022]; IDFI, 22 August 2019, Development of the New Anti-Corruption Strategy and Action Plan 2019-2020 has been Faulty, available at: <https://idfi.ge/en/development-of-new-anticorruption-strategy-and-action-plan-2019-2020-has-been-faulty> [07.07.2022].

<sup>23</sup> OECD, 30 May 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, available at: <https://doi.org/10.1787/d709c349-en>, [07.07.2022]; European Commission, 17 June 2022, Commission Opinion on Georgia's application for membership of the European Union, available at: <https://ec.europa.eu/neighbourhood-enlargement/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf>, [08.07.2022].

<sup>24</sup> Legislative Herald of Georgia, available at: <https://matsne.gov.ge>, [07.07.2022].

repealed version is accessible.<sup>25</sup> It is noteworthy that the anti-corruption policy documents together with progress and monitoring reports were available on the website of the Ministry of Justice of Georgia (MoJ) up until the Analytical Department of the MoJ functioned as the Anti-Corruption Council Secretariat. Upon transition of the Secretariat from the MoJ to the Government Administration of Georgia, these materials were excluded from the ministry's website, and were also not published on the AOG's website.<sup>26</sup>

The last National Anti-Corruption Strategy which was in force between 2019-2020<sup>27</sup> consisted of 16 priority areas identical to the list of priorities of the previous strategy for 2017 and very similar to the ones in the 2015 strategy. These priorities are: Anti-Corruption Council and Interagency Coordination; Public Service; Openness, Access to Public Information and Civic Engagement; Education and Public Awareness Raising; Law Enforcement Bodies; Judiciary; Public Finances and Public Procurement; Customs and Tax System; Private Sector; Health and Social Sector; Political Corruption; Defense Sector; Sports Sector; Infrastructural Projects; Regulatory Bodies; Municipalities.

There was no national risk assessment carried out prior to the development of the last National Anti-Corruption Strategy. The impact of the previous policy documents was not measured and not considered when designing the new document either. There also is no evidentiary basis for selecting priority areas that duplicate from one Anti-Corruption strategy to another.<sup>28</sup> It is worth noting that, for example, the last AC strategy for 2019-2020 did not target high-level corruption as a separate policy objective. However, the issue was pointed out by various local and international organizations as an issue to be addressed.<sup>29</sup>

CSO members of the Anti-Corruption Council have an opportunity to be involved in the development of national strategic documents by sharing opinions with the ACC Secretariat.<sup>30</sup> However, CSO engagement has not been meaningful.<sup>31</sup> CSOs are also given access to a monitoring tool to provide their input regarding the implementation status of the commitments envisaged by the action plan. However, oftentimes the activities can only be tracked internally by implementing entities, and CSOs do not have access to relevant source documents. The involvement of non-member organizations and other stakeholders/the

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<sup>25</sup> See Legislative Herald of Georgia, available at:

<https://www.matsne.gov.ge/ka/document/view/1006666?publication=2>.

<sup>26</sup> Official website of the Government of Georgia, available at: <https://www.gov.ge/en/home>, [25.07.2022].

<sup>27</sup> Ordinance №484 of the Government of Georgia of 4 October 2019 on the Approval of the National Anti-Corruption Strategy of Georgia and 2019-2020 action plan for the implementation of the National Anti-Corruption Strategy of Georgia, available at:

<https://www.matsne.gov.ge/document/view/4674422?publication=0>, [23.01.2023].

<sup>28</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, pp. 11-13.

<sup>29</sup> Ibid, p.13.

<sup>30</sup> IDFI, 9 February 2021, Recommendations for the New Anti-Corruption Strategy and Action Plan, available at: [https://idfi.ge/en/recommendations\\_for\\_the\\_new\\_anti-corruption\\_strategy\\_and\\_action\\_plan](https://idfi.ge/en/recommendations_for_the_new_anti-corruption_strategy_and_action_plan), [08.07.2022].

<sup>31</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, pp. 11, 14-15. See also: IDFI, 22 August 2019, Development of the New Anti-Corruption Strategy and Action Plan 2019-2020 has been Faulty, available at: [https://idfi.ge/en/development\\_of\\_new\\_anticorruption\\_strategy\\_and\\_action\\_plan\\_2019\\_2020\\_has\\_been\\_faulty](https://idfi.ge/en/development_of_new_anticorruption_strategy_and_action_plan_2019_2020_has_been_faulty), [08.07.2022].

general public is not properly ensured.<sup>32</sup> The lack of public consultation is also evidenced by the fact that the decision to transfer the ACC Secretariat from the MoJ to the Government Administration of Georgia has been discussed neither at the ACC meeting, nor was a public consultation held regarding this matter.<sup>33</sup> In general, the public consultation practice still needs to be improved in Georgia, both in legislative as well as policy development processes.

The approval of the methodology for the regulatory impact assessment (RIA)<sup>34</sup> in 2020 was a step forward, which will have a positive impact on public involvement in the legislative process. However, RIA is not mandatory for all changes.<sup>35</sup> It is also important to note that in 2019, a government ordinance<sup>36</sup> established the need for public consultation in the policy-making process. Even though it initially only set minimum mandatory requirements that failed to provide quality public consultation, in 2022 a detailed instruction on public consultation<sup>37</sup> was added to the approved rule. Undoubtedly, this is a positive change, however, its effective implementation in practice is what will matter most, which cannot be assessed at this stage.

Georgia cooperates with international organizations working on anti-corruption issues. The state continuously collaborates with the Group of States against Corruption (GRECO), the Organization for Economic Co-operation and Development (OECD), the Eastern Partnership (EaP) and the United Nations (UN) within the Convention against Corruption (UNCAC). The aforementioned organizations evaluate the legislation and Anti-Corruption policy of Georgia over a predetermined period of time and on the basis of these evaluations, develop relevant recommendations regarding reforms that need to be implemented. However, Georgia's implementation of anti-corruption recommendations issued by international organizations is characterized by low progress.<sup>38</sup>

## Good practices

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<sup>32</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, p. 14.

<sup>33</sup> IDFI, 10 May 2021, Joint Statement by IDFI and GYLA on Delays in Development of the Public Administration Reform and Anti-Corruption Strategic Documents, available at: <https://idfi.ge/en/joint-statement-by-idfi-and-gyla-on-delays-in-development-of-the-public-administration-on-reform-and-anti-corruption-strategic-documents>, [08.07.2022].

<sup>34</sup> Ordinance №35 of the Government of Georgia of 17 January 2020 on the approval of the methodology of regulatory impact assessment, available at: <https://www.matsne.gov.ge/document/view/4776100?publication=0>, [08.07.2022].

<sup>35</sup> Ibid, articles 5, 6.

<sup>36</sup> Ordinance №629 of the Government of Georgia of 20 December 2019 on the approval of the rule of policy development, monitoring and evaluation, available at: <https://matsne.gov.ge/ka/document/view/4747283?publication=1>, [11.07.2022].

<sup>37</sup> Instruction for Public Consultations, annex 11 of the Policy Planning, Monitoring and Evaluation Handbook, available at: <https://matsne.gov.ge/ka/document/view/4747283?publication=1>, [11.07.2022].

<sup>38</sup> IDFI, 15 April 2021, Progress of Implementing GRECO Recommendations on Prevention of Corruption Remains Low in Georgia, available at: <https://idfi.ge/en/progress-of-implementing-greco-recommendations-on-prevention-of-corruption-remains-low-in-georgia>, [11.07.2022]; IDFI, 20 January 2021, Joint Statement by IDFI and GYLA on Implementation of OECD-SIGMA Recommendations, available at: <https://idfi.ge/en/idfi-and-gyla-joint-statement-oecd-sigma>, [11.07.2022]; IDFI, 22 February 2019, The Government of Georgia reduces its efforts to implement OECD-ACN Recommendations, available at: <https://idfi.ge/en/government-of-georgia-reduces-its-efforts-to-implement-oecd-acn-recommendations>, [11.07.2022].

- Anti-Corruption strategic documents exist at the national level.
- The creation of the Interagency Coordination Council to Combat Corruption.
- The government ordinance has established the need for public consultation in the policy-making process.
- Georgia cooperates with international organizations working on anti-corruption issues.

### Deficiencies

- Significant time gaps in between the publishing of policy documents have become commonplace.
- No national risk assessment has been carried out prior to the development of the last national Anti-Corruption Strategy, and priority areas are duplicated within the Anti-Corruption strategic documents without any evidentiary basis.
- CSO engagement has not been meaningful in the development of strategic anti-corruption documents.
- The ACC has not met since 2019, and the Secretariat of the Anti-Corruption Council only exists formally.
- Stakeholder engagement in the policy development process is not properly ensured in practice.
- Georgia's implementation of anti-corruption recommendations issued by international organizations is characterized by low progress.

#### 4.1.2 Art. 6 – Preventive Anti-Corruption Body or Bodies

Anti-corruption investigation and prosecution functions are divided between the Division of the Criminal Prosecution of Corruption Crimes (AC division) at the Office of the General Prosecutor (POG) of Georgia,<sup>39</sup> and the Anti-Corruption Agency (ACA) of the State Security Service of Georgia.<sup>40</sup> Although these bodies are mainly focused on investigation and prosecution, according to their statutes, they also have certain preventive functions. For example, the AC Division is responsible for taking measures defined by law to suppress and prevent corruption crimes or corruption-related crimes.<sup>41</sup> The implementation of measures to prevent, detect and suppress corruption, as well as other violations of the law is one of the main objectives of the ACA as well.<sup>42</sup>

The head of the POG's AC division is a civil servant, which means that he/she shall be appointed in accordance with the competition rules set out in the Law of Georgia on Civil

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<sup>39</sup> Official website of the Office of the General Prosecutor of Georgia: <https://pog.gov.ge/en/structure>, [12.07.2022].

<sup>40</sup> Official website of the Anti-Corruption Agency of the State Security Service of Georgia: <https://sbg.gov.ge/en/news/c/26/antikorufciuli-saagento>, [12.07.2022].

<sup>41</sup> Statute of the Division of the Criminal Prosecution of Corruption Crimes at the Office of the General Prosecutor of Georgia, available at: <https://matsne.gov.ge/ka/document/view/5089997?publication=0>, [12.07.2022].

<sup>42</sup> Statute of the Anti-Corruption Agency (Department) of the State Security Service of Georgia, available at: <https://matsne.gov.ge/document/view/2929553?publication=4>, [12.07.2022].



Service.<sup>43</sup> As for the appointment procedure of the head of SSSG's ACA, he/she is directly appointed by the head of SSSG.<sup>44</sup> No detailed and clear procedure is available to assess the entire process. The OECD 5<sup>th</sup> Pilot Report mentioned that an independent expert selection committee was not involved in the selection of the head of the PSG's Anti-Corruption Unit and the head of SSSG's Anti-Corruption Agency. The head of the POG's AC division and the head of SSSG's ACA were not appointed to the respective administrative positions through a transparent and competitive selection procedure, using clear criteria based on merit.<sup>45</sup>

Regarding the practical implementation of the relevant laws and functions, IDFI has requested public information from POG in July 2022 on preventive measures conducted from 2020, but there was no answer to the FOI request as of the date of finalizing this report (01.02.2023).

Another responsible agency, the Anti-Corruption Agency of the State Security Service of Georgia has confirmed the following:

- In 2019, an internal working group was created, composed of different experts, lawyers and investigators in order to plan corruption prevention projects. According to SSSG, several awareness-raising events were held among central and local public institutions.
- According to the SSSG, a corruption prevention service was established in 2019 with the aim of analyzing different sources related to corruption offenses, including investigative statistical data of the SSSG, and conducting a risk assessment to identify vulnerable groups. Despite this, there is no evidence proving whether the risk assessment was held, and what results followed. According to a letter from the SSSG, several meetings were held between 2020-2022, focused on raising awareness, training employees and sharing good practices.

The SSSG underlines that its activities related to corruption prevention and constant communication with the public resulted in an increased rate of citizen notification on corruption-related crimes:

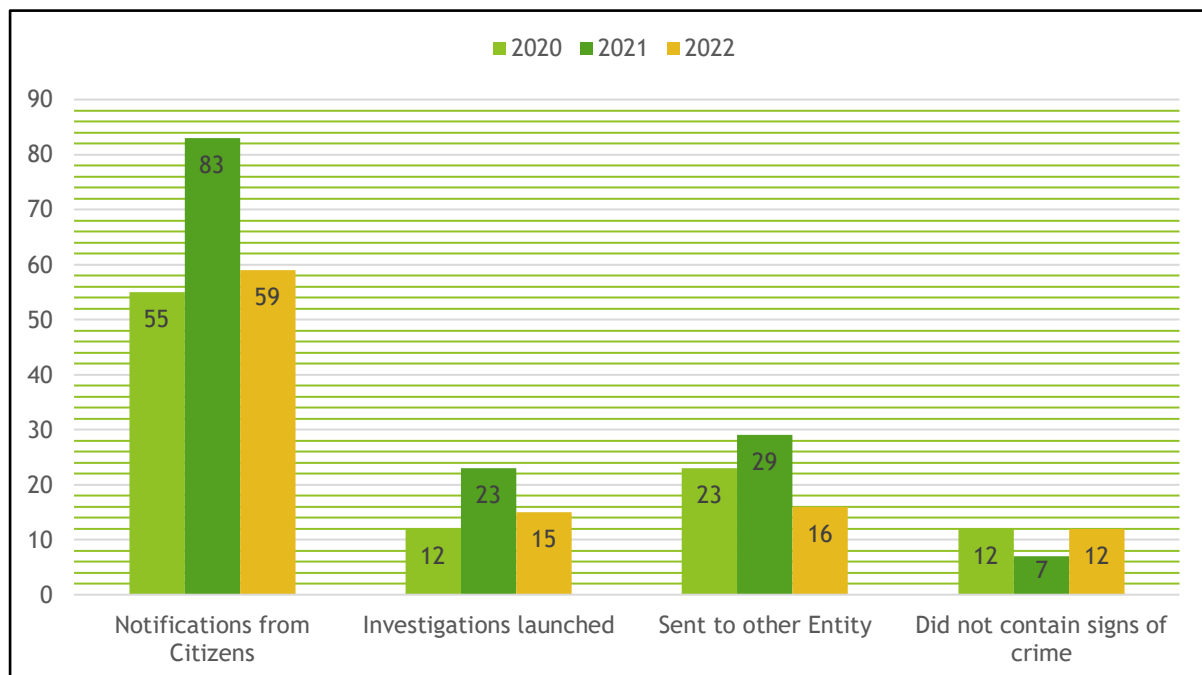
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<sup>43</sup> Law of Georgia on Public Service, Chapter V. available at: On Public Service | სსიპ "საქართველოს საკანონმდებლო მაცნე", <https://matsne.gov.ge/en/document/view/3031098?publication=35>.

<sup>44</sup> Statute of the SSSG's Anti -Corruption Agency. Available only in the Georgian language at: <https://ssg.gov.ge/uploads/>.

<sup>45</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, p. 145.

**Figure 1: Citizen engagement in reporting corruption related offences**



Source: Data provided by SSSG<sup>46</sup>

The Georgian government introduced an amendment to the law of Georgia on Conflict of Interests and the Fight Against Corruption on 15<sup>th</sup> of December 2022. In basic terms, the content of the law has not been changed dramatically, although it has a new name – the Law of Georgia on the Fight Against Corruption and it established an independent Anti-Corruption Bureau.<sup>47</sup> The Anti-Corruption Bureau has the mandates of policy development, previously belonging to the ACC and its secretariat, monitoring and publishing public officials’ asset declarations, which was transferred from the CSB, and monitoring the financial activity of the political union of citizens (political party), electoral entities and persons with a declared electoral goal. Additionally, the Bureau will operate the whistleblowing online portal currently run by CSB (discussed in the relevant section below).

The main objectives of the newly established Anti-Corruption Bureau are to:

- Define the general policy of fighting against corruption;
- Develop, periodically update, monitor and evaluate the implementation of the National Anti-Corruption Strategy and Action Plan;
- Consider the recommendations of relevant international organizations while developing and implementing the National Anti-Corruption Strategy and Action Plan;
- Ensure interagency coordination in the process of developing the National Anti-Corruption Strategy and Action Plan to promote the implementation of relevant activities;

<sup>46</sup> Data from 2022 refers to the 1<sup>st</sup> and 2<sup>nd</sup> quarters of the year (January-June 2022).

<sup>47</sup> Law of Georgia on the Fight Against Corruption, available at: საქარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/ka/document/view/33550?publication=80>.

- Ensure the implementation of recommendations elaborated by international organizations; as well as ensure the preparation of the state report on their implementation;
- Develop appropriate proposals for detecting and preventing conflicts of interest in a public institution, issue appropriate recommendations, and implement other appropriate measures related to the fight against corruption;
- In accordance with the law, ensure the receipt of the declaration of the official's property status, control of its completion and submission, its storage, monitoring and publicity, and the implementation of other appropriate measures in this field;
- Develop appropriate proposals for the improvement of whistleblower protection measures, issue appropriate recommendations on whistleblower protection issues;
- Monitor the financial activity of the political union of citizens (political party), electoral entity and person with a declared electoral goal.

The mentioned amendment will enter into force from September 1, 2023.

It is worth noting here that the OECD recommended in its 4th round monitoring process of the Istanbul Anti-corruption action plan to Georgia to employ at least 7 staff members working specifically on anti-corruption issues. At the assessment phase, the ACC secretariat was criticized for lacking sufficient financial resources, including for staff development and for implementation of its tasks under the anti-corruption action plan. According to the OECD, “The ACC and its Secretariat did very little since the previous round of monitoring to increase the visibility of their activities.”<sup>48</sup> Even though the ACC statute indicates that Anti-Corruption Council meetings shall be held at least twice a year,<sup>49</sup> the ACC has not met since 2019. Such practice further hinders the effective implementation of the Anti-Corruption policy.<sup>50</sup>

Both preventive bodies report on their activities on an annual basis to the Parliament of Georgia. There is no special mechanism or particular procedure for anti-corruption issues when reporting, but this topic is included in the general annual activity reports. The reports are available on official webpages.<sup>51</sup>

The newly established Anti-Corruption Bureau will report to the Parliament of Georgia once a year and to the Anti-Corruption Council of Georgia periodically.

It should be noted that establishing an independent anti-corruption body was highly advocated for by local civil society organizations in recent years.<sup>52</sup>

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<sup>48</sup> Anti-Corruption Reforms in GEORGIA. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf> [26.01.2023].

<sup>49</sup> Ibid, article 6.

<sup>50</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, p. 12; European Commission, 2022, Commission Opinion on Georgia's application for membership of the European Union, p. 8.

<sup>51</sup> POG Annual reports, available at: <https://pog.gov.ge/page/default/saqarTvelos-parlamentisTvis-wardgenili-angarishebi>. SSSG Annual Reports. Available at: <https://ssg.gov.ge/page/info/reports>.

<sup>52</sup> IDFI, 2017, Independent Anti-Corruption Agency – Georgia and International Standards, available at: [https://idfi.ge/en/independent\\_anti\\_corruption\\_structure\\_creation\\_needs\\_georgia](https://idfi.ge/en/independent_anti_corruption_structure_creation_needs_georgia) [26.01.2023].

As for the challenge of new amendments, the head of the Anti-Corruption Bureau is appointed by the Prime Minister, who is offered a minimum of two candidates by the special committee created to choose the candidates. The Committee is composed of seven members in total, of which five are public entities, one is the Public Defender’s Office, and the last is a civil society organization chosen by the Public Defender.<sup>53</sup>

A newly established Anti-Corruption Agency is not granted with investigative powers. The function of investigation of corruption crimes still remains under the State Security Service and the Prosecutor’s Office. Without investigative powers, the Anti-Corruption Bureau will not be able to fight effectively against high-level corruption. It is precisely “*rigorously addressing high-level corruption cases*” that is called for in Recommendation 4 given to Georgia by the European Commission.<sup>54</sup>

### Good practices

- An independent anti-corruption body has been established with broad powers to define policy and monitor the asset declaration system, accountable to the Parliament of Georgia. The Bureau is not supervised by any head of public entity as was the case with the ACC’s secretariat.
- Investigation and prosecution bodies are accountable to the Parliament of Georgia.
- Increased reporting of corruption-related crimes due to awareness-raising.

### Deficiencies

- The procedures for appointment of the head of the Anti-Corruption Bureau lack high standards of independence and impartiality, as the decision is made by the Prime Minister without involving the parliament in the process.
- The Anti-corruption Bureau lacks investigative powers.
- The ACC has not met since 2019 and the Secretariat of the Anti-Corruption Council only exists formally.

### 4.1.3 Art. 7.1 – Public Sector Employment

The first legal framework for the civil service in Georgia was set up in 1997. The law has since undergone numerous changes. In 2014, the Government of Georgia approved a new concept for Civil Service Development followed by a new Law on Civil Service adopted by the Parliament in 2015 and enacted in 2017.<sup>55</sup> The new law introduced fundamentally new approaches to civil service management, aimed at supporting career advancement and establishing a merit-based civil service, free from political influence and corruption. Some of the key changes introduced by the law have included:

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<sup>53</sup> The Law of Georgia on the Fight Against Corruption, available at: საჯარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ | სსიპ “საქართველოს საკანონმდებლო მაცნე” <https://matsne.gov.ge/ka/document/view/33550?publication=80> [26.01.2023].

<sup>54</sup> Transparency International Georgia, Evaluation of the Law on the Anti-Corruption Bureau, available at: Evaluation of the Law on the Anti-Corruption Bureau - საერთაშორისო გამჭვირვალობა - საქართველო - <https://transparency.ge/en/post/evaluation-law-anti-corruption-bureau> [26.01.2023].

<sup>55</sup> The Law of Georgia on Public Service, available at: On Public Service | სსიპ “საქართველოს საკანონმდებლო მაცნე” <https://matsne.gov.ge/document/view/3031098?publication=35> [26.01.2023].

- Establishment of a merit-based evaluation system for civil servants;
- Monitoring of asset declarations submitted by public officials;
- Creation of a unified ranking system within the civil service;
- Establishment of standards for professional development;
- Mandatory certification of civil servants upon recruitment; and
- Creation of a system of remuneration and incentives.

The law determines the status of a public servant, the conditions for the recruitment and performance of service of qualified public officers and matters of public service administration. It also regulates official legal relations between public servants in state bodies (institutions).<sup>56</sup> The legal framework for recruitment and hiring, retention and promotion of civil servants and other non-elected public officials is clear and precise.

Appointment to a vacant officer position is carried out through competition, except for mobility<sup>57</sup> and transfer of civil servants. A person shall be appointed to a Rank IV officer position on the basis of an open competition. An officer shall be appointed to a superior rank (Rank III, II or I) officer position on the basis of an internal or a closed competition. A closed competition is announced within the public service system to select an appropriate candidate from among existing officers, officers transferred to the reserve of officers and persons employed on the basis of an employment agreement. A person employed on the basis of an employment agreement may participate in a closed competition if he/she has been working in the public service system for at least one year.<sup>58</sup>

The procedure and conditions for conducting a competition, as well as the detailed rules of operation of the Competition Commission are determined by the ordinance of the Government of Georgia on the Procedure for Conducting a Competition in Public Service.<sup>59</sup> Regarding public examination of the process, this is ensured through:

- the open advertisement of jobs: The public institution announces an open and closed competition for the vacant position of a professional civil servant through the website administered by the bureau;<sup>60</sup>
- composition of a Competition Commission assembled by a representative of the human resources management unit of the relevant public institution, a representative of the structural unit of the public institution in which the relevant vacant position is located, a representative of the sectoral professional union of civil servants (if it

<sup>56</sup> Law on Civil Service, Article 2, available at: On Public Service | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/3031098?publication=35> [26.01.2023].

<sup>57</sup> In the case of a reduction in the number of positions due to reorganization, liquidation and/or a merger with another public institution, an officer may be transferred, with his/her consent, to an equal position in the same or another public institution, and if no such position is available, to a lower position, taking into account his/her competences.

<sup>58</sup> Law on Civil Service, Article 34, available at: On Public Service | სსიპ "საქართველოს საკანონმდებლო მაცნე" - <https://matsne.gov.ge/en/document/view/3031098?publication=35> [26.01.2023].

<sup>59</sup> The ordinance of the Government of Georgia on the Procedure for Conducting a Competition in Public Service, available at: <https://matsne.gov.ge/ka/document/view/3646700?publication=3#DOCUMENT:1> [24.10.2022].

<sup>60</sup> Vacancies in civil service, available at: <https://www.hr.gov.ge/> - სსიპ საჯარო სამსახურის ბიურო.

exists), and an independent invited specialist and/or a specialist of the relevant field, who is not affiliated with this public institution.<sup>61</sup>

There are no specific recruitment requirements and procedures for the selection of individuals to fill certain categories of positions considered especially vulnerable to corruption.

According to the Law of Georgia on Public Service, Article 117, the rights of candidate participating in a competition are guaranteed:

A candidate participating in a competition who failed in the relevant stage of the competition may, within two working days after receiving the notification under Article 40(2) of this Law, apply to the CSB with the request to verify the compliance of the application submitted by him/her with basic official requirements. In the case of a request under paragraph 1 of this article, the Bureau shall make a decision within two working days after receiving the request and shall immediately notify the relevant Competition Commission and the candidate about the decision.

In the case of receipt of a notification under Article 42(2) of this Law, the candidate participating in a competition may apply to a court as determined by the Administrative Procedure Code of Georgia.

Regarding the procedures for recruitment and hiring of senior managers, there is no specific procedure for heads of departments at the ministries, which are first rank managers. On the other hand, managers at Legal Entities of Public Law (LEPLs ) are hired under Civil Service Law (CSL) of Georgia, with simplified procedures foreseen in specific laws. The full enforcement of the CSL of Georgia has been postponed several times without any clear reasons being given. Political positions like ministers and deputy ministers are not regulated by the CSL of Georgia and its subject of political decision.

With regard to the protection of the rights of a candidate participating in a competition, a candidate participating in a competition who failed in the relevant stage of the competition may, within two working days after receiving the notification under Article 40(2)<sup>62</sup>of the Law, apply to the Bureau requesting to verify the compliance of the application submitted by him/her following basic official requirements. In the case of receipt of a notification under Article 42(2) of the Law, the candidate participating in a competition may apply to a court as determined by the Administrative Procedure Code of Georgia. Appealing the individual administrative act shall not result in its suspension.

According to the Civil Service Bureau (CSB,) appeals to comply with the formal requirements of competition over the past three years are as follows:

**Table 6: Appeals to comply with the formal requirements of competition over the past three years**

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<sup>61</sup> Ibid, Art. 15.

<sup>62</sup> Ibid. Art. 40 (2).

Year	Appeals received by CSB	Decisions of CSB to move the candidate on the next stage
2019	48	23
2020	30	9
2021	46	6

Source: CSB letter N7864 issued on 17 October 2022 on the IDFI public information request.

The Law of Georgia on Civil Service does not allow exemptions to the process of hiring civil servants on the basis of competition, therefore the procedures of competition are applied, but there are concerns about nepotism related to candidates before hiring. There are cases where the hiring procedure is formal in nature, with the job announcement being made after the desired candidacy has already been informally chosen. Several cases were identified by Transparency International Georgia: Employment of public officials' family members in public service after a member of their family is appointed to a high-ranking post is frequent in local government. Family members of local government officials are often employed by municipal LEPLs.

There are cases when family members of public officials work in the same agency, which is a violation of the Law on Conflict of Interest and Corruption in Public Institution with the exception of the cases in which appointments occurred as a result of a competition.

The trend of employing family members in public service after receiving the mandate of a Member of the Parliament (MP) can also be observed in the Parliament of Georgia. It is noteworthy that all MPs whose family members work in public service are members of the parliamentary majority.<sup>63</sup>

In the judiciary, it is often the case that family members of judges are employed within the same system, sometimes, in the same district court.<sup>64</sup>

**Table 7: Information on job competitions over the last three years**

Year	Open competitions	Closed competitions	Internal competitions	Simplified competitions <sup>65</sup>
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<sup>63</sup> Transparency International Georgia, available at: Family members of public officials in public service - საერთაშორისო გამჭვირვალობა - საქართველო - <https://transparency.ge/en/blog/family-members-public-officials-public-service>.

<sup>64</sup> IDFI, 23 January 2023, მოსამართლეები და სასამართლო სისტემაში დასაქმებული მათი ოჯახის წევრები, available at: [https://idfi.ge/ge/judges\\_and\\_their\\_family\\_members\\_employed\\_in\\_the\\_judicial\\_system](https://idfi.ge/ge/judges_and_their_family_members_employed_in_the_judicial_system) [02.02.2023].

<sup>65</sup> This is an exception from the general rule of competition in civil service: Article 83 of the Law of Georgia on Civil Service – Procedure for the recruitment for public service on the basis of an employment agreement: 1. To recruit a person for public service on the basis of an employment agreement, as a rule, a **simplified public competition** is announced on the website administered by the Bureau. In this case, a period of 10 calendar days shall be determined for the submission of applications, and the decision shall be made by an authorized person based on interviews with selected candidates. Employment agreements concluded without a simplified public competition shall be forwarded to the Bureau. 2. The limits of the number of persons employed in public institutions on the basis of an employment agreement and of the amount of their remuneration shall be determined by the Law of Georgia on Remuneration in Public Institution. Law of Georgia on Civil Service, available at: On Public Service | სსიპ

2019	4125	486	The relevant provision was not yet in force.	764
2020	2385	252	218	525
2021	2826	258	387	725

Source: CSB letter N7864 issued on 17 October 2022 on the IDFI public information request.

The table illustrates the decreased number of open competitions (where all interested parties are able to participate) from 2019 to 2021, as well as only slight changes in applying simplified procedure in the given years.

**Table 8: Number of civil servants active by year**

Year	Number of professional civil servants	Number of persons hired by employment agreement	Number of persons hired by administrative agreement <sup>66</sup>
2018	22,081	2192	73
2019	25,516	1452	691
2020	39,392	5657	3464
2021	38,574	6782	1746

Source: CSB letter N7864 issued on 17 October 2022 on the IDFI public information request.

From 2018 to 2021, the number of professional civil servants has dramatically increased from 22,081 to 38,574. Bearing in mind several optimization procedures held by the Government in recent years, like uniting two ministers, or annulment of some legal entities, the reason for the increasing number of civil servants is not clear. At the same time, agreements shown in the table shall be used in exceptional cases according to the Law on Civil Service as hiring with the agreement is held without a competition procedure. As illustrated in the table above, the practice of using agreements is increasing year by year. The CSB has carried out an external monitoring and review of the process, identified shortcomings, and developed recommendations and solutions (available in Annual Activity Reports).<sup>67</sup>

<sup>66</sup> "საქართველოს საკანონმდებლო მაცნე"

<https://matsne.gov.ge/en/document/view/3031098?publication=35>. [26.01.2023].

<sup>66</sup> Law of Georgia on Civil Service, available at: On Public Service | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/3031098?publication=35>. Article 3 and 78.2 [26.01.2023]. As a rule, persons shall be recruited for public service on the basis of an agreement under public law without a competition. Person employed on the basis of an agreement under public law – a person who provides support to a public political official for the exercise by the public political official of his/her powers by giving industry/sector-specific advice, rendering intellectual and technical assistance and/or performing organizational and managerial functions and who does not occupy a position provided for by this law for an officer or a person employed on the basis of an employment agreement.

<sup>67</sup> Civil Service Bureau of Georgia, Activity Report 2021, available at: [http://www.csb.gov.ge/media/3306/report\\_2021\\_geo-eng.pdf](http://www.csb.gov.ge/media/3306/report_2021_geo-eng.pdf). [26.01.2022].



Additionally, in 2017, the Parliament of Georgia adopted the Law of Georgia on Remuneration in Public Institutions, which regulates the remuneration of employees in the public sector aimed at defining a uniform system of remuneration for all public institutions.<sup>68</sup> Moreover, in accordance with the Law on Civil Service, all ministries adopted the employee assessment procedure and introduced the corresponding assessment system in 2018.

The basic salary stipulated in the law is defined each year by the Ministry of Finance of Georgia in the process of elaborating the state budget. For this, no special criteria such as taking into account the country's level of economic development or other factors, are used.

The CSB's mandate has been somewhat strengthened through the Law on Civil Service. The CSB became the coordinating agency for the implementation of the Law on Civil Service, and its powers with regard to monitoring the conflict-of-interests provisions and asset declarations of public officials has grown considerably. At the same time, the CSB is legally an LEPL (a quasi-governmental agency), and while it is tasked by law to act as a coordinating body, its standing vis-à-vis the line ministries might not be sufficiently high to ensure effective coordinating capabilities.<sup>69</sup>

The CSB has been conducting regular training on anti-corruption, whistle-blower protection, and the prevention of conflicts of interest. In 2018, 400 individuals and in 2019, 528 individuals participated in CSB trainings for representatives of central and local governments, CSOs and the media on new developments in the civil service law and on anti-corruption measures.<sup>70</sup>

### Good practices

- Adoption of new legislation, which allowed the scope of the civil service to be defined, establishing a merit-based evaluation system for civil servants.
- Adoption of the Law of Georgia on Remuneration in Public Institutions which played a part in creating a fair and transparent system for the civil service.
- Establishment of a professional career development system for civil servants.
- Development of a ranking of the accredited professional development programs, which is an additional monitoring mechanism.
- Increased transparency in hiring procedures.
- Establishment of a complaints and whistle-blower system, which strengthens anti-corruption mechanisms in the country.

### Deficiencies

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<sup>68</sup> The law of Georgia on remuneration in public institutions. Available at: [On Remuneration in Public Institutions | სსიპ "საქართველოს საკანონმდებლო მაცნე"](#)  
<https://matsne.gov.ge/en/document/view/3971683?publication=12>. [26.0102023].

<sup>69</sup> Public Administration Reform Roadmap 2020 Implementation Review, UNDP. Available at: [https://www.gov.ge/gzamkvlevi-2020?fbclid=IwAR0oj2h2cgpB\\_Q75VRChyeGbvFQam\\_N90n2SCxojRqRz73X1ZaOE8dwLy-l](https://www.gov.ge/gzamkvlevi-2020?fbclid=IwAR0oj2h2cgpB_Q75VRChyeGbvFQam_N90n2SCxojRqRz73X1ZaOE8dwLy-l).

<sup>70</sup> Civil Service Bureau Annual report 2018. Available at: <http://csb.gov.ge/media/2438/964872018.pdf> [26.01.2023].

- Progress in legal frameworks is apparent. In practice, however, many transformations are still ongoing and are insufficiently advanced to allow for a conclusive judgment on their effectiveness to be made. The process of transformation from the starting point (new law) to the final objective (an improved civil service) is not consistently addressed to a satisfactory level.
- Prevention of political influence and corruption with regard to managerial positions in the civil service has been a concern raised by the OECD’s Anti-Corruption Network (ACN), in its 4<sup>th</sup> round of monitoring.<sup>71</sup> Georgia has made significant progress in this regard, but a lot still has to be done to solidify those achievements. One of the concepts recommended for the discussion is the establishment of permanent positions for senior civil servants.
- Notwithstanding progressive change in the Civil Service legal framework, no basis for an efficient and transparent civil service in the country, free from nepotism and political influence, has been created.<sup>72</sup>
- The Law on Civil Service of Georgia does not entirely apply to Legal Entities under Public Law, although they carry public legal authority.

#### 4.1.4 Art. 7.3 – Political Financing

The relevant legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and funding of political parties (campaigns) for elected public office are covered by the Law of Georgia on Political Associations of Citizens and the Organic Law of Georgia Election Code of Georgia (LPAC).<sup>73</sup>

The parameters for the limits, purpose and time periods of campaign expenditures, as well as a legal definition of what constitutes a donation or a contribution, including limits on contributions to political parties and candidates, are foreseen in the LPAC.<sup>74</sup> The following shall be considered to be a donation:

- a) Monetary funds deposited with the party’s bank account by a citizen of Georgia;
- b) Monetary funds deposited with the party’s bank account by a legal person who is registered in the territory of Georgia and whose partners and final beneficiaries are exclusively citizens of Georgia;
- c) Tangible or intangible assets (including low interest loans) and services (except for voluntary work performed by volunteers) received by a party from a natural or legal person free of charge, at discounted prices or on concessional terms.

Certain restrictions on donations towards political parties are defined as follows: donations may not be accepted from: a) Natural and legal persons of foreign countries, international

<sup>71</sup> OECD, 2016, Anti-Corruption reforms in Georgia, 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, p. 37, available at: <https://www.oecd.org/corruption/anti-bribery/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf> [24.10.2022].

<sup>72</sup> Ibid. pg. 49.

<sup>73</sup> Election Code of Georgia, available at: <https://matsne.gov.ge/en/document/view/1557168?publication=69> [24.10.2022].

<sup>74</sup> Law of Georgia on Political Associations of Citizens, Article 25, available at: „On Political Associations of Citizens | სსიპ ”საქართველოს საკანონმდებლო მაცნე” <https://matsne.gov.ge/en/document/view/28324?publication=32> [24.10.2022].

organizations and movements, except for the organization of lectures, workshops and other related public activities; state bodies, state organizations, legal persons under public law, state-owned enterprises, except for the cases set out in this Law; non-entrepreneurial (non-commercial) legal persons and religious organizations, except for the organization of lectures, workshops and other related public activities; d) stateless persons; and e) anonymous persons.

Moreover, monetary funds contributed without indicating the data specified in the relevant provisions of the LPAC shall be considered as anonymous donations. Anonymous donations shall be immediately transferred to the state budget of Georgia by the official responsible for the financial activities of the political association.<sup>75</sup>

The requirements of paragraphs 2 and 3 of this article shall not apply to donations received from public activities. The amount of donations from public activities shall not exceed GEL<sup>76</sup> 30,000 (approx. USD 11,030) per year.

Additional restrictions strengthening the same law are as follows:

1. The total amount of donations received by a party from each citizen may not exceed GEL 60,000 (approx. USD 22,060) per year and the total amount of donations received from each legal person may not exceed GEL 120,000 (USD 44,120) per year. The annual amount of the membership fees paid by each member of a party may not exceed GEL 1,200 (approx. USD 441).
2. A donor may not be a legal person, 15% of whose actual annual revenue for the previous calendar year, or for the election year up to Election Day, has been received from simplified state procurement conducted for the benefit of such legal person or for the benefit of an enterprise established with the participation of such legal person.
3. A citizen or a legal person may donate sums to several parties during a year, but the total amount of such donations may not exceed the maximum limits set for them under this Law. In addition, the total amount of donations made to parties by a single beneficiary through different legal persons may not exceed the established maximum amount of donations made to a party by a legal person.<sup>77</sup>

Violation of the law with regard to acceptance of forbidden donations or non-disclosure of funds are administered by dissuasive sanctions. Acceptance or non-disclosure of donations or membership fees prohibited under the legislation of Georgia by a party or a person specified in Article 26(1) of this Law shall result in the transfer of the prohibited donations or membership fees to the state budget and the imposition of a fine equal to twice the amount

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<sup>75</sup> Ibid. Article 26.

<sup>76</sup> Georgian Lari, the national currency.

<sup>77</sup> Ibid. Article 27.

of the prohibited donations or membership fees.<sup>78</sup> A full list of sanctions can be found in the reference to the article.<sup>79</sup>

In 2021, the State Audit Office took 35 administrative offense cases to the Tbilisi City Court, including 10 cases concerning political parties, one legal entity, one natural person, and 18 independent candidates. Violators were verbally reprimanded in two cases, warned in a written form in 22 cases, and fined in 11 cases to a total amount of GEL 215,057 (approx. USD 79,074) and with an obligation to transfer GEL 57,228 (approx. USD 21,042) to the state budget. Of the 17 parties studied, only one turned out to be a lawbreaker - the New Political Center - Girchi.<sup>80</sup>

Regarding the transparency provisions in the domestic legal framework, monitoring political parties' activities related to political financing falls within the functions of the State Audit Office of Georgia (SAO). Before 1 February of each year, parties shall submit to the State Audit Office financial disclosure statements of the previous year along with the auditor's (auditing firm's) report. The copies of the financial disclosure statements along with the copies of the auditor's (auditing firm's) report shall be sent to the local tax authority according to the legal address of the party.<sup>81</sup> The State Audit Office shall make the financial disclosure statement of a party/electoral subject available to all interested persons and ensure the publication of the given statement on the relevant web site within five days after its receipt.

Transparency International Georgia studied the issue of Georgia's political finance in 2021, municipal elections were held in Georgia in 2021. The main focus was on 17 political parties that, as of 2021, were either receiving public funding or received revenues of at least GEL 100,000 (approx. USD 36,769) in the same year. Both in terms of total revenues and expenditures (up to GEL 40 million each (approx. USD 14.7 million), the ruling party's finances were almost twice as high as the other 16 parties combined, indicating an extremely unequal distribution of finances between the parties, which is a traditional problem in Georgian politics.<sup>82</sup>

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<sup>78</sup> Law of Georgia on Political Associations of Citizens, Article 34<sup>2</sup>, available at: [On Political Associations of Citizens | სსიპ "საქართველოს საკანონმდებლო მაცნე"](#)  
<https://matsne.gov.ge/en/document/view/28324?publication=32> [24.10.2022].

<sup>79</sup> Law of Georgia on Political Associations of Citizens, Article 34<sup>2</sup>, available at: [On Political Associations of Citizens | სსიპ "საქართველოს საკანონმდებლო მაცნე"](#)  
<https://matsne.gov.ge/en/document/view/28324?publication=32> [24.10.2022].

<sup>80</sup> Transparency International, Georgia's Political Finance in 2021, 08 July 2022, available at: [Georgia's Political Finance in 2021 - საერთაშორისო გამჭვირვალობა - საქართველო](#)  
<https://transparency.ge/en/post/georgias-political-finance-2021>.

<sup>81</sup> The disclosure statement shall include the annual income of the party (including the amounts of membership fees and donations, the identities of citizens who paid membership fees, information on citizens and legal persons who made donations, sums allocated by the state or those received as a result of publications and other activities of the party); it shall also include the expenditure of the party (incurred for elections, for funding various activities, for remuneration, business trips and other expenses), as well as reports on property ownership (the number and type of owned buildings and vehicles, their total value, the amount of funds in their bank accounts).

<sup>82</sup> Transparency International, Georgia's Political Finance in 2021, 08 July 2022, available at: [Georgia's Political Finance in 2021 - საერთაშორისო გამჭვირვალობა - საქართველო](#)  
<https://transparency.ge/en/post/georgias-political-finance-2021>.

According to Article 6 of the Law of Georgia on State Audit Office:<sup>83</sup> “Within the scope of the authority determined by the Law of Georgia on the Election Code of Georgia and the Law of Georgia on Political Unions of Citizens, the State Audit office shall monitor the financial activities of political parties and independent candidates. It may conduct audits, sequester property of physical and legal persons and political union of citizens (including their bank accounts) and draw up reports on violations of the law and adopt relevant resolutions.” The issues related to the transparency of political finances are also regulated by the Decree № 2915/21 of the Auditor General.<sup>84</sup>

In 2016, the SAO created the webpage [www.monitoring.sao.ge/ka](http://www.monitoring.sao.ge/ka) which represents the search engine providing information about the activities conducted by the SAO, legislation, declaration forms, donation statistics, received declarations, monitoring reports and case updates, and a registry of offenders, among other features.

### Good practices

- Political financing is strictly and thoroughly regulated in organic law, which is hierarchically higher than general laws.
- The law precisely sets rules and grounds for donations.
- Any anonymous, suspicious or international donation is forbidden.
- State-controlled entities are prohibited from making financial or in-kind contributions to political parties, political candidates and election campaigns.
- Transparency and lawfulness of funds are monitored by the State Audit Office of Georgia.

### Deficiencies

The State Audit Office is particularly ineffective in responding to cases of alleged political corruption. The Agency’s management has been clarifying for several years that the function of monitoring political finances is incompatible with this agency’s core activities and carries a reputational risk. The agency's management has also noted that under the current mandate, the State Audit Office does not have the leverage and resources to investigate possible cases of political corruption.

- The absence of an independent anti-corruption agency.
- Financial inequality between political parties.

### 4.1.5 Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

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<sup>83</sup> The Law of Georgia on State Audit Office, available at: [\\_Law of Georgia on State Audit Office | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/17506?publication=11> \[26.01.2023\].](#)

<sup>84</sup> Decree of Audit General, available at: [„პოლიტიკური ფინანსების გამჭვირვალობასთან დაკავშირებული ზოგიერთი საკითხის მოწესრიგების შესახებ“ სახელმწიფო აუდიტის სამსახურის გენერალური აუდიტორის 2016 წლის 5 მაისის №2915/21 ბრძანებაში ცვლილებების შეტანის თაობაზე | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/ka/document/view/4993464?publication=0> \[26.01.2023\].](#)

Issues related to integrity, ethics, and the conduct of civil service in Georgia are regulated at the legislative level by the Law of Georgia on Public Service<sup>85</sup> in conjunction with the Ordinance of the Government of Georgia on Defining General Rules of Ethics and Conduct in Public Institutions<sup>86</sup> and the law of Georgia on Fight Against Corruption.<sup>87</sup> The latter, together with the general principles of ethics and rules of conduct, establishes the basic principles of conflicts of interest and prevention, detection, and suppression of corruption in a public institution, the liability of persons who have committed corruption offenses, the conditions and mechanism for submission of asset declarations by officials and monitoring of submitted declarations, as well as the basic rules related to the protection of whistleblowers. Additionally, the Civil Service Bureau (CSB) has developed a commentary<sup>88</sup> on the government Ordinance, which should be an important practical tool for its implementation, as it is full of examples and assessments adapted to real environments.

Although the Government Ordinance adequately addresses the challenges that exist in Georgian public institutions, there is low awareness about what it includes due to the lack of widespread publication of related documents, hindering its impact.<sup>89</sup> In addition, the document is general in nature and, therefore, fails to provide an individual approach for all institutions, creating the need for each public institution to have its own code of ethics, better adapted to its needs. However, most public institutions in Georgia do not have codes of ethics tailored to the specifics of institutions.<sup>90</sup>

As of 2021, out of 219 public institutions only 23 had rules of ethics and conduct of employees regulated by an internal legal document. Employees of 14 entities were guided by various codes of professional ethics.<sup>91</sup> Codes of ethics existing at some ministries are not in

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<sup>85</sup> The Law of Georgia on Public Service, available at: საჯარო სამსახურის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/ka/document/view/3031098?publication=45> [27.01.2023].

<sup>86</sup> Ordinance of the Government of Georgia on Defining General Rules of Ethics and Conduct in Public Institutions, available at: საჯარო დაწესებულებაში ეთიკისა და ქცევის ზოგადი წესების განსაზღვრის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/ka/document/view/3645402?publication=0> [27.01.2023].

<sup>87</sup> The Law of Georgia on Fight Against Corruption, available at: საჯარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/document/view/33550?publication=80> [27.01.2023].

<sup>88</sup> CSB, Comments on the Ordinance of the Government of Georgia on Defining General Rules of Ethics and Conduct in Public Institutions, 2018, available at: <http://csb.gov.ge/media/3012/ეთიკა-კომენტარები.pdf>, [28.07.2022]; an important tool is also the practical guide on general rules of ethics and conduct in public service developed by the CSB in 2017, available at: <http://www.csb.gov.ge/media/1672/etika-da-qcevis-wesebi.pdf>, [28.07.2022].

<sup>89</sup> Council of Europe, Handbook on Transparency and Citizen Participation, 2020, p. 12, available at: <https://rm.coe.int/handbook-georgia-eng/1680786b7d>, [28.07.2022].

<sup>90</sup> See IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice; IDFI, 2022, Integrity in Public Service.

<sup>91</sup> In November 2021 IDFI sent letters requesting public information among them, regarding an integrity policy document adopted by the institution, a code of ethics, practical tools for their implementation, and opportunities for staff to familiarize themselves with them; internal mechanisms for enforcement of ethical norms; statistics of violations of ethical norms, etc. Requests were sent to 265 public institutions, including: Parliament of Georgia; Administration of the Government; Administration of the President; 12 Ministries and the Office of the State Minister; 74 LEPLs and agencies subordinated to the Ministry; 64 City Halls; 64 City Councils; Nine Governor Administrations; Nine representative and executive bodies of autonomous republics;

compliance with international standards; they are of general nature and either do not cover properly or do not cover at all the important issues such as prohibited gifts, conflicts of interest management, etc.<sup>92</sup> The same tendency is observed at the local level.<sup>93</sup> Challenges remain for the effective implementation of codes of ethics by professions. For example, in 2019 a code of conduct for members of parliaments was adopted, however, the Council of Ethics had not become fully operational and further practical measures for the implementation of the code of conduct, such as confidential counseling, had not been taken.<sup>94</sup> The existence of a mechanism to provide guidance, advice, or consultation to resolve an ethical dilemma related to work is quite a challenge in general.<sup>95</sup> As for the judiciary, the practical instrument for proper implementation of the norms of judicial ethics still is not developed.<sup>96</sup>

The COI law includes provisions on incompatibility of duties and regulates outside activities of public servants.<sup>97</sup> However, it excludes the obligation of the President of Georgia, the Prime Minister of Georgia, members of the Parliament of Georgia, member of the Supreme Representative Bodies and heads of the Executive Bodies of the Autonomous Republic of Abkhazia and Adjara to abstain and resolve ad hoc COI.<sup>98</sup> According to the COI law “a dismissed public servant may not, within one year after dismissal, start working in the public institution or carry out activities in the enterprise which has been under his systematic official supervision during the past three years. Within this period, he/she also may not receive income from such public institution or enterprise.” This provision shall regulate “revolving door” cases; however, the law does not work in practice since on the one hand, the provision is vague making it difficult to reveal this type of conflict of interest and to identify the relevant cases, and on the other hand, no responsible agency for revealing and responding to such cases is allocated.<sup>99</sup> Herewith, the legislation does not regulate the movement of persons from the private sector.

The Internal Audit Unit represents the body responsible for enforcement of ethical norms.<sup>100</sup> Supervisory functions are also assigned to general inspection units.<sup>101</sup> In 2019-2021 violations of ethical norms have been registered in only 40 public institutions (a total of 497 cases of

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30 independent LEPLs, regulatory commissions, and other agencies. IDFI received a response to public information requests from 219 agencies only. See IDFI, 2022, Integrity in Civil Service.

<sup>92</sup> IDFI, 2022, Integrity in Civil Service, available at:

<https://idfi.ge/public/upload/Analysis/Civil%20Service%20Integrity%20Study%20-%20Best%20Practices%20and%20Challenges%20in%20Georgia.pdf> [14.07.2022].

<sup>93</sup> Ibid.

<sup>94</sup> GRECO, Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, addendum to the second compliance report, Georgia, 2022, available at:

<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7398c> [28.07.2022].

<sup>95</sup> See IDFI, 2022, Integrity in Civil Service.

<sup>96</sup> See GRECO, 2022, Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, addendum to the second compliance report, Georgia.

<sup>97</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 13.

<sup>98</sup> Ibid, article 11.

<sup>99</sup> TI Georgia, June 2021, Revolving door regulation continues to be nonexistent in Georgia, available at:

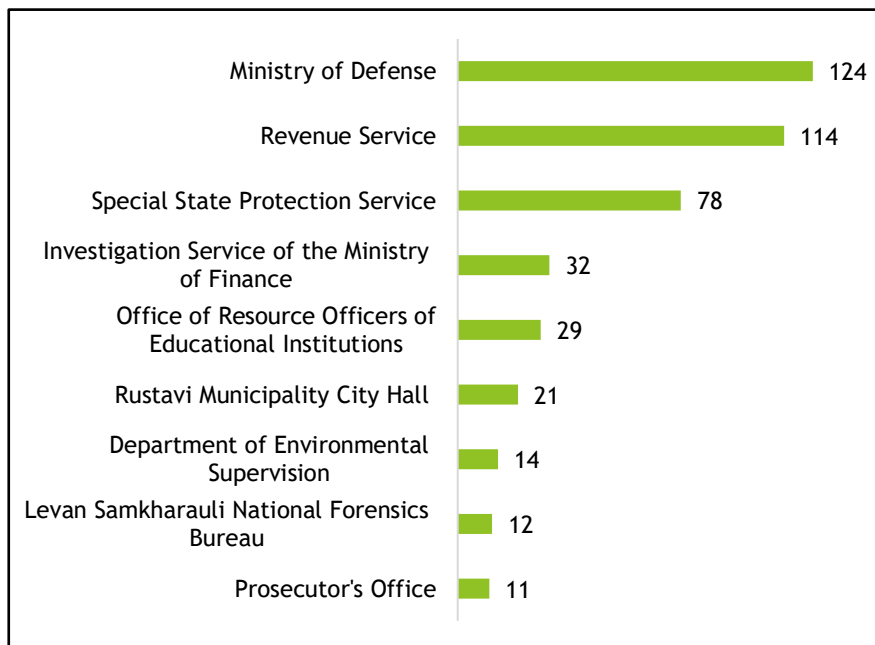
<https://transparency.ge/en/blog/revolving-door-regulation-continues-be-nonexistent-georgia> [28.07.2022].

<sup>100</sup> See IDFI, 2022, Integrity in Civil Service.

<sup>101</sup> Ibid.

violation).<sup>102</sup> Among them more than ten cases of violations of ethical norms were registered in only nine public institutions (see Figure 2 below).

**Figure 2: Number of individual reports of violations of norms of ethics within different government bodies and entities between 2019-2021**



Source: IDFI, 2022, *Integrity in Civil Service*

Among 61% of persons who violated ethical norms, reprimand was used as a measure of disciplinary liability, 25% received a warning, 8% were fired, and 5% were subject to withholding of a certain amount of remuneration for various conditions in accordance with the law.<sup>103</sup>

As already mentioned above, the COI Law regulates the conditions and mechanisms for the submission of asset declarations by officials and for the monitoring of submitted declarations. Since 2010, the declaration process has become electronic and is made through the unified electronic declaration system which is administered by the CSB.<sup>104</sup> However, the system does not provide for the automated risk-based submission of declarations. Submitted asset declarations are public, however, they are not published in an open data format. COI law defines which officials have the obligation to disclose relevant information, and the list is broad, however, the scope of declarants omits several categories of high-risk officials.<sup>105</sup> For

<sup>102</sup> The data does not include institutions, which produce unified statistics and do not separate the violation of norms of ethics from other violations and disciplinary offenses. See IDFI, 2022, *Integrity in Civil Service*.

<sup>103</sup> See IDFI, 2022, *Integrity in Civil Service*.

<sup>104</sup> [www.declaration.gov.ge](http://www.declaration.gov.ge).

<sup>105</sup> See OECD, 2022, *Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan*. See also TI Georgia, September 2020, *The Georgian Asset Declaration System is in Need of an Update*, available at: <https://transparency.ge/en/blog/georgian-asset-declaration-system-need-update> [28.07.2022].



example, the requirement still does not bind all prosecutors, which was one of the recommendations made by GRECO as well as the OECD.<sup>106</sup>

Asset declarations shall be submitted annually. Officials shall submit their asset declaration within two months after their appointment as well as after dismissal in case they failed to submit it within the respective calendar year and in the following year of dismissal.<sup>107</sup> Declarations shall also be submitted by candidates for members of the Parliament of Georgia within one week after registration as a candidate; candidates for judges within one week after submission of an application; and candidates for positions as judges of the Supreme Court of Georgia within three days after the appropriate information is published on the official webpage of the High Council of Justice of Georgia.<sup>108</sup> The information about officials and their family members that shall be contained by declarations is indicated in the COI law.<sup>109</sup>

The content of the disclosure form is broad but not sufficiently comprehensive, as it excludes several important categories (for example, the source of income, unpaid activities, indirect control of assets, beneficial ownership).<sup>110</sup> Failure to submit an official asset declaration within the time limit prescribed by the COI Law shall be subject to a fine in the amount of GEL 1000 (approx. USD 367).<sup>111</sup> Payment of a fine does not exempt the official from the obligation of submitting their asset declaration. Failure of an official to submit their asset declaration within two weeks after the date of entry into force of a decree imposing a fine result in the imposition of criminal liability on that official that does not exempt him/her from the obligation of submitting this asset declaration. In such case, the official shall submit the declaration within two weeks after the date when the judgment of conviction enters into force. Officials shall be fined in case of the existence of a violation in their asset declaration in the amount of 20% of their official salary, but not less than GEL 500 (approx. USD 183).<sup>112</sup> In case of minor violations, officials shall be given a warning.<sup>113</sup>

The mechanism for the monitoring of public officials' asset declarations was introduced in Georgia in 2017: the CSB is responsible for this, however, their human resource capacity has decreased over time. The change in number of staff members employed in the Asset Declaration Monitoring Unit in CSB by years is as follows: in 2019 - 9 persons, in 2020 - 9 persons, in 2021 - 7 persons, in 2020 - 7 persons.

The grounds for initiating the monitoring of officials' asset declarations are: a) a random selection of the officials by the Unified Electronic Officials' Asset Declaration System (no more

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<sup>106</sup> See GRECO, 2022, Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, addendum to the second compliance report, Georgia; OECD\ACN, March 2019, Istanbul Anti-Corruption Action Plan, Fourth Round Monitoring, Progress Update Report, Georgia, available at: <https://www.oecd.org/corruption/acn/OECD-ACN-Georgia-Progress-Update-2019-ENG.pdf> [28.07.2022].

<sup>107</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 14.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid, article 15.

<sup>110</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan; TI Georgia, 2020, The Georgian Asset Declaration System is in Need of an Update.

<sup>111</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 20.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

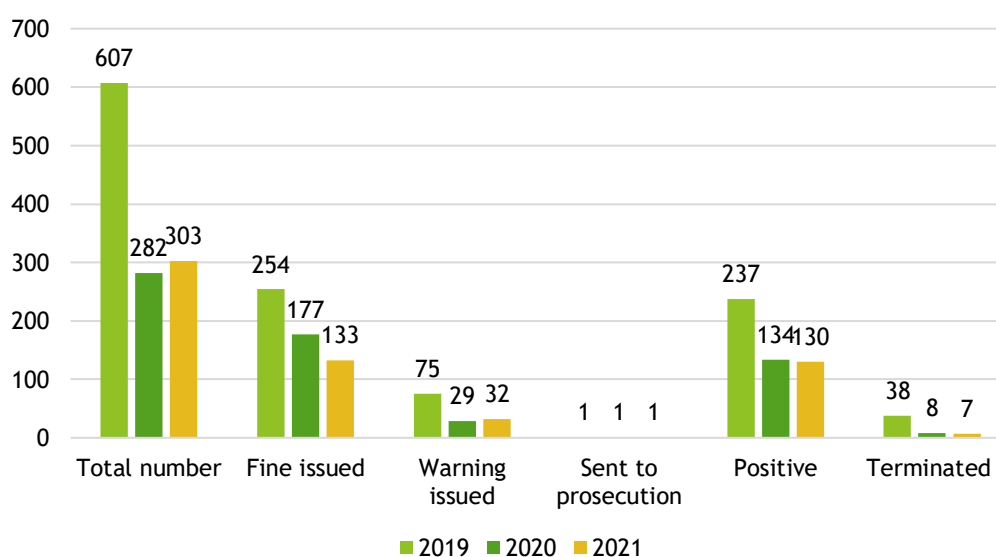
than 5% of all declarations submitted);<sup>114</sup> b) a reasoned written application; and c) declarations selected by an independent commission set up by the head of the CSB (no more than 5% of all declarations submitted).<sup>115</sup> As for the independent commission, the rules for its selection and work need to be improved since due to shortcomings, it failed to come together four times in the last five years and as a result, only half of the declarations defined by legislation were subject to verification.<sup>116</sup>

**Table 8: Number of persons subject to publication of asset declarations:**

Year	2018	2019	2020	2021	2022 (from 01.01.22 to 07.10.22)
Total	7480	6857	6211	6228	5968
Active	5641	5707	5343	5463	4905
Dismissed	1839	1150	877	765	1063

Source: Response to the FOI request of IDFI by Civil Service Bureau dated 17.10.2022.

**Figure 3: Public officials’ asset declaration monitoring results between 2019-2021**



Source: Civil Service Bureau response N.7864 (17.10.2022) to public information request of IDFI

Certain shortcomings remain regarding the monitoring mechanism. The CSB lacks powers for effective verification. The monitoring system for asset declarations is focused entirely on verifying the accuracy and completeness of the data provided in the declarations. It does not

<sup>114</sup> Official website of the CSB, available at: <http://csb.gov.ge> [28.07.2022].

<sup>115</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 18<sup>1</sup>.

<sup>116</sup> TI Georgia, March 2022, Half of Public Officials in Georgia Submit Asset Declarations with violations of the law, available at: <https://transparency.ge/en/post/half-public-officials-georgia-submit-asset-declarations-violations-law> [28.07.2022].

reveal and prevent conflict of interest and corruption-related offenses<sup>117</sup> as prescribed by the law. Verification is not risk-based and cannot be triggered by anonymous complaints. There is a very low track record of cases referred to law enforcement agencies (LEAs).<sup>118</sup> During the five years of monitoring, only 11 declarations have been transferred to the Prosecutor's Office.<sup>119</sup> While administrative sanctions are actively applied, including to high-level officials, they mainly concern insignificant infringements.<sup>120</sup> In addition, the 2019 amendment in the law, according to which the disclosure obligation no longer applies to companies which have been inactive for the past six or more years, seriously hindered the monitoring process by civil society.

To promote integrity and raise public servants' awareness of corruption, conflict of interest, whistleblowers, and ethics, the CSB has conducted training since 2015. Apart from this, regular trainings are not introduced at public institutions, which reflects the poor number of trained public servants.<sup>121</sup> In addition, the CSB has introduced a virtual course on ethics and conduct in the public service, although only 123 public servants have registered for the course (and only 55 of them are certified).<sup>122</sup>

### **Good practices**

- Issues related to integrity, ethics, and conduct of civil service are regulated at the legislative level.
- A practical tool for the implementation of the common Code of Ethics on public service has been developed by the CSB: a commentary on the government ordinance.
- The COI law includes provisions on the incompatibility of duties, and regulates outside activities of public servants.
- The COI Law regulates the conditions and mechanism for the submission of asset declarations by officials and for the monitoring of submitted declarations.
- The declaration process is electronic and submitted declarations are public.
- The mechanism for the monitoring of public officials' asset declarations has been introduced.
- The CSB has introduced a virtual course on ethics and conduct in the public service

### **Deficiencies**

- There is low awareness about what the legislation includes, hindering its impact.
- The existence of a mechanism for providing guidance, advice, or consultation to resolve an ethical dilemma related to work is quite a challenge.

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<sup>117</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan; TI Georgia, September 2020, The Georgian Asset Declaration System is in Need of an Update; TI Georgia, 2022, Half of Public Officials in Georgia Submit Asset Declarations with violations of the law.

<sup>118</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan.

<sup>119</sup> See TI Georgia, 2022, Half of Public Officials in Georgia Submit Asset Declarations with violations of the law.

<sup>120</sup> OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan.

<sup>121</sup> See IDFI, 2022, Integrity in Civil Service.

<sup>122</sup> Information available at: <https://ethics.gov.ge/> [29.07.2022].

- Codes of ethics in existence within some public institutions are not in compliance with international standards.
- The existing common Code of Ethics fails to provide an individual approach for all institutions, however, most public institutions in Georgia do not have codes of ethics tailored to the specifics of institutions.
- The COI law is not comprehensive. Provision regulations on the “revolving door” effect are vague and do not work in practice.
- The system does not provide for the automated risk-based submission of declarations.
- Declarations are not published in an open data format.
- The scope of declarants omits several categories of high-risk officials.
- The content of the disclosure form is not sufficiently comprehensive, as it excludes several important categories.
- The CSB lacks powers for effective verification. The monitoring system for asset declarations is focused entirely on verifying the accuracy and completeness of the data provided in the declarations and does not reveal or prevent conflict of interest and corruption-related offenses.
- There is a very low track record of cases referred to law enforcement agencies.

#### **4.1.6 Art. 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection**

Georgia was one of the first countries in the region to regulate whistleblower protection at the legislative level.<sup>123</sup> The issue is not regulated by an independent legislative act but by the Law of Georgia on Conflict of Interest and Corruption in Public Institutions and the Government Ordinance on Defining the General Rules of Ethics and Behavior in a Public Institution.

Even though as a result of the reforms implemented in this area in 2014–2015, the legislative norms for whistleblowing and the protection of whistleblowers have been improved significantly, the system does not appear to properly operate in practice.<sup>124</sup> In 2016, an online reporting channel ([mkhileba.gov.ge](http://mkhileba.gov.ge)) run by the Civil Service Bureau was set up in Georgia. However, civil servants’ awareness of the electronic portal as well as of mechanisms for whistleblowing and whistleblower protection guarantees in general is low; and the rate of use of the website by civil servants is minimal.<sup>125</sup> Between 2017–2020, only 261 statements were

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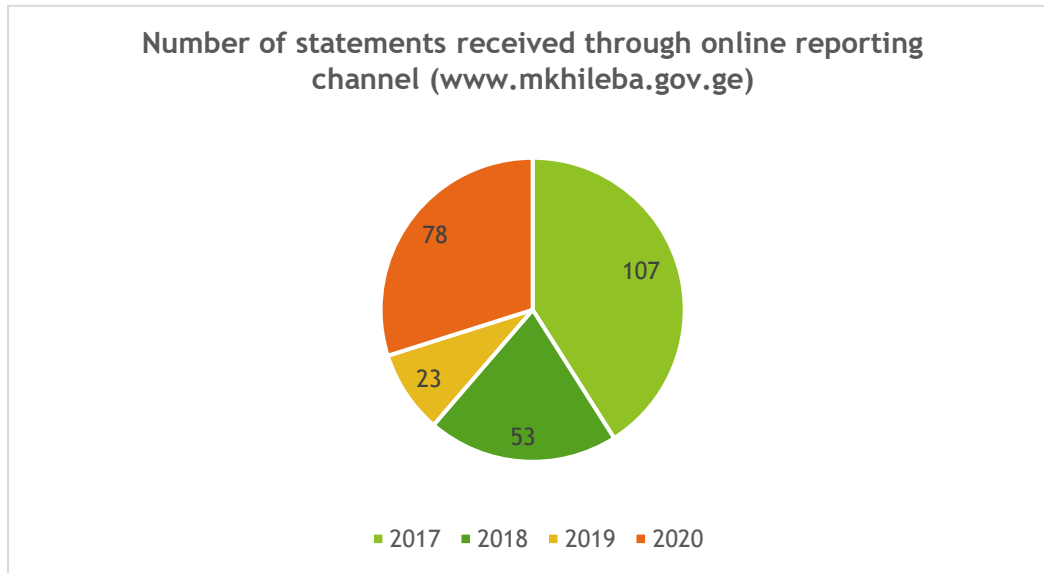
<sup>123</sup> OECD, 2016, Anti-Corruption reforms in Georgia, 4th round of monitoring of the Istanbul Anti-Corruption Action Plan, p. 37, available at: <https://www.oecd.org/corruption/anti-bribery/OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf> [14.07.2022].

<sup>124</sup> IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice, available at: <https://idfi.ge/public/upload/Analysis/ENG-Challenges%20of%20Whistleblowing%20in%20Georgia.pdf>, [14.07.2022]; IDFI, 2022, Integrity in Civil Service, available at: <https://idfi.ge/public/upload/Analysis/Civil%20Service%20Integrity%20Study%20-%20Best%20Practices%20and%20Challenges%20in%20Georgia.pdf> [14.07.2022]; TI Georgia, 2020, the mechanism of whistleblowing in the Georgian public service is largely dysfunctional, available at: <https://transparency.ge/ge/blog/sakartvelos-sajaro-samsaxurshi-mokmedi-mxilebis-mekanizmi-didcilad-upunkcioa> [14.07.2022]; See also: OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, p. 42.

<sup>125</sup> See IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice; IDFI, 2022, Integrity in Civil Service.

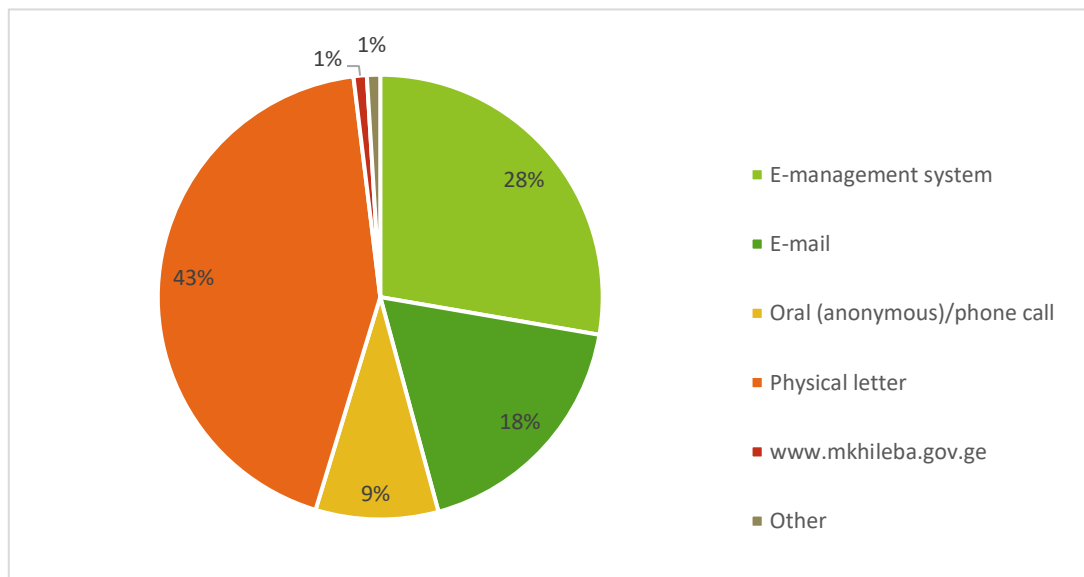
submitted to 84 public agencies through the platform, while other means to report whistleblowing seemed to be more useful (see Figure 5 below).<sup>126</sup>

**Figure 4: Number of statements received through online reporting channel between 2017-2020**



Source: IDFI, 2021 Challenges of Whistleblowing in Georgia – Legislation and Practice<sup>127</sup>

**Figure 5: Different forms of whistleblowing in 2017-2020**



Source: IDFI, 2021 Challenges of Whistleblowing in Georgia – Legislation and Practice.

<sup>126</sup> See IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice. Note: “Form of whistleblowing” chart does not include information about the Ministry of Internal Affairs.

<sup>127</sup> IDFI. Challenges of Whistleblowing in Georgia – Legislation and Practice, available at: Challenges of Whistleblowing in Georgia – Legislation and Practice, [https://idfi.ge/en/challenges\\_of\\_whistleblowing\\_in\\_georgia-legislation\\_and\\_practice](https://idfi.ge/en/challenges_of_whistleblowing_in_georgia-legislation_and_practice) [25.04.2023].

It is obvious that certain gaps still remain:<sup>128</sup>

Unlike international legal instruments,<sup>129</sup> the Law of Georgia on Conflict of Interest and Corruption in Public Institutions does not specify who a whistleblower can be. The decree of the Government of Georgia defines a whistleblower as a person who provides information about a breach of the law or the rules of ethics and conduct by a civil servant that has harmed or could harm public interest or the reputation of the relevant public institution to the internal audit and/or service inspection structural unit of a public agency, investigator, prosecutor and/or Public Defender of Georgia, as well as to civil society or the mass media, as they decide.<sup>130</sup> Thus, neither the law nor the bylaw specifically lists who a whistleblower can be and further, does not specify whether a whistleblower shall be a civil servant, although the fact of disclosure shall be related to civil service.

Georgian legislation does not take a sufficiently detailed approach to the definition of whistleblowing, although this is unequivocally important for encouraging the use of the mechanism.<sup>131</sup> Georgian legislation defines whistleblowing as informing a body reviewing statements, investigator, prosecutor and/or Public Defender of Georgia by a person (a whistleblower) in breach of the Georgian legislation or the rules of ethics and conduct by a civil servant that has harmed or could harm the public interest or the reputation of the relevant public institution.<sup>132</sup> Revealing a wrongdoing mentioned above to civil society or the mass media by a whistleblower after the decision of the body reviewing the statements, the investigator, the prosecutor, or the Public Defender of Georgia is also considered to be whistleblowing.<sup>133</sup> Georgian legislation on whistleblowing does not cover the private sector,<sup>134</sup> meaning that both the private sector as well as the activity of establishments that

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<sup>128</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan; IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice; IDFI, 2022, Integrity in Civil Service.

<sup>129</sup> OECD, 2016, Committing to Effective Whistleblower Protection, p. 41-43, available at: [https://read.oecd-ilibrary.org/governance/committing-to-effective-whistleblower-protection\\_9789264252639-en#page43](https://read.oecd-ilibrary.org/governance/committing-to-effective-whistleblower-protection_9789264252639-en#page43), [14.07.2022]; OECD, 2011, G20 Anti-Corruption Action Plan, Protection of Whistleblowers, p. 31, available at: <https://www.oecd.org/corruption/48972967.pdf> [14.07.2022]; EU, 23 October 2019, Directive 2019/1937 of the European Parliament and of the Council on the Protection of Persons Who Report Breaches of Union Law, article 4, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=en> [14.07.2022]; COE, 30 April 2014, Protection of Whistleblowers, Recommendation CM/Rec(2014)7 and Explanatory Memorandum, available at: <https://rm.coe.int/16807096c7> [14.07.2022]; TI, 2018, A Best Practice Guide for Whistleblowing Legislation, p. 11-14, available at: [https://images.transparencycdn.org/images/2018\\_GuideForWhistleblowingLegislation\\_EN.pdf](https://images.transparencycdn.org/images/2018_GuideForWhistleblowingLegislation_EN.pdf) [14.07.2022].

<sup>130</sup> Ordinance №200 of the Government of Georgia on defining general rules of ethics and conduct in public institution, article 3 (k).

<sup>131</sup> See TI, 2018, A Best Practice Guide for Whistleblowing Legislation, pp. 7-10; OECD, 2011, G20 Anti-Corruption Action Plan, Protection of Whistleblowers, p. 7, 30; UNODC, 2015, Resource Guide on Good Practice in the Protection of Reporting Persons, p. 22., available at: [https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf) [14.07.2022].

<sup>132</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 20<sup>1</sup>.

<sup>133</sup> Ibid.

<sup>134</sup> See Law of Georgia on conflict of interest and corruption in public institutions; Ordinance №200 of the Government of Georgia on defining general rules of ethics and conduct in public institution; OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan; IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice; IDFI, 2022, Integrity in Civil Service.

do not belong to the civil service but exercise delegated public authority may harm the public interest, beyond its control (e.g., State Ltd., Non-entrepreneurial Non-commercial Legal Entity( NNLE). For example, Georgian Railway, which is established by 100% share of the state.

A whistleblower cannot decide for themselves which channel for whistleblowing (whistleblowing within the organization, outside the organization, or publicly) will be most adequate. Georgian legislation allows for public whistleblowing only after a decision has been made by the body reviewing the statement.<sup>135</sup> Additionally, there is no uniform standard for internal disclosure procedures in Georgia. Furthermore, the legislation does not indicate the need for public agencies to establish an internal disclosure mechanism and to develop a clear procedure, which in practice creates problems in separating whistleblowing complaints from other types of complaints.<sup>136</sup>

As of 2021, out of 219 public institutions only 52 confirmed the functioning of internal whistleblowing channels.<sup>137</sup> 16 out of these 52 institutions did not specifically name the forms and mechanisms of internal channels, while 36 public agencies specified the internal whistleblowing channels, including the agency's e-mail, hotline, written statement, internal document management system, and others. Some agencies also pointed to the electronic portal as the internal channel of disclosure. Between 2019-2021,<sup>138</sup> only six agencies registered whistleblowing statements received through internal channels for whistleblowers:

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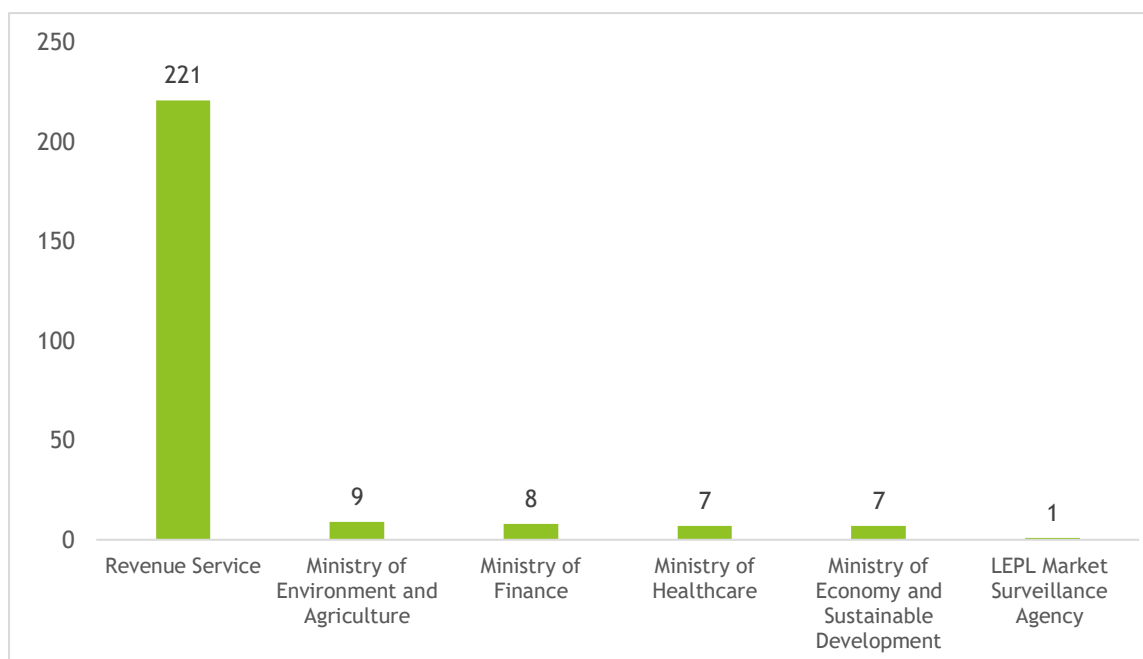
<sup>135</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 20<sup>1</sup>.

<sup>136</sup> See TI Georgia (2020), The mechanism of whistleblowing in the Georgian public service is largely dysfunctional.

<sup>137</sup> In November 2021 IDFI sent letters requesting public information among them, regarding internal channels of whistleblowing and statistics of whistleblower reports received in this way, to 265 public institutions, including: Parliament of Georgia; Administration of the Government; Administration of the President; 12 Ministries and the Office of the State Minister; 74 LEPLs and agencies subordinated to the Ministry; 64 City Halls; 64 City Councils; Nine Governor Administrations; Nine representative and executive bodies of autonomous republics; 30 independent LEPLs, regulatory commissions, and other agencies. IDFI received a response to a public information request from 219 agencies only. 87 public institutions clarified that they did not have an internal channel of whistleblowing. 80 agencies did not specify whether they had internal channels of whistleblowing. Only 52 public institutions confirmed to IDFI the functioning of internal channels of whistleblowing. See IDFI, 2022, Integrity in Civil Service.

<sup>138</sup> In the case of the Ministry of Economy and Sustainable Development the data reflects statistics for 2018-2020.

**Figure 6: Whistleblowing statements received through internal channels of public institutions between 2019-2021**



Source: IDFI, 2022, *Integrity in Civil Service*

It is noteworthy that IDFI also requested the statistics of whistleblowing statements for the previous years as well (2017-2020),<sup>139</sup> which looked as follows:

**Table: 9 Public institutions with number of whistleblowing reports recorded**

Year	2017	2018	2019	2020	Total
Ministry of Internal Affairs	7916	9890	9756	8096	35,658
Revenue Service	33	60	43	45	181
Levan Samkharauli National Forensics Bureau	42	24	37	28	131
Ministry of Environmental Protection and Agriculture of Georgia	5	14	7	1	27
Batumi Municipality City Hall	12	4	7	2	25
Department of Environmental Supervision	0	1	8	3	12

<sup>139</sup> In 2020, IDFI addressed 232 public agencies to study the practice of using the whistleblowing mechanism in the public sector (the Government Administration, the Parliament of Georgia, the President Administration, 10 ministries and state minister office, 124 city halls/assemblies, 94 legal entities of public law and other independent institutes), requesting statistical information on whistleblowing statements received in 2017-2020. Out of the 232 public institutions, 142 explained to IDFI that their agency had not received a whistleblowing statement in the last four years, and 72 agencies did not respond to IDFI's request for public information. Only 18 agencies were observed to have registered at least one disclosure statement in 2017-2020. See IDFI, 2021, *Challenges of Whistleblowing in Georgia – Legislation and Practice*.



Sachkhere Municipality City Hall	0	3	2	5	10
Veterans' Cases State Department	3	2	3	1	9
Emergency Situations Coordination and Urgent Assistance Center	1	1	2	2	6
Zugdidi Municipality City Hall	1	1	1	2	5
Ministry of Education, Science, Culture and Sport of Georgia	3	1	0	0	4
National Environmental Agency	0	1	3	0	4
Tbilisi Municipality City Hall	0	0	0	4	4
Kutaisi Municipal Assembly	0	0	3	0	3
Parliament of Georgia	0	0	2	0	2
Ministry of Foreign Affairs of Georgia	1	0	0	0	1
Khobi Municipality City Hall	0	1	0	0	1
Marneuli Municipality City Hall	1				1

*Source: Challenges of Whistleblowing in Georgia – Legislation and Practice, IDFI, 2021.*

General whistleblowing legislation does not apply to law enforcement agencies. According to the law, the issues of disclosure in the system of the Ministry of Defense of Georgia, the Ministry of Internal Affairs of Georgia, and the State Security Service of Georgia shall be regulated by special legislation.<sup>140</sup> However, this legislation has not been developed for these institutions yet, which is a significant gap in terms of whistleblower protection within the public sector as a whole.<sup>141</sup>

Guarantees for the protection of the right of whistleblowers are regulated relatively well at the legislative level. Georgian law recognizes anonymous whistleblowing, and protects the confidentiality of whistleblowers.<sup>142</sup> The body reviewing the statement is obliged not to disclose the identity of the whistleblower unless it has obtained the written consent of the whistleblower to reveal his/her identity.<sup>143</sup> The law also codifies the requirement to protect whistleblowers from retaliation (both direct and indirect retaliation). Namely, the legislation prohibits intimidation, harassment, coercion, humiliation, persecution, pressure, moral or material harm, the use of violence or threats of violence, discriminatory treatment or other

<sup>140</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 20<sup>11</sup>.

<sup>141</sup> See OECD, 2022, Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD. Istanbul Anti-Corruption Action Plan, p. 43.

<sup>142</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 20<sup>3</sup>. Additionally, it should be noted that the electronic whistleblowing platform [www.mkhileba.gov.ge](http://www.mkhileba.gov.ge) allows anonymous whistleblowing.

<sup>143</sup> Ibid.

unlawful acts against whistleblowers and their close relatives;<sup>144</sup> as well as initiation of administrative or civil proceedings or criminal prosecution against whistleblowers.<sup>145</sup> On the legislative level, the presumption of innocence of the whistleblower is recognized and the whistleblower protection regardless of whether the information disclosed is true or false is guaranteed.<sup>146</sup> However, disclosure shall be made in good faith and shall be intended to prevent, discover or eliminate violations of the legislation of Georgia and the general rules of ethics and conduct and/or to protect the public interest.<sup>147</sup>

The law does not provide for all the necessary pre-retaliation measures. Mechanisms for potential whistleblowers to get advice confidentially on relevant issues is not provided.<sup>148</sup> As for the post-retaliation measures, in the event that the whistleblower is not protected and is harmed, the issue is regulated only by general legislation, and special legislation does not prescribe compensation, which would make the issue clearer and more understandable to the whistleblower. Moreover, protection of personal safety is limited only to the situations when the criminal proceedings have been started in relation to the whistleblower report.<sup>149</sup>

Despite the need for periodic review of the legislation for whistleblower protection,<sup>150</sup> no legislative amendments have been implemented in the last five years for legal enhancement of the whistleblowing mechanism. In order to evaluate the effectiveness of the legislation, processing basic information such as the number of cases of whistleblowing and the consequences of responding to disclosures is vital.<sup>151</sup> However, the practice shows that in Georgia unified statistics on cases of whistleblowing are not produced and responses to them are not analyzed.<sup>152</sup> There is no dedicated authority in Georgia that is responsible for providing protection and ensuring oversight, monitoring, and collection of data regarding whistleblower protection.

### Good practices

- The whistleblowing institution has been operating in Georgia since 2009.
- Whistleblowing is regulated at the legislative level.
- Georgian law recognizes anonymous whistleblowing, and protects the confidentiality of whistleblowers.

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<sup>144</sup> Ibid, article 20<sup>4</sup>.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid, article 20<sup>5</sup>.

<sup>147</sup> Ibid, article 20<sup>2</sup>.

<sup>148</sup> See OECD, 30 May 2022, Anti-Corruption Reforms in Georgia: Pilot 5<sup>th</sup> Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, p. 45.

<sup>149</sup> Law of Georgia on conflict of interest and corruption in public institutions, article 20<sup>4</sup>; See also OECD, 30 May 2022, Anti-Corruption Reforms in Georgia: Pilot 5<sup>th</sup> Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, p. 44.

<sup>150</sup> See COE, 2014, Protection of Whistleblowers, Recommendation CM/Rec(2014)7 and Explanatory Memorandum, Principle 29, para. 94; OECD, 2011, G20 Anti-Corruption Action Plan, Protection of Whistleblowers, Principle 6; TI, 2018, A Best Practice Guide for Whistleblowing Legislation, p. 68; EU, Directive 2019/1937 of the European Parliament and of the Council on the Protection of Persons Who Report Breaches of Union Law, Article 14, 27(2).

<sup>151</sup> See OECD, 2016, Committing to Effective Whistleblower Protection, p. 99-100.

<sup>152</sup> See IDFI, 2021, Challenges of Whistleblowing in Georgia – Legislation and Practice; IDFI, 2022, Integrity in Civil Service; TI Georgia, 2020, the mechanism of whistleblowing in the Georgian public service is largely dysfunctional.

- An online reporting channel, run by the Civil Service Bureau, has been set up.

### Deficiencies

- Whistleblowing is not regulated by an independent legislative act.
- The existing legislation does not fully comply with international standards:
  - It does not specify who a whistleblower can be;
  - The definition of whistleblowing is not detailed enough;
  - It does not cover the private sector;
  - It does not set requirements for establishing disclosure procedures at internal level;
  - It allows for public whistleblowing only after a decision has been made by the body reviewing the statement.
- The relevant legislation has not been developed for law enforcement bodies.
- The law does not provide for all the necessary pre- and post-retaliation measures.
- The mechanism for potential whistleblowers to get advice confidentially on relevant issues is not provided.
- The system does not operate properly in practice.
- Civil servants' awareness of the electronic portal is low, and the rate of use of [mkhileba.gov.ge](http://mkhileba.gov.ge) by civil servants is minimal.
- Unified statistics on cases of whistleblowing are not produced and the response to them is not analyzed.
- There is no dedicated authority in Georgia that would be responsible for providing protection and ensuring oversight, monitoring, and collection of data regarding the protection of whistleblowers.

#### 4.1.7 Art. 9.1 – Public Procurement

Public procurement in Georgia is regulated by the Public Procurement Law<sup>153</sup> (PPL) and is overseen by the State Procurement Agency (SPA). Primary public procurement legislation covers all areas of economic activity concerning public interests, including state owned enterprises (SOEs), utilities and natural monopolies, as well as the non-classified area of the defense sector. However, according to PPL, on the proposal of the Ministry of Regional Development and Infrastructure or the Ministry of Economy and Sustainable Development, the Government of Georgia may establish a “special procedure” for the procurement of goods and services related to the “special aspects of activities” of specific State-Owned Enterprises for no longer than two years. Currently, 25 SOEs fall under an active government resolution granting them special rules for procurement. This issue was raised in the previous OECD/ACN monitoring report on Georgia, which noted that 18 SOEs were exempted as of 2016.<sup>154</sup>

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<sup>153</sup> Law of Georgia on Public Procurement, available at: <https://matsne.gov.ge/en/document/view/31252?publication=58>.

<sup>154</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, available at: [https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia\\_d709c349-en;jsessionid=dczwIBn0hB7OnLABzXOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110](https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia_d709c349-en;jsessionid=dczwIBn0hB7OnLABzXOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110) [01.02.2023].

The PPL stipulates that competitive electronic means is the primary method of conducting public procurement. Exemption from this rule is regulated by Decree no. 13 of the SPA Chairman “On the Approval of the Rule of Conduct of Simplified Procurement and Defining Simplified Procurement Criteria”, defining when direct contracting is permitted instead of competitive procedures. All entities willing to use the procedure need to seek approval from the SPA through the Georgian electronic Government Procurement system before applying Simplified Procurement.

The new Law on Public Procurement, adopted by the Parliament of Georgia on February 10, 2023 and meant to enter into force in 2025<sup>155</sup> offers new regulations with regards to the simplified procedure.<sup>156</sup> According to the text of the new law, most of the changes relate to the definitions of terms like “simplified procedure” being changed to “procedure without prior publication”. It is not clear what has been changed in the content itself to improve the current situation. Some prerequisites are too broad, others too specific, and they will supposedly be specified in bylaws, to be adopted in the future.

According to the assessment of IDFI, the fact that the negotiation procedure without prior publication in the new draft law will be allowed in most of the same cases that were defined by the current legislation, with the addition of some new specific circumstances that increase the grounds for using the simplified procurement procedure, shows that the problem will persist. In addition, the increase in the total value threshold also increases risks that the simplified procurement procedure will be used more often.<sup>157</sup>

The electronic procurement system in Georgia (Ge-GP system) is functional and encompasses all procurement processes, including single-source procurement. The Ge-GP system covers all stages of the procurement process – from planning, announcement and proposal submission to contract award and contract management. The following processes are built into the Ge-GP system: ePlan, ePublishing, Notifications, eTendering, eBidding, eEvaluation, Awarding, Contract Management, eMarket, and eComplaints. The eProcurement system databases are free of charge and are available for any interested persons. The data includes procurement plans, complete procurement documents, outcome of the tender evaluation, the contract award decision, final contract price, appeals and the results of their review. The beneficial ownership identities of participants in a procurement process are not revealed.

Information on contract implementation is available only for registered users. Procurement plans are uploaded on an annual basis. All other procurement data/documents are uploaded on a regular basis, and the deadline for uploading this information on the eProcurement system databases are regulated by the PPL and secondary legislation. All procurement data (since 2011 and up until the first quarter of 2019) are available in a machine-readable (JSON) format in two languages (GEO and ENG). Data in machine-readable (open data) format has

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<sup>155</sup> IDFI, 17 February 2023, The Georgian Parliament Adopts the New Public Procurement Law, available at: [https://idfi.ge/en/the\\_georgian\\_parliament\\_adopts\\_the\\_new\\_public\\_procurement\\_law](https://idfi.ge/en/the_georgian_parliament_adopts_the_new_public_procurement_law).

<sup>156</sup> სახელმწიფო შესყიდვების შესახებ საქართველოს კანონი, <https://matsne.gov.ge/ka/document/view/31252?publication=82> – სახელმწიფო შესყიდვების შესახებ | სსიპ “საქართველოს საკანონმდებლო მაცნე” [25.04.2023].

<sup>157</sup> IDFI, 7 September 2022, Analysis and Assessment of the Draft Law on Public Procurement, available at: [https://idfi.ge/en/analysis\\_and\\_evaluation\\_of\\_the\\_draft\\_law\\_on\\_public\\_procurement?fbclid=IwAR2M850BF6kv6QVI6z3tAyw3tLpe7lOhnEgeZGjNXeM5VIFhPrakOSqRJ\\_M](https://idfi.ge/en/analysis_and_evaluation_of_the_draft_law_on_public_procurement?fbclid=IwAR2M850BF6kv6QVI6z3tAyw3tLpe7lOhnEgeZGjNXeM5VIFhPrakOSqRJ_M) [01.02.2023].

not been updated regularly (the last update was in the first quarter of 2019). Technical issues with publication of open data remain a problem.

The Public Procurement Dispute Resolution Council (DRC) is responsible for reviewing complaints related to public procurement, with a written decision to be issued within 10 working days. A total of 1,245 complaints were filed to the DRC in 2019 and 1,044 in 2020. Most of the complaints filed in 2019 (705) and 2020 (559) were resolved in favor of the business sector (fully or partially granted by the DRC), which represented 56.62% (2019) and 53.54% (2020) respectively of the total number of submitted complaints.<sup>158</sup>

Georgian legislation does not have any provisions restricting foreign companies from participation in public procurement.

Business Ombudsman was established in Georgia to protect the rights and legitimate interests relating to the entrepreneurial activities of persons in Georgia<sup>159</sup>. The powers of the Business Ombudsman are quite broad and include supervising the protection of rights and legitimate interests related to the entrepreneurial activities of persons in Georgia, detecting violations of these rights and legitimate interests by administrative bodies, and facilitating the restoration of violated rights. Based on the wording of the law, it seems that the Business Ombudsman would have authority to receive and resolve complaints about bribe solicitation by public officials and other corruption-related complaints from companies. The OECD 5<sup>th</sup> Monitoring Report mentions that, according to the Business Ombudsman, they do not handle complaints of criminal corruption acts, but instead always refer them to relevant law enforcement agencies.<sup>160</sup>

The Business Ombudsman is appointed by the Prime Minister of Georgia with the consent of the Chairman of the Parliament of Georgia. According to the law, the Business Ombudsman shall be independent in exercising its powers and any interference or exertion of influence in its activities shall be prohibited. The monitoring team of the OECD received limited input from international partners and civil society organisations and did not receive any input from business organisations on this matter. During the OECD monitoring process, the stakeholders mentioned that in their perception the function of the Business Ombudsman is not (very) visible, and the Business Ombudsman does not operate independently and impartially, while also lacking resources to perform anti-corruption-related functions.<sup>161</sup>

According to the Law of Georgia on Public Procurement,<sup>162</sup> a Register of *mala fide* participants of the procurement ('the Black List') is established. The Public Procurement Agency maintains

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<sup>158</sup> See OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan.

<sup>159</sup> The Law of Georgia on Business Ombudsman, available at: On Business Ombudsman of Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/document/view/2860205?publication=1>.

<sup>160</sup> See OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan.

<sup>161</sup> See OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan.

<sup>162</sup> Law of Georgia on Public Procurement.

the Black List electronically and publishes it on its official website.<sup>163</sup> The Black List shall include the data on *mala fide* persons, bidders, and suppliers participating in public procurement, who may no longer participate in public procurement and be awarded a public procurement contract within one year after they are entered into the Black List. The Black List is available to every person.

There are numerous cases related to public procurements to be supposed as corrupt:

- On 6 October 2022, for purchasing the architectural service for the Ministry of Economy and Sustainable Development's new building to be built, the LEPL National Agency of State Property signed a simplified procurement contract worth GEL 1,724,814 (673,755\$) with a company owned by Giorgi Chkonia, who has made donations to the Georgian Dream party (governing party of the country) in the past and is an architect of Bidzina Ivanishvili's "Panorama Tbilisi" project. A simplified procurement does not allow competitive bidding, where suppliers compete with each other with the best offers, and instead the buyer signs a contract directly with the supplier.<sup>164</sup>
- In the years 2013-2021, persons with links to the Georgian Dream and serving in public office, as well as their family members – 39 natural/legal persons in total – purchased land with an area of 129,775 sq. meters, which was put on 54 electronic auctions, for GEL 7,725,685. Out of this, 75% (97,417 sq. meters) of the alienated land was sold without competition, after only one bid, for GEL 2,938,300. In addition, 8 natural/legal persons received an area of 378,223 sq. meters for GEL 1,458,387 (569,682\$) through the direct sale method.<sup>165</sup>
- The essence of the problem is that the agencies responsible for preventing and dealing with corruption-related crimes in Georgia (the General Prosecutor's Office and the State Security Service) for the most part do not respond to corruption cases that involve high-ranking public officials in the central government or persons with close ties to the ruling party. For example, the 2018 (the latest) report of the State Security Service states that the highest-ranking officials detained by the agency for corruption were a municipal mayor and a former governor. Cases of possible corruption reported to these agencies on a regular basis by TI Georgia are also left without a response.<sup>166</sup>

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<sup>163</sup> სახელმწიფო შესყიდვების სააგენტო - სააგენტოს შესახებ, <http://www.procurement.gov.ge/ka/n/BlackList?page=1>.

<sup>164</sup> Transparency International Georgia (6 December 2022). Georgian Dream party donor receives a 1.7 million GEL simplified procurement contract - საერთაშორისო გამჭვირვალობა - საქართველო, available at: <https://www.transparency.ge/en/blog/georgian-dream-party-donor-receives-17-million-gel-simplified-procurement-contract> [25.05.2023].

<sup>165</sup> Transparency International Georgia (9 November 2022). Risks of corruption in the process of privatization of state property in Samtskhe-Javakheti - საერთაშორისო გამჭვირვალობა - საქართველო, available at: <https://www.transparency.ge/en/blog/risks-corruption-process-privatization-state-property-samtskhe-javakheti> [25.04.2023].

<sup>166</sup> Transparency International Georgia (14 March 2023). Uninvestigated Cases of Alleged High-Level Corruption in Georgia — A Periodically Updated List - საერთაშორისო გამჭვირვალობა - საქართველო, available at: <https://www.transparency.ge/en/blog/uninvestigated-cases-alleged-high-level-corruption-georgia-periodically-updated-list>.

The legal framework in force is absolutely adequate for promoting integrity in procurement. For example: conflict of interest procedure is foreseen in a comprehensive manner (and further expanded in the new PPL). The conditions for avoiding conflicts of interest shall apply to the following activities related to the conduct of public procurement:

- a) review, selection and evaluation of qualification data and tenders;
- b) holding negotiations in cases provided for by this law and subordinate normative acts;
- c) monitoring and supervision of the performance of a contract;
- d) selection of a supplier under a simplified procurement;
- e) review of design contest proposals and selection of a supplier through a design contest;
- f) consideration of disputes related to public procurement.

A natural person carrying out the activity defined above shall be considered to have a conflict of interest with the bidder or the supplier if a special relationship is confirmed. Special relationship provisions are wide enough to cover all potential cases, such as:

- a) persons are the founders (participants) of one enterprise, provided their combined share is at least 20%;
- b) one person has a direct or indirect interest in another person's enterprise, provided such participation is at least 20%;
- c) a person controls the enterprise;
- d) a natural person is subordinated to another natural person;
- e) one person directly or indirectly controls another person;
- f) the persons are controlled, directly or indirectly, by a third person;
- g) the persons jointly control, directly or indirectly, a third person;
- h) the persons are relatives;
- i) the persons are members of a partnership.

Additionally, the relevant legal regulations define a natural person's relatives as grounds for a conflict of interest:

- a) the first line of relatives: spouse, parent, child, sister, brother;
- b) the second line of relatives: spouse, parent, child, sister, brother of each relative in the first line, except for the natural person who already belongs to the first line;
- c) persons who are related to one another as parents and children as a result of long-term guardianship.

A bidder or a supplier may not directly or indirectly influence, in his/her favour, the decision of a person carrying out activities related to procurement. After a person carrying out activities mentioned above learns the identity of a bidder or a supplier, the person shall confirm in writing that their involvement in this procurement does not cause a conflict of interest. If a person carrying out a procurement procedure has a conflict of interest, they shall immediately declare it and exclude themselves from the procurement.<sup>167</sup>

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<sup>167</sup> Law of Georgia on Public Procurement, available at: Law of Georgia on Public Procurement | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/31252?publication=58> [01.02.2023].

Furthermore, the State Procurement Office of Georgia has a mandate to conduct awareness-raising campaigns, prepare special training programmes, hold seminars and trainings for central and local self-government authorities, mass media representatives, and other interested persons. As it appears from the official webpage of the State Procurement Office, it performs those activities systematically through the Training Centre established within its own capacity.<sup>168</sup>

The State Audit Office publishes audit reports on its web page, *inter alia*, on the effectiveness of the public procurement system in different public entities.<sup>169</sup> The most recent external assessment of the issue is covered in OECD 5<sup>th</sup> Round pilot monitoring report.<sup>170</sup>

Notwithstanding the high standards set in the relevant laws and wide perception among main stakeholders that public procurement is fair and transparent, NGOs who provided input to the pilot (5<sup>th</sup> round) monitoring of OECD anti-corruption action plan implementation in Georgia raised certain concerns about fairness and transparency in this area.<sup>171</sup>

### Good practices

- Primary public procurement legislation covers all areas of economic activities concerning public interests, including state-owned enterprises, utilities and natural monopolies, as well as the non-classified area of the defense sector.
- Key procurement data and statistics are published and regularly updated online on a central procurement portal, free of charge.
- The legislation clearly defines specific, limited exemptions from the competitive procurement procedures.
- Public procurement procedures are open to foreign legal or natural persons.
- An electronic procurement system is functional and encompasses all procurement processes.
- Procurement complaints are addressed by a specific body (DRC).

### Deficiencies

- NGOs who provided input to the pilot (5<sup>th</sup> round) monitoring of OECD anti-corruption action plan implementation in Georgia raised certain concerns about fairness and transparency.
- The volume of single-source procurement remains high in practice.
- Machine-readable procurement data has not been updated since 2019.

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<sup>168</sup> State Procurement Agency, available at: [სახელმწიფო შესყიდვების სააგენტო - სააგენტოს შესახებ](http://www.procurement.gov.ge/ka/page/TrainingCenter)  
<http://www.procurement.gov.ge/ka/page/TrainingCenter>.

<sup>169</sup> State Audit Office of Georgia. Available at: <https://www.sao.ge/en/reports?isAudit=true>.

<sup>170</sup> See OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, available at: Anti-Corruption Reforms in Georgia.

<sup>171</sup> See OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan; Review of the OECD Pilot Monitoring Report of Georgia on Anti-Corruption Environment, IDFI July 2022, Available at: Review of the OECD Pilot Monitoring Report of Georgia on Anti-Corruption Environment,

[https://idfi.ge/en/review\\_of\\_the\\_oecd\\_pilot\\_monitoring\\_report\\_of\\_georgia\\_on\\_anti\\_corruption\\_environment](https://idfi.ge/en/review_of_the_oecd_pilot_monitoring_report_of_georgia_on_anti_corruption_environment) [ 25.04.2023].



- Business Ombudsman operates but lacks resources.<sup>172</sup>
- Beneficial ownership of participants in a procurement process is not revealed.
- Government Administration, the State Security Service, the Ministry of Internal Affairs and some of its sub-agencies do not comply with the obligation to regularly upload their single source procurement contracts.
- The high standard of transparency is not extended to sub-contracting, market research, and the implementation phase of the procurement cycle.

#### 4.1.8 Art. 9.2 – Management of Public Finances

According to the UNCAC, each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Requirements for the relevant provisions of the Convention are largely implemented in Georgia’s domestic legislation.

Procedures for the adoption of the national budget are governed by the Budget Code of Georgia.<sup>173</sup> The budget preparation process starts by the preparation of the Basic Data and Direction (BDD) document on 1 March of each year. The document covers analysis of macroeconomic and fiscal parameters for the past and current years and projections for the coming four-year period.

Public participation and transparency in the process is ensured by the Budget Code of Georgia. State budget packages submitted to the Government and the Parliament, as well as the State Budget Law are available to the public through the webpage of MOF.<sup>174</sup> Additionally, hearings on the state budget draft law at the different committees of the Parliament of Georgia are broadcast. The State Budget Law is finally discussed in the plenary session which is also broadcast, and is open for interested people to attend. Moreover, the new electronic portal of Budget Transparency and Public Participation was launched in 2019.<sup>175</sup> The portal gives the opportunity to plan the budget (vote for priorities) or make comments and opinions on any programs/subprograms and get feedback from the Government of Georgia. Evaluation of effectiveness of the portal is not possible through publicly available sources.

Despite high standards with regard to the transparency of the budgetary process in Georgia, there is low awareness of the entire public financial management concept among civil servants, and the link between policy planning and budgeting process is extremely weak.<sup>176</sup>

<sup>172</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, available at: [https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia\\_d709c349-en](https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia_d709c349-en).

<sup>173</sup> Budget Code of Georgia. Available at: საქართველოს საბიუჯეტო კოდექსი | სსიპ "საქართველოს საკანონმდებლო მაცნე", available at: <https://matsne.gov.ge/document/view/91006?publication=53> [27.01.23].

<sup>174</sup> Ministry of Finance web. Page, available at: <https://www.mof.ge/en/>.

<sup>175</sup> Transparency and participation platform, available at: ბიუჯეტის გამჭვირვალობისა და ჩართულობის სისტემა – <https://ebtps.mof.ge/>.

<sup>176</sup> Public Administration Reform Roadmap 2020 Implementation Review, UNDP, available at: <https://www.gov.ge/gzamkvlevi-2020>.

Regarding internal audit standards, internal monitoring and risk management obligations are foreseen in the Law of Georgia on Public Internal Financial Control (Art. 10)<sup>177</sup>. The head of an institution shall be in charge of establishing a risk management system. They shall determine the identification, assessment, control and monitoring processes of those likely events and situations that affect the achievement of the goals and objectives of the organization (Art. 12). The function of internal financial monitoring, including risk assessment, is entrusted to internal audit units. There is no evidence that those procedures include corruption risk assessments. Documents produced by internal audit units are not publicly available.

According to the Instruction for Budgetary Organizations on Accounting and Financial Reporting,<sup>178</sup> accounting documents and financial statements in both electronic and physical format are kept in the organization for six years after the end of the reporting period, unless otherwise defined by Georgian legislation.

Georgia continues to hold the 5th place among 117 countries in the Open Budget Survey, according to which the country's budget transparency is sufficient, and extensive information is available.<sup>179</sup>

#### **Good practices**

- A clear, precise and transparent process for the adoption of the national budget is in place.
- Timely reporting on revenue and expenditures is ensured.
- The system of accounting and audit standards together with the related oversight is in force under the law.
- Risk management systems are foreseen by the legislation.
- Budget transparency and public participation is ensured.
- A state budget expenditure system is in place.

#### **Deficiencies**

- Weak coordination between policy planning and financial management structural units during budget planning process.
- Low awareness among ordinary people about participation mechanisms in the budget planning process.
- Weakness of the budget planning practice in terms of responding to real challenges, such as: social projects, including health protection and unemployment.
- Absence of cost effectiveness evaluation mechanism.
- Weakness of the role of the State Audit Service in the field of public financial management.

#### **4.1.9 Art. 10 and 13.1 – Access to Information and the Participation of Society**

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<sup>177</sup> Law of Georgia on Public Internal Financial Control. Available at: [სახელმწიფო შიდა ფინანსური კონტროლის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე"](https://matsne.gov.ge/document/view/91618?publication=11) [27.01.2023].

<sup>178</sup> Decree of the Ministry of Finance of Georgia N429 of 31 December 2014.

<sup>179</sup> International Budget Partnership, Open Budget Survey, Georgia, 2019. Available at: Open Budget Survey Georgia 2019 | International Budget Partnership, <https://internationalbudget.org/open-budget-survey/country-results/2019/georgia>.

Access to public information is guaranteed by Article 18 of the Constitution of Georgia,<sup>180</sup> whereas the procedure for requesting and issuing public information is guided by Chapter III of the General Administrative Code of Georgia (GAC).<sup>181</sup>

Public information is considered to be an official document (including a drawing, model, plan, layout, photograph, electronic information, or video and audio recording), i.e., any information stored at a public institution, as well as any information received, processed, created or sent by a public institution or public servant in connection with official activities, in addition to any information proactively published by a public institution.<sup>182</sup> Public information shall be open, except for cases provided for by law and information considered to be state, commercial or professional secrets, as well as personal data.

A public institution is obliged to ensure proactive publication of public information in the manner and under conditions determined by the relevant subordinate normative acts.<sup>183</sup> Everyone is entitled to request public information and there are no limitations, such as possession of citizenship or other. Pursuant to Article 40 of the GAC:<sup>184</sup> A public institution shall be obliged to issue public information, including the public information requested electronically, immediately. Only in exceptional cases given below do public institutions have 10 days to respond, if the request for public information requires:

- a) retrieving of information from its structural subdivisions in another locality or from another public institution, and its processing;
- b) retrieving and processing of single and uncorrelated documents of considerable size;
- c) consulting with its own sub-division in another locality or with another public institution.

There are precisely defined limitations in the law on access to information – state, commercial or professional, secret or personal data. No other limitations are foreseen in the General Administrative Code of Georgia.

If a 10-day period is required for issuing public information, a public institution shall be obliged to notify the applicant of it upon request. Proactive publication of public information shall not release a public institution from the obligation to duly issue the same or other public information requested. Ordinance №219 of 26 August 2013, of the Government of Georgia

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<sup>180</sup> Constitution of Georgia, Available at: CONSTITUTION OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე", available at: <https://matsne.gov.ge/en/document/view/30346?publication=36> [30.01.2023].

<sup>181</sup> General Administrative Code of Georgia. Available at: LAW OF GEORGIA GENERAL ADMINISTRATIVE CODE OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე", available at: <https://matsne.gov.ge/en/document/view/16270?publication=33> [30.01.2023].

<sup>182</sup> General Administrative Code of Georgia, Article 2, available at: LAW OF GEORGIA GENERAL ADMINISTRATIVE CODE OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/16270?publication=33> [30.01.2023].

<sup>183</sup> Ibid, Article 28.

<sup>184</sup> Available at the Official Web Page of the Legislative Herald: <https://matsne.gov.ge/en/document/view/16270?publication=33>.

On Requesting Public Information in Electronic Form and Publishing It Proactively sets standards for proactive publication of public information, the rule for requesting the public information in electronic form and provides the list of public information to be published proactively.<sup>185</sup> This Decree is not binding for local municipalities, which have developed proactive disclosure standards for public information with the relevant regulations issued by local governments.

The right to appeal when the access to information request is denied and the relevant procedure is guaranteed by the GAC. Refusal to issue public information by the public authority shall be well- reasoned and the public institution is obliged within three days from making the decision, to explain to the applicant in writing their rights and the appeal procedure, as well as to specify the structural subdivision or the public institution with whom consultations were held when making a decision to refuse to issue the information.

Refusal of access to public information is an ordinary administrative act, there is no separate procedure for issuing access to information denial decisions. An interested party may appeal an administrative act issued by an administrative body. Violation by an administrative body of the timeframe for issuing an administrative act shall be considered a refusal to issue the act.<sup>186</sup> A person may apply to a court in the manner determined by the Administrative Procedure Code of Georgia for protection of their rights and freedoms.

All ministries and LEPLs administrate official web pages, with a special banner on access to public information and contact information of persons responsible for FOI requests within the institution.

IDFI analyses access to information practices each year. According to the monitoring conducted by IDFI in 2021, the quality of access to public information in the country increased by 2% compared to the previous year.<sup>187</sup> On the other hand, out of 8446 requests sent to public institutions in 2021, IDFI received information within the prescribed 10-day period in 4,545 cases (54%),<sup>188</sup> which demonstrates the problem of meeting the deadline set by the law. Local governments in municipalities remain weak with regard to FOI standards: in 2021, the unanswered requests by self-governing units increased by 10%.<sup>189</sup>

A problem interpreting the law in some cases remains a challenge, with regard to the restrictions on access to information. In 2021, a large percentage of public institutions (28%) left requests unanswered or refused to submit internal audit reports,<sup>190</sup> which the GAC of Georgia does not acknowledge as restricted information.

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<sup>185</sup> Ordinance №219 of 26 August 2013 of the Government of Georgia on “On Requesting Public Information in Electronic Form and Publishing It Proactively, available at: On Requesting Public Information in Electronic Form and Publishing It Proactively | სსიპ “საქართველოს საკანონმდებლო მაცნე” <https://matsne.gov.ge/en/document/view/2001875?publication=1> [30.01.2023].

<sup>186</sup> ACG, Article 177.

<sup>187</sup> Access to Public Information in Georgia 2021, 23 May 2022, available at: [https://idfi.ge/en/access\\_to\\_public\\_information\\_in\\_georgia\\_2021?fbclid=IwAR393RtxVbPuc85aeRfocQssj6c5f4JCxk5aFj18ZU0eNwCURhEfrvSnFFY](https://idfi.ge/en/access_to_public_information_in_georgia_2021?fbclid=IwAR393RtxVbPuc85aeRfocQssj6c5f4JCxk5aFj18ZU0eNwCURhEfrvSnFFY).

<sup>188</sup> Ibid.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

The participation of civil society in decision-making processes has not been obligatory under legislation until 2019. However, there were good practices in some public institutions, establishing councils or working groups composed by, inter alia, civil society organizations. In 2019, the Decree of the Government of Georgia №629 on Rules for Development, Monitoring and Evaluation of Policy Documents<sup>191</sup> was adopted. The methodology established the new policy planning and coordination system that covers the whole policy cycle from development, to implementation, monitoring, and evaluation of policy documents. According to the Decree, each policy document approved by the Government of Georgia shall be subject to public consultations.

The amendments are recent; therefore, it is not possible to assess their effectiveness. However, a good example of civil society participation in compliance with the new Decree No. 629 can be confirmed with the ongoing elaboration process of the Public Administration Reform Strategy and Action Plan 2023-2026.<sup>192</sup> During the situation analysis, almost 30 meetings were held with members of different civil society organizations and representatives of academia.<sup>193</sup> Additionally, the High-level Open Government Coordinating Council<sup>194</sup> was established for the first time ever in Georgia at the initiative of the OGP Georgia coordinating body (Administration of the Government of Georgia, AOP) and with active engagement from local and international organizations. The Statute and the composition of the Council were approved by Decree No. 110 of the Government of Georgia, dated February 13, 2020.<sup>195</sup>

OGP Georgia Council offers equal opportunity of participation to both government agencies and the civil society community. Deputy Ministers and heads of NGOs enjoy the right to vote in the Council. International organizations are also involved in the activities of the Council. It is noteworthy that the OGP action plan for 2023-2024 has not been expanded upon since 2020 and the process is still ongoing. According to the representative of the AOG, the reason for this was the pandemic situation in the country. The Action Plan development process was suspended in 2020, then renewed in 2021. After the renewal of the process, two meetings of the OGP Forum<sup>196</sup> and almost 25 thematic working groups were held, in order to identify problems and provide recommendations. The Forum and working groups were composed of different stakeholders, including CSOs. At the same time, the High-level Open Government Coordinating Council, which gives NGOs equal voting rights to governmental organizations, has never met since its inception.

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<sup>191</sup> Decree of the Government of Georgia №629 on “Rules for Development, Monitoring and Evaluation of Policy Documents, available at: პოლიტიკის დოკუმენტების შემუშავების, მონიტორინგისა და შეფასების წესის დამტკიცების შესახებ | სსიპ “საქართველოს საკანონმდებლო მაცნე”, available at: <https://matsne.gov.ge/ka/document/view/4747283?publication=0> [30.01.2023].

<sup>192</sup> Drafts of strategy 2023-2026 and action plan 2023-2024, available at: <https://www.gov.ge/gzamkvlevi-2025> [30.01.2023].

<sup>193</sup> Interview with Deputy Head of Policy Planning and Government Coordination Department of AOG, Ms. Ketevan Tsanova [20.10.2022].

<sup>194</sup> OGP Georgia web page, available at: <https://ogpgeorgia.gov.ge/en/about-the-council/> [30.01.2023].

<sup>195</sup> Decree of the Government of Georgia №110 on the approval of the Statute and Composition of the Open Government Interagency Coordination Council of Georgia 13 February 2020 Tbilisi, available at: [https://ogpgeorgia.gov.ge/upload/pages/38/FileManager/Eng\\_OGP-Council\\_Statute.pdf](https://ogpgeorgia.gov.ge/upload/pages/38/FileManager/Eng_OGP-Council_Statute.pdf) [30.01.2023].

<sup>196</sup> Forum Meetings, available at: ფორუმის შეხვედრები | OGP, <https://ogpgeorgia.gov.ge/forum-meetings/> [01.02.2023].

Journalists are not able to attend Government meetings. Moreover, from 2020, not a single government decree has been published on the webpage of the Administration of the Government of Georgia, notwithstanding the obligation to make all decrees publicly available within 3 days after issuance. It has to be noted that the government decrees are the most frequent decisions from the cabinet, related to a number of issues falling within the competence of the government, including decisions on direct purchases of state-owned properties. According to IDFI's findings of 2022 on Access to Public Information by the Media, the number of public institutions that attempt to comply with the requirements of the legislation to the greatest possible extent is exceptionally low. There is about a 12% probability that information on issues of interest to the media will be provided fully and within the timeframe stipulated in the law.<sup>197</sup>

### **Good practices**

- Access to information regulation ensures a wide definition of public information.
- Limitations on access to public information are clearly defined.
- Right of access to information covers all branches of the state, the executive, the legislative and the judiciary.
- Regulations apply to other entities that carry out public functions within the scope of receiving public funding.
- The appeal mechanism in case of denial of information is in place.
- The involvement of civil society in policy planning is obligatory from 2019.

### **Deficiencies**

- Absence of standalone legislation on access to information in conformity with up-to-date international standards.
- Absence of an independent access to information oversight body.
- Poor and fragmented proactive disclosure practices.
- Delayed answers to FOI requests.
- Improper attitude towards access to information among state-owned LLCs and NNLEs.

#### **4.1.10 Art. 11 – Judiciary and Prosecution Services**

Georgia has implemented several waves of judicial reforms over the past 10 years, with the most recent changes adopted in April 2021. The Constitution of Georgia<sup>198</sup> sets the rule for appointment of judges of common courts until they reach the age established by organic law. In case of the first appointment, the judge may be appointed for a three-year term (this is a temporary provision until 31 December 2024). The three-year probationary period was preserved for judges of city courts and the court of appeals, while judges of the Supreme Court are elected until the legal retirement age without probationary period. Procedures for confirming judges for life tenure after the initial three-year period are set by the Organic Law on Common Courts.<sup>199</sup> The criteria for confirmation (integrity and competence) are explained

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<sup>197</sup> Access to Public Information by Media, Legislation vs Reality. IDFI 2022, available at: [https://idfi.ge/public/upload/Analysis/eng\\_Legislation-v.-Reality-2022-.pdf](https://idfi.ge/public/upload/Analysis/eng_Legislation-v.-Reality-2022-.pdf) [01.02.2023].

<sup>198</sup> Constitution of Georgia, Article 63.6.

<sup>199</sup> Organic Law on Common Courts, available at: ORGANIC LAW OF GEORGIA ON GENERAL COURTS | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/90676?publication=34> [30.01.2023].

in the law and appear to be sufficiently clear. The High Council of Justice (HCJ) decides on the confirmation following three assessments conducted during the three-year initial term by two evaluators chosen by lot from among HCJ members. Assessments are made public.<sup>200</sup>

Selection of judges of city courts and the court of appeal is conducted by the HCJ based on competitive procedures clearly set in the primary law. However, in July 2018, NGOs raised the issue of transparency and merit basis of the process.<sup>201</sup> As noted by GRECO with reference to NGO concerns,<sup>202</sup> despite the criteria now being included in the law, the HCJ is alleged to have broad discretion regarding judicial appointments, as not necessarily the candidates with the best assessment results are appointed (candidates are instead being voted on). It is unclear what weight the interview has in the overall assessment, and there is no detailed definition of what information the HCJ members should base their decisions on, when deciding about the competency and integrity of candidates. The OECD 5<sup>th</sup> Round Monitoring Report shares these concerns and highlights that judicial reform amendments on merit-based selection should be further improved. In its October 2020 opinion, the Venice Commission pointed to the fact that HCJ members may deviate from the earlier vote on the candidates that was based on the evaluation scores, which appeared to be inconsistent with a merit-based evaluation system.<sup>203</sup>

It has to be mentioned that international observers and Georgian NGOs raise serious concerns as to the transparency and competitiveness of the procedure for selection of Supreme Court judges in recent years.<sup>204</sup> The OSCE/ODIHR in its 2020 report, assessed recent amendment to the appointment process of judges as a significant step forward in openness and transparency, however, the selection procedure of supreme court judges runs contrary to international standards and good practices. A number of key shortcomings in the legal framework that undermine the aim of a merit-based selection process persist, including the use of secret votes and the lack of an obligation for substantiated decisions, insufficient

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<sup>200</sup> Webpage of High Court of Justice of Georgia, available at: საბჭოს გადაწყვეტილებები - საქართველოს იუსტიციის უმაღლესი საბჭო – <http://hcoj.gov.ge/ka> [30.01.2023].

<sup>201</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Available at: Anti-Corruption Reforms in Georgia : OECD iLibrary, [https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia\\_d709c349-en;jsessionid=dczwIBn0hB7OnLAbZxOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110](https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia_d709c349-en;jsessionid=dczwIBn0hB7OnLAbZxOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110);

Transparency International Georgia (2018), Coalition addresses Parliament with legislative proposal concerning selection/appointment of judges - საერთაშორისო გამჭვირვალობა - საქართველო - <https://www.transparency.ge/en/post/coalition-addresses-parliament-legislative-proposal-concerning-selectionappointment-judges> [01.02.2023].

<sup>202</sup> GRECO, Fourth Evaluation Round (2019), “Compliance Report” para.26, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168095529a> [01.02.2023].

<sup>203</sup> OECD 5<sup>th</sup> Round Monitoring Report.

<sup>204</sup> GRECO, Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, addendum to the second compliance report, Georgia, 2022, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7398c>, [25.10.2022]; ODIHR (2019), “Second report on the nomination and appointment of supreme court judges in Georgia”, <https://www.osce.org/files/f/documents/2/6/443494.pdf>; IDFI, 2022, Integrity in Civil Service, available at: <https://idfi.ge/public/upload/Analysis/Civil%20Service%20Integrity%20Study%20-%20Best%20Practices%20and%20Challenges%20in%20Georgia.pdf> [14.07.2022].

provisions on conflict of interest, the absence of safeguards against arbitrary decision-making, and the granting of unfettered discretion to parliament.<sup>205</sup>

Additionally, the OECD Report monitoring team agreed with these concerns about the selection of Supreme Court judges in its 2022 evaluation. The amendments to the Law on Common Courts (in April 2021) addressed some of the problems mentioned above, namely: requiring publication of the identity of HCJ members linked to the assessments of candidates, removing an additional vote in HCJ after the initial assessment, and advancing candidates with the highest score under the competence criteria and with a sufficient assessment under integrity criteria to the next stage. Nevertheless, there is still another vote by two-thirds of HCJ members for each candidate following the sequence of highest scores, which can overturn a previous assessment.<sup>206</sup> The Venice Commission welcomed the above changes, but it still criticizes a voting procedure as a weak tool to base an efficient merit-based appointment on.

Moreover, the appointment procedure for Supreme Court judges involves the parliament as a last step. The proceedings in parliament do not allow for transparent and merit-based selection. The parliament conducts de facto a second evaluation following the one by HCJ, and has unlimited discretion in deciding on the selection. The problems became evident in the appointment of Supreme Court judges in December 2019, which was heavily criticized by observers.<sup>207</sup>

Another loophole in the legal framework relates to the judicial promotion procedure. The main procedures and criteria for decisions on judicial promotions to the court of appeals are set in the HCJ bylaws, not in the primary law. Bearing in mind that the HCJ and the Disciplinary Panel are judicial self-governance bodies responsible for all judicial career and discipline issues, their composition is an important element for integrity. The HCJ and the Disciplinary Panel include a majority of judicial members selected by their peers through a general vote

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<sup>205</sup> ODIHR (2019), “Second report on the nomination and appointment of supreme court judges in Georgia”. Available at: Second Report on the Monitoring of the Judicial Appointment Process Georgia, available at: <https://www.osce.org/files/f/documents/2/6/443494.pdf>.

<sup>206</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan, Anti-Corruption Reforms in Georgia, available at: [https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia\\_d709c349-en;jsessionid=dczwIBn0hB7OnLAbZxOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110](https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia_d709c349-en;jsessionid=dczwIBn0hB7OnLAbZxOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110).

<sup>207</sup> OECD 5<sup>th</sup> Round monitoring report, available at: Anti-Corruption Reforms in Georgia : Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan | OECD iLibrary, [https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia\\_d709c349-en;jsessionid=dczwIBn0hB7OnLAbZxOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110](https://www.oecd-ilibrary.org/governance/anti-corruption-reforms-in-georgia_d709c349-en;jsessionid=dczwIBn0hB7OnLAbZxOTNoDkPdpeiWi49SDJQGwM.ip-10-240-5-110); IDFI (29 March 2020), Appointment of Supreme Court Justices: What people in Georgia know and think about the process, available at: [https://idfi.ge/en/appointment\\_of\\_supreme\\_court\\_justices](https://idfi.ge/en/appointment_of_supreme_court_justices); GRECO (2022), Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, addendum to the second compliance report, Georgia, 2022, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a7398c> [25.10.2022]; ODIHR (2019), “Second report on the nomination and appointment of supreme court judges in Georgia”, available at: <https://www.osce.org/files/f/documents/2/6/443494.pdf>; OSCE/ODIHR reports on the appointment of Supreme Court Judges, available at: ODIHR-ი ანგარიშს აქვეყნებს უზენაესი სასამართლოს მოსამართლეების დანიშვნის საკითხზე - <https://www.radiotavisupleba.ge/a/31424637.html>.



of all judges. However, procedures do not ensure the substantial participation of non-judicial members, and such members are not selected transparently and based on merit.

When it comes to the disciplinary procedures, grounds for the disciplinary liability and dismissal of judges are stipulated in the Organic Law on Common Courts and appear to be formulated narrowly and unambiguously. Four institutions are involved in the disciplinary proceedings against judges: the Independent Inspector, the High Council of Justice, the Disciplinary Panel of Judges of the Common Courts, and the Disciplinary Chamber of the Supreme Court.

As for the recruitment of prosecutors, it is based on provisions of the Organic Law of Georgia on the Prosecutor's Office<sup>208</sup> and regulations approved by the Prosecutor General. Neither the law, nor regulations of the Prosecutor General establish clear criteria for the final decision on selecting candidates from among those who passed the appropriate stages of the process and joined the pool of candidates for internships or appointments through a competition. Therefore, the legislation does not clearly establish merit-based selection, indicating that persons with the best qualities and experience should be selected at the competition or for the internship.<sup>209</sup> The Prosecutor General has excessive discretion in the recruitment process.

Regarding disciplinary proceedings against prosecutors, it is clearly regulated by the Organic Law on the Prosecutor's Office. It sets grounds for disciplinary liability, and the Commentary to the Ethics Code and Disciplinary Proceedings for Employees of the Prosecution Service explain these grounds, but do not provide sufficient clarity.<sup>210</sup> According to the authorities, ten prosecutors were brought to disciplinary liability in Georgia in 2020. Among them four were sanctioned with reproach, three – with reprimand and three prosecutors were dismissed from office. The analysis of the brief facts of disciplinary cases and follow-up sanctions allows us to conclude that in most cases, sanctions were proportionate and dissuasive. The OECD monitoring Team concluded, in the light of the applicable criteria, that proportionate and dissuasive sanctions are routinely applied.<sup>211</sup>

The Law of Georgia on the Fight Against Corruption<sup>212</sup> establishes principles for preventing, reporting, and resolving conflict of interest in public service in general, which cover both judges and prosecutors. Provisions on the roles and responsibilities for preventing and managing conflict of interest are basic and not detailed, covering only limited situations of ad hoc conflict of interest.<sup>213</sup>

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<sup>208</sup> The Organic Law of Georgia on the Prosecutor's Office, available at: [პროკურატურის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე"](https://matsne.gov.ge/ka/document/view/4382740?publication=8)  
<https://matsne.gov.ge/ka/document/view/4382740?publication=8>.

<sup>209</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Law of Georgia on Fight Against Corruption. Available at: [საჯარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე"](https://matsne.gov.ge/ka/document/view/33550?publication=80), available at: <https://matsne.gov.ge/ka/document/view/33550?publication=80> [31.01.2023].

<sup>213</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan.

The Organic Law on Common Courts<sup>214</sup> includes several additional restrictions on judicial activity that relate to the conflict-of-interest prevention. Actions considered disciplinary misconduct are: political or social influence or influence of personal interests when a judge exercises judiciary powers, judge's interference in other judge's activities for the purpose of influencing the outcome, public expression of an opinion by a judge on a case currently handled by the court, judge's refusal to recuse oneself or satisfy a request for recusal when clear legal grounds for recusal exist, disclosure of the outcome of a case to be heard by a judge in advance; establishment of personal and intense (friendly, familial) relations with a participant in a process, etc. There are provisions on recusal of judges in the procedural codes.

In order to perform activities related to disciplinary proceedings, an Independent Inspector's Office<sup>215</sup> was created in 2018, which is supervised by an independent inspector. With the aim to conduct a preliminary examination, the Independent Inspector is entitled to request all information, documents, and materials related to the disciplinary misconduct. The inspector is also entitled to invite another person to hear this person's information regarding the disciplinary misconduct. The Independent Inspector is not limited to the circumstances indicated in the complaint. Imposition of disciplinary liability on a judge may be based on circumstances that have not been specified in the complaint, application, or other information on committing disciplinary misconduct by a judge which were nevertheless revealed during the preliminary examination.

The Independent Inspector submits results of the preliminary examination and inquiry in the form of opinions and suggestions to the High Council of Justice. The latter, with a 2/3 majority of the full composition, takes the decision to terminate or to initiate disciplinary proceedings against judges.

After the initiation of disciplinary proceedings, the High Council of Justice of Georgia shall consider the issue of termination of disciplinary proceedings against a judge or impose disciplinary liability against a judge and referring the case to the Disciplinary Board.

There is no evidence that the application of disciplinary and dismissal procedures to judges was not impartial in the past year or that authorities did not investigate allegations of corruption of judges. There are very few cases of disciplinary liability of judges and no routine practice of proportionate and dissuasive sanctions applied to them.

With regard to the prosecutors, the Code of Ethics for the Employees<sup>216</sup> of the Prosecution Service of Georgia repeats provisions of the law of Georgia on the fight against corruption, but also states that an employee of the Prosecution Service who has property-related or other personal interest towards any issue falling within the competence of the Prosecution Service

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<sup>214</sup> Organic Law on Common Courts, available at: საერთო სასამართლოების შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" - <https://matsne.gov.ge/document/view/90676?publication=47> [31.01.2023].

<sup>215</sup> Web page of Independent Inspector, available at: საქმიანობა – დამოუკიდებელი ინსპექტორის სამსახური - <https://dis.court.ge/work/>.

<sup>216</sup> საქართველოს პროკურატურის თანამშრომელთა ეთიკის კოდექსის დამტკიცების შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/document/view/4973795?publication=0> [31.01.2023].

of Georgia is obligated to file for self-recusal in accordance with the procedure defined by law and not participate in discussions and the decision-making process on that specific issue.

Prosecutors should not have any private interests that are incompatible with their performance of official duties and should not pursue activities incompatible with the interests of the Prosecution Service in the office and/or outside of its limits.

There are also additional specific rules on conflict-of-interest management in the Criminal Procedure Code<sup>217</sup> (articles 59, 62-64, 66).

Analyzing the relevant legal framework related to conflict of interest for a judge or a prosecutor mentioned above brings us to the conclusion that there is an adequate standard and process for determining a potential conflict of interest.

As an additional highlight related to transparency and impartiality standards, it should be mentioned that public and media access to court proceedings is allowed (with limited exceptions, mainly related to personal data or state secrets), the distribution of cases is ensured through an electronic platform, based on random selection of judges, and judges and prosecutors are required to declare their assets and interests (discussed in asset declaration section of this report).

### **Good practices**

- Georgia has implemented several waves of judicial reforms in the past years to ensure transparency and integrity within the judicial system.
- Codes of conduct and disciplinary mechanisms are applicable to members of the judiciary and the prosecution service.
- Judges and prosecutors are required to declare their assets and interests.
- Public and media access to court proceedings is allowed (with limited exemption, mainly related to personal data or state secrets).
- The distribution of cases is ensured by electronic platform, based on random selection of judges.

### **Deficiencies**

- The composition of the High Council of Judges and Disciplinary Panel raises questions with regard to integrity and impartiality standards.
- The voting procedure for selecting Supreme Court judges is not compatible with international good practice, because the role of the High Council of Justice in the appointment of the Supreme Court judges remains limited, with significant discretion of the political body (the Parliament) that does not ensure the transparent and merit-based appointment of these judges.
- Non-governmental stakeholders often underline that the judicial governance bodies are not genuinely independent and impartial.

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<sup>217</sup> Criminal Procedure Code of Georgia, available at: საქართველოს სისხლის სამართლის საპროცესო კოდექსი | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/document/view/90034?publication=151> [31.01.2023].

- The Parliament does not ensure the transparent and merit-based appointment of Supreme Court judges.
- There are deficiencies in the selection and promotion of other judges as well as in the selection of court presidents.
- Judicial decisions are not published online (exempt from Supreme Court Decisions).
- There is no evidence that the application of disciplinary and dismissal procedures to judges was not impartial in the past year or that authorities did not investigate allegations of corruption of judges. There are very few cases of disciplinary liability of judges and no routine practice of proportionate and dissuasive sanctions applied to them.<sup>218</sup>
- Grounds for disciplinary liability and dismissal of prosecutors in Georgia are not formulated narrowly and unambiguously.

#### **4.1.11 Art. 12 – Private Sector Transparency**

The Anti-Corruption Council of Georgia, as a permanent inter agency-mechanism developing policy in terms of fighting against corruption, does not involve representatives of the private sector.

The anti-corruption action plan and strategy for 2019-2020 covered business integrity issues, however, they are binding only for members of the Anti-Corruption Council. Private sector representatives are not members of the ACC, with the only relevant organization being the Business Ombudsman, represented as a member. The objectives of the action plan contain a primary goal of supporting integrity, transparency and competition in the private sector, as well as raising awareness on issues of business integrity. The government, in its self-assessment reports<sup>219</sup> highlights that the approach of the state is to impose fewer regulations on the economic sector, and instead focus on awareness-raising campaigns and more friendly interactions.

Generally, private entities lack obligations to ensure transparency and public access to their data under domestic legal frameworks. A different regime applies to state owned enterprises, as they are obliged to provide their annual report (which also includes financial data) to the National Agency of State Property (NASP). Additionally, access to public information regulations apply to state-owned enterprises and enterprises that are financed by the state (access to information obligations are applying to the reasonable extent of state participation in the entity).

According to the Law of Georgia on Accounting, Reporting and Auditing,<sup>220</sup> companies are divided into four categories, out of which three categories are responsible for conducting accounting and audits in accordance with the law, and to publish those documents on a

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<sup>218</sup> OECD, Anti-Corruption Reforms in Georgia, Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan.

<sup>219</sup> Country Self-Assessment Report of Georgia on the Implementation of chapters II (Preventive measures) and V (Asset recovery) of the United Nations Convention against Corruption.

<sup>220</sup> The law of Georgia on "Accounting, Reporting and Auditing, available at: On Accounting, Reporting and Audit | სსიპ "საქართველოს საკანონმდებლო მაცნე"  
<https://matsne.gov.ge/en/document/view/3311504?publication=4>.

special portal<sup>221</sup> run by the Service for Accounting, Reporting and Auditing Supervision. The reporting portal is the first public information resource in Georgia comprising financial statements and management reports of entities operating in Georgia. ‘Reportal’ was launched in 2017 by a subordinate body under the Ministry of Finance of Georgia – the Service for Accounting, Reporting and Auditing Supervision - to facilitate capital markets and economic growth. The following information about the entity is available on Reportal: financial and/or management reports of the entity, information about the group of entity, information about the entity’s auditors and profile information of the entity.<sup>222</sup>

A public company registry is run via the online platform by the National Agency for Public Registry.<sup>223</sup> A beneficial ownership registry has not been established. Moreover, the legal framework lacks regulation in this field, with the exception of anti-money laundering provisions related to financial institutions covered in the relevant chapter of this report.

A number of articles of the Criminal Code of Georgia (CCG) provide for the criminalization of corruption in the private sector: Article 220 on Abuse of powers, Article 220<sup>1</sup> on Negligence, and Article 221 on Commercial bribery. As for penalties, Article 204<sup>1</sup> (Violation of accounting rules) and Article 210 (Manufacturing, sale or use of forged credit or debit cards) of the Criminal Code of Georgia provide for the criminalization of violation of accounting rules and falsification of documents.

Oversight for the use of licenses granted by public authorities for commercial activities is ensured by the Law of Georgia on Licenses and Permits,<sup>224</sup> which defines a comprehensive list of types of licenses and permits, and lays down procedures for issuing, changing and repealing licenses and permits. It obliges the issuer to monitor the performance of license and/or permit conditions by a license and/or permit holder, and foresees the relevant liabilities for violating license and/or permit conditions.

### **Good practices**

- A company registry is public and run by the online platform of the National Agency for Public Registry.
- There are penalties imposed on private entities for failure to comply with relevant articles of the Criminal Code of Georgia.
- Rules, regulations and procedures for private entities are in place regarding the maintenance of books and records, financial statement disclosure, as well as accounting and auditing standards.

### **Deficiencies**

- A central beneficial ownership registry has not been established.
- There is a lack of mechanisms in place to ensure the verification of beneficial ownership information.

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<sup>221</sup> Reporting Portal, available at: ანგარიშგების პორტალი - <https://reportal.ge/en>.

<sup>222</sup> Reporting Portal, available at: ანგარიშგების პორტალი - <https://reportal.ge/en>.

<sup>223</sup> Webpage of the National Agency for Public Registry, available at: NAPR.

<sup>224</sup> Law of Georgia on Licenses and Permits, available at: Law of Georgia on Licences and Permits | სსიპ

”საქართველოს საკანონმდებლო მაცნე” <https://matsne.gov.ge/en/document/view/26824?publication=62> [24.10.2022].

- Beneficial ownership information is currently only available to law enforcement authorities and specific actors (such as banks, financial intelligence units, etc.).

#### 4.1.12 Art. 14 – Measures to Prevent Money-Laundering

Georgia’s legal framework on money-laundering consists of different laws including the Organic Law on the National Bank of Georgia,<sup>225</sup> Law on Entrepreneurs,<sup>226</sup> Criminal Code,<sup>227</sup> etc. Among these, special notice is given to the Law on Facilitating the Prevention of Money Laundering and the Financing of Terrorism Law (AML/CFT Law)<sup>228</sup> adopted in 2019. The main purpose of the law is to create an effective legal mechanism to facilitate the prevention, detection and suppression of money laundering and the financing of terrorism, as well as the financing of the proliferation of weapons of mass destruction; thus, to bring Georgia's legal framework closer to EU directives and to implement Financial Action Task Force (FATF) recommendations.

The AML/CFT Law sets the basis for the regulatory and supervisory regime on the subject. It also sets the regulatory framework for domestic cooperation. In particular, the Financial Monitoring Service (FMS) is entitled to submit to the competent authorities intelligence information on suspicious transactions, as well as to request from them the results of the analysis.<sup>229</sup> The FMS is also entitled to submit confidential information at its disposal to the competent authorities upon their request, which is necessary to achieve the goals of an investigation of crimes under the Criminal Code.<sup>230</sup> However, potential ML cases are not sufficiently detected, and the overall number of investigations is modest compared to predicate criminality.<sup>231</sup> Within international cooperation, the FMS shall also be entitled to send and receive confidential information to or from FIUs from another jurisdiction.<sup>232</sup> Chapter II of the AML/CFT law deals with the Evaluation and Management of Risks Related to Money Laundering and the Financing of Terrorism, and establishes the requirement for conducting national risk assessments, producing national risk assessment reports and an action plan. It indicates accountable persons’ obligation to introduce an effective system for risk evaluation and management and periodically conduct internal risk assessments.

The first national money laundering and terrorism financing risk assessment of Georgia (NRA) was conducted in 2019. The NRA assessed risks both at national and sectoral levels. At the

<sup>225</sup> The Organic Law on the National Bank of Georgia, available at: ORGANIC LAW OF GEORGIA No 1676 ON THE NATIONAL BANK OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/document/view/101044?publication=38> [31.01.2023].

<sup>226</sup> Law on Entrepreneurs, available at: LAW OF GEORGIA ON ENTREPRENEURS | სსიპ "საქართველოს საკანონმდებლო მაცნე" - <https://matsne.gov.ge/document/view/5230186?publication=0> [31.01.2023].

<sup>227</sup> The Criminal Code of Georgia, available at: CRIMINAL CODE OF GEORGIA | სსიპ "საქართველოს საკანონმდებლო მაცნე" - <https://matsne.gov.ge/document/view/16426?publication=246> [31.01.2023].

<sup>228</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism, adopted in 2019, last amended on 11.05.2022, available at: <https://www.matsne.gov.ge/ka/document/view/4690334?publication=3>, [26.07.2022].

<sup>229</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism, articles 34 (1), 39 (5).

<sup>230</sup> Ibid, article 39(6).

<sup>231</sup> MONEYVAL, 2020, Anti-money laundering and counter-terrorist financing measures - Georgia, fifth Round Mutual Evaluation Report.

<sup>232</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism, article 37.

national level, the risk of money laundering was assessed as medium, and the risk of financing of terrorism was assessed as low.<sup>233</sup> However, the 2019 NRA report is not comprehensive.<sup>234</sup> It is not always methodological enough and does not fully take account of some inherent contextual factors that may influence the risk profile of a country (e.g. prevalence of cash, geographical, economic, and demographic factors).<sup>235</sup> In addition, the factor of the informal economy is not sufficiently analyzed by the NRA and it completely ignores the money laundering (ML) risks associated with the presence of wealthy foreign and domestic politically exposed persons and their associates. It only assesses gambling and legal persons as presenting the highest ML risk (medium-high), whereas the frequent use of bank accounts, payment services provided by non-bank financial institutions, the use of real estate and cash should also be considered as important ML risks.<sup>236</sup>

There is a lack of analysis of ML/TF risks related to virtual asset service providers (VASPs), collective investment funds and fund managers or trust and company service providers (TCSPs). As concerns the other activities listed and applied exemptions, the authorities have not always demonstrated that there is a proven low risk of ML/TF and could not demonstrate that any of these exemptions occur in strictly limited and justified circumstances;<sup>237</sup> supervision of casinos and real estate transactions are not in line with the ML/TF risks identified in the NRA since no sectorial AML/CFT policies in respect of leasing company and supervisors for designated non-financial businesses and professions (DNFBP) do not exist in the country.<sup>238</sup>

The abovementioned NRA was conducted by LEPL FMS,<sup>239</sup> which represents the Financial Intelligence Unit of Georgia. According to the FMS statute, the Service shall be independent and guided by the Constitution of Georgia, international agreements, and national legislation.<sup>240</sup> Even though the FMS enjoys operational independence, it lacks human resources.<sup>241</sup> The reporting entities (indicated in table 11), which are key actors in monitoring money laundering risks, are obliged to provide reporting forms regarding transactions subject to monitoring to the Financial Monitoring Service of Georgia. Certain types of transactions above the limit of 30,000 GEL (approx. USD 11,814) as well as suspicious transactions are defined in AML/CFT Law as subject to monitoring. Statistics generated from FMS's annual reports on reporting forms received between 2017-2021, as well as cases disseminated by FMS to law enforcement agencies are provided below in figures 7 and 8. It has to be mentioned that not all the reported cases are transferred to law enforcement agencies. It is

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<sup>233</sup> Money Laundering and Terrorism Financing Risk Assessment Report of Georgia, 2019, available at: [https://www.fms.gov.ge/Uploads/files/NRA\\_Georgia\\_English.pdf](https://www.fms.gov.ge/Uploads/files/NRA_Georgia_English.pdf) [26.07.2022].

<sup>234</sup> MONEYVAL, September 2020, Anti-money laundering and counter-terrorist financing measures - Georgia, fifth Round Mutual Evaluation Report, available at: <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271> [27.07.2022].

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

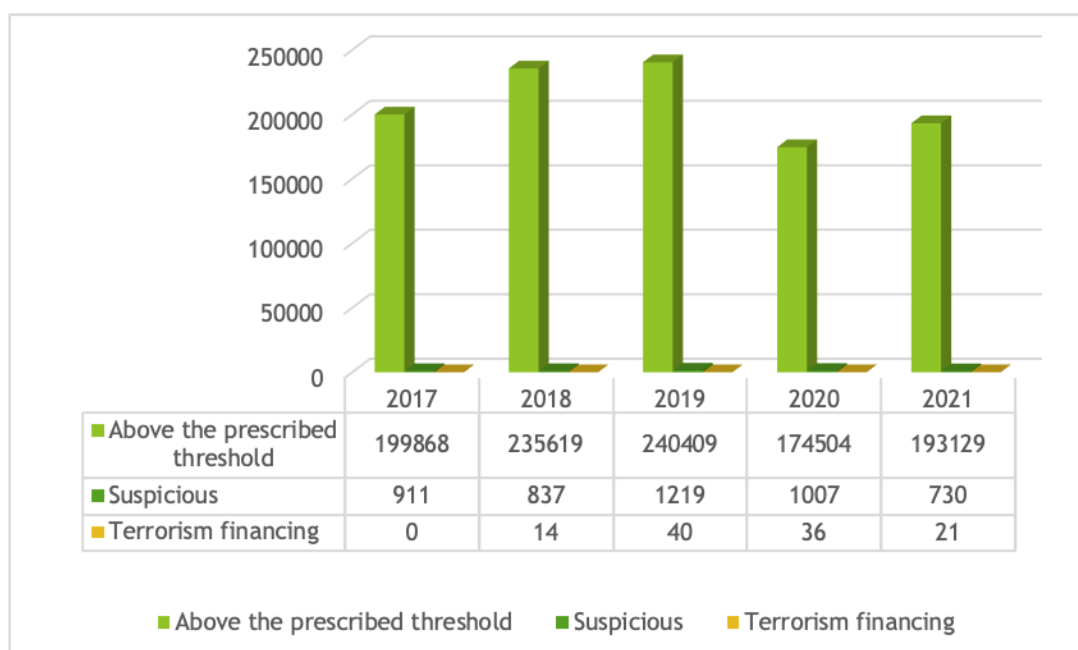
<sup>239</sup> See official website of the Financial Monitoring Service of Georgia, available at: <https://www.fms.gov.ge/>, [27.07.2022].

<sup>240</sup> Statute of the LEPL Financial Monitoring Service of Georgia, article 1, available at: <https://matsne.gov.ge/ka/document/view/4753023?publication=0> [27.07.2022].

<sup>241</sup> MONEYVAL, 2020, Anti-money laundering and counter-terrorist financing measures - Georgia, fifth Round Mutual Evaluation Report.

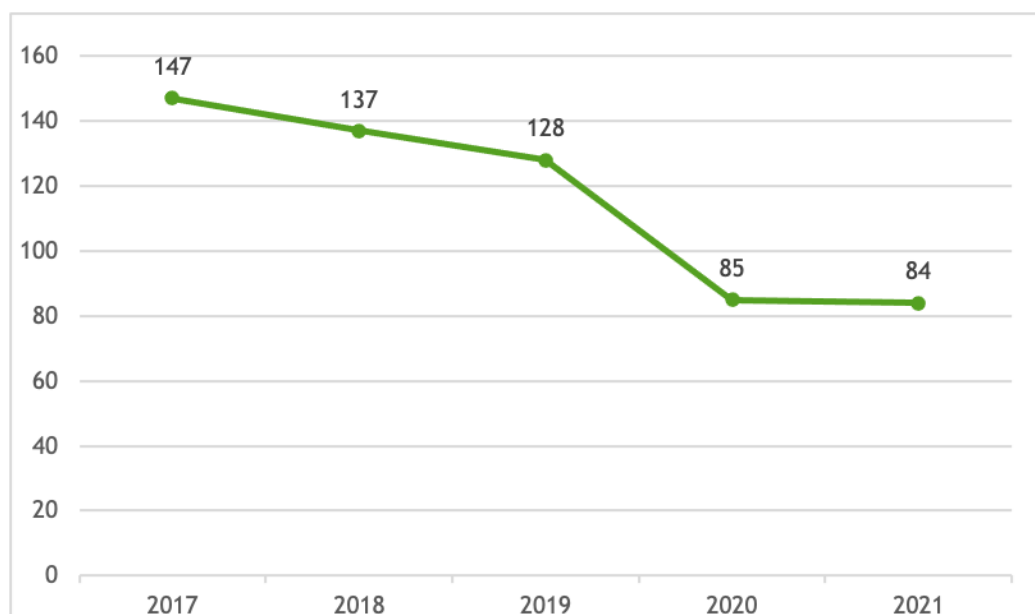
clear that from 2017 to 2022, the number of referrals to law enforcement agencies by FMS has decreased.

**Figure 7: Statistics on information received by FMS between 2017-2021**



Source: Official website of the Financial Monitoring Service of Georgia

**Figure 8 Number of cases disseminated by FMS to the Law Enforcement Agencies**



Source: Official website of the Financial Monitoring Service of Georgia<sup>242</sup>

<sup>242</sup> FMS, annual report, 2021, available at: [https://www.fms.gov.ge/Uploads/files/GEO\\_29.04.2021\\_Annual\\_Report.pdf](https://www.fms.gov.ge/Uploads/files/GEO_29.04.2021_Annual_Report.pdf) [27.07.2022]; FMS, annual report, 2017, available at: [https://www.fms.gov.ge/Uploads/files/Draft\\_Report\\_2017\\_with\\_diagrams.pdf](https://www.fms.gov.ge/Uploads/files/Draft_Report_2017_with_diagrams.pdf) [27.07.2022].



The National Bank of Georgia (NBG) represents a supervisory body for all financial institutions, ranging from currency exchange offices to commercial banks, micro-financial organizations and investment funds, among others.<sup>243</sup> The NBG is authorized to request and receive, within its authority, any information (including confidential information) from competent persons.<sup>244</sup> The NBG's independence in its activity is ensured by legislation.<sup>245</sup> To perform supervisory duties, the National Bank shall be authorized to issue appropriate decrees and orders, implement relevant measures, give written instructions, set additional requirements, and impose relevant limitations and/or sanctions.<sup>246</sup> In the case of violation of the AML/CFT legislation, the NBG is entitled to cease or limit certain types of operations, impose a ban on the distribution of profits, accrual and issuance of dividends, the increase of remuneration, the issuance of premiums and other similar payments, impose monetary fines, initiate deregistration and deprivation of a license in relation to the representative of the financial sector, etc.<sup>247</sup> Information on sanctions is published on NBG's official website.<sup>248</sup> Information on sanctions imposed by NBG from 2017-2021 is given below in figure 10. The figure below illustrates that there are no clear and precise dynamics towards an increase or decrease in the amount of imposed sanctions. For example, in 2017 currency exchange points are fined 359 850 GEL (approx. USD 141,708), while in 2018 we see an increased amount and in 2021 the amount is 9000 GEL (approx. USD 3544). Compared to commercial banks, between 2017-2021, the fines imposed in 2018-2020 decreased, while in 2021 they increased dramatically. The reason for such a wavering situation is not explained by any particular ground which would help to come up with a conclusion.

**Table 10: AML sanctions imposed by the National Bank of Georgia<sup>249</sup>**

Financial institution	2017		2018		2019		2020		2021	
	Fine	R/A	Fine	R/A	Fine	R/A	Fine	R/A	Fine	R/A
Currency exchange point	359 850	63	456 6001	1	177 100	5		1	9000	11
payment service provider	n/a	6	n/a	n/a	256 400	n/a	21000	n/a	69 200	n/a
Commercial Bank	1 944 700	n/a	596 000	n/a	726 000	n/a	276 000	n/a	1 117 500	n/a
brokerage company	n/a	n/a	36 400	n/a	n/a	n/a	16000	n/a	112 500	n/a
Microfinance organizations	287 800	n/a	291 700	n/a	539 399	n/a	271000	n/a	386 700	n/a

<sup>243</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism, article 4 (c).

<sup>244</sup> Organic law on the National Bank of Georgia, adopted in 2009, last amended on 12/04/2022, article 48 (5), available at: <https://www.matsne.gov.ge/document/view/101044?publication=47> [27.07.2022].

<sup>245</sup> Constitution of Georgia, adopted in 1995, last amended on 29/06/2020, article 68, available at: <https://www.matsne.gov.ge/document/view/30346?publication=36> [27.07.2022]; Organic law on the National Bank of Georgia.

<sup>246</sup> Organic law on the National Bank of Georgia, article 48 (3).

<sup>247</sup> Ibid, article 48 (4<sup>1</sup>).

<sup>248</sup> Ibid, article 48 (4<sup>2</sup>).

<sup>249</sup> Data was provided by NBG on the request of access to public information [10.08.2022]. *Fines are indicated in the national currency of Georgia, laries (GEL). R/A in the table means Registration Annulment.*

<b>Independent securities registrar</b>	n/a	n/a	71 100	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Money transferring subjects</b>	65 100	1	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Loan issuing subject</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	15 000	n/a
<b>Total</b>	2 657 450		1451 800	1	1698 800	5	584 000	1	1 709 900	1

Source: Letter of the National Bank of Georgia dated: 10.08.2022

To detect and monitor the movement of cash the AML/CFT law indicates the obligation of the Revenue Service of Georgia to report to FMS on the movement of more than GEL 30,000 (approx. USD 11,175), or if in foreign currency, the equivalent of GEL 30 000, in cash or securities at the border of Georgia.<sup>250</sup> A report on a movement of cash or securities at the customs border of Georgia, performed covertly or by circumventing customs control, or by submitting incorrect declarations, shall also be submitted to the FMS.<sup>251</sup> In practice, the risks presented by the high level of cash circulation in Georgia are underestimated.<sup>252</sup> The NRA report only assesses gambling and legal persons as presenting the highest ML risk (medium-high), whereas cash should also be considered as an important ML risk.<sup>253</sup>

In 2020, MONEYVAL released a report which assessed Georgia's compliance with the FATF recommendations. According to MONEYVAL, out of the 40 recommendations the country had fully implemented six, mostly implemented 21 recommendations, partly 12, and one recommendation had not been implemented. The latter relates to existing legislation and practices with regard to non-profit organizations in the context of combating the financing of terrorism.<sup>254</sup> The evaluation mission detected shortcomings with regard to the identification of some threats and vulnerabilities, and subsequent understanding of some of the ML/TF risks.<sup>255</sup> In addition to the challenges already mentioned above, MONEYVAL indicated that there is no effective gate-keeper in the real estate sector to prevent its use in ML/TF.

Another important challenge that was highlighted is related to the transparency of beneficial ownership. In Georgia, the risks to legal entities are not fully analyzed. Legal entities do not have the obligation to keep up-to-date information on beneficial owners or to indicate beneficial owners in the registry of the National Agency of Public Registry. Since the data

<sup>250</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism, article 25 (5).

<sup>251</sup> Ibid.

<sup>252</sup> MONEYVAL, 2020, Anti-money laundering and counter-terrorist financing measures - Georgia, fifth Round Mutual Evaluation Report.

<sup>253</sup> Ibid.

<sup>254</sup> See also IDFI, 2022, Overview of the implementation by Georgia of the recommendations on fight against money laundering and terrorism financing, available at: <https://idfi.ge/public/upload/Analysis/Compliance%20with%20FATF%20Recommendations.pdf> [27.07.2022].

<sup>255</sup> MONEYVAL, 2020, Anti-money laundering and counter-terrorist financing measures - Georgia, fifth Round Mutual Evaluation Report; See also IDFI, 2020, MONEYVAL assessment of Georgia on money laundering (ML) and terrorism financing (TF), available at: <https://idfi.ge/public/upload/Blog/MONEYVAL%20final%20ENG.pdf> [27.07.2022].

contained in the Registry may not always contain information about beneficial owners, it cannot provide accurate and up-to-date information. Existing mechanisms also do not provide for the identification of an authorized person, who would be responsible for storing beneficial ownership information and would be accountable to the government.

According to MONEYVAL, there is proven abuse of legal persons in Georgia, including through the use of “fictitious” companies and the authorities have not taken adequate measures to deal with the issue. According to the MONEYVAL assessment report 2020, between 2013 and 2016, there was a significant number of instances when the proceeds from Nigerian social engineering schemes were laundered through Georgia. The perpetrators, mostly non-residents, established fictitious companies and opened bank accounts to launder their criminal proceeds. Non-bank remittance systems were misused for the same purpose. According to the respective investigations, prosecutions and convictions the predicate offences were fraudulent “social engineering schemes” committed abroad. In 2017, the Financial Monitoring Service (FMS) (Financial Intelligence Unit of Georgia) identified possible attempts to avoid Iranian sanctions by non-Georgian residents of Iranian origin, or with ties to Iran, who established companies in Georgia to conduct financial transactions with third countries.<sup>256</sup>

Criminal measures are not applied against legal persons when they should be and an opportunity to mitigate abuse is being missed. Law Enforcement Agencies rarely use financial intelligence to conduct an in-depth and sophisticated analysis to investigate complex ML cases.<sup>257</sup>

### **Good practices**

- A special law on facilitating the prevention of money laundering and the financing of terrorism is adopted.
- A requirement for conducting national risk assessments is established within by legislation.
- The national money laundering and terrorism financing risk assessment of Georgia (NRA) was conducted in 2019.
- The Financial Intelligence Unit is established and enjoys operational independence.

### **Deficiencies**

- The 2019 NRA report was not comprehensive, ignoring a number of relevant aspects.
- The Financial Intelligence Unit lacks human resources.
- Potential ML cases are not sufficiently detected, and the overall number of investigations is modest compared to predicate criminality.
- LEAs rarely use financial intelligence to conduct an in-depth and sophisticated analysis to investigate complex ML cases.
- The risks presented by the high level of cash circulation in Georgia is underestimated.
- There is no effective gatekeeper in the real estate sector to prevent its use in ML/TF.
- There is no beneficial ownership registry.

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<sup>256</sup> MONEYVAL, 2020, Anti-money laundering and counter-terrorist financing measures - Georgia, fifth Round Mutual Evaluation Report.

<sup>257</sup> Ibid.

## 4.2 Chapter V

### 4.2.1 Art. 52 and 58 – Anti-Money Laundering

The Georgian domestic framework in terms of anti-money laundering measures includes both regulatory and supervisory provisions as discussed in the previous article on prevention of money laundering, analyzed above. The Law of Georgia on Combating Money Laundering and Terrorism Financing<sup>258</sup> together with the Criminal Code of Georgia and relevant bylaws regulate anti money laundering issues.

The National Bank of Georgia (NBG) oversees commercial banks, currency exchange bureaus, and non-bank depository institutions such as credit unions, microfinance organizations, and others, with respect to ensuring compliance with the AML/CFT legislation. The NBG is a constitutional, independent legal entity, established in accordance with the Constitution of Georgia and the Law of Georgia on the National Bank. The AML/CFT Law<sup>259</sup> provides a full list of reporting entities (financial institutions and designated non-financial persons and professions), which are key actors in monitoring money laundering risks through their activities:

**Table 11: List of reporting entities which are key actors in monitoring money laundering risks**

Financial institutions	Entities carrying out non-financial activity	Public agencies
<b>a.a) non-bank depository institution - credit union</b>	b.a) lawyer/law firm	c.a) the National Agency of Public Registry - the Legal Person of Public Law under the Ministry of Justice of Georgia
<b>a.b) founder of a non-state pension scheme</b>	b.b) organizer of lotteries, gambling or other commercial games	c.b) the Revenue Service - the Legal Person of Public Law under the Ministry of Finance of Georgia (hereinafter "Revenue Service")
<b>a.c) insurance/reinsurance broker</b>	b.c) notary	n/a
<b>a.d) currency exchange bureau</b>	b.d) certified accountant/legal person rendering accounting services through a certified accountant	n/a
<b>a.e) commercial bank</b>	b.e) auditor/audit firm	n/a

<sup>258</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism Available at: Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/4690334?publication=0> [31.01.2023].

<sup>259</sup> Ibid, Article 3.

<b>a.f) microfinance organization</b>	b.f) trader of precious stones and metals	n/a
<b>a.g) brokerage company</b>	n/a	n/a
<b>a.h) payment service provider</b>	n/a	n/a
<b>a.i) insurance organization</b>	n/a	n/a
<b>a.j) leasing company</b>	n/a	n/a
<b>a.k) loan issuing entity</b>	n/a	n/a
<b>a.l) securities registrar</b>	n/a	n/a

*Source: Letter of Bank of Georgia dated 10.08.2022*

The National Bank of Georgia issues advisories to financial institutions on when and how to apply enhanced due diligence recordkeeping through guidelines.<sup>260</sup> Additionally, the NBG provides trainings on how to exercise enhanced scrutiny foreseen in the supervisory annual action plan.

Each reporting entity is obliged to assess its business-related money laundering risks as well as group-wide money laundering and terrorism financing risks, by paying attention to customers, beneficial owners, their location and nature of business, products, services, delivery channels, transactions and other risk factors. The risk assessment approach generally is based on AML/CFT Law and the National Risk Assessment report and action plan adopted by the Government.<sup>261</sup>

The AML/CFT Law (Art. 21) covers Politically Exposed Persons (PEP), defining them as natural persons who have been entrusted with prominent public or political functions (except for middle or low-ranking officials). Concerned provisions are sufficiently broad to detect any doubtful relations with PEPs, and are not limited to identifying a customer or a beneficial owner as a PEP. Moreover, the same provisions are applied to closely related persons. An accountable person shall implement the measures provided for by Law in relation to the following persons:

- a) a family member of a politically active person: spouse, sister, brother, parent, son/daughter and his/her spouse(s);
- b) a natural person who is a legal person together with a politically active person, a beneficial owner of a non-registered organizational entity or a trust or a legal structure similar to a trust, or who has any other kind of close business relationship with a politically active person;
- c) a natural person who is a beneficial owner of a legal person established in favor of an actual (informally) politically active person, or likewise a non-registered organizational entity or a trust or a legal structure similar to a trust.<sup>262</sup>

Grounds for implementation of preventive measures, such as establishment of business relationship and limits of single transactions are prescribed by the law in a detailed manner.

<sup>260</sup> Order of the president of the NBG, 12/01/2021, (not available online, document was provided by the representative of NBG).

<sup>261</sup> Law of Georgia on facilitating the prevention of money laundering and the financing of terrorism, Law Art. 5.

<sup>262</sup> Ibid, Article 21.

When those grounds are met, the accountable entity is obliged to identify a beneficial owner and take reasonable measures for the verification thereof based on a reliable source.<sup>263</sup>

Regarding the identification and verification of beneficiary ownership, an accountable person shall introduce an effective system for the evaluation and management of the risks of money laundering and the financing of terrorism, taking into account the nature and volume of its activity. An accountable person is obliged to evaluate the risks of money laundering and the financing of terrorism with appropriate periodicity, and in the case of a head enterprise, also the risks of money laundering and the financing of terrorism at a group level on the basis of a client and a beneficial owner, the essence of their activities or location of jurisdiction, a product, a service or the means of their provision, or a transaction or other risk factors.<sup>264</sup>

When applying preventive measures, an accountable person shall:

- a) identify and verify a client based on a reliable and independent source;
- b) identify a beneficial owner and take reasonable measures for the verification thereof based on a reliable source;
- c) establish the goal and the intended nature of a business relationship;
- d) monitor a business relationship.<sup>265</sup>

The reporting entity is obliged to undertake customer due diligence measures when applying preventive instruments which is fully in compliance with FATF recommendations 10-13. With regard to the FATF recommendations, all key elements of the recommendations 20-23, 26-29 and 35 are in place, however there remain some minor deficiencies in the new AML/CFT Law and supporting guidance.<sup>266</sup>

In accordance with Art. 27 of the AML/CFT Law, the reporting entities have certain record keeping requirements. In particular, a reporting entity has to maintain information (documents) obtained and results of analyses undertaken, and also account files and business correspondence for five years following the termination of a business relationship or the conclusion of an occasional transaction.

The Georgian financial intelligence unit - the Financial Monitoring Service of Georgia - analyses reports and other information (documents) received from accountable persons and other sources and if a reasonable belief arises about money laundering, financing of terrorism or other crimes, it shall send the outcomes of its analysis to the Prosecutor's Office of Georgia, the State Security Service of Georgia, the Revenue Service, and/or the Ministry of Internal affairs of Georgia.<sup>267</sup>

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<sup>263</sup> Ibid, Article 10. 1 (b)

<sup>264</sup> Ibid, Art.6.

<sup>265</sup> Ibid, Art. 7.

<sup>266</sup> MONEYVAL 2020, assessment of Georgia on money laundering (ML) and terrorism financing (TF), available at: <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271#page=247&zoom=100,92,676> [25.10.2022].

<sup>267</sup> AML/CFT Law, Art 34.

Additionally, notifications are issued by the Financial Monitoring Service of Georgia about the identity of particular natural or legal persons to whose accounts designated entities will be expected to apply enhanced scrutiny.<sup>268</sup> According to the interview with the representative of the NBG, politically active persons are defined as a high-risk segment.<sup>268</sup>

### **Good practices**

- The Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism is largely in compliance with the relevant Anti money laundering provisions of the Convention.
- The Georgian Financial Intelligence Unit - Financial Monitoring Service of Georgia - is equipped with all relevant capacities to perform analyses of the general situation regarding money laundering based on information received from accountable entities.
- The Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism covers PEPs and provides for a broad definition with regard to the related persons.
- Reporting/Accountable agencies apply risk-based approaches in their activities.
- The Government of Georgia approves a national report for the evaluation of the risks of money laundering and the financing of terrorism and an action plan on the recommendation of a standing interagency commission. The national report on the evaluation of risks and the action plan shall be updated, if necessary, but not less than twice a year.
- The National Bank of Georgia has supervisory functions over financial institutions and its performance is assessed to be high.
- The National Bank of Georgia issues advisories to financial institutions on when and how to apply enhanced due diligence recordkeeping by guidelines.<sup>269</sup>
- The NBG provides trainings on how to exercise enhanced scrutiny foreseen in supervisory annual action plan.
- Dissuasive sanctions for non-compliance are applied in practice (see section on preventive measures for money laundering above).

### **Deficiencies**

- Other accountable entities, apart from the NBG, fall under the authority of different supervisory entities. Compliance with the provisions of the AML/CFT Law is not traceable in publicly available sources in those cases.
- Real estate and gambling sectors are not effectively regulated in practice.<sup>270</sup>
- Virtual asset service providers (VASPs) are operating in the country but have not been regulated yet.
- Statistics and data concerning beneficiary ownership cases are not visible in publicly available sources.

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<sup>268</sup> Interview with Sophio Asanidze *Head of Methodological and distance supervision division* [13/10/22].

<sup>269</sup> Order of the president of the NBG, 12/01/2021, (not available online, document was provided by the representative of NBG).

<sup>270</sup> MONEYVAL 2020, assessment of Georgia on money laundering (ML) and terrorism financing (TF), available at: <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271#page=247&zoom=100,92,676> [25.10.2022].

- There is no licensing/registration regime for leasing companies nor AML/CFT supervision. There are also some gaps in the regulation of supervision of insurance companies. Both sectors are, however, less important sectors and shortcomings considered minor.

#### **4.2.2 Art. 53 and 56 – Measures for Direct Recovery of Property, and Art. 54 – Confiscation Tools**

Measures for direct recovery of the property and confiscation procedures are regulated by international agreements, the Georgia International Private Law,<sup>271</sup> Criminal Law of Georgia,<sup>272</sup> Georgian Law on Enforcement Proceeding<sup>273</sup> and several bylaws. Analyzing the aforementioned legal framework has led to the conclusion that Georgian legislation is in conformity with the Articles 53, 54 and 56 of the UNCAC.

According to the UNCAC, States Parties should ensure full implementation of UNCAC Article 53 by making sure that nothing in their domestic framework prevents other States Parties from standing before their jurisdictions to seek the recovery of property. This should apply to any and all courts or out of court proceedings whenever proceeds of corruption are involved (including foreign bribery cases) - as required by the Convention.

Other States Parties are entitled to initiate civil actions before Courts of Georgia with the aim of establishing title to or ownership of property acquired through the commission of an offense established in accordance with the Convention. The UNCAC requirement for domestic legislation allowing courts to order those who have committed offenses to pay compensation or damages to another State Party that has been harmed by such offenses is satisfied. Georgian legislation allows courts to order those who have committed offenses established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offense.

According to the self-assessment report of Georgia, there is no regulatory or practical obstacle to give effect to a foreign confiscation order by means of a domestication process based on a foreign request. Recognition and enforcement of the foreign decisions on civil matters within the Georgian jurisdiction is mainly regulated by international multilateral and bilateral agreements, of which the hierarchy takes precedence over domestic law,<sup>274</sup> and Georgian International Private Law in the absence of a concrete international agreement.

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<sup>271</sup> Law of Georgia on Private International Law, available at: On Private International Law | სსიპ "საქართველოს საკანონმდებლო მაცნე" - <https://matsne.gov.ge/en/document/view/93712?publication=3> [31.01.2023].

<sup>272</sup> Criminal code of Georgia. Available at: <https://matsne.gov.ge/document/view/16426> [31.01.2023].

<sup>273</sup> Law of Georgia on Enforcement Proceedings, available at: Law of Georgia on Enforcement Proceedings | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/document/view/18442?publication=99> [31.01.2023].

<sup>274</sup> Georgia is the state party to the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and has signed bilateral agreements with the Republic of Azerbaijan, Republic of Armenia, Republic of Bulgaria, Republic of Turkey, Turkmenistan, Republic of Cyprus, Hellenic Republic, Ukraine, Republic of Uzbekistan, Republic of Kazakhstan, Czech Republic.



According to the Law of Georgia on the International Private Law, Georgia shall recognize legally effective court decisions of foreign countries. A decision shall not be recognized if:

- a) a case belongs to the exclusive jurisdiction of Georgia;
- b) a party was not notified of summoning by way of delivering the writ of summons under the law of a country adopting the decision or other procedural violations have occurred;
- c) there is a legally effective court decision of Georgia on the same dispute between the same parties, or a legally effective court decision of a third country which has been recognized in Georgia;
- d) the foreign court that adopted the decision is not considered as competent under the legislation of Georgia;
- e) foreign country does not recognize court decisions of Georgia;
- f) proceedings are pending in Georgia between the same parties on the same issue and on the same basis;
- g) the decision contradicts the basic legal principles of Georgia.

The issue of recognizing a foreign court decision shall be considered by the Supreme Court of Georgia.<sup>275</sup> When it comes to the procedure, the request on the recognition and enforcement of the foreign court decision may be filed by the interested party under the relevant international agreement through the Ministry of Justice of Georgia. In the absence of such agreement, the motion can be filed under Georgian International Private Law directly to the court. Pursuant to Article 68 of Georgian International Private Law, the Supreme Court of Georgia recognizes legally effective court decisions of foreign jurisdictions if the above-mentioned non-recognition criteria established by the law are not met.

As for the international jurisdiction of Georgian courts, it applies if: a) a respondent party consists of several persons one of whom has a place of residence, residence or habitual residence in Georgia; b) the obligations under an agreement must be fulfilled in Georgia; c) a claim concerns damages inflicted by an unlawful or an equivalent act and the act was committed or damages were inflicted in Georgia; d) a dispute concerns a branch of an enterprise which is based in Georgia; e) regarding the establishment of paternity or payment of alimony, a place of residence or habitual residence of a child or beneficiary of alimony is in Georgia; f) the subject of a claim is the determination of succession rights and/or division of inherited property, and a place of residence, residence or habitual residence of a testator at the time of his/her death was in Georgia.<sup>276</sup>

The Courts of Georgia shall have exclusive international jurisdiction only over claims that refer to:

- a) immovable property, if the property is in Georgia;
- b) the authenticity or termination of decisions of a legal person or its body, if the residence of the legal person or its body in Georgia;
- c) registration of legal persons by the courts of Georgia or other bodies;

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<sup>275</sup> Law of Georgia on the International Private Law, Article 68.

<sup>276</sup> Law of Georgia on the International Private Law, Article 9.

- d) registration of a patent, a trademark or other rights, if the rights were registered or requested for in Georgia;
- e) enforcement actions that were requested for or implemented in Georgia.<sup>277</sup>

The National Bureau of Enforcement is authorized to decide on confiscation, specifically, to recognize another State Party's claim as the legitimate owner of property acquired through the commission of an offense established. According to the Art. 2 of the Law of Georgia on Enforcement Proceedings,<sup>278</sup> a court judgment of conviction in force delivered against a natural and/or legal person in a criminal case imposing a fine and/or deprivation of property as a measure of punishment can be subject to enforcement. In addition, the enforcement of foreign judgements is regulated by the Law of Georgia on International Cooperation in Criminal Matters.<sup>279</sup>

Under Article 189 of the Criminal Procedure Code of Georgia, a defendant can be tried and sentenced in absentia. Confiscation of instrumentalities and proceeds is a part of the sentencing procedure. Therefore, absence of the defendant is not an obstacle for prosecution.

According to the responses provided by national authorities in the self-assessment checklist, Georgia complies with the provisions of Articles 53 and 54 of the Convention. The report does not contain any examples, statistical data, reports, jurisprudence, etc. that would prove the efficient enforcement of the respective laws.

### **Good practices**

- Civil action - Other countries are entitled to initiate civil actions before the courts Georgia with the aim of establishing title to or ownership of property acquired through the commission of an offense established in accordance with the UNCAC Convention.
- Confiscation procedure - Other States are entitled to claim, as a third party in a confiscation procedure taking place in the courts of Georgia, ownership over assets acquired through the commission of an offense established in accordance with the Convention.
- Compensation for damages - Legislation allows courts in Georgia to order those who have committed offenses to pay compensation or damages to another State Party that has been harmed by such offenses.

### **Deficiencies**

- Statistics and detailed regulations exempt from law regulating the direct recovery and confiscation tools are not available in public sources. Both articles have been adopted and transposed into the national legislation. Upon analyzing the legal framework, it is

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<sup>277</sup> Ibid, Art. 10.

<sup>278</sup> Law of Georgia on Enforcement Proceedings, available at: Law of Georgia on Enforcement Proceedings | სსიპ "საქართველოს საკანონმდებლო მაცნე" - <https://matsne.gov.ge/document/view/18442?publication=99> [31.01.2023].

<sup>279</sup> Law of Georgia on International Cooperation in Criminal Matters, available at: Law of Georgia on International Cooperation in Criminal Matters | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/112594?publication=4> [31.01.2023].

apparent that at the level of adopted legislation, Georgia is in line with the UNCAC provisions, but there is no proof of their efficient practical enforcement.

- With regard to the effective enforcement of the above-mentioned laws, it should be noted that in the public space, there is no statistical data concerning the number of requests from other States for legal assistance in recovering assets located in the territory of Georgia.
- In addition, the available public information does not contain statistical data on requests submitted to other States by national authorities for the recovery of assets located on the territory within other jurisdictions.
- Statistics and information on asset recovery cases are not published online by the relevant authorities.

#### **4.2.3 Art. 51, 54, 55, 56 and 59 – International Cooperation for the Purpose of Confiscation, and Art. 57 – The Return and Disposal of Confiscated Property**

Georgia has robust legislation in place allowing effective international cooperation on asset recovery. International cooperation for the purpose of confiscation on foreign requests is governed by the Law of Georgia on International Cooperation in Criminal Matters<sup>280</sup> (hereinafter ICCMA). In 2018 Georgia introduced a new package of legislation specifically addressing the international cooperation aspect in tracing, seizing, freezing, confiscating and sharing of criminal assets<sup>281</sup> in compliance with international standards in these fields. It is also allowed to confiscate criminal assets based on an ad hoc agreement between the competent authorities of Georgia and a foreign country. According to ICCMA,<sup>282</sup> assets that can be confiscated through the international cooperation may be any of the following:

- a. Instrumentalities and/or intended instrumentalities of crime;
- b. Proceeds of crime as well as any income from those proceeds or equivalent assets;
- c. Undocumented property (owner is unable to prove the lawful origin of the assets), owned by the relatives or affiliates of a public official convicted of corruption in public office offences (or persons convicted of trafficking in persons, drug trafficking, racketeering, criminal organization).

The request of another State Party for confiscation is received by the Office of the Prosecutor General. If the Prosecution Service determines that the request is *prima facie* executable, then a prosecutor files a motion with a district court seeking a domestic confiscation order. All the relevant facts adjudicated by a foreign court must be admitted by the Georgian court as is unless there is an indication of manifest arbitrariness.

There is a relevant procedure for appealing the court's decision in place. The Georgian court order giving effect to the foreign confiscation order may be appealed at all three instances of Georgian Courts. The city court's decision can be appealed at the Court of Appeals of Georgia either by prosecution or a person whose property rights have been affected by the order. The

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<sup>280</sup> Law of Georgia on International Cooperation in Criminal Matters, available at: Law of Georgia on International Cooperation in Criminal Matters | სსიპ "საქართველოს საკანონმდებლო მაცნე" <https://matsne.gov.ge/en/document/view/112594?publication=4>. [24.10.2022].

<sup>281</sup> ICCMA, Chapter VI<sup>1</sup>.

<sup>282</sup> Ibid, Article 56<sup>1</sup>.

Court of Appeals' decision may be appealed in the Supreme Court of Georgia on the points of law.

The requesting foreign authority must be informed about the outcome of the confiscation proceedings. All the assets subject to the confiscation order must be handed over to the National Bureau of Enforcement for management. In order to examine foreign requests on enforcement dual criminality requirement, the court decision of the final instance of the requesting country shall be satisfied.

There are clear grounds provided in the ICCMA for refusal of confiscation requests:<sup>283</sup>

- a) the execution of request may come in conflict with the fundamental (Constitutional) principles of the Georgian law;
- b) the execution of the request may prejudice the sovereignty, security, public order or any other fundamental interests of Georgia;
- c) the request is of de minimis nature;
- d) the crime, with respect to which the confiscation has been requested, is deemed by Georgia to be a political offense;
- e) the execution of request may violate the principle of double jeopardy;
- f) the crime, with respect to which the confiscation has been requested, is not a crime under the Georgian law;
- g) there is a reasonable ground to believe that the confiscation is motivated by discrimination on the ground of race, nationality, ethnicity, religion or political views or similar circumstances;
- h) the execution of request may come in conflict with the international obligations of Georgia.

Georgia may provide assistance in the form of searches, seizures and freezing and other tracing measures where it is needed for asset recovery purposes.<sup>284</sup> The procedure related to search and seizure is governed by Articles 112 and 119-124 of the Criminal Procedure Code of Georgia. Under the Georgian law, search and seizure is subject to a court warrant. Proceedings warranting search and seizure in court are *ex parte*. The court has 24 hours to entertain the pertinent prosecution motion. The persons affected by such measures may challenge the warrant in court. If such challenge succeeds, then any evidence obtained based on such a warrant is considered inadmissible.

According to Criminal Code of Georgia,<sup>285</sup> freezing can be used against instrumentalities, proceeds of crime or equivalent assets. In respect to corruption crimes, freezing can be ordered even in cases where no suspect is identified. Freezing is subject to the judicial warrant which must normally be obtained *ex ante*. In case of urgency, the prosecutor may issue a freezing decision but must seek an *ex-post* warrant from the court. The mechanism for the preservation and proper maintenance of seized and frozen assets in order to avoid their dissipation before their possible confiscation is provided by the Criminal Procedure Code, which is as follows:

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<sup>283</sup> Ibid, Article 56<sup>5</sup> and 56<sup>6</sup>

<sup>284</sup> ICCMA, 56<sup>2</sup>.

<sup>285</sup> Ibid, Article 151.

- Depending on the type of assets to be frozen, the above-mentioned order/decreed is presented to the competent institution or person. After presenting the order/decreed, the entities that hold the assets must prevent their transfer or disposal of any kind;
- The frozen assets, which are not large, must be seized by the competent investigative body (e.g., cash, jewelry). After the seizure of property, the investigator and prosecutor in charge are responsible for its preservation and proper maintenance.

The competent representative of the respective institution or designated person who are entrusted to preserve frozen assets are warned by the investigator or prosecutor about the criminal liability under Article 377 of the Criminal Code of Georgia, which is reflected in the protocol on freezing.

Subject to the conditions set forth in Article 56 of the ICCMA, assets confiscated based on a foreign request can be returned and/or shared with the requesting foreign country in respect of any crime. Procedures related to the return and disposal of confiscated assets are governed by Article 56 of the ICCMA. After the relevant assets have been confiscated the Prosecution Service of Georgia shall negotiate with the competent authority of the requesting state regarding the sharing (division) of the confiscated property. Following the negotiation, a special agreement must be concluded between the two.

Sharing of the confiscated property with the relevant foreign state may not take place if the foreign state refuses to accept it or its total value does not exceed GEL 40,000 (approx. USD 14,300). If the confiscated property is not cash, the property may be sold for the purpose of sharing (dividing) the assets with the foreign authority. When sharing (dividing) the confiscated property with the relevant foreign state, the interests of the owners of the property and those of the persons who suffered losses out of the crime shall be taken into account.

Georgia has been a member of the Egmont Group since June 23, 2004.<sup>286</sup> However, the page for Georgia is not working and the Georgian context is not mentioned, nor in the Egmont Group's annual report,<sup>287</sup> nor in its strategic document.<sup>288</sup>

### **Good practices**

- The legal framework obliging to cooperate in the widest possible manner with other States Parties on the implementation of asset recovery is in place.
- Enforceability of foreign seizure orders, seizure upon foreign request and provisional measures are foreseen in domestic legislation.
- Practice to enter into bilateral or multilateral agreements or arrangements to improve effective international cooperation is in place.
- Prosecution Office of Georgia is specially mandated to coordinate international asset recovery cases.

<sup>286</sup> Egmont Group web page, available at: Members by Region - Egmont Group, <https://egmontgroup.org/members-by-region/?id=5> [25.04.2023].

<sup>287</sup> Egmont Group. Annual Report 2020-2021, [https://egmontgroup.org/wp-content/uploads/2022/10/EGMONT\\_21-267\\_2020%E2%80%932021\\_AR-E\\_WEB.pdf](https://egmontgroup.org/wp-content/uploads/2022/10/EGMONT_21-267_2020%E2%80%932021_AR-E_WEB.pdf) [25.04.2023].

<sup>288</sup> Egmont Group Strategic Plan for 2022-2027. Available at: <https://egmontgroup.org/wp-content/uploads/2022/08/33.-Egmont-Group-Strategic-Plan-2022-2027-1.pdf> [12.05.2023].

## Deficiencies

- With regard to the effective enforcement of the above-mentioned laws, it should be noted that, in the public space, there is no statistical data concerning practice on international cooperation and return and disposal of confiscated property in Georgia. Additionally, MOJ and POG have not answered to the request for interview in order to analyze the practice.

## 4.3 Statistics<sup>289</sup>

### Money Laundering

Reporting/Intelligence Phase	Year: 2019	Year: 2020	Year: 2021
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entities: <ul style="list-style-type: none"> <li>- Banks and financial institutions</li> <li>- Non-financial businesses and professions (NFBPs)</li> </ul>	1219	1007	730
Number of postponement orders adopted on reported transactions	n/a	n/a	n/a
Number of money laundering investigations carried out independently by law enforcement agencies (without a prior STR)	35	3	21
Number of suspicious cash activities at the border reported to the FIU (including those based on declarations and smuggling)	193	121	162
Number of STRs sent to law enforcement and on which further analysis was made	130	85	84
Number of staff dedicated full-time (or full-time equivalent) to money laundering in the FIU	6	6	6

Investigation Phase	Year:	Year:	Year:
Number of cases initiated by law enforcement agencies on the basis of STRs sent by the FIU	19	49	41
Number of staff dedicated full-time (or full-time equivalent) to money laundering in law enforcement agencies	n/a	n/a	n/a
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement	n/a	13	27

<sup>289</sup> The tables below follow the format in this Eurostat report: <http://ec.europa.eu/eurostat/documents/3888793/5856465/KS-TC-13-007-EN.PDF/69cde077-3bd9-4d0d-8c19-a6fe3608c2cd>.

investigations			
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**4.4 Short analysis**

All the data mentioned above was received on the request of public information from the relevant institutions.

During research for this report, the following agencies were requested to issue public information: NBG, FIU, FMS, POG, MIA and SSSG. All of them answered the request fully, according to the questions included in the letters, except for POG, which did not reply to the FoI request. Mostly, the FoI requests were answered within 10 days by the mentioned public institutions.

With regard to enforcement, on the basis of data received it can be concluded that all the relevant agencies perform their duties according to AML law: FMS analyzing/detecting cases within its competence properly sends issues to the relevant authorities, which have provided proven evidence, that each notification from FIU is addressed accordingly.

However, there is a lack of information at the judicial phase. Only the Supreme Court publishes its decisions online, where the cases are searchable by key word, text or case number. There is no statistical data provided online. With the words: “confiscation” or “asset recovery” there is only one case available, from 2019, but information about cases is neither available in public sources, nor indicated in the self-assessment report of Georgia.

## **V. Recent Developments**

As mentioned at the beginning of this report, the Anti-Corruption Council has not met since 2018. Functions of the ACC secretariat have been transferred to the administration of the Government of Georgia, which has not produced any policy document yet. According to the information received from the new secretariat, the anti-corruption strategy and the action plan are being drafted at the time of writing. Bearing in mind new regulations on mandatory participation of stakeholders in policy making processes, a new AC action plan and strategy could be a good opportunity for CSOs to share their thoughts and analysis about different aspects related to fight against corruption.

Another meaningful policy document which is being drafted is the Public Administration Reform Strategy and Action Plan, covering several issues relevant to this report, such as public sector employment, public procurement, public finance management and policy development. Documents should have been finalized for the end of 2022. Drafts of the strategy and action plan were introduced through the working group meeting format by Administration of The Government of Georgia on 11<sup>th</sup> of January 2023, although their approval is still pending [01.02.2023]. Drafts are available at AOG official webpage.<sup>290</sup> Presented strategic documents lack ambitiousness and do not respond to the current challenges, including in the direction of the fight against corruption.

Anti-corruption issues will be covered in the OGP action Plan 2023-2024 of Georgia which also should have been approved by the end of 2022, but the approval is still pending [01.02.2023].

A new National Human Rights Strategy, covering the years 2022-2030 was adopted, ensuring protection of all basic human rights and defined priorities in economic, social and civil rights.<sup>291</sup>

This document is the second national strategy for the protection of human rights and covers the years 2022-2030. It derives from the first national strategy (2014-2020), represents its logical continuation, and its purpose is to further strengthen the systemic guarantees of protection of human rights and freedoms in Georgia. This document reflects the national needs and existing challenges of Georgia in terms of human rights and is based on the Constitution of Georgia. The strategy takes into account obligations arising from international, including European, legal documents on human rights protection and is consistent with the UN sustainable development goals.

The National Action Plan on Combating violence against Women and Domestic Violence and the National Action Plan for the implementation of the UNSC Resolution 1325 on Women, Peace and Security are currently being drafted [01.02.2023].

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<sup>290</sup> AOG's webpage, available at: <https://www.gov.ge/par> [31.01.2023].

<sup>291</sup> Human Rights Strategy 2022-2023, available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Finfo.parliament.ge%2Ffile%2F1%2FBillReviewContent%2F304602&wdOrigin=BROWSELINK> [31.01.2023].



In December 2022, the members of the parliamentary majority (representatives of the "People's Power") announced that they would initiate the so-called Law on Foreign Agents in January 2023 and they did so. The term 'agents' soon began to be used, the activities of non-governmental organizations were linked to "a natural threat to the sovereignty of Georgia" and the call for the "necessity of regulating the civil sector with a strict legal framework" was made. It is noteworthy that the mentioned statement was made in the background of the discussion on the decline of democracy in Georgia held in the Committee on Foreign Relations of the United States of America.<sup>292</sup>

In the beginning of March 2023, intense street protests started in the Georgian capital city Tbilisi demanding the annulment of the draft law.<sup>293</sup> On March 10, the parliament voted to drop a foreign agent registration bill after the legislation prompted tens of thousands of protesters to swarm the capital.

Finally, according to the monitoring conducted by IDFI in 2022, the quality of access to public information in the country has decreased significantly compared to the previous year. The rate of responses to IDFI's requests (58%) from public institutions in 2022 is the lowest observed since 2010. It has to be mentioned that there was an established practice of a critical threshold of 80% on the rate of responses after 2013, which was successfully maintained until 2022. The report showing these findings also highlights that the rate of access to public information in most categories of public institutions has declined in 2022, and the ministries and their subordinate bodies have actively left the letters of FOI requests unanswered.<sup>294</sup>

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<sup>292</sup> United Nations Association of Georgia's project web (17 November 2022), U.S. Foreign Relations Committee Talks Georgia's Democratic Backsliding – Civil Georgia, available at: <https://civil.ge/archives/515196> [21.04.2023].

<sup>293</sup> Reuters press (9 March 2023), Factbox: Why is Georgia in turmoil over a "foreign agents" law? | Reuters, available at: <https://www.reuters.com/world/us/why-is-georgia-turmoil-over-foreign-agents-law-2023-03-09/> [21.04.2023].

<sup>294</sup> IDFI (10 March 2023), Access to Public Information in Georgia 2022, IDFI, available at: [https://idfi.ge/en/access\\_to\\_public\\_information\\_in\\_georgia\\_2022](https://idfi.ge/en/access_to_public_information_in_georgia_2022) [21.04.2023].

## **VI. Recommendations**

1. Eliminate time gaps between national anti-corruption strategic documents and ensure the development of ambitious, evidence-based, effective policy documents in a timely manner.
2. Renew the functioning of the Anti-Corruption Council, strengthening the Anti-Corruption policy coordination body and equip the secretariat of the Anti-Corruption Council with appropriate resources to ensure its proper operation.
3. Adhere to the recommendations of international anti-corruption institutions.
4. Create an independent anti-corruption agency that would be equipped with high degree of independence, relevant authority and public trust to, along with other duties, investigate high-profile corruption cases.
5. Define the obligation of public institutions to develop codes of ethics and practical instruments for their implementation.
6. Improve the conflict-of-interest law among them, with clear regulation of revolving door cases.
7. Ensure proper monitoring of asset declarations to integrate identification of conflict of interest and corruption-related offenses in the monitoring process.
8. Eliminate shortcomings hindering the composition of Independent Commission that selects declarations for monitoring.
9. Refine scope of declarants and content of the disclosure form to include all important categories.
10. Ensure the publication of declarations in an open data format.
11. Define the obligation of public institutions to develop codes of ethics and practical instruments for their implementation.
12. Develop norms of ethics for senior officials.
13. Ensure the implementation of an integrity risk assessment system at public institutions.
14. Develop an effective advisory mechanism on ethics at public institutions.
15. Ensure proper recording and periodic publication of data on violations of ethics, including in the form of generalized cases.
16. Ensure the revision of the Georgian legislation on whistleblowing to bring it in line with international standards.
17. Determine by legislation the unified standard of internal whistleblowing procedures as well as the obligation of public institutions to establish internal whistleblowing channels and ensure their effectiveness.
18. Adopt the rule and methodology for registration of whistleblowing statements by public institutions.
19. Define a dedicated authority responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers.
20. Encourage the use of the electronic portal of whistleblowing.
21. Produce, analyze and publish unified statistics on cases of whistleblowing.
22. Raise public servants' awareness of ethics, conflicts of interest, whistleblowing mechanisms, and others, and ensure the conducting of regular trainings at public institutions.
23. Introduce relevant regulations to ensure prevention of political influences and corruption on managerial positions in the civil service.

24. Introduce senior civil servant (executive secretary) positions, which would clearly delineate political and administrative functions.
25. Ensure proper implementation of integrity obligations in order to prevent nepotism in the civil service.
26. Ensure full operation of the Civil Service Law of Georgia on Legal Entities of Public Law.
27. Introduce relevant integrity norms concerning subcontractors and the spreading conflict of interest regulations to these.
28. Provide for durable limitations on using simplified procedures in public procurement.
29. Ensure publication of machine-readable data of procurement on a regular basis.
30. Comply with international standards on revealing beneficial ownership of participants in public procurement.
31. Ensure compliance of law enforcement bodies' obligations to regularly upload single source procurement contracts.
32. Extend a high standard of transparency on market research process.
33. Adopt standalone legislation on access to public information in conformity with international standards.
34. Establish an oversight body for access to information.
35. Improve existing legislation on access to information in order to enhance the openness, transparency, and accountability of public institutions and ensure its consistent application in practice.
36. Conduct comprehensive national risk assessment of money-laundering and terrorism financing, focusing on all relevant aspects.
37. Equip the Financial Monitoring Service with adequate resources.
38. Ensure the establishment of the Beneficial Ownership Register.
39. Ensure the implementation of FATF and MONEYVAL recommendations.
40. Effectively implement the national toolkit for asset recovery through international cooperation.
41. Publish statistical data about the number of requests for legal assistance on asset recovery submitted by other States and about requests sent to other States by national authorities.

## VII. Annex

### 7.1 Table on Freedom of Information requests

Identification number	Institution	Date of request	Date of answer	Information requested	Information provided
FOI06/22-009	AOG	07/06/2022	13/07/2022	Georgia's Self-Assessment Checklists created under the first and second cycle of the implementation review of the UNCAC; full review reports on Georgia's implementation of the UN Convention against Corruption from the first and second implementation review cycles; participation in or contribution to the first and second cycle of the implementation review of the UNCAC by civil society, NGOs, and/or other non-state actors; information on the current status/stage of the second review cycle; information on focal point; information and any relevant documents regarding actions that have been taken to discuss, address and implement findings and recommendations made in the first and second cycle of the implementation review process of the UNCAC.	The Self-Assessment Report of Georgia dated May 20, 2020; The full review report on Georgia's implementation of the UN Convention against Corruption from the first implementation review cycle; information on involvement of NGOs and civil society in the first cycle of the implementation review of the UNCAC; information on the second round of UNCAC implementation review (underway); information about coordination of the second cycle and focal point; information on important steps Georgia has taken after acceding to UNCAC.
FOI07/22-017	POG	22/07/2022		Preventive measures taken by the relevant POG unit since 2020 (content of the activities, dates, contingent and number of participations (if any).	Did not answer FOI request.
FOI07/22-018	SSSG	22/07/2022	05/08/2022	Preventive measures taken by the relevant SSSG unit since 2020 (content of the activities,	According to SSSG, several awareness raising events was held among central and

				dates, contingent and number of participations (if any).	local public institutions; also, several meetings were held between 2020-2022 oriented on raising awareness, training of employees and sharing good practice.
FOI07/22-019	AOG	22/07/2022	02/08/2022	How many employees does Anti-Corruption Secretariat have (positions and functions); Has the secretariat staff been trained (on which issues, in what form); At what stage is the process of developing the new Anti-Corruption strategic documents; has any activity been conducted by the Anti-Corruption Council since 16 March 2021 (type, content and date of activities).	Three employees. Staff is not trained yet. Developing of policy documents are in active phase. In July 2022 Council membership was updated, particularly, head of the Council and deputy were defined.
FOI07/22-021	MFA Intelligence Unit	28/07/2022	03/08/2022	Number of staff dedicated to money-laundering (by years, positions for 2019-2022); number of suspicious transactions submitted to Intelligence Unit by FMS in 2019 – 2022 (by years). How many cases have been responded and how?	There are no special staff dedicated to money laundering, as it carries out investigation in certain cases only. Statistical data is not produced.
FOI07/22-022	FMS	28/07/2022	12/08/2022	Number of staff dedicated to money-laundering (by years, positions for 2019-2022); number of cases of suspicious transactions regarding cash flow submitted to FMS in 2019-2022; number of suspicious transactions submitted by FMS to LEAs in 2019-2022, how many cases have been responded to and how?	6 members. Suspicious transactions regarding cash flow submitted to FMS: In 2019-193, in 2020-121 and in 2021- 162. STRs submitted by FMS to LEAs: in 2019-35, in 2020-3, in 2021-21. Cases sent to investigative agencies: In 2019- 128, in 2020- 85, in 2021-84.

FOI07/22-023	MIA	28/07/2022	03/08/2022	Number of staff dedicated to money-laundering (by years, positions for 2019-2022); number of suspicious transactions submitted to MIA by FMS in 2019 – 2022 (by years). How many cases have been responded and how?	Money laundering investigation is carried out only in certain cases, therefore MIA has not specially dedicated staff. Statistical data is not produced.
FOI07/22-024	Revenue Service	28/07/2022	10/08/2022	Number of staff dedicated to money-laundering (by years, positions for 2019-2022); number of suspicious transactions submitted to Revenue Service by FMS in 2019 – 2022 (by years). How many cases have been responded and how?	Each customs officer is obliged to monitor money laundering issues. There is a specific unit in RS supervising gambling industry with regard to the obligations foreseen in MLA law. Staff members in the Unit: in 2019- 10, in 2020-11, in 2021-8, in 2022-8.  Cases submitted by FMS: In 2019-2, in 2020-118, in 2021-99, in 2022-48.
FOI07/22-025	SSSG	28/07/2022	10/08/2022	Number of staff dedicated to money-laundering (by years, positions for 2019-2022); number of suspicious transactions submitted to SSSG by FMS in 2019 – 2022 (by years). How many cases have been responded and how?	There is no dedicated staff. Cases submitted by FMS: Nine letters between 2019-2020.  In 2019 two cases were transferred to the relevant authority, in 2021 one case was added to criminal case, and in 2022 five cases were transferred to the relevant authority.
FOI07/22-026	POG	28/07/2022		Number of staff dedicated to money-laundering (by years, positions for 2019-2022); number of suspicious transactions submitted to SSSG by FMS in 2019 – 2022 (by years). How many cases have been responded	Did not answer the request.

				and how? In Total how many cases of money-laundering are recorded in 2019-2022?	
FOI10/22-003	CSB	05.10.2022	17.10.2022	Number of persons employed in asset declaration monitoring unit in CSB number of civil servants in 2018-2021 number of civil servants subject to publication of asset declarations number of declarations monitored in 2018-2021 and the results Trainings conducted by CSB related to prevention of corruption number of vacant positions announced on hr.gov.ge; Number of civil servants undergone professional appraisal in 2018-2021.	Each provision of foi request was fully answered by SCB in its letter dated: 17.10.2022 due to the large amount of data it's impossible to insert it in this section. (Please see all charts in the public employment section above).
FOI07/22-027	NBG	28/07/2022	10/08/2022	The sanctions imposed on financial institutions in 2017-2022 for violations of the AML/CFT law (by years, the category of financial institution, the sanction applied).	In 2017 Imposed fine -2 657 450 Registration was canceled: 70 2018- Imposed fine 1451800, registration was cancelled: 1 In 2019- Imposed fine 1698 800, registration was cancelled: 5. 2019 Imposed fine: 584 000, registration was cancelled: 0. 2021- Imposed fine: 1 709 900 registration was cancelled: 1 2022 Imposed fine: 1 403 700 registration was cancelled: 3.

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