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REPORT ON MONITORING THE IMPLEMENTATION OF THE EASTERN PARTNERSHIP ROADMAP IN GEORGIA

Independent Monitoring Report

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The proposed report was prepared in frames of Open Society Georgia Foundation in-house project “Monitoring the implementation of the Eastern Partnership Roadmaps in Armenia and Georgia”. Mr. Giorgi Burjanadze, Mr. Irakli Kobakhidze, Mr. Mirosław Maj, Mr. Levan Natroshvili, Mrs. Nana Sajaia, Mr. Nikoloz Samkharadze, Mr. Erekle Urushadze and Mr. Kornely Kakachia worked on studying the situation in relevant fields of the Roadmap for Georgia.

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ABBREVIATIONS AND ACRONYMS

Art	Article
BCP	Border Crossing Point
BTI	Bertelsmann Transformation Index
CAA	Communities Association of Armenia
CEC	Central Election Commission of Georgia
CBC	Cross-border cooperation
CEPEJ	European Commission for the Efficiency of Justice
CERT	Computer Emergency Response Team
CCJE	Consultative Council of European Judges
CCG	Constitutional Court of Georgia
CIA	Confidentiality Integrity Availability (model)
CII	Critical Information Infrastructure
CoE	Convention of Europe
CSIRT	Computer Security Incident Response Team
CRRC	Caucasus Research Resource Centers
CSDP	Common Security and Defence Policy
CFSP	Common Foreign and Security Policy
DEC	District Election Commission of Georgia
DDoS	Distributed Denial of Service
DEA	Data Exchange Agency
DTV	Digital Television
EaP	Eastern Partnership
ENP	European Neighbourhood Policy
ECHR	European Court of Human Rights
EUMS	European Union Member States
EoP	Educational opportunity Program
FPA	Framework Participation Agreement
FAS	Financial Analytical Service
FBI	Federal Bureau of Investigation
FIDH	International Federation for Human Rights
FOI	Freedom of Information
ENPI	European Neighborhood and Partnership Instrument
GCB	Global Corruption Barometer
GNCC	Georgian National Communication Commission
GRC	Georgian Railway Company
GPB	Georgian Public Broadcaster
GE06	International Telecommunication Union's Geneva 2006 agreement
GYLA	Georgian Young Lawyers Association
HCOJ	High Council of Justice
IATF	Inter-Agency Taskforce
ICT	Information and Communication Technologies

ISP	Internet Service Providers
IBM	Integrated Border Management
IFES	International Foundation for Electoral Systems
IDFI	Institute for Development of Freedom of Information
ISFED	International Society for Fair Elections and Democracy
ICCPR	International Covenant on Civil and Political Rights
LEA	Law Enforcement Agencies
MFA	Ministry of Foreign Affairs
MoD	Ministry of Defence
MIA	Ministry of Interior,
MoJ	Ministry of Justice
MoEU	State Ministry of European and Euro-Atlantic Integration
MoU	Memorandum of Understanding
MSI	Media Sustainability Index by IREX
NALAG	National Association of Local Authorities of Georgia
NMS	Network Monitoring Services
NSC	National Security Council
NSR	National Security Review
NDI	National Democratic institute
NGO	Non-governmental organization
OSCE	Organization for Security and Co-operation in Europe
OSCE/ODIHR	Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights
OSGF	Open Society Georgia Foundation
Par	Paragraph
PEC	Precinct Election Commission of Georgia
PDPC	Personal Data Protection Convention
POG	Prosecutor's Office of Georgia
SAO	State Audit Office of Georgia
SCIBM	South Caucasus Integrated Border Management Programme
Sec	Section
SPS	Sanitary and Phyto-Sanitary
SIDA	Swedish International Development Cooperation Agency
TI Georgia	Transparency International Georgia
TCP/IP	Transmission Control Protocol/Internet Protocol
TERENA	Trans European Research and Education Networks Association
UNDP	United Nations Development Programme
UDHR	Universal Declaration on Human Rights
USAID	United States Agency for International Development
UNM	United National Movement

EXECUTIVE SUMMARY

The aim of the report- a result of the study commissioned by Open Society Georgia Foundation and implemented by the independent group of researchers- is to ensure the detailed information regarding the actual situation on the ground with regards to Georgia's obligation under the 2013 Eastern Partnership Roadmap. It presents the first findings of evidence- based research on the implementation of benchmarks highlighted in Eastern partnership roadmap: Electoral standards, freedom of the media; Regional and local authorities, Judiciary, Common Foreign and Security Policy and Integrated Border Management Sections, Fight against Corruption, Fight against cybercrime. The publication also aims, to assess the state of progress achieved by Georgia in EU integration affairs, analyze advancement which has been made in the implementation of obligations, on the eve of the Vilnius summit, including preconditions for its positive outcomes for Georgia. While in this report one may undoubtedly find many interesting insights, it also makes an important contribution to the debate on where Georgia stands in present EaP rankings. Authors of the report scrutinize progress made by Georgia during May. 2012-Sept.2013 and aim to give, impartial and balanced assessment of Georgia's performance before the Vilnius summit.

RESEARCH METHODOLOGY

The methodology is based on existing benchmarks and criteria set out by the European Union for EAP countries involved in negotiating agreements. The assessment of country done with the help of a questionnaire, generally based on these benchmarks, developed and filled out by experienced independent experts. Report methodology comprised the qualitative and quantitative methods of research as well as documents review. The qualitative method rested on expert interviews, while an in-depth interview guide was used for expert interviewing. Country progress reports as well as assessment reports of different stakeholders and ministerial implementation reports were consulted during the research. In order to collect information, the experts used a variety of resources, including official data of relevant public institutions and authorities, reports by the European Commission and international organizations (OSCE, COE, etc), legislation overview. Analysis of new and amended internal legislation, international agreements as well as secondary legal acts was instrumental for understanding the progress of the reforms carried out by the Government of Georgia. Methodology also includes desk research, interviews with experts and field professionals as well on the assessments of international and local observation organizations.

REVIEW OF THE ACTUAL PROGRESS

As Georgia is proud of to be one of the front-runner among Eastern Partner countries, there is increasing impression that more must be done to consolidate and institutionalize its own democracy. According to the European Commission ENP progress report while Georgia acted on most of the key recommendations in the last year's ENP progress report, it still needs greater judicial and self-government reform, stronger investment climate, protection of human rights, and the availability of economic opportunity for all who seek it. It also requires more tolerant and pluralistic political culture. As of 23 September 2013, the monitoring confirms that Georgia has achieved certain progress with regard to most of the EaP benchmarks. From the analysis of available documents and facts it seems like Georgia actively adopting the international agreements related to the cybercrime issues as well as best practices and recommendations developed by the international community on this field. Continuously the state is developing and adopting various legal acts which have a significant influence on legal system and possibility of fighting with cybercrime cases. In 2013 the draft strategy on Combatting Organised Crime was prepared and the Presidential office issued the Cybersecurity Strategy of Georgia. It is a confirmation of active approach of Georgia to the cybercrime protection system.

Recent years Georgia witnessed a considerable drop in the levels of reported and perceived corruption, which was reflected in the improvement of the country's results in various international surveys (such as Transparency International's *Global Corruption Barometer* and *Corruption Perceptions Index*), as well as in local public opinion polls (including the *Caucasus Barometer*). At the same time, while there is a general acknowledgement of the government's success in tackling the most visible and apparent forms of corruption (such as the petty bribery which was very common among public sector workers prior to 2004), multiple studies have highlighted the persistent risk of more complex types of corruption, arising principally from the lack of accountability and transparency at higher levels of authority. Arbitrary dismissal of public sector employees and lack of a transparent system of remuneration in the public administration remained the most significant problem in terms ensuring the public administration's independence in 2012-2013.

As far as the elections are concerned, the political independence of the election administration has been a top-priority issue for many years in Georgia. During the pre-election period (2012 parliamentary elections) the Central Election Commission (CEC), with some exceptions, fulfilled its responsibilities much better compared to previous elections. The capacity of the CEC has been much stronger and there haven't been observed that many problems related to the professionalism of the electoral administration. Compared to previous elections, the CEC's activities were noticeably less affiliated to the ruling party. However, certain problems were still observed. Though, substantial legislative changes to the electoral laws were made in 2011 and partially in 2012 problems still remain. The electoral legislative topics needing attention and improvement includes: the use of administrative resources for electoral purposes; the electoral system; party financing; voters' lists; political advertisements and the media coverage of election campaigns.

According to the report there was some progress during the year on loosening media regulations and increasing access to a diversity of viewpoints, especially in the immediate pre-election period. Progress has also been reported, particularly in terms of accessing information, new government seems to be more responsive to the requests on public information and as journalists report officials are easier to get in touch with. As opposed to the year of 2012, in 2013 the media environment was a less polarized. However, while Georgia has the freest and most diverse media landscape in its region the impartiality of media is still a big problem in the country. Georgian media has not reached the level of transparency in financing and there still are political interests in media ownership.

After the parliamentary elections of October 2012, the new government declared ambitious plans to reform local and regional governance. Consequently, there is reason to be optimistic that significant reforms will be implemented in the following years to achieve a higher degree of decentralization and effectiveness of local and regional authorities. Such progress is expected to positively influence the outlooks of cross-border cooperation of Georgian administrative-territorial entities. However, there has been limited progress made in regard to dividing the competencies between the central government and local self-governments in accordance with the principle of subsidiarity. Consequently, the current level of the decentralization of competencies is very low. The level of the citizens' participation in local deci-

sion-making processes is still extremely small and the relevant effective tools are missing. The legislation on local self-government is not fully in line with the European Charter of Local Self-Government. Although several laws have been improved during the reporting period, a significant portion of the sectoral legislation still contradicts the Organic Law on Local Self-Government.

Georgia is on a good track in implementing provisions of EaP Roadmap in CFSP and IBM sections. In CFSP segment of the roadmap Georgia and the EU are close to finalising the Framework Participation Agreement (FPA), which will create conditions for Georgia's participation in Common Security and Defence Policy (CSDP) missions. The success of the negotiations is demonstrated by the fact that Georgia had already received invitation to take part in two current CSDP missions in Mali and Horn of Africa. Georgia and the EU have also agreed on the text of political chapter of the Association Agreement, which covers co-operation in Common Foreign and Security Policy field. Georgia has signaled its readiness to participate in CSDP panel and approved its terms of references. Georgia's alignment to CFSP declarations has intensified.

In regards to IBM, Georgia institutionalized strategy elaboration process and placed it under National Security Review (NSR) mechanism, so the next IBM strategy to be developed in 2014 will be developed under the NSR framework. The current IBM action plan is being updated and will be submitted for approval soon. Georgian authorities continued modernization of border crossing points in terms of upgrading infrastructure and equipment. Vast majority of BCPs are already modernized with one infrastructural project still ongoing. Unlike BCPs, infrastructure at green border segments with Armenia and Azerbaijan is in dire conditions, lacking basic facilities.

The Report detected some problems with the financial independence of the Judiciary. The procedure should be introduced about the negotiation of the Judicial Budget between Government and Judicial Branch. Remuneration of judges was found to be problematic. Additionally, the process of the promotion of judges was found to be regulated insufficiently. The report devoted special attention to the transfer of judges and some problems has been identified which needs further elaboration and legislative amendments, since several provisions are not clear and lack foreseeability.

RECOMMENDATIONS

As a result of the analysis and findings of this project, authors formulated a package of proposals with recommendations to be as soon as possible fulfilled in order to strengthen confidence in the positive decision of the EU regarding the initialization of the Association Agreement with Georgia.

1. In order to achieve further progress in combating corruption, the Georgian authorities must implement reforms aiming to increase the independence, transparency, accountability and integrity of the public administration. The authorities must also undertake improving the capacity of the Anti-Corruption Council, adopting an improved anti-corruption action plan and establishing proper monitoring and evaluation procedures.

2. Implement practical measures to protect public sector employees from arbitrary dismissal and ensure that recruitment in the public administration is conducted in a competitive and transparent manner.

3. Continue the inclusive process of drafting the Anti-Corruption Action Plan for 2014-2016 and ensure that the new Anti-Corruption Action Plan contains appropriate benchmarks and measurable indicators of success, while the implementation reports should be produced at a regular basis.

4. ECHR judgments should be implemented fully and this process must cover Administrative Proceedings also; Judiciary should be accorded with certain rights in criminal proceedings in order to achieve effective balance between the principle of discretionary prosecution and victims' rights.

5. Finalize the text of framework participation agreement for signature before November, continue implementation of IBM strategy provisions; endorse the updated IBM Action Plan before October 2013 and start preparations for drafting the new Border Management Strategy.

6. To ensure easy and not politicized transition at Georgian Public Broadcaster; to investigate facts of pressure on the members of the GPB Board of

Trustees and interference with the work of the GPB; To prepare and present the legal framework for digital switchover.

As the needs and challenges outlined in the report create new opportunities for Georgia, it will hopefully offer incentives to political and civil leaders to seize opportunities provided by Vilnius Summit. We hope this publication will provide additional information and feedback for this very valuable process.

PRIORITY AREA: FIGHT AGAINST CORRUPTION

INTRODUCTION

The Georgian Government started pursuing active anti-corruption measures in 2004 and implemented a number of practical measures and legislative changes in this area in subsequent years. These included the prosecution of individuals implicated in corruption, as well as broader policy/institutional changes, including the streamlining and simplification of various administrative procedures and the introduction of electronic systems of administration designed to enhance transparency and accountability in the public sector.

As a result of these measures, Georgia witnessed a considerable drop in the levels of reported and perceived corruption, which was reflected in the improvement of the country's results in various international surveys (such as Transparency International's *Global Corruption Barometer* and *Corruption Perceptions Index*), as well as in local public opinion polls (including the *Caucasus Barometer*).

At the same time, while there is a general acknowledgement of the government's success in tackling the most visible and apparent forms of corruption (such as the petty bribery which was very common among public sector workers prior to 2004), multiple studies have highlighted the persistent risk of more complex types of corruption, arising principally from the lack of accountability and transparency at higher levels of authority.

The new government that came to power in Georgia after the October 2012 parliamentary elections has pledged to tackle the problem of "elite" corruption. The reform of the country's anti-corruption policy framework is likely to be a key element of these efforts and thus presents an interesting matter of analysis.

METHODOLOGY

The multilateral dimension of the Eastern Partnership Roadmap 2012-2013 includes the following three general objectives in the area of the fight against corruption:

1. Promote good governance and boost the capacity of public administration and the criminal justice sector to prevent and fight corruption and economic crime.
2. Review existing systems to fight corruption in EaP countries (legislative, policy and institutional framework, including enforcement structures) and share best practices with a view to increasing overall efficiency in reducing corruption.
3. Improve the skills of civil servants and civil society organizations dealing with anti-corruption issues.

These objectives are broad and it is thus difficult to measure the country's success in attaining them, particularly as the implementation report only covers a one-year period. It is therefore advisable to narrow down the scope of the report by identifying more specific areas that fall under the broader objectives listed above.

This report thus explores the following two focus areas:

- I. Good governance and public administration reform
- II. Anti-corruption Institutions and policies

These focus areas correspond to the broader objectives (1) and (2) are established under the multilateral dimension of the Roadmap. Additionally, implementation of the anti-corruption strategy (covered under focus area I) is highlighted as Georgia's specific objective under the bilateral dimension of the Roadmap.

A set of benchmarks was developed for each of the two focus areas and the analysis was conducted accordingly. Based on these benchmarks, the report assesses both the strength of corresponding legal provisions and their implementation in practice. The analysis is therefore based on the review of the relevant laws and official policy documents (such as the anti-corruption strategy and action plan), as well as the existing secondary materials (the reports and studies by authoritative local and international organizations working on the issues covered in this assessment).

MAIN FINDINGS

I. Good Governance and Public Administration Reform

1. Independence of public servants

Safeguarding the professional independence and impartiality of public servants and protecting them from undue influence of the ruling party of the day has remained a constant challenge in Georgia in recent years, resulting in persistent allegations of the “politicizing” of the public service. This has been particularly evident during the elections as domestic and international organizations have repeatedly noted the involvement of public sector workers in the ruling party’s campaigns.

Protection from arbitrary dismissal is an important element of civil servants’ independence. While Georgian law provides general safeguards, the arbitrary dismissal of public service members was common both before and after the October 2012 parliamentary elections.

The Law on Public Service provides a list of cases where a public servant can be dismissed from work. These include expiry of contract (for the servants employed for a specific period of time), voluntary resignation, reorganization or abolishment of the agency where a public servant is employed, disciplinary offences or failure to meet job requirements, or conviction for a

crime.¹ Although the inclusion of such a list in the law is an important safeguard which should limit the opportunities for abuse, undue dismissals have still occurred in practice and the provision concerning voluntary resignation, in particular, has been abused.

During the campaign for the October 2012 parliamentary elections, observer organizations repeatedly voiced concerns over cases where public sector workers were allegedly dismissed for political reasons.² The authorities acknowledged the seriousness of the problem, as demonstrated by the fact that the Interagency Commission for Free and Fair Elections, which operated under the National Security Council, issued a statement, urging public agencies to refrain from dismissals during the election campaign except for the cases involving disciplinary offences.³ The OSCE/ODIHR also noted in its final assessment of the election that there were reported cases where public administration employees were either pressured or encouraged to become involved in the ruling party's campaign events.⁴

The problem of dismissals persisted after the October elections and the subsequent transfer of power from the United National Movement to the Georgian Dream coalition. Transparency International Georgia reported in August 2013 that over 5,000 public sector employees had been dismissed since the October 2012 elections.⁵

1 The Law on Public Service, 31 October 1997, Articles 93-107.

2 International Society for Fair Elections and Democracy, *Second Interim Report on Monitoring Preelection Period for 2012 Parliamentary Elections*, Tbilisi, 15 June 2012, accessed 17 July 2013, <http://isfed.ge/pdf/2012-06-15-report.pdf>, International Society for Fair Elections and Democracy, *Third Interim Report on Monitoring Preelection Period for 2012 Parliamentary Elections*, Tbilisi, 13 July 2012, accessed 17 July 2013, <http://isfed.ge/pdf/2012-07-13-report.pdf>, International Society for Fair Elections and Democracy, *Fourth Interim Report on Monitoring Preelection Period for 2012 Parliamentary Elections*, Tbilisi, 21 August 2012, accessed 17 July 2013, http://isfed.ge/pdf/LTO_Report_Fourth.pdf, International Society for Fair Elections and Democracy, *Fifth Interim Report on Monitoring Preelection Period for 2012 Parliamentary Elections*, Tbilisi, 3 September 2012, accessed 17 July 2013, <http://isfed.ge/pdf/2012-09-03-report.pdf>, (in Georgian).

3 "Interagency Commission: Dismissal of Public Servants for Political Reasons Is Inadmissible", NPO.GE, accessed 17 July 2013, <http://www.npo.ge/story/utsqebatashorisi-komisia-daushvebelia-sajaro-mokheleebis-p> (in Georgian).

4 OSCE Office for Democratic Institutions and Human Rights, *Georgia Parliamentary Elections 1 October 2012, OSCE/ODIHR Election Observation Mission Final Report*, Warsaw, 21 December 2012, pp 12-13.

5 Transparency International Georgia, *Staffing Changes in the Civil Service after the 2012 Parliamentary Elections*, Tbilisi, 2013, <http://transparency.ge/en/post/press-release/ti-georgia-releases-new-report-changes-civil-service-after-2012-parliamentary-elections>

Along with dismissals, questions have been asked regarding the criteria for the appointment of public servants and the possible partisan bias in these appointments. In the report cited above, Transparency International Georgia noted that only 4 percent of some 6,500 new members of the public service had been appointed through competitive selection.⁶ The same organization voiced concern of the Internal Affairs minister's January 2013 decision to temporarily alter recruitment rules, making it possible to appoint individuals who had not attended the relevant professional education programs and training courses to various positions inside the police force until 31 March 2013.⁷ Media⁸ and civil society organizations⁹ have also reported on alleged cases of nepotism in public sector appointments after the elections.

On the positive side, Parliament passed an amendment to the Criminal Code in January 2013, introducing a criminal penalty for forcing an individual to submit a resignation request.¹⁰ This is an important development since the provision of "voluntary" resignation from public service has frequently been abused in recent years. Earlier, an important amendment was made to the Public Service Law, requiring all public agencies to conduct recruitment on a competitive basis, through a dedicated website administered by the Public Service Bureau.¹¹

If applied in practice, these changes in the legal framework have the potential of reinforcing professional independence of public sector employees, providing them with stronger protection against undue political influence.

6 Ibid.

7 "Ministry of Internal Affairs Temporarily Simplifies Staff Recruitment Procedure", Transparency International Georgia, <http://transparency.ge/en/blog/ministry-internal-affairs-temporarily-simplifies-staff-recruitment-procedure>

8 "Nepotism in New Government", Tatia Khaliani, Liberali, accessed 17 July 2013, <http://www.liberali.ge/ge/liberali/articles/114080/> (in Georgian)

9 "Kutaisi Sakrebulo and City Hall's Suspicious Dismissal Policy", Transparency International Georgia, accessed 17 July 2013, <http://transparency.ge/blog/kutaisis-sakrebulo-da-meris-saechvo-sakadro-politika>

10 "Forced Dismissal From Public Service To Become Punishable", Netgazeti, accessed 17 July 2013, <http://netgazeti.ge/GE/105/News/16133/>

11 The Law on Public Service, Articles 20, 31.

2. Transparency and accountability in public administration

In recent years, Georgia has introduced several new systems designed to improve transparency and accountability of public service. At the same time, a number of important gaps remain.

The launch of a unified electronic system¹² of public tendering in 2011 was a major step toward transparent public procurement. Under this system, all tenders are conducted through a single website, and interested individuals have the possibility to monitor the entire process, including tender announcement, bidding, and signing of contracts. However, transparency is undermined by the fact that large amounts of public money are still being spent outside the electronic procurement system. In 2012, some 800 million lari was spent from the state budget through opaque procedures and nearly half of all public procurement was done through a non-competitive ‘simplified procurement’ mechanism.¹³ There have been some positive changes in his regard since October 2012. Notably, the Ministry of Defense is now conducting a larger share of its procurement through public tenders.¹⁴

Georgia also has an electronic system of asset disclosure for public officials. Asset declarations are posted on a dedicated website¹⁵ administered by the Public Service Bureau and are accessible to all citizens. The database presently contains nearly 45,000 declarations. On the negative side, the requirement of asset disclosure does not extend to some important members of local government and there is no mechanism for the verification of content of asset declarations.

The lack of transparency in the system of remuneration in public administration and the resulting arbitrariness in decision-making has been a matter of concern in recent years. This applies especially to the allocation of bonuses to

12 Unified Electronic System for State Procurement, <https://tenders.procurement.gov.ge/login.php>

13 Transparency International Georgia, *Georgia's Public Procurement System*, Tbilisi, June 2013, pp 5-6, 29-30.

14 According to the unified electronic system of public procurement, the Defense Ministry announced 88 public tenders between January and June 2013, compared to just 22 in the 12 months of the previous year.

15 Civil Service Bureau, Asset Declarations of Georgian Senior Officials, www.declaration.ge

public officials and public sector employees. Prior to the October 2012 elections, it was common practice to effectively double the annual remuneration of some public servants through the payment of monthly bonuses whose size equaled that of the official salary (in some cases, the annual size of bonuses actually exceeded that of the salaries).¹⁶ The practice of outsized bonuses continued after the transfer of power, despite the new government's pledge to address the issue.¹⁷ A 2013 study by the Georgian Young Lawyers Association (GYLA) found that the majority of public institutions have no formal guidelines for the allocation of bonuses and that the decisions to award bonuses are not supported by any explanatory notes, while the share of bonuses in total remuneration is well above the average of developed countries.¹⁸

Application of Freedom of Information (FOI) legislation in practice remains problematic. In September 2013, the Institute for Development of Freedom of Information (IDFI), a leading Georgian civil society organization which focuses on access to information, published the statistics reflecting how different government agencies had responded to the organization's requests for public information between July 2012 and June 2013. According to IDFI, the organization sent a total of 5,625 FOI requests during this period of time and received the requested information in full in 3,830 cases. Public agencies did not provide the requested information in 788 cases, while 576 requests remained unanswered. The organization also noted an improvement after the transfer of power in October 2012, as the share of cases where information was provided in full increased from 51 to 81 percent, while the share of cases where no reply was received dropped from 31 to 11 percent.¹⁹ It remains to be seen whether this positive trend will be sustained in the long run.

16 "Bonuses in Central Government in 2012", Opendata Blog, accessed 17 July 2013, <http://opendatablog.wordpress.com/2013/02/01/2012-wels-centralur-xelisuflebash-gacemuli-premiebi/> (in Georgian)

17 "Institute for Development of Freedom of Information Publishes Data on Bonuses in Government", For.ge, 1 February 2013, accessed 17 July 2013, http://for.ge/view_news.php?news_id=13274&news_cat=0 (in Georgian); "Parliament Members Have Received 2,702,646.84 Lari in Bonuses", Liberali, accessed 17 July 2013, <http://www.liberali.ge/ge/liberali/news/115125/> (in Georgian)

18 The Georgian Young Lawyers Association, *Performance Related Pay for Public Officials: Existing Practice in Georgia and Abroad*, Tbilisi, 2013, p 7.

19 Institute for Development of Freedom of Information, *Access to Public Information in Georgia, 2012-2013*, 12 September 2013, accessed 16 September 2013, <http://www.idfi.ge/?cat=main&lang=en&topic=417&header=Access%20to%20Public%20Information%20in%20Georgia,%202012-2013>

3. Integrity in public administration

The level of integrity in Georgia's public administration has increased as a result of virtual elimination of petty bribery, although a number of indicators point to the persistence of more complex forms of corruption.

The surveys conducted in recent years indicate the success of the government's efforts to tackle corruption at the lower levels of public administration. For example, 99 percent of the respondents in the 2011 Caucasus Barometer said that they had not paid a bribe during the preceding 12 months.²⁰ In Transparency International's Global Corruption Barometer (GCB) 2013 survey, only 4 percent of the Georgian respondents reported paying a bribe (well below the global average of 27 percent), while 70 percent said that the level of corruption had decreased in the country over the preceding two years.²¹

Nevertheless, a number of authoritative organizations have voiced concerns about alleged corruption at the higher levels of government. Freedom House noted in its 2013 Nations in Transit report that the relationship between government and business remained "largely opaque" and the widespread offshore ownership of major companies was believed to mask the links between these companies and people from President Saakashvili's entourage. Freedom House identified opaque spending of public funds on large-scale infrastructure projects as another area of concern.²²

In the most recent Global Integrity Report, Georgia received the aggregate score of 75 (moderate), although the score for legal framework (88, strong) was considerably higher than the score for actual implementation (61, weak). The report identified government oversight, as well as conflict of interest safeguards and checks and balances, as the main problematic areas.²³ Transparency International Georgia's review of the country's National Integrity System

20 Caucasus Barometer 2011, Georgia, <http://www.crrc.ge/oda/?dataset=16&row=197>

21 Transparency International, *Global Corruption Barometer 2013*, accessed 13 September 2013, <http://www.transparency.org/gcb2013/country/?country=georgia>

22 Freedom House, *Nations in Transit 2013*, pp 237-238

23 Global Integrity, *Global Integrity Report 2011, Scorecard 2011: Georgia 2011*, accessed 17 July 2013, <http://www.globalintegrity.org/report/Georgia/2011/scorecard>

offers a similar assessment, noting that the lack of executive branch oversight and accountability creates opportunities for abuse of power and corruption.²⁴

The 2012 Bertelsmann Transformation Index country report for Georgia also notes that, while the government has successfully tackled corruption at the lower levels of public administration, it remains present at the higher levels and “formal procedures can still be circumvented by those connected to the bureaucracy.”²⁵

In the GCB 2013, Georgian respondents identified the judiciary, media, Parliament, political parties, and business as the institutions where corruption remains a significant problem and 51 percent of the respondents described the judiciary as “corrupt” or “extremely corrupt.”²⁶

II. Anti-Corruption Institutions and Policies

1. Capacity of anti-corruption institutions

The Georgian Government’s anti-corruption activities are presently coordinated through the Interagency Coordinating Council for Combating Corruption. The Council was established in December 2008 through a presidential decree²⁷ and its status was subsequently reinforced through the addition of a special provision in the Law on Conflict of Interest and Corruption in Public Service.²⁸

24 Transparency International Georgia, *Georgia National Integrity System Assessment 2011*, accessed 17 July 2013, <http://transparency.ge/nis/2011/executive-summary>

25 BTI 2012 Georgia Country Report, accessed 17 July 2013, <http://www.bti-project.org/countryreports/pse/geo/>

26 Transparency International, *Global Corruption Barometer 2013*, accessed 13 September 2013, <http://www.transparency.org/gcb2013/country/?country=georgia>

27 Georgian President’s Decree #622 “On Approving Composition and Charter of Interagency Coordinating Council for Combating Corruption”, Tbilisi, 26 December 2008, accessed 17 July 2013, https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=104218&lang=ge (in Georgian)

28 The Law on Conflict of Interest and Corruption in Public Service, Article 12¹

The Council is not an independent agency but is rather a consultative body made up of *ex officio* members from key government institutions (including government ministries and agencies, parliament, and the judiciary), as well as representatives of civil society organizations invited by the government to participate in the Council's work. The minister of justice has presided over the Council since its creation.

The Council's activities since its establishment in 2008 have been somewhat irregular and *ad hoc* and it has only met, on average, twice a year.²⁹ The bulk of the Council's work is therefore carried out by the Justice Ministry's Analytical Department which double-acts as the Council's executive body: the Secretariat.

The Council's lack of its own dedicated staff raises concerns regarding its organizational capacity. The Council's Secretariat presently has a staff of nine people³⁰ and, given the Secretariat's parallel role as the Justice Ministry's Analytical Department, they have to deal with a number of broad policy areas along with the fight against corruption. The Council would thus benefit from having its own independent staff and a dedicated budget.

While Georgia's Anti-Corruption Council's sole responsibility is to coordinate anti-corruption policies and reforms, international experience suggests that anti-corruption agencies that combine policy formulation with some kind of investigative powers tend to be more successful and effective.

If Georgia were to adopt such a model (based on international best practices), it would require a major overhaul of the current structure. Namely, rather than being a consultative body comprising representatives of different public institutions, the anti-corruption agency would have to become a fully-fledged agency with an independent staff and budget. In order to ensure the agency's impartiality and its ability to effectively tackle high-level corruption (which is the new government's declared goal), the government would need to introduce the kind of independence safeguards that are in place for a number of other key watch-

29 A full list of the Council's meetings and the minutes of these meetings are available on the Justice Ministry's website, http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=647

30 The Georgian Ministry of Justice, Analytical Department, Structure and Employees, http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=644

dog institutions (such as the Public Defender and the State Audit Office). These could include legal provisions designed to protect the head of the anti-corruption agency from arbitrary dismissal, as well as provisions whereby the agency would be accountable to Parliament or the president (rather than the prime minister), thus placing it outside the executive branch and safeguarding it against any undue influence by high-level officials from the government.

The Anti-Corruption Council seemed inactive for a large part of 2012 and did not meet a number of its declared objectives for the year (including updating the action plan), while the Secretariat failed to produce the 2012 report on the implementation of the Anti-Corruption Action Plan. These shortcomings were, most likely, the result of the fact that the former government was focused on the October parliamentary elections for the better part of the year (for example, the Justice Ministry's Analytical Department played an important role in drafting campaign financing regulations in early 2012), as well as the problems of transitioning under the new government.

The Council reconvened in January 2013 and a number of new civil society organizations were invited to participate in its work (in addition to those had previously been involved).

2. Policy framework

The Anti-Corruption Strategy was adopted in June 2010 and covers six broad areas: (1) increasing the public sector's effectiveness and eradicating corruption; (2) increasing competition and reducing corruption in the private sector; (3) improving the justice system; (4) improving the anti-corruption legislation; (5) prevention of corruption; (6) political party financing.³¹

The corresponding Anti-Corruption Action Plan was adopted in September 2010. Regrettably, this was done through a rather hasty procedure and the government did not allocate sufficient time for civil society organizations to

31 Georgian National Anti-Corruption Strategy, 3 June 2010, accessed 17 July 2013, http://www.justice.gov.ge/files/Documents/analitikuri/Anti-Corruption_Strategy_GEO.pdf (in Georgian)

provide input. The Council was tasked with monitoring the implementation of the Action Plan through the secretariat which is responsible for collecting the information about the relevant activities from different public institutions and producing annual implementation reports.

There are a number of problems with the Action Plan:³²

- Some of the activities are defined too broadly.
- Time frames are too broad and there is no year-by-year list of activities.
- Quantitative indicators do not contain specific target numbers.
- The link between some of the goals in the Action Plan and the fight against corruption is questionable (privatization, deregulation, “liberalization”, etc.).
- Some of the goals appear to be contradictory (i.e. minimal regulation and maximum transparency).

The Secretariat has produced two implementation reports to date, for 2010 and 2011 respectively. As noted above, the failure to produce the implementation report for 2012 was, most likely, linked to the October parliamentary elections and the subsequent transfer of power (but still highlights the organizational weakness of the Council and the Secretariat).

A review of the most recent available implementation report (2011)³³ reveals a number of problems in terms of reporting and measuring progress in implementing the Strategy and the Action Plan. Namely:

32 Georgian National Anti-Corruption Strategy Implementation Action Plan, 14 September 2010, accessed 17 July 2013, http://www.justice.gov.ge/files/Documents/analitikuri/Anti-Corruption_Action_Plan_GEO.pdf (in Georgian)

33 Report on Implementation of Georgian National Anti-Corruption Strategy Action Plan in 2011, accessed 17 July 2013, http://www.justice.gov.ge/files/Documents/analitikuri/AC_AP_2011_Report.pdf (in Georgian)

- The report should be the Council's own analysis of the situation in terms of Action Plan implementation. Instead, it appears that the Secretariat has simply compiled the information provided by different agencies regarding their own activities in a single document. If the Secretariat did not have sufficient resources for such independent analysis, it clearly requires additional capacity.
- The entire report looks like a list of accomplishments with little or no analysis of the challenges and problems encountered in the process of implementation.
- Certain activities from the Action Plan are simply omitted in the (2011) implementation report. However, if some of the activities outlined in the Action Plan were not implemented during the reporting period, the implementation report should still provide appropriate notes/explanations. (e.g. 1.1.1, 1.1.3-1.1.6, 1.2.6, 1.3.6-1.4.1, 1.4.3, 2.1.1, 2.2.1, 3.5.1, 3.5.3, 4.1.1-4.1.2, 5.3.5, 6.1.1, 6.1.3, 6.2.2-6.2.3, 6.3.1-6.3.2, 6.8.1-6.8.2, 6.8.5, 7.1.3, 7.4.2, 8.1.5-8.1.3, 8.2.5)
- The sections devoted to the implementation of certain activities from the Action Plan only provide information from some agencies, while there is nothing about the activities of other agencies that were also listed as responsible for the implementation of those activities in the Action Plan (e.g. 1.2.2, 1.2.3, 1.3.1).
- Some sections of the report lack the quantitative information that the corresponding indicators require (e.g. the number of training sessions held or the number of employees trained).
- Some sections on implementation are too short/general/ambiguous and provide too little information to determine whether or not any real progress was made toward the corresponding goals.

These shortcomings in the implementation, monitoring and evaluation process raise further questions regarding the usefulness of the current setup and sufficiency of the Council's and the Secretariat's current resources.

On the positive side, in early 2013, the Ministry of Justice started an inclusive process of drafting a new action plan for 2014-2016 and a number of civil society organizations have been invited to participate in the process. A first draft of the new Action Plan was produced during a three-day workshop held in March and the participating civil society organizations were given further time to provide their comments. The Council subsequently adopted a list of 11 priority areas³⁴ of the new action plan and decided to establish working groups to draft action plans in each of these areas. Stakeholders, including civil society organizations, were invited to register for participation in the working groups, although the working groups have not assembled as of September 2013.

While it is too early to draw any definitive conclusions before the Action Plan is adopted later this year, these initial steps could indicate a turnaround in the government's approach to civil society involvement.

34 The priority areas include (1) interagency cooperation for prevention of corruption, (2) prevention of corruption in public service, (3) access to information and citizen participation, (4) education and awareness raising, (5) investigation and prosecution, and prevention of corruption in law enforcement agencies, (6) prevention of corruption in the justice system, (7) transparency and prevention of corruption in public finance and procurement, (8) prevention of corruption in the customs and tax systems, (9) prevention of corruption in the private sector, (10) prevention of corruption in the health care and social protection sector, (11) prevention of political corruption.

CONCLUSIONS

The assessment in preceding sections shows that, while Georgia has made considerable progress in combating corruption and has introduced a number of important safeguards, significant challenges remain and the existing legal provisions are not always applied effectively in practice, either because of loopholes in the law or because of the lack of proper implementation and monitoring mechanisms.

A strong and independent public sector that operates according to the principles of transparency and accountability is an essential element of any successful anti-corruption policy. The persistent practice of arbitrary dismissals from public service is a major obstacle preventing Georgia from consolidating the progress it has made toward the establishment of a professional bureaucracy and undermining long-term sustainability of positive reforms.

Meanwhile, although Georgia has successfully dealt with some forms of corruption and has virtually eliminated petty bribery from its public administration, significant corruption risks remain at the higher tiers of power. These stem mainly from the lack of transparency and accountability at the top of the government. The weakness of parliament and the judiciary has undermined the accountability of the executive branch, creating opportunities for abuse of power, and the problem has been exacerbated by the shortcomings of other important institutions, including the media. Establishing a functional system of checks and balances and closing the loopholes in the law (which allow powerful agencies and officials to bypass the existing transparency and accountability mechanisms) should therefore be the key elements of the future reform agenda.

As Georgia aims to take the next steps in its struggle against corruption and attempts to deal with more complex forms of this problem, the country needs a strong anti-corruption body (which can coordinate the multiplicity of measures that will have to be implemented in different areas), as well as a robust strategy that will provide a conceptual framework for the reforms and will include appropriate benchmarks for measuring progress. There are serious problems both in terms of the anti-corruption agency's capacity and the anti-corruption strategy's content, although some positive initial steps toward addressing these have been taken in recent months.

RECOMMENDATIONS

Good Governance and Public Administration Reform:

- Implement practical measures to protect public sector employees from arbitrary dismissal
- Ensure that recruitment in the public administration is conducted in a competitive and transparent manner
- Eliminate the gaps in the procurement law that make it possible for public agencies to conduct a considerable share of their spending without open tenders and reduce the volume of public procurement carried out through non-competitive procedures
- Extend the requirement of asset disclosure to all relevant public officials and introduce a system for the verification of the content of asset declarations
- Establish clear rules for the allocation of bonuses in public administration
- Ensure uniform application of the freedom of information law throughout the public service
- Improve the levels of transparency and accountability at the higher levels of public administration in order to reduce corruption risks there

Anti-Corruption Institutions and Policies:

- Continue the inclusive process of drafting the Anti-Corruption Action Plan for 2014-2016 and only adopt the finalized document after reviewing the comments by civil society organizations

- Ensure that the new Anti-Corruption Action Plan contains appropriate benchmarks and measurable indicators of success, while the implementation reports should be produced at a regular basis
- Increase the capacity of the Anti-Corruption Council by providing the Secretariat with additional human and financial resources
- Consider the possibility of major changes in the current structure of the Anti-Corruption Council and the establishment of a fully independent anti-corruption agency which would have some investigative powers, would operate outside the executive branch, and would report to parliament or the president.

**PRIORITY AREA: DEMOCRACY, GOOD GOVERNANCE
AND STABILITY/ ELECTORAL STANDARDS
AND FREEDOM OF THE MEDIA**

INTRODUCTION

In October 2012, parliamentary elections were held in Georgia. In the following months, the presidential and local elections are also supposed to be held. Therefore, electoral standards are very important issues for the country in order to assure international society that Georgian democracy has been consistently developing. The 2012 parliamentary elections in Georgia attracted a huge interest of international society due to the big importance it might have had for the further development of the country. The 2013 presidential elections will be another test for Georgia's democracy.

The report assesses the 2012 parliamentary and 2013 presidential elections. The focus is also made on pre-election periods. Based on the findings, the study presents specific recommendations needed for further improvement of electoral standards in Georgia.

It should be noted that the 2012 parliamentary elections resulted in the transition of power in the country and a new government started working on the improvement of electoral standards and solving existing problems identified during the previous years. The expectations of Georgian and international societies were quite high, which made the new government's work even more difficult than could have initially been foreseen.

The structure of the final report is as following: first, it shortly discusses the research objectives and methodology for achieving them; then it identifies the most important results and developments observed in the reporting period and, finally, it presents the recommendations for the further improvement of electoral standards in the country.

METHODOLOGY

The interim report focuses on identifying main developments and results of electoral processes in the country. It aims to single out the most important results by reviewing the electoral developments according to the issues listed in multilateral and unilateral dimensions of the Eastern Partnership Road Map 2012-2013. The primary findings and description of the situation are based on the assessments of such international and local observation organizations as Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE-ODIHR), Transparency International Georgia (TI Georgia), Georgian Young Lawyers Association (GYLA), and International Society for Fair Elections and Democracy (ISFED). For certain conclusions the reports of the Georgian Central Election Commission (CEC) are also used. The conclusions of these organizations are compared with each other and verified against the facts and relevant laws.

RESULTS

1. Preparing electoral administrations to better fulfill their tasks

According to Georgian electoral code, the elections are administered by a three-level election administration comprised of the Central Election Commission (CEC),³⁵ 73 District Election Commissions (DECs), and 3,648 Precinct

³⁵ Supreme Election Commission (SEC) in Autonomous Republic of Adjara

Election Commissions (PECs).³⁶ At present, election commissions at all levels have 13 members each, seven of whom are nominated by the political parties that qualify for state funding. Five CEC members are appointed by parliament from nominees proposed by the president, with additional procedures elaborated to select the CEC chairperson.³⁷

2012 Parliamentary elections

In the pre-election period (2012 parliamentary elections), the CEC, with some exceptions, fulfilled its responsibilities much better compared to the previous elections. The capacity of the CEC has much improved and there have been few problems observed related to the professionalism of the electoral administration. There still was a case when the CEC violated the electoral code of Georgia when 7 days prior to the parliamentary elections, it adopted the resolution by which it has substantially limited the right of those people authorized to be present in the polling station to carry out photography and video recording. It must be noted that the CEC was not authorized to issue such a resolution.³⁸

The Election Day (2012 parliamentary elections) passed without serious shortcomings and the parliamentary elections have been assessed mostly positively by the leading international and local observation missions.

According to the CEC, a total of 384 complaints were filed to election commissions across the country alleging polling day violations, challenging the PEC results, protocols, or both. The OSCE/ODIHR noted that the majority of complaints, 278, were submitted by citizen observers or Georgian Dream (GD) representatives. Representatives of other election contestants, includ-

36 "Georgia, Parliamentary Elections, October 1, 2012 – Final Report," OSCE/ODIHR Election Observation Mission, published December 21, 2012, Available at: <http://www.osce.org/odihr/elections/98399>

37 Ibid

38 "Pre-Election Period Monitoring Results," Transparency International Georgia, published September 28, 2012, Available at: <http://transparency.ge/en/post/report/new-report-pre-election-period-monitoring-results>

ing the United National Movement (UNM), filed only a few complaints. In addition, election commissions referred 14 cases of violations for prosecution. Out of the 106 complaints that challenged the outcome of the vote, nine requested a recount of the ballots and 97 the invalidation of results of a particular PEC; only six DEC's invalidated PEC results by their decision upon complaints.³⁹

The political independence of the election administration has been a top-priority issue for many years in Georgia. Compared to the previous elections, the CEC's activities were less obviously affiliated to the ruling party. However, certain problems were still observed in 2012: in August, the CEC refused to grant the desired electoral number 7 to the Georgian Dream - the main opposition electoral entity – by which it seriously damaged the political coalition's election campaign.⁴⁰

According to the OSCE/ODIHR, the six administratively appointed members of the CEC tended to vote as a bloc and were commonly joined by the UNM party appointees, giving them a de facto majority on election commissions at all levels.⁴¹

The Financial Monitoring Service for Political Finances of the State Audit Office (SAO), formerly the Chamber of Control, was mandated to exercise oversight of campaign finance. During the pre-election period (2012 parliamentary elections), the SAO had been alleged many times with incompetence and lack of necessary capacity needed for the fulfillment of its responsibilities. It turned out that the SAO did not have enough human resources in order to monitor party finance processes and properly investigate all suspicious cases. The lack of resources and competence has been reflected in very weak justification of unprecedented fines that have been levied mostly on opposition parties and their supporters.

39 Ibid

40 "Pre-Election Period Monitoring Results," Transparency International Georgia, published September 28, 2012, Available at: <http://transparency.ge/en/post/report/new-report-pre-election-period-monitoring-results>

41 Ibid

As for the political independence of the SAO, according to the law, the SAO is independent, but the perception of its independence and impartiality was severely undermined by the political affiliations of its management. Furthermore, the SAO was an institution which fined dozens of individuals, businesses and political parties for alleged violations of political finance regulations. However, it should be noted that the vast majority of fines have been levied on opposition supporters, seriously questioning the impartiality of the institution. The SAO was the primary subject for negative criticism from the side of the OSCE/ODIHR and other international and local election observation organizations.

2013 Presidential elections

Similar to the year of 2012, in 2013 there were not many problematic issues in the work of the CEC that might have had a serious negative influence on the electoral environment. However, some issues could be handled better.

On April 27, 2013, the CEC conducted by-elections in three electoral districts of Georgia. The necessity of by-elections stemmed from the fact that three Members of Parliament (MPs) from Georgian Dream were appointed as ministers in the executive branch. The opinions of local and international observers on the by-elections were quite similar. According to them, the by-elections passed in a calm environment without any serious violations.

Prior to the by-elections, there were some problems observed regarding the selection of PEC secretaries. It turned out that the representatives of one political camp were appointed on all key positions of the PECs. This happened due to the CEC's decision to interpret existing regulations very strictly by neglecting its essence and spirit which aimed at avoiding one political team getting all of the important positions in the PECs.⁴²

42 Joint Statement of three leading NGOs in Georgia, published April 13, 2013 Available at: <http://transparency.ge/en/post/general-announcement/ngos-about-appointment-pec-secretaries-2013-elections>

Similar to the year of 2012, certain questions about political independence of the CEC have been also raised in 2013 when almost two months prior to the presidential elections the chairman of the CEC resigned and opted to participate in the elections as a candidate for presidency. This step should be considered as not very responsible, since leaving a position which has been a problematic issue for many years in Georgia might decrease the trust in the work of this institution. In general, during many years, negative practices have been established in Georgia when high officials of such formally politically independent and impartial state institutions as the CEC or the SAO have been coming from politics or have been going into politics right after their resignation. This negative trend harms the impartiality of these institutions being so crucial for their work. The exception from this negative practice might be an appointment of Tamar Zhvania on the position of the chairperson of the CEC on September 11, 2013. Zhvania was nominated by 14 local NGOs working on electoral issues. By taking into consideration the professionalism and non-political personal background the appointment of Zhvania on this position should be considered a step forward towards the improvement of electoral processes in the country.

2. Preparing NGOs to better fulfill their role as observers

2012 Parliamentary elections

Non-Governmental Organizations (NGOs) have played an important role in monitoring of the work of relevant state institutions. The active involvement of NGOs in electoral processes had a positive effect on the accountability of state institutions and informing society. NGOs' election observing activities have been financed and supported by such international donors as IFES, US-AID, SIDA and UNDP.

NGOs have also been funded within the Framework of Grant Competition to provide the electoral process for the voters of ethnic minorities.⁴³ However, it should be noted that three most trustful local elections observing NGOs

43 "Report on the Elections of the Parliament of Georgia 2012", Central Election Commission of Georgia, available at: http://cesko.ge/files/2012/REPORT_2012_-NEW.pdf

(TI Georgia, ISFED and GYLA) did not participate in the grant competition announced by the CEC.

The reports of the leading election monitoring NGOs have been highly valued and noted by local and international organizations working on electoral issues. The reports and opinions of TI Georgia, ISFED and GYLA have been referred by such authoritative institutions as the OSCE/ODIHR.

2013 Presidential elections

In 2013, nothing different happened regarding the NGOs capacity-building needed for observing the electoral processes. The CEC announced several grant competitions for NGOs in which leading NGOs, similar to the year of 2012, did not participate. The CEC also provided all interested NGOs with various kinds of handbooks and other printed and electronic materials needed for observers. International donors like OSGF, IFES, SIDA, USAID and UNDP continued financial and technical support of leading election observing NGOs.

3. Bringing electoral legislation and implementation in line with European electoral standards (principally, the Code of Good Practice in Electoral Matters)

2012 Parliamentary elections

Electoral legislation and its execution has been one of the main problems in Georgia's electoral process for a long time. The reporting period was not an exception from this trend. Substantial legislative changes to the electoral laws were made in 2011 and partially in 2012. However, certain problems still remain.

In 2012, there were numerous occasions after the appointment of the polling day when political party nominees participated in state events, carrying out

active election campaigning. Such activities are perceived as party events for the voters, and this, therefore, represents the use of state resources for an electoral purpose. Although election campaigning is not prohibited at budgetary events, by its essence it is still one of the types of the use of administrative resources for electoral purposes, as a political party and the authorities are mixed, which is unacceptable in line with the 1990 Copenhagen Conference Document of the OSCE. The election legislation of Georgia provides a possibility to use such resources without committing any violations.

Other electoral legislative topics needing attention and improvement include: the electoral system; party financing; voters' lists; political advertisements and media coverage of election campaigns.

As for the execution of electoral law, the state authorities had a hand in the majority of the cases of biased and improper use of legal resources. The SAO was notorious in this respect. In addition, the Central Election Commission made several disputed decisions. In certain cases the Inter-Agency Taskforce, functioning under the National Security Council, also failed to act with impartiality.

The SAO has also misinterpreted legal provisions on vote buying activities several times and sanctioned legal and natural persons illegally. Moreover, there were some cases when this state body neglected obvious facts of vote buying.

Since August 1, 2012, the CEC became the chief executive body of the election legislation, which was often charged with the function of interpreting the laws. Several biased actions by the CEC were reported during the pre-election period. For example, on August 20, 2012 the CEC refused to grant to the main opposition electoral entity, Bidzina Ivanishvili – Georgian Dream,⁴⁴ their desired number, 7, by which it had significantly damaged this coalition since it had to reprint its electoral materials and conduct an explan-

44 Political unions within the bloc were: Georgian Dream – Democratic Georgia, Republican Party of Georgia, Free Democrats, National Forum, Conservative Party and Industry Will Save Georgia.

atory campaign to electorate.⁴⁵ On September 24, 2012, the CEC adopted the Resolution on the Determination of Several Election Procedures, by which it has substantially limited the right of those people authorized to be present in the polling station to carry out photography and video recording. This action has also been considered illegal by leading NGOs.⁴⁶

2013 Presidential elections

In March 2013, a bipartisan group was created at the Parliament of Georgia. The group aims at reforming electoral legislation and involves all relevant stakeholders, including non-parliamentary political parties and NGOs.

Initially the bipartisan group listed the following 9 issues that should have been reformed: 1. General electoral principles 2. Voters' lists 3. Vote buying and political party finances 4. Abuse of administrative resources 5. Pre-election campaign and media (Pre-election ads) 6. Election day procedures 7. Electoral disputes 8. Electoral administration 9. Electoral system.⁴⁷

According to the schedule, the first 6 issues should have been discussed and respective legislation proposals should have been initiated in the parliament by May 31. As for the remaining issues, they were supposed to be discussed after the 2013 presidential elections. However, as of September 2013, only the first, the second and the third issues were partially discussed and reformed. This fact unveils serious problems in the effectiveness of the bipartisan group's work.

Political party financing was the only issue which has been quite decently reformed. In this regard, almost all recommendations of leading NGOs have

45 "Pre-Election Period Monitoring Results," Transparency International Georgia, published September 28, 2012, Available at: <http://transparency.ge/en/post/report/new-report-pre-election-period-monitoring-results>

46 Ibid

47 The web-page of parliamentary Inter-faction group. Available at: http://parliament.ge/index.php?option=com_content&view=article&id=3081&Itemid=504&lang=ge

been taken into consideration. More precisely, corporate donations were legalized, sanctions for violations became less severe, legal proceedings of the SAO improved, regulations on third party donations became more clarified, etc.

Fewer changes have been made regarding the restriction of the use of administrative resources for electoral purposes. Initially the bipartisan group agreed to reform this issue quite seriously, however, ultimately, the ruling political coalition refused to initiate many important amendments. As a result, the issues of fair campaigning by certain public servants and the use of the state's financial administrative resources for electoral purposes have not been reformed appropriately.

Another question the bipartisan group worked on is the improvement of voters' lists. It was decided that for 2014, the local elections biometric voters' lists would be practiced. However, the old system will be used by the CEC for the 2013 presidential elections.

The remaining electoral issues have not been reformed yet. It is clear that much more could be done during this period.

As for the execution of the electoral legislation, in 2013, compared to the year of 2012, much less problems were observed in this regard. First of all, this year the SAO acted much more carefully. In 2012, this institution was actually used for suppressing political opposition, which has been reflected in large, unprecedented fines for opposition political parties and their supporters. We can say that in 2013, the SAO was even reluctant to monitor political finances. During the year, the SAO only fined three political parties for 2000 GEL for minor violations of the law. According to the SAO, other serious violations have not been observed.⁴⁸

Another difference between the last two years was the fact that in 2013, the wide-spread trend of the intimidation of general citizens on political grounds has not been observed. However, there were certain cases that could raise

48 Results of 2 month pre-election campaign monitoring, State Audit Office, published September 9, 2013, Available at: <http://sao.ge/files/PDF%20PresRelizes/09-09-2013.pdf>

the same problems. Special attention should be paid to the processes taken place in the local state institutions which started right after the parliamentary elections. For example, according to ISFED, in 69 municipalities 50 heads of local executive branches and 25 chairpersons of local legislative branches have been changed during the period from October 2012 to April 2013. In many case there were doubts that these persons were politically intimidated.⁴⁹ Such doubts become more realistic if we take into consideration frequent political manifestations against the incumbent officials in the regions sometimes hampering the work of local state institutions.

Such developments did not stop in April and are still an ongoing process which intensified in August-September again. In order to avoid such negative processes, the IATF issued the recommendation calling on local authorities to refrain from serious personnel changes during the pre-election period.⁵⁰ In general, it should be noted that IATF, which works now under the Ministry of Justice, is very active in issuing relevant and prompt recommendations for the improvement of the electoral environment.

In 2013, illegal participation of public servants in presidential election campaigning is rarely observed. However, there still were certain facts in this regard, for example, during the campaigning meetings in Zugdidi on September 11.⁵¹

As for the execution of the law from the side of the CEC, one controversial decision has been made by this institution. The issue was related to the refusal to register Salome Zurabishvili's, potentially a strong candidate, for presidential elections. The reason for refusal was the fact that Salome Zurabishvili holds double citizenship. Georgian legislation in this regard is quite controversial and does not provide enough clarification whether such person can participate in presidential elections or not. However, if CEC had made a deci-

49 Third Report of post-election monitoring, local self-governments, ISFED, published April 22, 2013, Available at: <http://www.isfed.ge/main/155/eng/>

50 Recommendations, IATF, published September 2, 2013, Available at: <http://www.justice.gov.ge/Page/index?code=b59e4e5a-6fd9-41f5-9756-9ff14e84cc9a>

51 "Participation of local public servants in Zugdidi Pre-election campaign meetings", Transparency International Georgia, published September 13, 2013, Available at: <http://transparency.ge/blog/sajaro-mokheleebi-tsinasaarchevno-aktsiasa-da-kontraktsiaze-zugdidsi>

sion in favor of Zurabishvili there would not have been any problem, according to three leading local NGOs.⁵²

4. Ensuring that media freedom is better respected and that the right of all candidates to have access to the media is observed

2012 Parliamentary elections

The pre-election period (2012 parliamentary elections) was characterized with extreme polarization and confrontation between political rivals fueled by visible partiality of the media and unequal access to media resources. Providing the electorate with diversified information has been one of the biggest problems, which was mostly solved two months before the elections.

In an attempt to address mounting criticism by the opposition and the NGO community of insufficient media access and following consultations with media advocacy groups, Must Carry and Must Offer provisions were introduced in the Election Code in June. These provisions obliged cable networks and satellite content providers to include all national media outlets with a satellite broadcasting license and those that reached over 20 per cent of the population in their distribution list. Media outlets could not object to their inclusion. While in general, these provisions helped TV stations to increase their penetration into cable networks, they mainly benefited the urban population. The provisions were welcomed by the majority of cable operators, TV stations and NGOs. By law, these provisions were only applicable to the pre-election campaign. In a welcome response to calls by civil society groups and some political parties, the majority of cable providers continued broadcasting the TV stations affected by these provisions on Election Day and beyond.⁵³

52 "Salome Zurabishvili should have been allowed to run in presidential elections"; Transparency International Georgia, published, September 3, 2013, Available at: <http://transparency.ge/en/blog/salome-zourabichvili-should-have-been-allowed-run-presidential-elections>

53 "Georgia, Parliamentary Elections, October 1, 2012 – Final Report," OSCE/ODIHR Election Observation Mission, published December 21, 2012, Available at: <http://www.osce.org/odihr/elections/98399>

Throughout the election campaign, public and private broadcasters aired numerous talk shows and debates, which provided candidates with a platform to present their opinions. However, contrary to their legal obligations, the majority of TV stations monitored by the OSCE/ODIHR and other observing organizations displayed partisan editorial policies in the news and talk shows. This, together with the limited coverage of major opposition media outlets, limited citizens' access to a variety of information.⁵⁴

2013 Presidential elections

As opposed to the year of 2012, in 2013 the media environment was a little bit less polarized. However, the impartiality of the media is still a major problem in the country.

In 2013, serious problems developed in the Georgian Public Broadcaster (GPB), the director general of which resigned after 2012 parliamentary elections. The substitute director general was fired twice by the GPB's Board of Trustees during a couple of months. On the first occasion, the court considered the Board's decision illegal and restored him to his position, but temporarily, as it turned out later. Apparently, the fight between the pro-government and pro-opposition groups is still continuing in the GPB.

In August, 2013, a noteworthy fact was that TV 9, the TV channel owned by the family of Bidzina Ivanishvili, Georgia's Prime Minister, was closed. This decision could be considered a positive step towards a healthier electoral environment.

The principles of Must Carry and Must Offer have not been legally prolonged. However, none of the TV or cable networks had problems in this regard. Although this issue is not that relevant at this stage, legal regulations of these principles are still desirable.

⁵⁴ Ibid

Minor problems in the election campaign occurred when the GPB, not very fairly, refused to air UNM's political ads containing anti-Georgia Dream content. In this case the GPB expressed its partiality and used an ambiguity of legal regulations for justification of its refusal.⁵⁵ Later, the UNM made certain clarifications in its ads and the GPB did not have any legal ground to refuse again. As a result, currently the UNM's political ads are aired on the GPB.

55 "Should public broadcaster have aired the counter ad of Georgian Dream?", Transparency International Georgia, published, September 11, 2013, Available at: <http://transparency.ge/en/post/general-announcement/should-public-broadcaster-have-aired-counter-ad-georgian-dream>

CONCLUSIONS

In conclusion, the processes around the 2012 parliamentary elections have controversially developed. While the pre-election period has been characterized by high polarization and improper actions of certain state institutions, the Election Day has been passed peacefully without serious systemic violations.

In the pre-election period (2012 parliamentary elections), the CEC, with some exceptions, fulfilled its responsibilities much better compared to the previous elections. The capacity of the CEC has been much improved and that many problems related to the professionalism of electoral administration have not been observed. The Election Day (2012 parliamentary elections) mostly passed without serious shortcomings and the parliamentary elections have been assessed mostly positively by the leading international and local observation missions. Compared to the previous elections, the CEC's activities were less obviously affiliated to the ruling party. However, certain problems were still observed in 2012.

During the pre-election period (2012 parliamentary elections), the SAO was accused many times of incompetence and lack of the necessary capacity needed for fulfillment of its responsibilities. It turned out that the SAO did not have enough human resources in order to monitor party finance processes and properly investigate all suspicious cases. Lack of resources and competence has been reflected as a very weak justification of unprecedented fines that have been levied mostly on opposition parties and their supporters. As for the political independence of the SAO, according to the law, the SAO is independent, but the perception of its independence and impartiality was severely undermined by the political affiliations of its management.

In 2012, there were numerous occasions after the appointment of the polling day when the political parties' nominees participated in state events, carrying out active election campaigning. Such activities are perceived as party events for the voters, and this, therefore, represents the use of state resources for an electoral purpose. Other electoral legislative topics needing the attention and improvement includes: the electoral system; party financing; voters' lists; political advertisements and media coverage of election campaigns.

As for the execution of electoral law, the state authorities had a hand in the majority of the cases of biased and improper use of legal resources. The SAO was notorious in this respect.

The pre-election period (2012 parliamentary elections) have also been characterized with extreme polarization and confrontation between political rivals fueled by visible impartiality of media and unequal access to media resources. The majority of TV stations monitored by the OSCE/ODIHR and other observing organizations displayed partisan editorial policies in the news and talk shows. This, together with the limited coverage of major opposition media outlets, limited citizens' access to a variety of information.

As for the developments around the 2013 Presidential Elections, compared to 2012, the pre-election period was much calmer and less problematic. Similar to the year of 2012, in 2013 there were not many problematic issues in the work of the CEC that might have serious negative influence on the electoral environment. However, some issues could be handled better.

In March, 2013 a bipartisan group was created at the Parliament of Georgia. The group aims at reforming electoral legislation and involves all relevant stakeholders including non-parliamentary political parties and NGOs.

Initially the bipartisan group listed the following 9 issues that should have been reformed: 1. General electoral principles 2. Voters' lists 3. Vote buying and political party finances 4. Abuse of administrative resources 5. Pre-election campaign and media (Pre-election ads) 6. Election day procedures 7. Electoral disputes 8. Electoral administration 9. Electoral system.

According to the schedule, the first 6 issues should have been discussed and respective legislation proposals should have been initiated in the parliament by May 31. As for the remaining issues, they were supposed to be discussed after the 2013 presidential elections. However, as of September 2013, only the first, the second and the third issues were partially discussed and reformed. This fact unveils serious problems in the effectiveness of the bipartisan group's work.

As for the execution of electoral legislation, in 2013, compared to the year of 2012, many less problems were observed in this regard. First of all, this year the SAO acted much more carefully. In 2012 this institution was actually used for suppressing the political opposition which has been reflected in large, unprecedented fines for opposition political parties and their supporters. We can say that in 2013, the SAO was even reluctant to monitor political finances.

Another difference between the last two years was the fact that in 2013, the widespread trend of intimidation of general citizens on political grounds has not been observed. However, there were certain cases that could raise the same issues. In 2013, the illegal participation of public servants in presidential election campaigning is more rarely observed. However, there still were certain instances in this regard.

As opposed to the year of 2012, in 2013 the media environment was a little bit less polarized. However, the impartiality of media is still a big problem in the country.

RECOMMENDATIONS

Some recommendations presented in the interim report have been taken into consideration in 2013. However, most of them are still relevant and should be considered in order to get a better electoral environment for the 2014 local elections. The recommendations are formulated based on the opinions and suggestions of leading international and local election observation organizations.

1. Preparing electoral administrations to better fulfill their tasks

- In order to increase the political independence of the election administration, members of the CEC and DEC should not be nominated by political parties any more. The CEC and DEC might be comprised of only 7 members (instead of current 13) that could be selected by the Parliament of Georgia. Fewer members would have more personal responsibilities and weight in the commission which will increase the institutions independence;⁵⁶
- There is a need to further train PEC members, emphasizing consistency in applying procedures with particular emphasis on the completion of results protocols;⁵⁷
- DEC's should be provided with more detailed written instructions and comprehensive training on the procedures for the intake and tabulation of PEC protocols.⁵⁸

56 Recommendations of TI Georgia, GYLA and ISFED

57 "Georgia, Parliamentary Elections, October 1, 2012 – Final Report," OSCE/ODIHR Election Observation Mission, published December 21, 2012, Available at: <http://www.osce.org/odihr/elections/98399>

58 Ibid

2. Bringing electoral legislation and implementation in line with European electoral standards (principally, the Code of Good Practice in Electoral Matters)

- The possibility of using administrative resources for electoral purposes should be further limited by introducing clearer regulations concerning this issue. Consideration should be given to reducing the number of political appointees that have a right to campaign for political parties without any restrictions;⁵⁹
- Effective and impartial supervision of political parties' activities should be ensured by the further separation of the SAO from political influences;⁶⁰
- To further enhance the transparency of campaign financing, it is recommended that the SAO be obliged to publish campaign finance reports submitted by election contestants, as well as the results and conclusions of the verification that it conducts in a timely manner;⁶¹
- The disparity of the population size in the single mandate constituencies for parliamentary elections should be reduced;⁶²

3. Ensuring that media freedom is better respected and that the right of all candidates to have access to the media is observed

- More balanced media coverage of election campaigns should be ensured by introducing fairer and more effective regulations. Considerations could be given to limiting the rates for paid political

59 Recommendations of TI Georgia, GYLA and ISFED

60 Ibid

61 "Georgia, Parliamentary Elections, October 1, 2012 – Final Report," OSCE/ODIHR Election Observation Mission, published December 21, 2012, Available at: <http://www.osce.org/odihr/elections/98399>

62 Ibid

advertising and align them with the rates for regular commercial advertising;⁶³

- In order to ensure the population's access to a wide range of political views, Must Carry and Must Offer provisions in the Law on Broadcasting should be prolonged without limiting to the election campaign period only;⁶⁴
- Social advertisements should be more clearly prescribed by the law and monitoring of this issue could be assigned to the Georgian National Communication Commission (GNCC).

⁶³ Ibid

⁶⁴ Ibid

PRIORITY AREA: REGIONAL AND LOCAL AUTHORITIES

INTRODUCTION

The primary aim of the Interim Report is to identify the results achieved in the field of regional and local governance during the reporting period in Georgia. In this regard, the general intent is to examine the level of decentralization, as well as the effectiveness of local and regional governance. Special emphasis was placed on performance and the compatibility of Georgian legislation with the European Charter of Local Self-Government, general standards of decentralization and the European Outline Convention on Transfrontier Cooperation.

After the parliamentary elections of October 2012, the new government declared ambitious plans to reform local and regional governance. Consequently, there is reason to be optimistic that significant reforms will be implemented in the following years to achieve a higher degree of decentralization and effectiveness of local and regional authorities. Such progress is expected to positively influence the outlooks of cross-border cooperation of Georgian administrative-territorial entities.

METHODOLOGY

The report analyzes the results of the reporting period in the field of regional and local governance in Georgia. The report is based on qualitative and comparative research methods. The following documents have been reviewed to develop the report:

- Laws and other legal acts regulating regional and local governance;
- Budgets of the administrative territorial-entities;
- State Strategy of Regional Development for 2010-2017;
- Regional Development Plans of seven Georgian regions;
- Reports and analytical materials prepared with the support of international organizations.

Furthermore, interviews with representatives of relevant governmental agencies and development partners were held to identify the current status and challenges of the regional and local governance reform.

RESULTS

The present report aims to provide a precise examination of the progress made during the reporting period in the field of regional and local governance (including cross-border cooperation) in Georgia and to propose relevant recommendations. The study revealed that limited progress was made in 2012-2013, mainly due to the government's reluctance to promote decentralization and strengthen regional and local governance before parliamentary elections in October 2012. However, the new government announced ambitious plans to reform local self-government and regional governance in the upcoming years. The stated reform shall ensure real decentralization of governance and boost the administrative capacity of the regional and local authorities. Furthermore, the reform is expected to contribute to the promotion of cross-border cooperation between Georgian subnational authorities. The recommendations provided in the report are considered to serve as benchmarks for the planned reform.

MAIN FINDINGS

Georgia is a unitary state that consists of three administrative-territorial entities at the regional level. These are the two Autonomous Republics of Abkhazia and Adjara and the temporary administrative-territorial entity of South Ossetia. The Autonomous Republics, which were established during the Soviet period, are granted limited competencies and resources while the level of both their political and administrative autonomies are rather restricted. The temporary administrative-territorial entity was established in 2007 to utilize de-concentrated authorities on the territory of the former Autonomous District of South Ossetia.⁶⁵ Since the early 1990s, state trustees – governors – have represented the executive branch of the central government in 9 cultural-geographic regions of Georgia which do not enjoy the status of administrative-territorial entities. The legislation does not assign extensive regular functions nor provide stable financial resources to the governors. Instead, they are mainly responsible for managing regional development projects implemented and funded by the central government in their respective regions. Nevertheless, between 2006 and the parliamentary elections of October 1, 2012, the governors managed to exercise extensive power and control over the local self-government entities under their jurisdiction and they unlawfully interfered with the autonomy of local self-governments. Since the 1990s, regional administrative-territorial entities and governors' administrations have essentially failed to ensure effective planning and implementation of regional development policies in Georgia, due to a lack of relevant functions and resources.

Between 1991 and 1998, local governance in Georgia amounted to about 70 local administrations operating in the former Soviet rayons and cities whose heads were appointed by the President of Georgia. This centralized system of local governance was replaced by a mixed system in 1998 where about 1,000 local self-government entities were established on the levels of towns, villages and small communities. Meanwhile, local governance at the rayon and city level was carried out by centrally appointed local officials and their

⁶⁵ The territories of the Autonomous Republic of Abkhazia and the Temporary Administrative-Territorial Entity on the Territory of Former South Ossetia are entirely occupied by the Russian Federation since August 2008.

administrations. Due to the scarcity of financial and human resources, the local self-governments could not function adequately, therefore *de facto* rayons and cities provided the only effective level of local governance up until 2006. In 2004, the Parliament of Georgia ratified the European Charter of Local Self-Government.⁶⁶ By joining the Charter, the Georgian government confirmed its commitment vis-à-vis the Council of Europe to introduce decentralized governance and to strengthen local self-governments in Georgia. From 2004 to 2007, the Parliament of Georgia adopted crucial laws to reform the local governance system and to create the legislative framework for decentralization. Based on the Organic Law on Local Self-Government, adopted in 2005, around 1,000 local self-governments, as well as the local administrations in rayons and cities were abolished. These were replaced by 69 local self-government entities (5 self-governing cities and 64 municipalities). The primary laws on local governance – Organic Law on Local Self-Government, Law on Budget of Local Self-Government Entity, Law on Property of Local Self-Government Entity and Law on State Supervision over Activities of Local Authorities – were drafted in accordance with the principles stipulated by the European Charter of Local Self-Government. Technically, the legislation ensured the establishment of fully decentralized governance in Georgia, however, because the competencies and resources of local self-governments were limited, the real level of decentralization was still extremely low.⁶⁷

On October 15, 2010, a special chapter on local self-government was added to the Constitution of Georgia, which identifies several important principles that guarantee the autonomy of local self-governments. Moreover, the municipal councils were granted permission to petition the Constitutional Court of Georgia against normative acts that violate any of the norms stipulated by the new constitutional chapter.⁶⁸ However, constitutional reform has had a limited impact on the local self-government system, so far.

66 The Parliamentary Decree on the ratification of the European Charter of Local Self-Government, 26.10.2004, #515. Available at: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=42658&lang=ge.

67 See Annual Report on Local Democracy Development in Georgia (2009 - 2010) (Policy Analysis), Prepared within the framework of the Human Rights and Good Governance Program (HRGGP) of the "Open Society - Georgia" Foundation, Tbilisi 2011.

68 Ibidem.

Since 2006, two local elections (2006 and 2010) and two elections of the Supreme Council of the Autonomous Republic of Adjara (2008 and 2012) have been held in Georgia. The level of competitiveness of 2006, 2008 and 2010 elections was extremely low. The United National Movement (UNM) ruling party managed to win more than 2/3 of the seats in each council. This fact effectively hindered institutionalization of the newly established local self-government system and limited the administrative autonomy of the Autonomous Republic of Adjara. In 2012, the elections of the Supreme Council of Adjara were held in a more competitive environment, and the newly established political coalition, Georgian Dream, managed to win the absolute majority of the seats.

After the parliamentary elections of October 1, 2012, the new government announced ambitious plans to promote decentralization and strengthen the local and regional governance in Georgia. These plans are reflected in the official governmental program, which was endorsed by the Parliament of Georgia in November 2012. The Program emphasizes decentralization reform as one of the new government's key priorities. Among other things, the document explicitly refers to the political will of the government to significantly enhance the competencies and resources of local self-governments and take other specific measures to strengthen the local and regional governance in Georgia. Furthermore, in March 2013, the government approved the "Decree on the Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014," which stipulates which reform measures shall be introduced before the upcoming local elections of May-June 2014.

Considering the new context of regional and local governance in Georgia, the following benchmarks have been outlined to measure the progress achieved:

A. Boost the administrative capacity of regional and local authorities

- Functions between the central government and local self-governments are divided, based on the principle of subsidiarity;
- Local self-governments and regional authorities are provided with adequate resources (i.e. finances and property) to effectively perform their functions;
- A rational civil service system and systemic tool for the capacity development of regional and local authorities in place;
- Effective tools for the citizens' participation in local decision-making are established;
- Good governance principles at local and regional levels are implemented;
- Effective institutional and financial framework for regional development in place.

B. Promote Local Government Reform

- A comprehensive strategy for the local and regional governance reform that relies on a comprehensive situation analysis, as well as a relevant action plan in place;
- Effective high level and technical level inter-governmental coordination mechanisms involving a wide range of reform stakeholders (including the associations of local authorities and NGOs) in place;
- The legislation on local self-government harmonizes with the European Charter of Local Self-Government.

C. *Promote Cross-Border Cooperation*

- Cross-border cooperation put into practice.

ADMINISTRATIVE CAPACITY OF REGIONAL AND LOCAL AUTHORITIES

To establish effective local and regional governance, it is essential to increase the functions of local self-governments and regional administrations and to provide them with adequate resources (finances and property). In addition, effective regional and local governance needs a rational civil service model, essential tools for capacity development of the regional and local authorities, establishment of good governance principles at sub-national levels, as well as the strong participation of citizens in the local decision-making process. The present chapter focuses on these aspects of the regional and local authorities' administrative capacity. Special emphasis is also placed on the improvement of the institutional and financial framework of regional development.

1. Division of functions between central, regional and local authorities

Article 16 of the Organic Law on Local Self-Government lists the exclusive competencies of local self-governments. The main functions of the local authorities include: local budgeting; introduction of property tax and local fees; overseeing local investments; implementation of local employment programs; management of local property (including agricultural land and other natural resources of local importance); municipal development planning; spatial planning; issuing construction permits; beautification of settlements; construction and maintenance of roads of local importance; planning roads and traffic control; organization of municipal transport; organization sewage systems; collection of solid waste; cleaning and lighting of streets; mobilizing municipal resources for healthcare and social assistance; organization of pre-school education; organization of libraries, museums, theatres and galleries; promotion of sports and recreation; maintenance of cemeter-

ies; fire safety and rescue; regulation of the markets, outdoor trade, outdoor advertisement and vehicle parking.

Despite the fact that the Organic Law provides a long list of the competencies of local self-governments, the real scope of their functions remains rather limited. This is mainly due to the lack of relevant financial resources required for effective implementation of their particular competencies. Another important challenge is the non-compliance of some 30 sectoral legislative acts with the Organic Law on Local Self-Government, which does not permit local authorities to properly fulfill particular tasks assigned to their exclusive competencies (these sectoral laws mainly cover the issues of infrastructure development, agriculture, natural resources, culture, education, health, social protection, and law enforcement).⁶⁹ Furthermore, several functions of local importance (e.g. water supply, gas supply, general education, etc) have not yet been assigned to local authorities. Considering the overall reluctance of the Georgian government to promote decentralization before October's parliamentary elections, no significant progress has been made during the reporting period in terms of assigning additional functions to the local self-governments. Management of solid waste (excluding the garbage collection) was even removed from the list of the exclusive competencies of local self-governments in 2011.

The state administrative supervision over the local decision-making is regulated by the Law on State Supervision Over Activities of Local Authorities, which was adopted in accordance to the principles stipulated by the European Charter of Local Self-Government in 2007. During the reporting period, supervisory bodies and local authorities cooperated closely to execute administrative supervision.

The main competencies of the Autonomous Republic of Adjara include: promoting education, healthcare, culture and sports, management of the libraries and museums, tourism development, urban development, construction and maintenance of roads, and agriculture development.⁷⁰ The compe-

69 David Zardiashvili, *Competencies of Local Self-Governments: Shortcomings of Legislative Regulation and Solutions for Their Improvement*, Prepared in the framework of the UNDP project, Tbilisi 2009.

70 Article 7 of the Constitutional Law on Status of the Autonomous Republic of Adjara. Available at: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=30442&lang=ge.

tencies of the Autonomous Republic of Adjara provide it with the ability to implement effective regional development policies. During the reporting period, no changes were made to the list of functions of the Autonomous Republic.

As previously mentioned, the competencies of the state trustees – governors – are rather limited in Georgia. The governors are mainly responsible for managing regional development projects implemented and funded by the central government in their respective regions and for carrying out administrative supervision over the activities of local authorities. In 2010, the State Strategy of Regional Development of Georgia for 2010-2017 assigned governors with the additional function of preparing the regional development plans and the relevant action programs for their respective regions. To fulfill this task, regional development councils managed by the governors in all nine regions, was established in 2011. The councils consist of representatives from the governor's administration, relevant local self-government entities, civil society, academia and the business sector. The regional development plans drafted by the regional development councils, with support from international development partners, were officially endorsed and submitted to the Government of Georgia for its approval in July 2013. The action programs should be submitted to the regional development plans before the end of 2014. These developments will be considered a highly positive step towards strengthening regional development planning and the implementation capacities of regional administrations.

In March 2013, the Government of Georgia approved the Decree on the Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014,⁷¹ which among other things provides for increasing the competencies of local self-governments and regional authorities. However, the decree does not include any specific statements about the division of functions, therefore, the scope of future competencies of the local authorities is still unclear.

71 Decree of the Government of Georgia #223, March 1, 2013. Available at: <http://mrldi.gov.ge/images/stories/01gankarguleba.pdf>.

2. Finances and property of local self-governments and the regions

Since 2006, local self-governments have been granted limited financial resources. As of January 2013, the total amount of local budget revenues (including Tbilisi) made up only 14.4% (around GEL 1,140 million - EUR 520 mln) of the consolidated budget of Georgia, while the total amount excluding Tbilisi was 6.5% (around GEL 510 mln - EUR 235 mln). The local self-governments depend heavily on special transfers provided by the central government, mainly through the "Regional Development Projects' Implementation Fund," which is allocated annually in the State Budget. The special transfers served as the key funding source for local infrastructure development projects during the reporting period, which resulted in the limitation of local self-governments' autonomy. The major portion of state property of local importance (including agricultural land, forests and water resources) is still state owned. This obstructs local authorities to effectively plan and promote municipal development.

As of January 2013, the budget of the Autonomous Republic of Adjara was GEL 113,4 mln (around EUR 50 mln).⁷² Income tax collection is the key revenue source for the Autonomous Republic. Compared to other regions, Adjara is in a better position to plan and implement regional development policies. During the reporting period, no significant changes were made to the budgetary regulations concerning the Autonomous Republic.

Governors are not granted any of their own financial resources to implement regional development policies or projects.

During the reporting period, no significant progress was made in regard to providing local self-governments and regions with additional financial resources and property. The Governmental Decree on the Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014 provides for increasing the financial capacities of local and regional authorities, in addition to assigning them additional functions.

⁷² The figures rely on the calculation of all 69 local budgets approved for 2013.

However, the decree does not include any specific statement about the envisaged scope of the fiscal decentralization or de-concentration. The decree includes a more specific statement in terms of transferring property to the local authorities: it is anticipated that agricultural land, forests and water resources of local importance will be transferred to the ownership of local self-governments.

3. Civil service system and capacity development of the local and regional authorities

The Georgian local self-governments and regional authorities have limited institutional capacities and weak human resources. The existing civil service model is ineffective and does not promote the strengthening of their capacities. The high staff turnover negatively impacts the institutional efficiency of local self-governments. The legislation does not provide suitable statutes on career planning, advancement, promotion, accountability and evaluation. Human resource management tools are non-existent in Georgian local self-governments, in governors' administrations and in governmental bodies of the Autonomous Republic of Adjara. In addition, an effective training and development system that would ensure permanent capacity development for local and regional authorities is missing. The non-effectiveness of the local civil service system became particularly obvious after the parliamentary elections of October 2012, when the change of the central government resulted in a high staff turnover at the municipal level.

No significant progress was made during the reporting period in terms of improving the civil service model and ensuring the systemic capacity development of local and regional authorities. Recently, the Government of Georgia, with the support of USAID, has launched a special initiative to develop a comprehensive conceptual framework for civil service reform. The concept is expected to be finalized in 2014, along with the implementation of the relevant reforms. The reform is predicted to affect both the national and local civil service systems.

On June 18, 2012, the Government of Georgia approved Decree #1182 on the Training Mechanism for the Civil Servants of the Ministry of Regional Development and Infrastructure, Regional Governors' Administrations and Local Self-Governments. The decree includes an outline of the curricula in five priority areas. The training of regional and local civil servants was also organized in 2013, within the framework of commitments assumed vis-à-vis the European Union.

The Governmental Decree on the Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014 offers a general statement about the improvement of the local civil service system and the establishment of effective capacity development tools for local authorities. The Advisory Council to the Minister of Regional Development and Infrastructure has been assigned the task of developing a plan for a capacity development system to support the regional and local authorities. It is expected that the training concept to support local and regional authorities will be officially approved before December 2013.

4. Citizens' participation in the local decision-making process and implementation of other good governance principles at the local and regional levels

The current level of citizens' participation in the local decision-making process is extremely low. In the non-competitive electoral environment, the connection between the population and local authorities is very weak. The legislation has not established effective institutional tools to promote citizen participation in local self-government. The overall weakness of local self-governments shall be considered the key factor prohibiting the improvement of citizen participation. Consequently, increasing the competencies and resources of local self-governments will quite likely influence their active involvement in local decision-making significantly.

Although the General Administrative Code stipulates effective guarantees for proper implementation of the administrative procedures, the local

self-governments have so far failed to execute good governance principles (i.e. accountability, transparency, efficiency and effectiveness). In recent years, several prominent Georgian NGOs have reported on the reluctance of municipal authorities to provide public information, in addition to their non-fulfillment of particular regulations stipulated by the General Administrative Code and cases of corruption, etc. The inadequate implementation of good governance principles by the regional and local authorities shall be perceived as a reflection of similar trends observed at the national level before October's parliamentary elections.

A gender balance has not been observed at the local level. Women make up only 11% of the local council members throughout Georgia.⁷³ Inequalities are also evident in the executive bodies, where the leading positions are largely dominated by men.⁷⁴ Special legal regulations (e.g. gender quotas for local elections) and effective policies that would promote gender mainstreaming at the sub-national levels are missing.

The Governmental Decree on the Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014 provides for the establishment of "social self-governance" in villages. According to the decree, all villages will be granted the status of legal entity of public law and they will be managed by elected representatives. In addition, the municipalities will be authorized to delegate competencies and transfer property (including natural resources) to social self-governments. Social self-governance is considered a tool for the village population to manage common property, solve local problems and participate in the municipal decision-making process.

73 Law of the Autonomous Republic of Adjara on Republican Budget of the Autonomous Republic of Adjara of 2013 (December 27, 2012). Available at: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1807046&lang=ge.

74 Elizabeth Duban, DevTech Systems, Inc., Gender Assessment: USAID/Georgia, 2010. P.7. Available at: http://transition.usaid.gov/our_work/cross-cutting_programs/wid/pubs/Georgia_Gender_Assessment_Jun-2010_508.pdf.

5. Institutional and financial framework of regional development

In 2010, the Government of Georgia approved the State Strategy of Regional Development for 2010-2017. Preparation and endorsement of the document was actively supported by the European Union and other international development partners. Among other areas, the State Strategy envisages improvement of institutional and financial tools for regional development. However, effective implementation of the document is still pending. In 2011, the regional development plans of two regions were approved within the framework of the State Strategy. In September 2013, the Government of Georgia officially approved the regional development plans and the relevant action programs of seven regions, as envisaged by an agreement signed with the European Union.

Considering the limited competencies, resources and institutional capacities of the regions, there is an obvious need to improve regional governance to promote effective and sustainable regional development in Georgia. According to the Governmental Decree on the Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014, regional governance will be strengthened. The decree also formulates that after the local elections of May/June 2014, the regions will be governed by indirectly elected councils consisting of the councilors from relevant municipalities and the executive officials appointed by the Government of Georgia, upon the relevant regional council's submission. The regions will raise their own tax revenues. State transfers will provide another important source of funding for the regions. Strengthened regional governance is considered to better contribute to the implementation of Georgia's regional development policies.

LOCAL GOVERNMENT REFORM

To ensure successful implementation of the regional and local governance reform, it is crucial to outline a cognizant, long term-vision and roadmap for its implementation. In this regard, the reform strategy shall be designed in a participatory manner that involves different governmental and non-govern-

mental stakeholders. After developing the long-term vision of the reform, legislation should be aligned with the reform objectives. The following chapter focuses on the status of the reform strategy's development, respective legislation and the reform planning process.

1. Long-term vision of the reform

A long-term vision of the local and regional governance reform is still missing in Georgia. Although the Decree on Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014 was approved by the Government of Georgia in March 2013, the document does not offer a comprehensive strategy and roadmap for the planned reform. Moreover, a comprehensive situation analysis that would facilitate a sound strategy is missing. It is still unclear whether a regional and local governance reform strategy will be designed. The Ministry of Regional Development and Infrastructure has already submitted a new draft of the Organic Law – Local Self-Government Code without proposing a relevant strategy, which raises concerns.

2. Reform coordination

The Ministry of Regional Development and Infrastructure of Georgia is the key executive agency in the Georgian government that should lead the reform planning and implementation process. The Parliamentary Committee on Regional Policy and Self-Government is another important governmental stakeholder that should be actively involved in the reform planning, in addition to monitoring its implementation.

Presently, there is not an effective inter-governmental coordination mechanism in Georgia. The Advisory Council to the Minister of Regional Development and Infrastructure, which consists of NGO representatives and experts, serves as the only reform coordination mechanism. USAID and the Open Society Georgia Foundation (OSGF) are providing extensive support to the

Ministry of Regional Development and Infrastructure to ensure the Advisory Council functions effectively. Nevertheless, the capacity and mandate of this body is rather limited. Moreover, the National Association of Local Authorities of Georgia is not properly involved in the reform planning process, which has become subject to criticism by the Congress of Local and Regional Authorities under the Council of Europe.

3. Legislative reform

As stated earlier, the key laws on local governance, including the Organic Law on Local Self-Government, are essentially in line with the European Charter of Local Self-Government. However, several important legislative regulations are still not in compliance with the Charter. Overall, the legislation fails to ensure real decentralization and empowerment of the local authorities. Around 30 sectoral laws (i.e. Law on Water, Forest Code, Law on Fossil, Law on Advertisement, Law on State Theatres, Law on Museums, Law on Libraries, Law on Social Assistance, Law on Healthcare, etc) shall be brought in compliance with the Organic Law on Local Self-Government. During the reporting period, several sectoral laws were integrated into the organic law, however, due to their rather technical nature, these amendments failed to effectively contribute to a better regulation of the competencies of local self-governments.

The Governmental Decree on Basic Principles of Decentralization and Self-Government Reform of the Government of Georgia for 2013-2014 states that the legal and resource framework for the local and regional governance reform shall be created. According to the decree, the legislation on local self-government, including budgetary legislation, will be revised in accordance to the European Charter of Local Self-Government, and it will be comply with the general goals and objectives of the reform by ensuring adequate decentralization of competencies and resources.

The new draft Organic Law - Local Self-Government Code was developed by the Ministry of Regional Development and Infrastructure and is intended to be submitted to the Parliament of Georgia by November 2013.

CROSS-BORDER COOPERATION

1. The practice of cross-border cooperation

On 28 April 2006, the Parliament of Georgia ratified the European Outline Convention on Transfrontier Cooperation and assumed the obligation to stimulate cooperation between Georgia's local and regional authorities with their counterparts in neighboring countries. However, even though the State Strategy of Regional Development of Georgia for 2010-2017 emphasized the importance of cross-border cooperation, especially in the field of environment protection, Georgia's local and regional authorities have not yet signed an official cooperation agreement with any neighboring country.

On June 15, 2009, the National Association of Local Authorities of Georgia (NALAG) and the Communities Association of Armenia (CAA) established Euro-Caucasus, which is considered to be the first attempt of cross-border cooperation with Georgian municipalities. The establishment of Euro-Caucasus was supported in the framework of a project implemented by the international cooperation agency of the Association of Netherlands Municipalities - VNG International, with funding from the Ministry of Foreign Affairs of the Netherlands (duration of the project was 36 months and was completed in 2012). The Euro-Caucasus aims to assist the local self-governments in the Armenian-Georgian border regions to develop cross-border cooperation initiatives. In the framework of this initiative, Cross-Border Cooperation Unions (Councils) have been set up, which unify four municipalities established in southern Georgia and nine cities from three northern regions of Armenia.⁷⁵ Several activities aiming to strengthen partnerships between Georgian and Armenian administrative-territorial entities have been implemented in the framework of this initiative.

Georgia, along with other Black Sea countries, benefits from CBC Black Sea Basin Program, funded by the European Neighborhood and Partnership Instrument (ENPI), which contributes to the Black Sea Synergy cooperation

⁷⁵ The relevant figures are provided in the Regional Development Plans of Kvemo Kartli, Racha-Lechkhumi-Kvemo Svaneti, Samegrelo-Zemo Svaneti and Guria regions endorsed by the Government of Georgia in September 2013.

sectors with a focus on civil society and local level cross-border cooperation. EUR 17,306 was allocated in the framework of this program for the 2007-2013 period.

Although Georgia closely cooperates with its neighboring countries of Armenia, Azerbaijan and Turkey in various areas, formalized cross-border cooperation between Georgian regions or municipalities with their neighboring counterparts remains rather weak. This is mainly due to legislative obstacles and the overall weakness of the Georgian municipalities and regions. It is likely that increasing the administrative autonomy of the Georgian administrative-territorial entities will effectively contribute to an improvement in cross-border cooperation in Georgia.

RECOMMENDATIONS

The recommendations presented below should be taken into consideration by the Government of Georgia to strengthen the regional and local governance and promote cross-border cooperation:

- Competencies of the local self-government should be effectively increased in accordance to the principle of subsidiarity;
- Financial resources of local self-governments should be fundamentally increased;
- Civil Service Law should be revised to establish a rational civil service system and a systemic tool for the capacity development of local and regional authorities;
- Effective tools for citizens' participation in local decision-making should be established;
- Implementation of good governance principles at local and regional levels should be effectively promoted;
- Regional governance should be strengthened to improve the institutional and financial framework for regional development;
- Effective high level and technical level inter-governmental coordination mechanisms involving the wide range of the reform stakeholders (including the associations of local authorities and NGOs) should be established;
- A comprehensive strategy for the local and regional governance reform that relies on a comprehensive situation analysis and a relevant action plan should be proposed;
- The Organic Law on Local Self-Government and other key laws should be revised in accordance with the objectives of the regional

and local governance reform and with the European Charter of Local Self-Government;

- Cross-border cooperation should be actively promoted.

PRIORITY AREA: FREEDOM OF MEDIA

INTRODUCTION

Georgia has some of the most progressive media legislation in the region and the Constitution as well as the Law on Freedom of Speech and Expression guarantee safeguards against censorship. However, government influence over private media persisted in 2012 during the run-up to October's parliamentary elections.

The government decriminalized libel in 2004 as part of an effort to bring Georgian media laws in line with European standards. Although the country adopted freedom of information legislation in 1999, journalists have reported that government officials continue to limit or delay access to information.

2012 was an active and tense year for Georgian media: There was an aggressive parliamentary pre-election period, TV 9 appeared, a 60-day "must carry and must offer" law prior to election day was enforced, there was violence and harassment aimed at journalists, new restrictions imposed by the Central Electoral Commission (CEC) limiting media coverage at polling stations, a prison brutality scandal, a dramatic post-election period, two dismissals of the general director at the Georgian Public Broadcaster (GPB) and parliament approved amendments to the Law on Broadcasting.

In its most recent report, Freedom House rates Georgia's press status as "partly free".⁷⁶ According to the report, there was some progress during the year on loosening media regulations and increasing access to a diversity of view-

⁷⁶ "Freedom of the Press 2013", Georgia, Freedom House, accessed July 17, 2013 <http://www.freedomhouse.org/report/freedom-press/2013/georgia>

points, especially in the immediate pre-election period. The balloting resulted in a victory for the opposition Georgian Dream party, marking Georgia's first peaceful transfer of power through elections.

METHODOLOGY

The report focuses on identifying the main developments of Georgian media since May 2012 to the end of September 2013. It also analyzes legislative documents that regulate media in the country, their implications and challenges, overviews of other credible research on different spheres of Georgian media and proposes several recommendations.

The main topics of the report are elaborated on the assessments of several documents:

- Constitution of Georgia
- European Convention on Human Rights
- International Covenant on Civil and Political Rights
- The General Administrative Code of Georgia
- Law on Broadcasting
- Strategy on digital switchover process

Methodology includes:

- Analysis of recent trends in international rankings, dynamics of Georgian media in international organizations' reports
- Overview of the state of freedom of media

- Examination of freedom of information
- Analysis of professional and ethical standards
- Discussion on the effectiveness of self-regulatory bodies and existing mechanisms
- Interviews with media professionals

RESULTS

Freedom of speech and expression

The Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of expression. Freedom of speech and expression is guaranteed under Georgian constitution, however not all groups are afforded the same rights.

As stated in Article 19 of the Constitution of Georgia, “Every individual has the right to freedom of speech, thought, conscience, religion and belief.”⁷⁷ The same document (Article 25) guarantees the right to hold a public assembly without arms, either indoors or in the open air without prior permission.

Despite the fact that these freedoms are guaranteed under the main legislative document of the state, on May 17th, Tbilisi-based gay rights activists attempted to hold a rally in central Tbilisi to mark International Day Against Homophobia. Although there was a heavy police presence, a mob of thousands of anti-gay protesters, led by radical clergy, broke through the police cordons and brutally attacked gay activists, chasing them all across the city. The pursuit continued throughout the day, with mobs laying siege to a house and shops where several gay activists had reportedly hidden. Overall, 28 people, including three police officers and journalist suffered injuries.

77 “The Constitution of Georgia”, accessed on May 25, 2013 http://www.gncc.ge/files/7050_6826_189749_konstitucia.pdf

Local NGOs, observers and international organizations reacted to the May 17 demonstrations, stressing freedom of expression is of paramount importance for a democratic society and called on the Georgian government to properly and thoroughly investigate the case. The European Union also called on the government of Georgia to uphold international and European standards of freedom and equality to which it has committed itself,⁷⁸ while the US State Department condemned the attack on a peaceful gathering saying such acts of intolerance has no place in democratic societies.⁷⁹

Georgian Prime Minister Bidzina Ivanishvili condemned the violence and released a statement declaring, "Acts of violence, discrimination and restriction of the rights of others will not be tolerated, and any perpetrators of such acts will be dealt with according to the law."⁸⁰ However, criminal charges were filed against only two men in connection to the homophobic violence, according to the Interior Ministry, while video footages of mass violence and attacks had been distributed through local and international media. The ministry said that two individuals were charged with "encroachment of the right to assembly and manifestation." The same charges were filed against two Orthodox priests. The charges carry either fine or one year of "corrective work," or imprisonment for up to two years. Charges were filed without suspects being arrested.⁸¹

Freedom of information

Freedom of information is regulated by The General Administrative Code of Georgia⁸², 1999. In this document, "Public information" is defined as an official

78 "EU 'Dismayed' over Homophobic Violence in Tbilisi", civil.ge, May 20, 2013, Available at: <http://civil.ge/eng/article.php?id=26081>

79 "US Condemns May 17 Violence", US Embassy to Georgia, May 22, 2013, Available at: <http://georgia.usembassy.gov/latest-news/statements2013/may17.html>

80 "Ivanishvili Condemns Violence", civil.ge, May 17, 2013, Available at: <http://www.civil.ge/eng/article.php?id=26069>

81 "Two More Charged over May 17 Violence", civil.ge, May 24, 2013, Available at: <http://civil.ge/eng/article.php?id=26107>

82 "The General Administrative code of Georgia", September 18, 1999, accessed on July 17, 2013, <http://www.rti-rating.org/pdf/Georgia.pdf>

document/information held by a public agency, or that received, processed, created, or sent by a public agency or a public servant in connection with official activities. According to the document, everyone may gain access to official documents kept by an administrative agency and obtain a copy, unless such documents contain state, professional, commercial, or private secrets⁸³

The right to receive information is also guaranteed by the European Convention on Human Rights (ECHR) in 47 Member States of the Council of Europe, including Georgia. The right of access to public information is closely related to the right to receive information guaranteed by Article 10 of the ECHR.

Article 10 – Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

In addition to the General Administrative code of Georgia and the ECHR, the right of access to public information in all UN States is guaranteed by the International Covenant on Civil and Political Rights⁸⁴, which was adopted on December 16, 1966 by the United Nations General Assembly. Georgia ratified the International Covenant on Civil and Political Rights in 1994 and accepted the obligations under the Covenant, including the provision of the right of access to public information⁸⁵

83 "Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11", ECHR, accessed July 15, 2013 http://eycb.coe.int/Compass/en/pdf/6_8.pdf

84 "International Covenant on Civil and Political Rights, Adopted by the General Assembly of the United Nations on 19 December 1966", accessed July 15, 2013 <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>

85 <http://www.idfi.ge>

The Human Rights Committee interpreted that State Parties should exercise the following activities for effective implementation of the Covenant:

- Create an effective mechanism of access to public information;
- Ensure easy, prompt, effective and practical access to public information;
- Enact procedural guarantees for access to public information by means of freedom of information legislation;
- Define reasonable fees for requested information which do not constitute an impediment to access to information;
- Provide well-founded reasons for the refusal of access to information;
- Ensure an effective appeal mechanism in the court system.

As one of the signing parties of the International Covenant on Civil and Political Rights, Georgia should ensure that the national legislation, administrative practices and the courts' decisions are in compliance to the standards established by Article 19.

In its most recent report, Tbilisi-based Institute for Development of Freedom of Information (IDFI)⁸⁶ analyzed the problems of Georgia regarding access to public information and has identified several major problems. One major problem is that state bodies do not comply with the requirement of easy, prompt, effective and practical access to public information. State bodies typically exercise a ten-day waiting period to deliver information, regardless of the urgency. Furthermore, public bodies do not present well-founded grounds in cases of refusal of access to information and only indicate legislative provisions that do not describe the administrative organ's position clearly.

86 "General Comment of the United Nations Human Rights Committee: The Right of Access to Public Information," IDFI, accessed July 14, <http://www.idfi.ge/?cat=news&topic=306&lang=en>

Georgian Law on Broadcasting

While working on this report, the status of the Georgian Law on Broadcasting and proposed amendments has changed several times. First, parliament adopted amendments, then the President vetoed the package and finally, parliament overrode the veto on July 12th, 2013.⁸⁷

President Saakashvili vetoed the package of bills parliament passed at the end of May. The package envisaged reforming the composition of the Georgian Public Broadcaster's (GPB) board of trustees, transforming Adjara TV's status into public broadcasting and providing measures for more financial transparency of broadcasters.⁸⁸ Presidential objections mainly concerned the part of the legislation that gives parliament the right to disband GPB's board of trustees in cases of GPB's budget problems or failure to fulfill its content-related programming priorities.

The bill was initiated by the Georgian Dream coalition, based on a proposal that had long been advocated for by a group of eleven watchdog and media organizations known as Coalition for Media Advocacy. The amendments will be enforced from January 1, 2014.

Amendments envisage changes to the following fields:

1. Georgian Public Broadcaster

The amendments propose reducing the number of board members from the current 15 to 9, who will hold their seats for a six-year term; the new legislative amendments exclude the president from the process of selecting board members. Three members must be nominated by the parliamentary majority, three by the parliamentary minority group and other lawmakers who are not part of either the parliamentary majority or minority groups.

87 "Georgian Law on Broadcasting," accessed July 3, 2013, http://www.gncc.ge/files/7050_3380_492233_mauwyebloba-eng.pdf

88 "Saakashvili Vetoes Amendments to Law on Broadcasting," civil.ge, accessed June 25, 2013, Available at: <http://www.civil.ge/eng/article.php?id=26212>

Candidates for these six seats should be selected through competition by a nine-member commission, which should be established specifically for this purpose by the Parliamentary Chairman and should be composed of civil society representatives. The commission should nominate at least three candidates for each vacant seat in GPB's board of trustees. Two members of GPB's board have to be selected by the Public Defender through competition. One member will be nominated by the local legislative body of the Adjara Autonomous Republic.⁸⁹

According to the law, GPB's annual budget should be not less than 0.14%, of the country's GDP instead of the current 0.12% from the previous year.

2. Public Broadcaster of Adjara Autonomous Republic

Batumi-based Adjara TV was under the direct subordination of the Adjara Autonomous Republic's government. The law offers to reform this television channel on the public broadcasting model and to legally and financially affiliate it with the Georgian Public Broadcaster. The law also allocates funds for Adjara TV's operations from the GPB's budget; the amount of funding should be at least 15% of GPB's annual budget.

3. Financial transparency

The law provides for measures to make broadcasters' finances transparent. The law will obligate individual and legal entities having broadcast licenses to publicly reveal their property declarations. Before May 1 of each year, broadcast license holders will have to submit a report on the sources of their finances, together with audit reports to the Georgian National Communications Commission (GNCC); the same information will also have to be posted on the broadcaster's website. According to the bill, nationwide broadcast

89 "Parliament Confirms Amendments to Law on Broadcasting", civil.ge, accessed June 1, 2013, <http://www.civil.ge/eng/article.php?id=26136>

license holder's will also have to publish information about their funding, including advertisement revenues once every a quarter.

The general director of the major television station, Rustavi 2, announced the channel will address the Constitutional Court with a request to amend articles regarding financial transparency that oblige broadcasters to report finances to the regulatory body once in every three months.⁹⁰

4. 'Must-Carry' rules

The bill will obligate cable providers to transmit television channels with news programs beyond pre-election periods. Must Carry was a burning issue prior to the October 2012 parliamentary elections.

The legislative amendment passed in June 2012 made this rule, known as "must-carry," legally binding for cable providers, but only for 60 days before polling day. Although it was no longer legally binding, the rule remained in practice after the October elections.⁹¹

Before parliament approved the amendments to the Law on Broadcasting, the Office of the OSCE Representative on Freedom of the Media released an analysis on the proposed amendments to the Georgian Law on Broadcasting. The document assessed proposed amendments as "generally improvements to the current law, giving better guarantees for plurality by distributing the responsibility for appointment of the Board of Trustees of the Public Broadcaster between different instances and by stipulating clearer criteria for the Trustees."⁹²

90 "Rustavi 2" addresses constitutional court, Available at: <http://pirveliradio.ge/?newsid=10234>, accessed September 15, 2013

91 Parliament Confirms Amendments to Law on Broadcasting, <http://www.civil.ge/eng/article.php?id=26136> accessed September 15, 2013.

92 "Analysis of proposed amendments to the Law of Georgia "On Broadcasting", Available at: <http://www.osce.org/fom/100314>

ADVERTISING MARKET

According to NDI/CRRC surveys,⁹³ nine out of ten Georgians use television as a primary source of the news and information. Thus, television attracts the largest share of advertising. Television stations reported GEL 82,707,855 (around USD 50 million) of income in 2012 to the GNCC. Advertising (including sponsorship, product placement and teleshopping) accounted for GEL 63,405,061 (USD 38.5 million) of the revenue.⁹⁴

In addition to advertisement spots that fall into ad blocks, Georgian TV channels are actively applying product placement, which unlike commercials, appear in different shows either by guest-speakers, by showing or mentioning the product or by sending a message. The 2012 IREX Media Sustainability Index found that “product-placement practices are rampant on television, as stations have few qualms about presenting sponsored infomercials as news. It is an open secret that major television stations have price lists for commercial content packaged as news.”⁹⁵

Based on available public and commercial data and interviews with more than 30 professionals from media and advertising sectors, Transparency International Georgia presented a report - The Georgian Advertising Market⁹⁶ – Competition At Last? - an analyzes of Georgia’s pre and post 2012 election advertising market . The study found that the October 2012 parliamentary elections and the change of government had a major impact on the advertising market and that the structure of the advertising sector was significantly altered. Moreover, the study found that politics no longer play a significant role in the allocation of advertising budgets. Today, it would appear that companies have abandoned the practice of self-censorship when allocating marketing budgets, as had previously been the case, and now decide freely about their spending.

93 “Survey on Voting and Political Attitudes in Georgia”, OSCE, accessed July 17, 2013, <http://www.crrc.ge/store/downloads/projects/NDI%202011.rar>

94 “Advertising market is stagnating but has become depoliticized and more competitive,” TI Georgia, June 28, 2013, Available at: <http://transparency.ge/en/advertising-market>

95 “Media Sustainability Index 2012”, IREX, accessed July 16, 2013, Available at: http://www.irex.org/system/files/u105/EE_MSI_2012_Full.pdf

96 “Advertising market is stagnating but has become depoliticized and more competitive”, TI Georgia, June 28, 2013, Available at: <http://transparency.ge/en/advertising-market>

DIGITAL SWITCHOVER

According to the International Telecommunication Union's Geneva 2006 agreement (GE06), the Georgian government has to complete a digital switchover by June 2015. However, it has been more than 7 years since Georgia took the responsibility to switch from analog to digital broadcasting and the country has not presented any legislative framework for the transformation. The Ministry of Economy and Sustainable Development is responsible for developing a strategy for the switchover, but no plan has been presented so far. The only document concerning the process was prepared by the local NGO, Institute for Development of Freedom of Information (IDFI).⁹⁷

Due to the lack of basic documents regarding the transition, broadcasters are unable to estimate the amount of financial investment that is needed, or whether they will be able to switch to digital broadcasting, at all. This is particularly pertinent to regional TV and radio stations. Furthermore, the purpose and advantages of the digital transition have not been explained to the general public and the public remains completely unaware of the process.

The transition from analogue broadcasting to digital television (DTV) has been a complex process in every country. In the USA, it took fifteen years to switch to digital broadcasting, while in Bulgaria it only took 2 years.⁹⁸

"Georgia's Digital Broadcasting Switchover Strategy"⁹⁹ by IDFI, released in May 2013, presents an action plan for all stakeholders participating in the process of transition from analog to digital broadcasting, but no major discussions or public reactions from the ministry have been observed since the report was released.

97 "General Comment of the United Nations Human Rights Committee: The Right of Access to Public Information," <http://www.idfi.ge/?cat=researches=en&topic=91&header=>

98 "Digital Switchover – New Opportunity, New Challenges", IREX, February 28, 2012, Available at: <http://blog.irex.ge/?p=80>

99 "Georgia's Digital Broadcasting Switchover Strategy", IDFI, accessed July 15, 2013, [http://www.idfi.ge/uploadedFiles/files/DSO%20Strategy%20IDFI%20-%20English\(1\).pdf](http://www.idfi.ge/uploadedFiles/files/DSO%20Strategy%20IDFI%20-%20English(1).pdf)

The group of experts working on the switchover strategy note a major disagreement with the ministry of economy over the financing of multiplexes. “While presenting a general plan for the switchover, the ministry proposed to build one state funded multiplex and fully subsidize citizens to buy receivers. Our attitude is to have at least two multiplex operators funded by investors, which would ensure competition, and to subsidize only socially vulnerable citizens, those under poverty line.”¹⁰⁰

Even though less than two years remains till the deadline of digital switchover, the Georgian government has not yet presented its strategy or budget of the process. This information vacuum keeps broadcasters and citizens totally unaware and unprepared for inevitable switchover.

GEORGIAN NATIONAL COMMUNICATION COMMISSION (GNCC)

On May 1st 2013, a temporary Parliamentary Commission to study GNCC was established. The aim of the commission is to thoroughly study activities of the regulator and to present conclusions and recommendations to the parliament based on the analysis.

By the time this report went to print, the Parliament of Georgia was voting on the issue of impeaching the Georgian National Communications Commission (GNCC) Chairman Karlo Kvitaishvili.¹⁰¹ By procedural norms the voting must be held within one month. Kvitaishvili is accused of violating 2 laws – the Law on Conflict of Interests in Public Service and the Law on Corruption. A temporary parliamentary investigative commission has identified that in addition to GNCC membership, Kvitaishvili was a representative of the United National Movement in the Central Election Commission (CEC). Kvitaishvili says that he has never been member of the National Movement and that he had just represented the given party in the CEC.

100 Interview with Ucha Seturi, IDFI Expert on digitalization, August 1, 2013

101 In one month decision to be made on possible dismissal of the GNCC Chairman, Accessed October 7, 2013, Available at: <http://www.media.ge/en/portal/news/301511/>

The temporary commission has raised concerns about Irakli Chikovani, the former chairperson of the GNCC, who reportedly left the country after parliamentary elections and had been absent at GNCC sessions. Chikovani's business interests are fundamental issues, as he is the shareholder of advertising companies MagiStyle and Media House. MP Tina Khidasheli, Chairperson of the investigative commission: "Chikovani enjoyed an exclusive right to place ads in the TV companies such as Rustavi 2 and Imedi and accordingly, had financial interests."

Among other issues being examined by the commission is licensing. The GNCC has not issued broadcasting licenses for 6 years. The reason named by the regulator was unqualified research on public attitudes, which according to the law, must be the grounds for setting broadcasting priorities. The GNCC resumed competitions on broadcasting licenses only in 2011. The commission states that by postponing license distribution, the GNCC has limited the constitutional right "to receive complete, objective and timely information as to a state of his/her working and living environment," as well as "Neither the neither state nor particular individuals shall have the right to monopolize mass media or means of dissemination of information."¹⁰²

GEORGIAN PUBLIC BROADCASTER (GPB)

The former state television, Georgian Public Broadcaster that is made up of two TV and two radio stations, has been the object of frequent criticism, mostly regarding its political independence, journalism quality, lack of public trust and mismanagement.

In previous years, the GPB prided itself in its pre-election media monitoring results, enumerating the time allocated to election subjects and the tone of the coverage, which was mostly neutral. However, a 2012 pre-election study conducted by the Charter of Journalistic Ethics found that GPB coverage lacked analysis and investigative stories and was also characterized by polit-

¹⁰² The Constitution of Georgia, http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf, accessed September 16, 2013

ical biases. “There have been cases when the GPB has not covered issues of high public interest in a timely manner, or at all. For instance, the GPB did not cover the September 18th video footage on prison abuse, including torture and rape,” the report reads.

Shortly after the 2012 parliamentary elections, GPB Director General, Giorgi Chanturia, resigned. On December 26th 2012, the board elected Giorgi Baratashvili, who had served as the head of GPB’s technical department. Two months later the board moved to dismiss him, claiming he had failed to manage. He appealed to the court, which ruled in favor of his reinstatement.¹⁰³ On September 6th, the board again voted to dismiss Baratashvili, claiming he had never responded to queries on the budget and channel priorities.

In September, when the board announced a selection for the director position, two trustees left the board. Several board members have reported pressure and calls from the ruling party, Georgian Dream (GD), was exerting pressure on them. The chairperson of the board identified an intelligence service representative, who he claims had been sent to the television to monitor situation and report to the Interior Ministry.

At the time this report went to print, the GPB has neither a director general nor an acting board of trustees. The board is currently comprised of 7 members. According to legislation, nine people are necessary for the decision making process. Consequently, the Board of Trustees cannot elect a director, approve the budget, or get a loan necessary to complete the broadcasting season of 2013.¹⁰⁴

Other GPB controversies include the cancelation of two political talk-shows hosted by Davit Paitchadze and Eka Kvesitadze in September. Paitchadze’s and Kvesitadze’s contracts were terminated without proper notice, which is a “direct violation of the Labor Code.”¹⁰⁵

103 GPB Board of Trustees Reinstates Giorgi Baratashvili, <http://www.media.ge/en/portal/news/300205/> Accessed September 16, 2013

104 Authority of Two Members of GPB Board of Trustees Suspended, Accessed October 6, 2013, <http://www.media.ge/en/portal/news/301506/>

105 GYLA – Georgian Public Broadcaster has violated Eka Kvesitadze’s and David Paichadze’s rights, Accessed October 6, 2013, Available at: <http://www.media.ge/en/portal/news/301461/>

Two months before the presidential election, GPB refused to air pre-election advertisements by parliamentary minority, United National Movement (UNM), which highlighted the unaccomplished promises of the GD ruling party. GPB interim director refused to air the add stating he would not broadcast “what the Georgian Dream did not do”.¹⁰⁶ The UNM contend the decision was politically motivated. NGOs also criticized the GPB. As a result, GPB alleging not being responsible for the content of pre-election advertisements since the ad customer is the one to shoulder responsibility, agreed to air the United National Movement (UNM) videos unedited.¹⁰⁷ According to the Law on Broadcasting, the GPB must broadcast campaign advertisements free of charge for no more that 60 seconds an hour.¹⁰⁸

Although it has been a controversial year for the GPB, considerable changes are expected after January 2014, when a new law on broadcasting is enforced. Meanwhile, it is crucial that reported governmental pressure on the board will be investigated and that planned reform of the channel will not be cancelled.

TV9

The television channel TV9 was launched in April 2012 as a voice of the opposition Georgian Dream (GD) coalition. The station was owned by Ekaterine Khvedelidze, the wife of coalition leader Bidzina Ivanishvili (80%) and Kakha Kobiashvili, a close relative of Ivanishvili (20%).

Before parliamentary elections, the management created a board of advisers whose declared purpose was to protect the editorial independence of the

106 GPB Chairperson: I won't air what Georgian Dream did not do. <http://www.netgazeti.ge/GE/105/News/23364/>, Accessed September 16, 2013

107 GPB Accedes to Air Disputable UNM Videos <http://www.media.ge/en/portal/news/301378/>, Accessed September 16, 2013

108 Georgian Law on Broadcasting, https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=32866&lang=ge Accessed September 16, 2013

channel. The board included prominent journalists such as CNN's Larry King and New York Time's Lee Hamilton.¹⁰⁹

With no terrestrial license, TV9 was broadcast to satellite receivers via the television distributor Global TV, which functions like a cable provider and is owned by Ivanishvili's brother. Global TV was then subjected to harassment from the authorities, including the interrogation of one of its owners, property damage, and the seizure of its equipment. In June and July, stockpiles of satellite dishes owned by Global TV and the opposition-leaning Maestro TV were impounded by the state. Authorities accused the companies of attempting to buy votes for the opposition by distributing the receivers free of charge.¹¹⁰

After the 2012 election brought Ivanishvili and his GD coalition to power, NGOs and activists had called on him to sell the station. On August 19, 2013, Prime Minister Ivanishvili announced that if the channel weren't sold by September 1, it would be closed. Several hours after his statement the station's journalists took the station off the air.

After the Prime Minister announced the sale of TV9, some members of civil society considered forming a joint stock company and purchase the station. This resulted in the establishment of Joint Stock Company Televizia. Its founders include journalists, a former TV 9 presenter and son of Georgia's first President. They have requested the technical equipment to operate the TV station and the Prime Minister has expressed his readiness to do so.

JSC Televizia predicts it will be able to turn the channel into a profitable business. However, it is unclear how this will be possible in an environment where the declining advertising market is unable to sustain media outlets. Even small online publications depend on grants and donor support. It is also worth-mentioning that Ivanishvili has previously said that the maintenance of the channel cost him USD 1 millions per months.¹¹¹

109 The need to de-politicize TV9, <http://transparency.ge/en/node/2573>, Accessed September 16, 2013

110 Freedom House- <http://www.freedomhouse.org/report/freedom-press/2013/Georgia> Accessed September 16, 2013

111 Prime-Minister Criticized Journalists for Closing TV9, Available at: <http://www.media.ge/en/portal/news/301231/> Accessed September 16, 2013

ETHICS AND SELF-REGULATION

The Georgian Charter of Journalistic Ethics is the major self-regulatory body of Georgian media. Established in 2009, the NGO unites about 250 journalists, editors and producers throughout the country, who voluntarily sign an 11-point code of ethics agreeing to maintain journalistic standards. The charter has a 9-member council elected by member journalists. The council deals with complaints on ethics violations and publishes decision reports.

To open a case for discussion, the charter council's first should receive a complaint, which must addressed to a signatory, i.e. member of the charter. The complaint must also be filed within three months after the story is published/broadcasted.

The charter does not monitor whether its signatories follow the acknowledged code of ethics. Even though the Charter Council only discusses complaints on charter members, there have been several cases when the charter publicly reacted to cases of media outlets that were not charter members. The charter has no specific criteria for such reactions. They may choose to release a public letter, condemn the media outlet or make recommendations. Executive Director, Tamar Rukhadze, says they react to issues "of large public concern".¹¹²

The charter has no timeline guidelines for the length of a complaint discussion or the release of a report's decision. There have been cases when complaints were not discussed for two years or a report decision was not released in half a year. Giorgi Mgeladze, head of charter council: "We have one ongoing case on a complaint we received two years ago and the case has not been discussed yet because the person went to army and we have no strict regulation on this."¹¹³

Beyond the Charter of Journalistic Ethics, the Georgian Law on Broadcasting¹¹⁴ obliges license holders to establish effective mechanisms of discussing

112 Interview with Executive Director of the Charter of Journalistic Ethics - Tamar Rukhadze, August 1, 2013

113 Interview with Head of Charter Council Giorgi Mgeladze, August 1, 2013

114 Georgian Law on Broadcasting, https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=32866&lang=ge, Accessed September 16, 2013

and reacting to viewers' concerns and to operate according to the Broadcasters' Code of Conduct¹¹⁵. In case a broadcaster violates the code of conduct, viewers can petition the council. Viewers can also address the GNCC, depending on the violation and its recurrence, the commission can warn, fine and even suspend the broadcasting license, however this applies only to broadcasters, not to print and online media outlets. It is vitally important for media outlets to establish a code of ethics and an internal body to discuss citizens' concerns.

115 GNCC resolution on Code of Conduct, https://matsne.gov.ge/index.php?option=com_Ildmssearch&view=docView&id=82792&lang=ge, Accessed September 14, 2013

CONCLUSION

As assessed by international watchdog organizations, Georgia has the freest and most diverse media landscape in the region. Watchdog groups have noted some progress during the year on loosening media regulations and increasing access to a diversity of viewpoints. The new government appears to be more responsive to requests for public information and journalists are reporting officials are easier to get in touch with.

Parliament has confirmed amendments to the Georgian Law on Broadcasting, which envisages measures for more financial transparency of broadcasters, reforming the rule of the composition of GPB's board of trustees and transforming Adjara TV's status to public broadcasting.

Some changes have been taking place in advertising market as well. One of the major changes is the de-facto dissolution of General Media in December. As TI Georgia noted, General Media had a de-facto monopoly and was connected to a network of friends and relatives around former Defense Minister Davit Kezerashvili¹¹⁶. Dissolution of the company was assessed as positive fact with the prospect of competition promising for stakeholders.

Despite last year's positive changes, Georgian media remains politically vulnerable, as exemplified in the case with GPB, which remains without a general director and dysfunctional board of trustees. Reported pressures are alarming and should be investigated. Furthermore, Georgian media has not reached the level of transparency in financing and there still are political interests in media ownership. Neutral and objective news is only available from a few sources.

¹¹⁶ Advertising market is stagnating but has become depoliticized and more competitive"; TI Georgia, June 28, 2013, <http://transparency.ge/en/advertising-market>

RECOMMENDATIONS

The Government of Georgia must consider the recommendations presented below if it wants to contribute to the improvement of the state of media in the country.

- Ensure the rights granted by the constitution and other legislative documents of the country so that every member of a society can experience rights equally.
- Ensure easy and prompt access to public information.
- Provide well-justified reasons for refusing access to public information.
- Ensure non-politicized transition at GPB.
- Investigate allegations of pressure on the members of the GPB Board of Trustees and the interference with the work of the GPB.
- Ensure planned reform of GPB is implemented.
- Amend the Law on Advertising in order to regulate product placement.
- Prepare and present the legal framework for the digital switchover.
- Present a list of detailed duties and responsibilities of state institutions in the switchover process.
- Establish at least two independent multiplex operators to avoid monopoly and ensure competition.
- Inform and prepare the public for the digital switchover.

PRIORITY AREA: FIGHT AGAINST CYBERCRIME

INTRODUCTION

Georgia was in the group of countries which signed and adopted the European Conventions related to Personal Data Protection and Cybercrime. Continuously the state is developing and adopting various legal acts which have a significant influence on the legal system and the possibility of fighting with cybercrime cases.

The war between Georgia and the Russian Federation in 2008 has probably had a large influence on the further development of cybersecurity law, and the undertaking of practical steps in building a better system of cybersecurity protection in the state. It seems like the most important role in this system is assigned to the Data Exchange Agency, which was established in 2010. For example within this agency in 2011 the governmental Computer Emergency Response Team was established. This team is also a very good example of the active cooperation with international cybersecurity communities by the fact of joining the international cooperation forums like Trusted Introducer and Rorum of Incident Response and Security Teams.

Another big strategic step on the road to a well organised cybersecurity system in the country was made in 2012 when the Georgian Information Strategy Act was adopted, the Cybercrime Unit in police was created and the Inspector for Protection of Personal Data was appointed. These have had a practical result in a significant increase of cybercrime investigations in 2013.

In 2013 the draft strategy on Combatting Organised Crime was prepared and the Presidential office issued the Cybersecurity Strategy of Georgia. It is a confirmation of the active approach of Georgia to the cybercrime protection system.

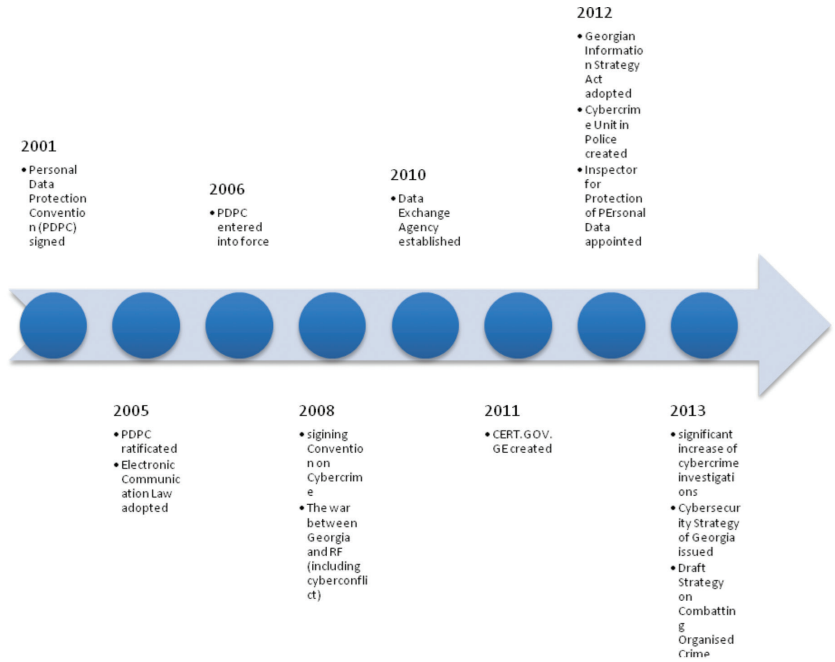


Figure 1 - The most important facts from the history of cybersecurity initiatives and activities in the Republic of Georgia.

DETAILED OBJECTIVES

To support the reform process in EaP countries by facilitating the approximation to EU and CoE standards as well as to boost the capacity of criminal justice authorities to cooperate effectively against cybercrime by assisting EaP countries in defining strategic priorities regarding cybercrime and developing tools for action against cybercrime.

There is a significant need for various actions for improving the process of fighting with cybercrime in Georgia. According to statistics provided by the Ministry of Internal Affairs¹¹⁷ number of investigated cases by the Georgian

117 Statistics were provided during the report draft reviewing process.

law enforcement agencies has already been increased in the first half of 2013 compared to the same statistics in 2012.

BENCHMARKS FOR EVALUATING THE FIGHT AGAINST CYBERCRIME

Convention on cybercrime

The Convention is the first international treaty on crimes committed in cyberspace. The main areas regulated in the convention are:

- copyright,
- computer-related fraud,
- child pornography,
- violations of network security,
- search of computer networks and interception.

The main objective of the Convention is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation.

The convention was opened for signature in Budapest on 23rd of November 2001.

Situation in Georgia in regards to key elements of the Convention

Although Georgia was not among the earlier signatory countries, it is which has fully signed, ratified and entered into force the Convention. The Convention was signed by Georgia on 1 April 2008, then in 2012 was ratified on 6 June and entered into force on 1 October.

In accordance with Article 6, paragraph 3, of the Convention, Georgia declares that criminal liability for acts, provided by Article 6, paragraph 1(a), can be imposed where a device, including a computer program, is designed or can be adapted for the purpose of committing acts under Articles 2 to 5 of the Convention.

In accordance with Article 24, paragraph 7, sub-paragraph a, of the Convention, Georgia has declared that the central authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty is the Ministry of Justice of Georgia.

In accordance with Article 27, paragraph 2, sub-paragraph c, of the Convention, Georgia has declared that the central authority responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution is the Ministry of Justice of Georgia.

In accordance with Article 35, paragraph 1, of the Convention, Georgia designates the following as the national point of contact for cooperation in combating cybercrime, available on a 24/7 basis – the Ministry of Internal Affairs of Georgia, Criminal Police Department. The police unit which is dedicated for fighting against cyber crime was formed and has been it operating since 2012.

In accordance with Article 40 and Article 27, paragraph 9, sub-paragraph e, of the Convention, Georgia has declared that, for reasons of efficiency, requests for mutual assistance made under Article 27, paragraph 9, are to be addressed to its central authority.

Regarding significant changes in the Georgian Law - probably the most important factor were attacks on Georgian cyberspace during the war with the Russian Federation in 2008. According to the report by Georgian Security Analysis Center¹¹⁸ from July 2012 there is still no comprehensive cyber defense system in Georgia. However since the war, a lot of positive changes were introduced:

118 Summary of Georgian Information Security Act – available at http://gfsis.org/media/download/GSAC/cyberwar/Summary_of_the_Draft_Georgian_Information_Security_Act.pdf

- In 2010 the Data Exchange Agency was established and it plays a leading role in the process of improving cybersecurity issues in Georgia (see also: OCERT.GOV.GE). This organization prepared the draft of Cybersecurity Strategy¹¹⁹. The Strategy was signed by the President of Georgia on 17 May 2013¹²⁰ (see: 0 The State Cybersecurity Strategy)
- On June 5 2012 “The Georgian Information Security Act” was adopted and entered into force on 1 July.
- The problem of cybercrime was recognized and well defined in number of governmental programs, strategies and policies – e.g. in “The Strategy of the Ministry of Internal Affairs”¹²¹. Additionally it became an important part of priorities for further improvement, e.g. MIA writes in its document in the “Priorities for 2013” section:

For ensuring cybersecurity it is crucial to define the functions of government agencies in this field. Effective united government approach requires the creation of inter-agency coordination mechanisms and the deepening of cooperation between state and private sectors. For this purpose it is vital to further develop capabilities of the cybercrime unit within the Central Criminal Police Department. This division includes an international contact point operating 24/7, determined by 2001 CoE “Convention on Cybercrime.”

Since November 2012, the specialized Cybercrime Unit was established within the MIA Central Criminal Police Department responsible for fighting Cybercrime and International Police Cooperation. The unit operates 24/7.

119 the draft was prepared together with National Security council and an inter-agency working group.

120 available at <http://www.nsc.gov.ge/eng/news.php?id=6260>

121 available at http://police.ge/files/pdf/misia%20da%20strategia/MIA_Strategy_454Eng_1.pdf

THE STATE CYBERSECURITY STRATEGY

The Cybersecurity Strategy of Georgia¹²²

On 17 May 2013 the presidential decree of cybersecurity strategy of Georgia was issued. The authors of the strategy assumed that experiences from the war between Georgia and the Russian Federation in 2008 showed that cyberspace should be treated as an integral part of the Georgian overall domain and be a subject of the security strategy.

The National Security Council developed the strategy and it is a result of the 3 years process of situation assessment and it is based on the document “The National Security Concept”. The strategy points out 5 important directions of strategic approach to cyber security:

- Research and analysis
- Legal aspects
- Coordination of cybersecurity activities
- Rising awareness of cyber threats and education
- International cooperation

There is a very clear statement in the Strategy that public private partnership is at least as important as the close cooperation of governmental institutions.

The strategy consumes all of the best practices in standards in the area of cyber security on the strategic level.

122 available at <http://www.nsc.gov.ge/files/files/legislations/kanonqvemdebare%20normatiu-li%20aqtebi/cyber%20security%2017%20may.pdf>

Georgian Information Security Act

This regulation, adopted and approved in 2012, defines state control mechanisms for the implementation of security policy as well as points out rights and obligations for companies and organisations in both – private and public sectors. The law applies to:

- Corporations;
- Companies;
- Autonomous state companies;
- State agencies defined as a critical information system subjects;
- Organisations which want to take obligations voluntarily.

The Act defines all systems, which are considered to be a part of the critical information ecosystem. The criticality is understood as a need for uninterrupted operation, which is necessary for ensuring the safety and security of the state. Examples of parts of this ecosystem are: police, military service, transport, finance, and telecommunication. According to the law there is a presidential duty to adopt a list of critical information subjects.



Figure 2 - the most important obligations for companies and organisations based on the Georgian Information Security Act

The very important role in the Georgian information security system plays the National CERT of Georgia – CERT.GOV.GE (see: 0 CERT.GOV.GE).

PERSONAL DATA PROTECTION

Personal data protection in the EU has its source in the rules described in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

This Convention is the first binding international instrument which protects the individual against abuses which may accompany the collection and processing of personal data and which seeks to regulate at the same time the trans-frontier flow of personal data.

In addition to providing guarantees in relation to the collection and processing of personal data, it outlaws the processing of “sensitive” data on a person’s race, politics, health, religion, sexual life, criminal record, etc., in the absence of proper legal safeguards. The Convention also enshrines the individual’s right to know that information is stored on him or her and, if necessary, to have it corrected.

Restriction on the rights laid down in the Convention is only possible when overriding interests (e.g. state security, defence, etc.) are at stake.

The Convention also imposes some restrictions on transborder flows of personal data to States where legal regulation does not provide equivalent protection.

SITUATION IN GEORGIA IN REGARDS TO KEY ELEMENTS OF THE PERSONAL DATA PROTECTION STANDARDS

Although Georgia was not among the early signatory countries, it is one of those countries, which have fully signed, ratified and entered the Con-

vention into force. The Convention was signed by Georgia on 21 November 2001, then in 2005 was ratified on 14 December and entered into force on 1 April, 2006.

Regarding the personal data protection legislation the working group consisting of representatives from the Analytical Department of the Ministry of Justice and Civil Registry was formed, the aim of which was to prepare and implement a draft law on Data Protection. The foreign experts were invited within the framework of the project, which presented important recommendations with regard to the draft law. Study visits to relevant agencies in European countries were held in order to better understand and research the system of Data Protection.

The Personal Data Protection Law came into force in May 2012 and the Inspector for Protection of personal data was appointed¹²³.

The law sets out the following basic principles:

- personal data shall be collected for specified and legitimate purposes;
- personal data must be accurate and kept up to date;
- Inaccurate data must be corrected or erased;
- personal data may only be stored for as long as necessary to achieve the purpose for which they were collected or further processed.
- On completion of the purpose of processing, personal data shall be erased, deleted, destroyed or blocked.
- One of the fundamental principles of the draft law is that Personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed.

123 the Inspector is Ms. Tamar Kaldani

The law establishes the rights of the data subjects in details. In addition, draft contains specific provisions regarding the processing of biometric data, video surveillance and direct marketing. For the protection of personal data the independent institution headed by the Data Protection Inspector will be formed. The main task of the Data Protection Inspector will be to promote implementation of the data protection legislation and supervise protection of the requirements of this Law on the territory of Georgia.

The implementation of the law requires the amendment of certain laws and by-laws (e.g. the General Administrative Act of Georgia). Activities in this direction have already been initiated. The Enforcement and implementation of the Data Protection Act will support human rights protection in Georgia, fulfilment of international obligations by the country and harmonization of Georgian legislation with European standards.

Also regarding the personal data rights it is important to mention the Legislation of Georgia in the Field of Electronic Communication: The Law of Georgia on Electronic Communication (2005) entails the obligation of Electronic Communication Service Providers to protect the secrecy of information transmitted by users by means of electronic communications networks (Article 8) as well as sub-paragraph *f* of paragraph 2 of Article 19 on General rights and obligations of authorized undertakings: *“prohibit unsanctioned use of electronic communications networks and facilities”* by authorized personnel. Also, Regulations in respect to the provision of Services and protection of Consumer Rights in the Sphere of Electronic Communications obliges the service providers to *“protect the integrity and impenetrability of the network and prevent any unauthorized use of networks and facilities”*.

Considering that existing legislation in the sphere of electronic communication entails mostly general obligations, it is necessary to elaborate the technical standards for service providers.

OTHER ACTIVITIES

Besides European partners (mainly mentioned in the examples below), the Ministry of Internal Affairs of Georgia actively cooperates with the US Federal Bureau of Investigation (FBI) while handling cybercrime cases.

Eastern Partnership – Cooperation against Cybercrime CyberCrime@EAP¹²⁴

Georgia is participating in the joint regional project of the European Union and the Council of Europe on cooperation against cybercrime under the Eastern Partnership Facility¹²⁵.

The project is aimed at strengthening the capacities of Eastern Partnership countries to cooperate effectively against cybercrime.

Components:

- Policies and awareness of decision-makers
- Harmonised and effective legislation
- Judicial and law enforcement training
- Law enforcement – Internet service provider cooperation
- International judicial and police cooperation
- Financial investigations

¹²⁴ available at http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy_Project_EaP/Default_EaP_en.asp

¹²⁵ the other countries are: Armenia, Azerbaijan, Belarus, Moldova and Ukraine.

The part of this project (part 3¹²⁶) – Support measures against serious forms of cybercrime. The goal of this part of the project is to build the capacity of each country's criminal justice authorities to co-operate effectively against cybercrime, based on the Budapest Convention on Cybercrime and other relevant standards and practices. The project will help countries:

- To define strategic priorities regarding cybercrime;
- To develop tools for action against cybercrime, including improved legislation, mainstreaming of cybercrime and electronic evidence topics in judicial and law enforcement training curricula, enhanced co-operation between law enforcement and Internet service providers, financial investigations on the Internet, effective international co-operation;
- To assess progress made.

The project will combine regional workshops with peer-to-peer assessments and advisory visits¹²⁷.

Within this project the following events were organised in Georgia:

- Regional seminar on judicial and law enforcement training (28-29 June 2012, Tbilisi, Georgia)
- Regional seminar on strategic priorities (27 June 2012, Tbilisi, Georgia)
- CyberCrime@EAP: Regional Workshop on High Tech Crime Units (20-21 March 2012, Tbilisi, Georgia)

126 available at http://www.coe.int/t/dgap/eap-facility/cybercrime_en.asp

127 Detailed information on this component available at: http://www.coe.int/t/DGHL/cooperation/economiccrime/cybercrime/cy_Project_EaP/Default_EaP_en.asp

Bilateral project between Georgia and Estonia¹²⁸

Since September 2012, the Ministry of Internal Affairs of Georgia and Estonian Police and Border Guard Board have launched a joint project “Enhancing the capacity of the cybercrime unit of the Georgian Ministry of Internal Affairs”, which is financed by the Estonian Government. In the framework of the project the following activities are planned:

- Training of MIA employees in the field of the fight against cybercrime by the means of trainings;
- Study visit to Estonia;
- Elaboration of manual on cybercrime issues.

In the scope of the project, the Georgian Ministry of Internal Affairs was visited by an Estonian delegation on November 13-14, 2012. Meetings were held between project managers and beneficiaries, planned work and technical details were discussed.

Other actions carried out by the Ministry of Internal Affairs of Georgia¹²⁹

Taking into account that cybercrime constitutes one of the main challenges for the 21st century, in December 2012, the Special Cybercrime Unit was established within the Central Criminal Police Department, the Ministry of Internal Affairs of Georgia (MIA). This Unit is responsible for detection, suppression and prevention of illegal activities committed in cyberspace.

Moreover, the Special Subunit for Computer-Digital Forensics was created within the system of MIA Forensics-Criminalistics Main Division that

¹²⁸ available at <http://police.ge/en/proeqtis-93-9Eshss-shesadzleblobebis-ganvitareba-kiberdanashaultan-brdzolis-sferoshi9C-93-memorandumis-kheltmotsera/4106>

¹²⁹ available at <http://police.ge/en/projects/kiberdanashauli/shinagan-saqmeta-saministros-mier-gankhortsielebuli-ghonisdziebebi>

carries out functions of first handling and further forensics of digital evidence.

In June 2013 the Ministry of Internal Affairs of Georgia elaborated the Draft Strategy on Combating Organized Crime that contains a special chapter on combating cybercrime. This strategy has its action plan that provides future actions and responsible state bodies for their implementation. This document has already presented to the Georgian Government for approval.

The Ministry of Internal Affairs of Georgia has taken important steps in the sphere of seizing digital evidences. More precisely, the MIA elaborated Standard Operational Procedures on Handling Digital Evidences. These Procedures specify types of software programs and technical rules that are used while searching and seizing digital evidences. Currently, this document is in the process of inter-agency discussion.

The Ministry of Internal Affairs pays utmost importance to the capacity building of its units responsible for combatting cybercrime. In that regard, the MIA Academy elaborated training modules for national first responders and cybercrime police investigators. Training modules cover the following issues: cybercrime case studies, search and seizure of electronic evidence, legal aspects of cybercrime and types of cyber-attacks.

Organisations involved in cybercrime fighting and analysis of their operations

To learn about existing organisations and their cooperation, the situation in different types of organisations was analysed. All of them, according to international standards and best practices should be involved in the process of fighting cybercrime and protection of national critical information infrastructure.

The main types of these organisations are:

- Internet Services Providers
- Critical Information Infrastructure operators
- Law Enforcement Agencies

As the CERT (Computer Emergency Response Team) concept is world widely recognized as the universal concept of addressing ICT security issues, a big part of the evaluation as well as the further recommendations were prepared in respect to this approach.

The detailed findings are presented in the next sub-chapters. Below the general findings are listed:

- There are no dedicated security (especially CERT) teams within the organizational structures of the third party organizations;
- Most organizations have staff responsible for ICT security issues. Generally there is correlation between the maturity of the organization and number of resources dedicated to deal with the ICT security issues;
- There are not too many incidents reported by the organizations. But this probably does not prove their lack of existence but rather the low level of their discovery;
- There is a strong interest in building cooperation between relevant parties.

CERT.GOV.GE

CERT.GOV.GE is the Georgian governmental role and it plays a significant aspect in providing cybercrime-fighting capabilities to the whole Georgian cyberspace constituency. The CERT.GOV.GE operates under the Data Ex-

change Agency of the Ministry of Justice of Georgia and is responsible for the handling of critical incidents that occur within Georgian governmental networks and critical infrastructure. CERT.GOV.GE started its operations in January 2011. Since the National CERT does not operate in Georgia at this moment, CERT.GOV.GE handles all critical computer incidents, which occur in the country.

According to the Georgian Information Security Act – National CERT of Georgia plays a very important role in the whole information security system in Georgia. All incidents related to cyber attacks on critical information systems must be reported to this team. The team cooperates directly with Information Security Manager and Cybersecurity Specialists. But it is important to notice that it is the reporter's decision to accept the CERT.GOV.GE assistance in the incident handling process.

Preparing for this role CERT.GOV.GE actively joined the international cooperation of the incident response community with members including: the European TERENA TF-CSIRT¹³⁰, Trusted Introducer¹³¹ and Forum of Incident Response and Security Teams¹³².

The mission of the team is the following: CERT.GOV.GE specializes in identifying, registering and analysing critical computer incidents, issues recommendations and conducts prompt responses to such occurrences.

CERT.GOV.GE's activities are important for minimizing critical computer incidents throughout the country. CERT.GOV.GE also plays a significant role in raising the awareness of information security issues within the country.

CERT.GOV.GE's main services for its constituency are:

- Alerts and warnings;

¹³⁰ available at <http://www.terena.org/activities/tf-csirt/>

¹³¹ available at <http://www.trusted-introducer.org/>

¹³² available at <http://www.first.org/>

- Incident handling;
- Security audits and assessments;
- Educational trainings and workshops;
- Intrusion detection services.

INTERNET SERVICE PROVIDERS

To recognize needs, the expectations of Internet Service Providers as well as potential tasks for them, the situation concerning the two largest Georgian ISPs (CAUCASUS ONLINE and SILKNET) was analysed. Some conclusions from this analysis are the following:

- ISPs have now dedicated CERTs (or security) teams whitening their organizational structures. They do not have a separate team responsible for ICT security. Regular IT staff plays this role. ISPs declare their interest in developing their security teams.
- ISPs are interested in receiving some support which could improve their cybercrime fighting capabilities, for example:
 - Advices on best practice security configurations;
 - Warnings of the Internet most dangerous internet threats;
 - Security trainings for their staff;
 - Basic configuration guidelines for ISPs' customers (e.g. wi-fi security configurations);
 - Minimal standards for IT security operations as well as hardware and software security configurations;

- ISPs do not report or observe a significant number of cybercrime incidents in their network. The most common, which they handle, are web defacements and phishing. It is very unlikely that the Georgian IP space is free from Internet attacks and massive host infections. More likely is that they have not been discovered or there is no reaction to them. Continuous, systematic provision of such cases could have a significant influence on improving security awareness within ISPs and their customers and as a result, increase the level of the Georgian cyberspace security level.
- ISPs work together in an emergency situation. They mention the 2008 case as an example. On the other hand they need increased coordination for this cooperation. There is probably a need for coordination support in such cases. As ISPs believe that such support could have a real influence on their cooperation, it is very important to establish well working support for them. Such cooperation should take into account some limits and barriers coming from the fact of the competition of the cooperation stakeholders. Thus detailed areas of the cooperation as well as information sharing rules should be developed.
- In the case of cybercrimes (e.g. DDoS attacks) ISPs do not follow any particular rules. The development of particular procedures of operational framework for the most important and dangerous attacks could improve their operational capabilities.
- ISPs cooperate with their Internet providers to mitigate DDoS attacks. They use the blackholing¹³³ technique to do it.
- ISPs declare their interest in cooperation on common network monitoring activities of cybercrimes. They are ready to share information about cybercrimes to all governmental institutions connected to their networks. However they mention that if the business model for such cooperation will generate new costs for them – they will need financial support to reimburse them their costs. Also legal framework

133 available at <http://tools.ietf.org/html/rfc5635>

for such cooperation is very much expected by them. Generally, without any special limits they are ready to share information about the nature and anatomy of the Internet attacks and to make clear rules on sharing information about Internet attacks victims and attackers.

COOPERATION WITH CRITICAL INFRASTRUCTURE OPERATORS

The following critical infrastructure operators of the critical information infrastructure (CII) were considered in the study:

- Ministry of Finance (Financial Analytical Service)
- TBC Bank
- Bank of Georgia
- MAGTICOM Operator
- Georgian Railway Company

MINISTRY OF FINANCE (FINANCIAL ANALYTICAL SERVICE)

The Financial Analytical Service is separate from the Ministry of Finance legal entity, which maintains the infrastructure for financial services of the Georgian state. Practically all budgetary financial transfers are processed within the network maintained by FAS. The most important parts of this infrastructure are:

- Databases
- Virtualization services
- Network connecting (more than 100 customers)

An important fact is that the FAS has organized the tender for providing new services and parts of it are security related services, including NMS and the creation of a formal security policy for the FAS.

CONCLUSIONS:

- The FAS Security Policy which will be established as a part of the new FAS contract has not included any special rules for performing cybercrime handling services
- The FAS is interested in close cooperation related to fighting. The potential area of this cooperation is especially operational
- The FAS is interested in participation in cybercrime protection trainings for technical staff
- The FAS is interested in getting security recommendations for their customers regarding practical recommendations and guidelines for establishing and maintaining the secure configuration of IT systems as well as security policy rules (e.g. data access rules)

TCB Bank

The bank, as a responsible financial organization, seems to pay appropriate attention to security issues. They have people responsible for the security of the bank's infrastructure. They mentioned an on-going penetration test audit as one of their current security initiatives.

The bank recognizes the potential for active cooperation with other relevant parties in Georgia. They are ready to share information related to all cybercrime incidents and events from such defined constituencies. They are especially interested in sharing information about sources of Internet cybercrimes targeted on their resources.

Bank of Georgia

In the Bank of Georgia security activities are under the control of the IT Department. There are not too many cybercrime incidents against BoG and its customers. The representatives of the bank reported no more than 10 incidents per year.

BoG is interested in support for developing minimal standards and requirements for computer systems, especially for end users.

They are aware of the necessity of introducing a new law against cybercrimes in the Georgian cyberspace. They are ready to support this process and they are interested in consultation before its final implementation in the legal system.

MAGTICOM operator

MAGTICOM Ltd is a commercial company, which offers mobile and fixed communication in Georgia. According to the information provided by the company, it covers approximately 97% of Georgian territory and almost 2 million customers. As in many places, the mobile connection is the only one, that allows people to access the Internet, so it seems to be an important organization in terms security of end-users.

It is also very important that MAGTICOM provides Internet access to above 700 governmental organizations. For this purpose they created a separate "governmental" network.

MAGTICOM's approach to the potential cooperation and overall security aspects is very much business oriented. They do not expect support. On the other side, they also look at cybercrime protection issues as potential costs for their business processes. MAGTICOM declares to follow all rules related to data provision as well as security operations in its network, but only by following obligations clearly pointed in the law.

According to the information provided by MAGTICOM practically there are no security incidents in the company's network.

Georgian Railway Company

The Georgian Railway Company has its own network infrastructure based on the regular Georgian railway tracks network. It is built with fiber optic technology. However usage of this network, according to the GRC representatives, is very limited.

What is most important is that the network does not provide services for the trains traffic control system. The traffic control system is out-dated and it is not based on Internet protocols at all. This limits a threat of attacking this part of critical infrastructure from the Internet.

The most important request from the GRC is to provide security awareness services. Especially those, which are dedicated for increasing awareness within top management. Additionally, in the case of a significant technology change (e.g. building new traffic control system for trains which will be based on TCP/IP protocol, which increases risk) the GRC is interested in receiving support in the technology evaluation, its secure implementation and maintenance.

Law Enforcement Agencies

The LEA play at critical role in fighting cybercrimes in Georgia. Unfortunately there is no clear definition of what cybercrime is and the result of this is the – lack of proper prioritization for handling cybercrime cases.

Whiting the LEA organizational structure there is no ICT crime unit, which is dedicated and specialized in dealing with computer crimes. The responsibility of handling this type of crime is put on regular crime investigation units.

These units operate with the support of the Police IT Department, especially in terms of preparing expertise as well as computer forensics services. However the first phase of the whole analysis, which is evidence gathering, is out of the control of this police unit. The consequences are such that evidence does not comply to the general computer forensics rules and can disqualify results of analysis from the legal point of view. In result – most cases are cancelled.

It seems that the LEA is a very important player on the field of cybercrime fighting. Thus it seems to be very important to improve its capabilities in fulfilling this task. Some of the most important gaps to fill are:

- Performing computer forensics analysis.
- security trainings;
- coordination in international incidents (this could be reached by the close cooperation with Georgian governmental CERT – CERT.GOV.GE which is a member of international organisations¹³⁴)

Generally there is a need for the stable educational program for LEA officers who will be dedicated as specialists within the LEA for investigating cybercrimes.

There is a need for clarifying the operational and legal border of the LEA operations. It should be decided which cybercrimes must be reported to the Police. The goal is to not expect from the LEA that they will deal with all crimes with the highest priority and from the other hand it is to improve public awareness and further the request of investigating cybercrimes, which are becoming more and more dangerous for society's daily operations.

134 e.g. FIRST (Forum of Incident Response and Security Teams) – available at <http://www.first.org/> TERENA TF-CSIRT Trusted Introducer available at– <http://www.trusted-introducer.org/>

RECOMMENDATIONS:

To arrange security benchmarks related to cybercrimes in the Law according to the CIA model (Confidentiality Integrity Availability)

The CIA model is widely used in the ICT security world. Its advantage is the full coverage of all ICT security aspects. Practically all security breaches can be referred to as one of the CIA functions. By using the CIA model, it is ensured that there will be no gaps in the description of requirements, potential problems etc. Usage of more specific terminology seems to be more appropriate but it is a risk that it could be also too specific and some exceptions can be found which can cause a problem in the legal interpretation. Thus the following definitions could be used:

- Confidentiality – the security function of the information system, which ensures system accessibility only for, authorized parties with predefined privileges. The coherent characteristic of the system confidentiality is to define the system access rights according to the rule “need to know”, ensuring access to it for limited parties at a restricted level.
- Integrity – the security function of the information system, which ensures that data processed in a system are properly protected, and its completeness, accuracy and validity are not breached.
- Availability – the security function of the information system, which ensures that access to data as well as system processing it, will be possible for authorized parties, and services provided by a system, will be reliable.

To decide on types of the information

In the existing Law there are different types of information with some overlapping definitions: primary information, secondary information, highly critical information, sensitive information, information for internal use, and open information.

Definitions are not clear and as earlier mentioned partially overlapping (e.g. primary information and highly critical information). It would be good for lessening the document's ambiguity to decide on fewer types and make clearer the differences.

To establish the process of CII determination

The Law should ensure the establishment of the process of determination of CII. It is no easy process but it is very important and for this reason it is worth paying special attention and real effort. The recommended process for CII determination is as follows:

Phase I - to establish a set of metrics, which will be used to decide if the particular asset is the part of CII. These metrics should be developed together with the private sector as the future main addressee of them. To realize this task it would be very helpful to utilize EU experiences on this matter. Especially those described in the document: "Non-paper on sectorial criteria to identify European Critical Infrastructure in the ICT sector"¹³⁵. This document will be the basis one for future EU directives related to this problem.

Phase II – to organize meetings with the potential CII owners to explain to them the need of CII identification and the methods of doing it.

Phase III – to work together with the potential CII owners to support them in the process of CII identification.

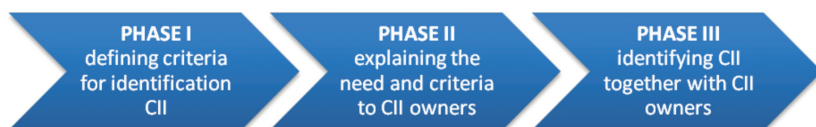


Figure 3- The CII identification process

135 Non-Paper - On sectorial criteria to identify european critical infrastructures in the ICT sector.

To present the Information Security Officer responsibilities as the life-cycle work

Presentation of the Information Security Officer (or any other position related to the cybercrime fighting) on all responsibilities as the life-cycle work will help to understand its holistic approach to the ICT security and an importance of its role in the organization structure as well as the cooperation with other parties. The possible life cycle could look like this:

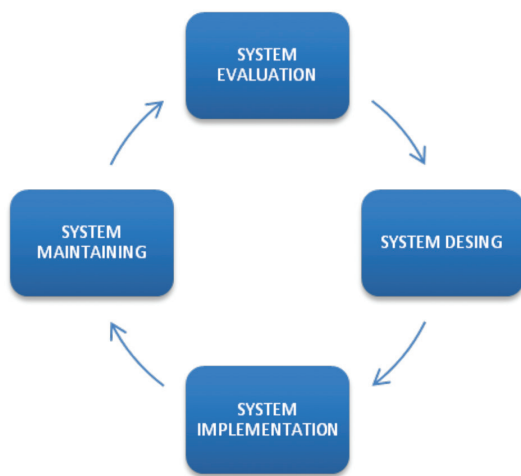


Figure 4 - the life cycle of Information Security Officer responsibilities.

To use a coherent cybercrime breaches classification

Usage of the standardized cybercrime breaches classification will help the understanding of the nature of these breaches as well as to collect standardized information about it. Thanks to this, it will be possible to prepare long-term statistics on trends in ICT security and improve the CII protection standards. One of the possible solutions is to implement the eCSIRT.net classification schema¹³⁶.

136 available at <http://www.ecsirt.net/cec/service/documents/wp4-clearinghouse-policy-v12.html#HEAD6>

“Data Exchange Agency or an independent and duly component person or organization selected by the critical infrastructure subject with prior consent of the Data Exchange Agency, shall conduct penetration testing and vulnerability assessment of information systems pursuant to duly planned and documented task description.”

To organize cyber exercises

The practical and very effective way to consolidate constituency members is to organize for cybersecurity exercises for them. These kinds of exercises are recommended on the European level by European Commission Communication EC COM on CIIP 30/03/2009 Action Plan where there is written that: “The Commission invites Member States to organise regular exercises for large scale networks security incident response and disaster recovery...” and they are part of the recommendation of the Digital Agenda for Europe where EU-wide cyber security preparedness exercises is one of the main actions.

Below there is a three level approach to organizing the country-wide cyber-exercises.

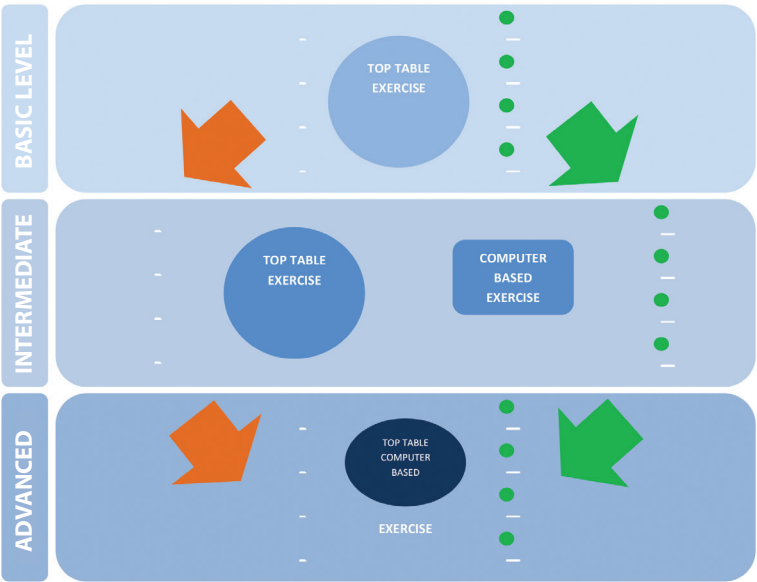


Figure 5 - the three level approaches to organizing the country level cyber exercises

During the basic level both groups “technical people” (T) and “policy makers and managers” (M) organize the top table exercise with simple scenarios, which will involve both groups. The main objective for this level is to identify the gaps in organizational as well as technical operations.

During the intermediate level both groups develop their cyber-exercise skills in their own groups: technical and management. They work in their natural environment so they organize network and computer based-exercise accordingly and again on the table top exercise.

In the third – advanced level, they bring their knowledge and new skills and again organize a joint exercise to reach at higher level in managing ICT security incidents.

The process can be repeatable and after the “advanced phase”, again the “basis phase” can be organized to reach an even higher level at the end of the whole cycle.

PRIORITY AREA: JUDICIARY

INTRODUCTION

The primary aim of this report is to identify the current situation of judicial reform in Georgia in order to assess its compliance with the Eastern Partnership Roadmap. The general intent was to examine the compatibility of Georgian legislation with European standards and the rule of law requirements enshrined in the Constitution of Georgia and other international documents. The report uses international soft law and other solid principles, which were adopted in the forms of declarations, as a yardstick for the assessment of the situation in the judiciary. First and foremost, the report assesses the independence of the judicial branch in Georgia. In this regard, it analyzes the financial and budgetary independence of the courts, evaluates the process of the appointment, promotion, dismissal, and disciplinary and criminal liability of the judges and their tenure. Additionally, the report examines trust towards the judiciary and some aspects of transitional justice. Finally, the report analyzes topics related to the Constitutional Court of Georgia, the Prosecutor's Office of Georgia and implementation of ECHR judgments by the Courts of Ordinary Jurisdiction and the judicial review of criminal investigations. The report detected some problems with the financial independence of the judiciary. A procedure should be introduced about negotiating the judicial budget between the government and the judicial branch. Remuneration of judges was noted to be problematic. Additionally, the process of promoting judges was found to be regulated insufficiently.

The report devoted special attention to the transfer of judges where some problems have been identified that need further elaboration and legislative amendments, since several provisions are not clear and lack transparency. And because the usage of reserved judges was also regarded problematic,

therefore the report stressed a higher reliance in its practice. The position of temporary judge, which came into force after October 2013, was also evaluated in the report. This institute should be regulated in a more detailed manner. Some mischief was detected in the functions of the Constitutional Court of Georgia. Part of the report targets recommendations to the Parliament of Georgia in order to ensure compatibility of transitional justice measures with the Constitution of Georgia.

The second part of the report assesses the situation of disciplinary and criminal liability of the judges. Some problems were identified, so respective legislative amendments should be made in order to fully comply with European standards. Subchapters were devoted to the process of implementation of ECHR judgments and the judicial review of investigations of criminal cases,

the latter of which was not found to be in full compliance with Council of Europe respective regulations. Additionally, the Prosecutors' Office was also assessed critically and problems were revealed concerning the appointment of the Chief Prosecutor.

The report attempts to provide a full understanding of the Judiciary of Georgia's situation to help assess the implementation of the Eastern Partnership Roadmap. Its main findings reveal some problematic issues, therefore it will have a positive impact on ensuring further compatibility of Georgian legislation with European standards.

Compliance with the recommendations proposed in the report will ensure a more effective and proper administration of justice in Georgia and provide much assistance on further EU integration.

METHODOLOGY

The report assesses Georgia's fulfillment of the Eastern Partnership Roadmap. On a multilateral level, four objectives have been identified that must be taken as a yardstick to evaluate the situation of Georgia's judiciary:

- 1) Facilitate the exchange of information and best practices on an effective delivery of justice with a view to promoting adherence to European/ international standards;
- 2) Share experiences in reforming the judiciary and adjusting its action to European/international standards;
- 3) Foster the implementation of a coherent sector-wide reform strategy in the area of justice in EaP countries;
- 4) Encourage EaP countries to introduce EU law-inspired tools into their regional cooperation.

Following these roadmap objectives, several common benchmarks have been elaborated to evaluate Georgia's judiciary:

- 1) The correspondence of national legislation on independence and impartiality of the judiciary to European / international standards;
- 2) The implementation of justice in practice is in line with ECHR's case-law;
- 3) The effectiveness of judicial oversight over the pre-trial investigation;
- 4) Compatibility of the procedures of disciplinary liability of judges to European / international standards;
- 5) Compatibility of the criteria and procedures of performance evaluation of judges to European / international standards;
- 6) Reform of the judiciary is conducted in a transparent manner with a measurable and clear timeline;

The report analyzes the improved functioning of the judiciary in Georgia based on these benchmarks. The report is based on qualitative, quantitative and comparative research methods. Its main topics were elaborated on the assessment of several documents:

- Laws, bylaws, draft laws and other legislative acts governing the Common Courts' system, the High Council of Justice, the High School of Justice and Constitutional Court of Georgia;
- CEPEJ, CCJE, Venice Commission and other relevant Council of Europe institutions' recommendations concerning the judiciary and its organization in Georgia;
- Public survey results on public trust and confidence in judicial reform;
- Reports and recommendations of other international and non-governmental organizations on the relevant subject;
- Analysis of official statistics;

Legislation and other documents used in the report are as recent as September 14, 2013.

RESULTS

The report aimed to precisely examine the judiciary in Georgia based on respective benchmarks in order to assess the implementation of the Eastern Partnership Roadmap. It was devoted to the assessment of the institutional independence of the judiciary and related topics. Overall, the objective was to ensure the independence of the judiciary and its assessment from the standpoint of European standards. The report assessed the financial and budgetary effectiveness and independence of the judiciary in Georgia. It was concluded that Georgia's legislation was not very precise in this regard. The adoption of the Court's budget was not based on detailed regulations and needs further legislative supplements. The same problem was detected in regards to judicial promotion and the transfer of judges, because the regulation is vague and some aspects need additional clarification. The report targeted the issue of Reserve Judges and found that their presence was nomi-

nal. It has been recommended to use this resource more actively. Also some problematic aspects have been detected to further improve the functioning of the Constitutional Court of Georgia. One part of the report assesses trust towards the judiciary and transitional justice issues. The report examines the amnesty of political prisoners and the Draft Law on the Temporary Commission on the Miscarriage of Justice, which was examined critically from the standpoint of the principle of separation of powers. Several problems have been identified. The report found several minor problems concerning disciplinary liability of judges, the functioning of the Prosecutors' Office of Georgia and the implementation of ECHR judgments.

The criminal liability of judges and the judicial review of investigation were assessed critically and several recommendations have been presented for further improvement. The report's overall conclusion is that Georgia is fulfilling the Eastern Partnership Roadmap in the judiciary sector. Judiciary reform is an ongoing process and in the past few years, the government has taken major steps to ensure compliance with international standards. However, there are still some problems which need further examination and resolution in order for Georgia to be in full compliance with European standards.

MAIN FINDINGS

I. Independence of the judiciary

The independence and impartiality of the judiciary is the cornerstone of the judicial branch. The judiciary lacks a direct popular vote and is based solely on a professional basis. Therefore, independence is a necessary precondition for its existence and must be measured from an internal and external perspective. This report targets the financial and budgetary autonomy of the judiciary, judicial appointment procedures, dismissal, tenure and promotion, and judicial self governance in Georgia.

1. Financial efficiency and independence of the judiciary

According to the Venice Commission¹³⁷, financial autonomy should exist for the judiciary from the Executive¹³⁸. States should provide respective legislative guarantees for the independence of the judicial branch¹³⁹. This includes independence in the process of the adoption (proposition of the draft before the respective body)¹⁴⁰ of the budget and in its expenditures. Moreover, each state is encouraged to allocate adequate resources in order to ensure an effective functioning of the courts¹⁴¹. The European Commission for the Efficiency of Justice (CEPEJ) has underlined that in Georgia, the High Council of Justice (HCOJ) lacks the possibility of presenting its full judicial budgetary needs to the Parliament and Government of Georgia. The negotiation mechanisms that establish the budgets of the courts are not regulated in the legislation. Therefore, this budgetary process needs special legislation which would be followed and implemented by all respective stakeholders¹⁴². The Venice Commission has the same general recommendation in this regard¹⁴³. The Constitution of Georgia¹⁴⁴ does not contain a clause concerning the financial autonomy of the judicial branch. Nevertheless, Chapter 12 of the Organic Law on the Courts of General Jurisdiction of Georgia (hereafter known as the 'Organic Law') regulates this aspect of the judicial autonomy. The Courts of General Jurisdiction of Georgia and the Supreme Court have their own budgetary lines in annual state budgets. These financial means cannot be reduced without the consent of the High Council of Justice, which

137 The Venice Commission provides legal advice to its member states and, in particular, helps them bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law.

138 Opinion on the Albanian law on the Organization of the judiciary (chapter VI of the Transitional Constitution of Albania); CDL (1995)074rev, 1995, B.1.i

139 Ibid.

140 Recommendation CM/Rec(2010)12, Committee of Ministers of Council of Europe, November 17, 2010, par 40.

141 Ibid. par 33.

142 'Eastern Partnership Enhancing Judicial Reform in the Eastern Partnership Countries', Directorate General of Human Rights and Rule of Law, p 50

143 'Report on the Independence of the Judicial System, Part I: the Independence of Judges'; CDL-AD(2010)004, par 55.

144 English translation of the updated version of the Constitution is available online: < > [accessed on 23/06/2013].

is a subsidiary body for the judicial branch in Georgia¹⁴⁵. The Law obliges the state to ensure life and health insurance for judges¹⁴⁶. According to the Organic Law, the remuneration of judges consists of a salary and fixed benefits¹⁴⁷. The remuneration is defined by a special law¹⁴⁸, but the benefits are calculated on an ad hoc basis by the HCOJ. The 9th and 10th Judicial Conference of Georgia, held on June 9th and 16th, 2013 indicated that the judiciary finds judicial remuneration problematic and that it needs to be further increased. Some NGOs have also made the same recommendations the same¹⁴⁹. Consequently, the President of the Supreme Court of Georgia presented a draft law to increase the salaries of judges¹⁵⁰. Although Georgia has increased the judicial budget annually (except in 2008 and 2009, when major infrastructural reconstruction occurred and the budget was higher than in 2010 and 2011)¹⁵¹ there is still a lack of funding. This directly creates a deficiency in the number of judges per capita. Despite the fact that Georgia introduced jury trials, they do not function often, so professional judges end up playing a decisive role in the administration of justice. According to CEPEJ, there are 6.7 judges per 100,000 citizens in Georgia, whereas, the general European standard is 21.3¹⁵². The budgetary increase is connected to this problem and further efforts are needed to improve the judiciary in this area.

2. Appointment, dismissal, transfer and tenure of the judges

The independence of the judiciary is enshrined primarily in the appointment process. The formation of a judicial corpus is a vital aspect of its proper exis-

145 Art 67, Section 3.

146 Art 72.

147 Art 69, Section 1.

148 The Law on the Remuneration of the Judges of the General Jurisdiction, December 23, 2005;

149 'Judicial System in Georgia', Coalition for an Independent and Transparent Judiciary, 2012, 33

150 Information is available online: < > [accessed on 13/09/2013].

151 Information available on the web-page: < > [accessed on 23/06/2013].

152 Eastern Partnership Enhancing Judicial Reform in the Eastern Partnership Countries Working Group on "Efficient Judicial Systems", Directorate General of Human Rights and Rule of Law, 2013, p 8.

tence and administration. Only those judges who are free from any political or subjective considerations can guarantee the independence of the judiciary. According to the Committee of Ministers of the Council of Europe, the election of judges should be based on objective criteria such as ‘merit... qualification, integrity, ability and efficiency’¹⁵³. The Venice Commission places special emphasis on the appointing bodies in newly formed democracies¹⁵⁴. According to the Organic Law, judges in Georgia are appointed by the HCOJ, who possess a sufficient amount of independence. After the May 1, 2013 amendments to the Organic Law, the Conference of Judges appoints 8 members of HCOJ among judges. The President of the Supreme Court is an ex- officio member and 6 additional peers are appointed by the Parliament of Georgia. They must not be involved in political activities and have a high moral character and respective professional experience¹⁵⁵. The Venice Commission found this system to be compatible with general European standards¹⁵⁶ and no other objections can be additionally presented. As for the appointment criteria, the ‘Law on High School of Justice’¹⁵⁷ provides detailed regulations of all the subjects and classes that judicial candidates must undergo. The candidates are required to take human rights courses, alongside other professional disciplines during their studies¹⁵⁸. The candidate is entitled to enter the High School of Justice after they have passed the State Judicial Exam, which is held twice a year and organized by the HCOJ. After completing the school, the candidates are short-listed and then the HCOJ appoints them, taking into account various pre-existing criteria. In this regard, Georgian legislation is constructed properly and no grounds of incompatibility can be identified. Article 41 of the Organic Law affords a special rule for the promotion of judges and defines objective grounds for their continued promotion. However, it is not clear how the list of judges is formed when there is a prospective vacancy in higher courts. Typically, the HCOJ decides this issue, but the law contains no provisions about the process of nomi-

153 Recommendation R(94)12, Committee of Ministers of Council of Europe, October 13, 1994, Principle I.2.c.

154 Report on Judicial Appointments’, CDL-AD(2007)028, 2007, par 6.

155 Organic Law, Art 47.

156 Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia’, CDL-AD(2013)007, 2013, par 75.

157 December 28, 2005.

158 Art 20, subsection ‘z’.

nating the candidates. This ambiguity could lead to selective application of the law; therefore, it needs a special clause in order to ensure equal opportunity of every judge in the process of promotion¹⁵⁹. The HCOJ has adopted a special 'Decision on Assessment of the Effectiveness of the Judges' Activities'¹⁶⁰, but this regulation is applicable only for the definition of fixed salary benefits, not the process of promotion¹⁶¹. The Draft Law presented to the Ministry of Justice of Georgia regulates the issue and defers the competence to the HCOJ to pass the decision regulating the procedure of promotion of judges¹⁶². In the last few years, Georgian NGOs have initiated active debates about the problems of the transfer of judges¹⁶³. They claim that a majority of judges were transferred to other courts to fulfill their judicial duties¹⁶⁴. According to Georgian legislation, which is valid until 2015, the transfer of judges is regarded as a temporary measure¹⁶⁵. Current regulation, as amended in 2012, requires the consent of the judge for their transfer¹⁶⁶. Before 2012, this requirement was absent. After the 2012 amendments, the HCOJ reappoints the transferred judges¹⁶⁷. An exception to this rule is permitted when the interests of justice so require it and when the majority of the acting composition of HCOJ consents. The maximum period of the transfer is 1 year, which can be extended for an additional year. But it is unclear whether these regulations apply to the transfer of the judge to one or to multiple courts. This ambiguity could create problems; therefore, it needs to be reformed, especially in cases when judges are transferred without personal consent. Moreover, the law should prohibit multiple transfers and solely authorize them on a singular basis. European standards dictate that the judge can only be transferred to another court when respective consent

159 Opinion no 1 (2001) of the Consultative Council of European Judges (CCJE) for the Attention Of The Committee Of Ministers Of The Council Of Europe On Standards Concerning The Independence Of The Judiciary And The Irremovability Of Judges; November 23, 2001, par 25.

160 #1/226. December 27, 2011.

161 Art 15-6.

162 Art 13, Section 13 of the Draft. Available online: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=2013148&lang=ge > [accessed on 13/09.2013].

163 Inter alia, 'Justice in Georgia', Georgian Young Lawyers' Association, 2009, 15-21.

164 Ibid. 20.

165 Art 13, section 3, 'Law on Case Management and Transfer of Judges', June 26, 1998.

166 Ibid. Art 13, Section 2 *bis*.

167 The decisions of the HCOJ are accessible on the web-page: www.hocj.gov.ge [last visited 24/06/2013]

is present or 'in the case of a temporary assignment to reinforce a neighboring court'¹⁶⁸. The transfer of judges should also be analyzed in the context of reserve judges. These are judges who are not fulfilling judicial duties due to a shortage of available places in the courts. They receive a reduced fixed salary and are used for filling vacant places in the judiciary. Currently, there are 18 reserve judges.¹⁶⁹ On several occasions the HCOJ used this corpus of reserve judges when it was necessary, but it is an exception rather than a rule.¹⁷⁰ It is unclear why the judiciary has not been utilizing reserve judges more actively. Because inactivity makes the reserve judge a nominal institution, judges find themselves suppressed¹⁷¹. HCOJ must be encouraged and obliged to initially use the resource of reserve judges when there are vacancies, and only afterwards transfer judges to the other courts. In its dicta, the Constitutional Court of Georgia regarded the reserved judge institute as non-compatible to the constitutional standards if special guarantees are not afforded to them¹⁷². This conclusion underlines reserve judges' roles and the necessity of utilizing their resources; otherwise, the independence of the judiciary will be flawed. The Ministry of Justice of Georgia presented its Draft Law on Amendments to the Organic Law on Courts of Ordinary Jurisdiction of Georgia, which will solve the problem of multiple transfers and give priority to reserve judges when there is a necessity to transfer a judge¹⁷³. Lastly, it must be mentioned that Art 82, section 2 of the Constitution of Georgia, which will enter into force in October, 2013, provides the possibility to assign a 3 year maximum probationary period to g judges. Notwithstanding various international documents resistant to the temporary appointment of judges,¹⁷⁴ it does not contradict, per se, the prin-

168 'European Charter on the Statute for Judges

169 Information available on the web-page: < <http://hcoj.gov.ge/ge/common-courts/list-of-waitingjudges> > [last visited 24/06/2013].

170 The Decision of the HCOJ #1/82, May 21, 2012.

171 One Reserve Judge filled constitutional complaint to the constitutional Court of Georgia. Information is available online: < <http://www.netgazeti.ge/GE/105/law/20750/> > [last visited 24/06/2013].

172 Decision of the Constitutional Court of Georgia, # 1/1/357, May 31, 2006, par IV.

173 Art 12, Section 13 of the Draft. Available online: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=2013148&lang=ge > [accessed on 13/09.2013].

174 European Charter on the Statute for Judges', Council of Europe, July, 1998, par 3.4; 'Montreal Declaration Universal Declaration on the Independence of Justice', 1983, par 2.20.

ciple of independence of the judiciary.¹⁷⁵ The Venice Commission underlines that the 'refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards that apply when a judge is to be removed from office'¹⁷⁶. Therefore, this approach dictates that independence of the judiciary should always be primarily guaranteed and the non-appointment of temporal judges must be of an exceptional nature, when the interests of justice so require. Otherwise, independence and impartiality of the judiciary will not be ensured. The Government of Georgia should acknowledge that probationary judges must have sufficient guarantees for the effective and proper administration of justice after the afore-mentioned constitutional clauses enter into force. Until these constitutional amendments become valid, the tenure of the judges will be 10 years. The new regulation will not be retroactive, therefore, all acting judges will serve a definite period¹⁷⁷. The Venice Commission recommends all member states to ensure life tenure for all judges¹⁷⁸. Therefore, from October 2013, new provisions should be adopted to ensure the life tenure of all judges, since this is a major step in guaranteeing the independence of the judicial administration. On September 9, 2013, the Ministry of Justice of Georgia published its Draft Law on the Amendments to the Organic Law on Courts of General Jurisdiction of Georgia, which regulates the issue assigning judges a 3 years probationary period¹⁷⁹. The draft stipulates three grounds¹⁸⁰ when the HCOJ can refuse the judge a life-time tenure appointment after probation:

- Disciplinary liability;
- Professional and moral reputation;
- Other relevant grounds for life time appointment.

175 'Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in 'the Former Yugoslav Republic of Macedonia', CDL-AD(2005)038, 2005, par 23.

176 Ibid. par 30.

177 Constitutional Law on Amendments and Supplements to the Constitution of Georgia, October 15, 2010, Art 2, section 2.

178 'Report on the Independence of the Judicial System, Part I: the Independence of Judges', CDL-AD(2010)004, par 38.

179 The Draft is available online: https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=2013105&lang=ge Accessed on 13/09/2013].

180 Art 1, Section 7 of the Draft Law.

The third ground is a catchall provision and due to its vagueness may create problems with the independence of the judiciary; therefore, it should be modified in a more definite manner. The dismissal of judges is regulated by Article 43 of the Organic Law. It sets *intra vires* grounds for the dismissal of judges. The decision is taken by the HCOJ, if respective requirements are fulfilled. Thus, the law is in conformity with European standards in this regard.

3. Trust towards judiciary

Trust towards the judiciary is not very strong in Georgia. A survey, n 'Knowledge and Apprehension of the Judicial System of Georgia,' conducted by the Social Research Institute in 2009, showed that public confidence was quite low for several reasons. Basically, citizens are not informed about judiciary reforms. Because they only receive information from the mass media, they are compelled to rely heavily on non-professional assessments of the facts.¹⁸¹ According to a 2012 survey, the majority of Georgians believe their court system has improved since 2003. Some 18 percent say the courts work much better, and 46 percent say somewhat better. Only 7 percent of the general population says things have gotten worse since 2003¹⁸². The judicial branch is actively involved in some projects to promote judiciary awareness to the general public¹⁸³. However, there are other reasons public trust is low. Several NGOs have highly criticized the courts for favoring prosecutors in cases.¹⁸⁴ Low acquittal rates may have caused negative attitudes towards the judiciary. In order to ensure a high level of public confidence in society, jury trials should be used widely and each judge should acknowledge the necessity of society's trust. This would entail acknowledging the possible public

181 Available online on the web-page: <http://www.supremecourt.ge/files/uploadfile/pdf/base-lineknowledge.pdf> > [last visited 24/06/2013].

182 'ttitudes towards the Judicial System in Georgia,' Caucasus Research Resource Center, 2012, 3

183 Inter alia, <http://hcoj.gov.ge/en/sazogadoebastan-komunikatsiisa-da-ndobis-samoqmedo-gegmis-da-saqartvelos-iustitsiis-umaghlesi-sabchos-akhali-veb-gverdis-prezentatsia/1907> > [last visited 24/06/2013].

184 'World Report,' Human Rights Watch, 2013, 443

impact of concrete decisions. Furthermore, public officials should also refrain from criticizing the judiciary, to the maximum possible extent.¹⁸⁵

4. Constitutional Court

According to the Constitution of Georgia, the main duty of the Constitutional Court of Georgia (CCG) is, *inter alia*, to conduct a judicial review of the Georgian legislation¹⁸⁶. CCG has functioned since 1996 and has already rendered some landmark judgments where some items of legislation were found unconstitutional. Nevertheless, some problems exist regarding the effectiveness of the CCG, which need further reform:

- *Ratio decidendi* of CCG's judgments does not have a binding force for the Courts of the General Jurisdiction of Georgia; decisions of CCG has *inter partes*¹⁸⁷ rather than an *erga omnes*¹⁸⁸ application;¹⁸⁹
- Decisions of the CCG do not have retroactive force; as a result, they do not constitute an effective remedy for past human rights violations¹⁹⁰;
- Parliament can avoid a Constitutional case before the CCG by a technical modification of the law;¹⁹¹
- When using interim measures by the CCG for suspending operation of the law, there are fixed deadlines for rendering judgments. The

185 Transparency International Georgia, blog available online: <http://transparency.ge/blog/sa-samartlo-1-oktombris-archevnebis-shemdeg> > [last visited 18/08/2013].

186 Art 89 of the Constitution of Georgia; 'Organic Law on the Constitutional Court of Georgia', January 31, 1996.

187 Between parties

188 Not limited to the parties of the case and with general application.

189 Judgment of the Supreme Court of Georgia, Criminal Chamber, July 6, 2009, #39/saz-09.

190 Art 20, 'Organic Law on the Constitutional Court of Georgia', January 31, 1996

191 *Inter alia*, Decision of the CCG, April 5, 2007, #2/3/412.

CCG and some NGOs have appealed to the Parliament of Georgia to not adopt such a regulation, but it was disregarded.¹⁹² The CCG acts under the shortage of non-judicial personal resources, quite often they have to adopt landmark judgments, therefore, it is getting much more difficult to render a judgment in 45 days, when an interim measure is inevitable.¹⁹³

Several legislative amendments are necessary in order to solve all the above mentioned problems and ensure a smooth and effective operation of CCG. This will create an effective mechanism on a national level for human rights protection in Georgia.

5. Political prisoners' amnesty

Some NGOs have accused Georgia of convicting prisoners on political grounds.¹⁹⁴ On December 28, 2013, the Parliament of Georgia passed an Amnesty Law. One of its articles was devoted to Political Prisoners.¹⁹⁵ The Act eliminated criminal responsibility for political prisoners. Before that, on December 5, 2012 the Parliament of Georgia adopted a resolution that made an ad hominem list of political prisoners. Parliament then passed amnesty and defined its personal application process itself. According to Georgian legislation, amnesty is an indefinite measure and it should be based on general criteria.¹⁹⁶ In contrast, a pardon is an individual act where the President of Georgia uses this authority with bona fide convicted persons.¹⁹⁷ The Venice

192 CCG statement is available online: http://www.constcourt.ge/index.php?lang_id=-GEO&sec_id=6&info_id=1103 > [Last visited, August 16, 2013].

193 Georgian Democratic Initiative 'Report on Human Rights and Freedoms' (First half of 2013), available online: < <http://gdi.ge/wp-content/uploads/2013/07/GDI-report-full-version.pdf> > [last visited, August 16, 2013]

194 Inter alia, 'After the Rose, the Thorns: Political Prisoners in Post- Revolutionary Georgia', FIDH, 2009.

195 Art 22.

196 Criminal Code of Georgia, Art 77

197 Ibid. Art 78.

Commission criticized this amnesty for several reasons.¹⁹⁸ Firstly, the amnesty contradicted the Principle of Legality, since it lacked a legal basis.¹⁹⁹ Secondly, the criteria for selecting cases were not transparent.²⁰⁰ Thirdly, it failed to comply with the principle of separation of powers.²⁰¹ Additionally, the amnesty law was regarded as arbitrary and discriminatory.²⁰² The Venice Commission clearly indicated that in this case, the Parliament of Georgia acquired the functions of the judiciary, which was not compatible with the rule of law requirements. Such an approach undermines the trust towards the judiciary; therefore, it should be limited to the minimum possible extent in the future. The separation of powers dictates that the legislative branch should not accord incompatible functions, especially those having damaging implications on the judiciary.

6. Temporary commission on the miscarriage of justice

On May 2013, the Ministry of Justice of Georgia presented its Draft Law on the Temporary State Commission on Miscarriages Of Justice of Georgia.²⁰³ This commission aims to reopen and re-examine cases decided between 2004-2012 by the Georgian Courts on criminal cases. Its primary aim is to ensure justice for all those who were convicted wrongly or with disregard of due process rights. On June 17, 2013 the Venice Commission announced this draft law²⁰⁴ contradicted several major principles in the Constitution of Georgia, namely – the Separation of Powers²⁰⁵ and the Prohibition of Ex-

198 Opinion on The Provisions Relating to Political Prisoners in the Amnesty Law of Georgia; CDL-AD(2013)009, 2013.

199 Ibid. par 35-7.

200 Ibid. par 38-9

201 Ibid. par 40-6.

202 Ibid. par 47-56.

203 English version is available online on web-page: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2013\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2013)024-e) [Last accessed 26/06/2013].

204 Joint Opinion on the Draft Law on the Temporary State Commission on Miscarriages of Justice; Venice Commission, Directorate for Justice and Human Dignity of the Directorate General of Human Rights and Rule of Law of CoE, CDL-AD(2013)013.

205 Ibid. par 82.

traordinary Courts²⁰⁶. In some aspects, the Draft went too far and the state commission acquired the functions of the highest appeal court²⁰⁷. The Venice Commission criticized the draft on many occasions²⁰⁸, stating that ‘...relevant provisions of the proposal ... will only bring discredit²⁰⁹ to the judiciary and the judicial system.’²¹⁰ The Government of Georgia should acknowledge the necessity of creating relevant measures for the solution of transitional justice problems. The mechanism adopted by parliament should correspond to the requirements of the Rule of Law. One possible measure may be giving the Constitutional Court of Georgia the competence to review the decisions of the Courts of Ordinary Jurisdiction. This process must comply with the constitutional standards and requirements of the Rule of Law. The Public Defender of Georgia has expressed the same opinion on that regard.²¹¹

II. Judicial accountability, prosecutors office

1. Disciplinary liability of judges

The Disciplinary Liability of Judges is one of the most crucial aspects of ensuring independence of the judiciary. Every state should ensure an effective system, where each judge is held responsible for wrongdoings, while censorship on functioning courts must be avoided. Several international documents provide respective guarantees in this regard. In a recent decision, the European Court of Human Rights stressed for the importance of a fair hearing while

206 Ibid. par 79.

207 Ibid. par 72.

208 Ibid. par 83.

209 It must be noted that the Committee of Human Rights and Civil Integration of the Parliament of Georgia has evaluated the dismissal of several former Supreme Court Judges to be politically motivated. This can also be regarded as acquiring non-compatible functions by the parliament and as a discrediting factor to the Judiciary of Georgia. Information available online: <http://parliament.ge/index.php?option=com_content&view=article&id=4225%3A2013-08-07-13-05-06&catid=2%3Anews&Itemid=433&lang=ge> [last visited 16/08/2013].

210 Ibid. par 11.

211 Available online < <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1776> > [Last accessed 15/08/2013].

imposing disciplinary liability on judges.²¹² European standards dictate that grounds for disciplinary liability must be precisely defined and respective procedural guarantees should be ensured.²¹³ Article 43 of the Organic Law provides for grounds of the dismissal of judges. One of these is the commission of disciplinary offense. The definition for dismissal is provided in article 2 of the 'Law on Disciplinary Liability and Procedure of the Judges of the Courts of General Jurisdiction of Georgia'. It sets intra vires grounds for disciplinary liability. These are accessible to the judges. One small ambiguity which needs to be addressed is that one of the grounds for the dismissal of judges is their involvement in non-compatible activities.²¹⁴ This is also the basis of disciplinary liability.²¹⁵ In the former case, the High Council of Justice makes the decision. In the latter, disciplinary proceedings must be against the judge and the respective decision should be rendered by an independent body, taking into account due process requirements. This ambiguity should be avoided and respective legislative amendments should be adopted.

Before 2012, the 'Law on Disciplinary Liability and Procedure of the Judges of the Courts of General Jurisdiction of Georgia' contained the clause of 'flagrant violation of law' as a ground for a judge's dismissal. This regulation was repealed in March 27, 2013 and must be regarded as a positive step towards empowerment of individual judges. Additionally, the President of the Supreme Court of Georgia has presented a draft law, according to which, disciplinary liability of the judge will solely be permitted in cases of violating judicial ethics.²¹⁶ As for the procedures for disciplinary liability, Georgian legislation is fully compatible with international standards. According to the 'Law on Disciplinary Liability and Procedure of the Judges of the Courts of General Jurisdiction of Georgia', a special independent disciplinary board exists which makes decisions on the issue of Disciplinary Liability of the Judges.

212 Oleksandr Volkov v. Ukraine, Judgment of the European Court of Human Rights, January 9, 2013.

213 Recommendation No. R (94) 12, Committee of Ministers of Council of Europe, October 13, 1994, Principle VI

214 Art 43, Sec 1, Subsection 'G'

215 Art 2, Sec 2, Subsection 'G', 'Law on Disciplinary Liability and Procedure of the Judges of the Courts of General Jurisdiction of Georgia'

216 Information is available online: < <http://www.supremecourt.ge/eng/news/id/461> > [accessed on 13/09/2013].

The Decisions are subject to appeal to the Disciplinary Chamber of the Supreme Court of Georgia.

2. Criminal liability of judges for rendering erroneous decision

Criminal liability of judges for erroneous decisions was problematic in Georgia in 2006. In its report, 'Justice in Georgia,' the Georgian Young Lawyers' Association (GYLA) revealed many problems in this area.²¹⁷ Until 2007, the Criminal Code of Georgia contained a provision "rendering illegal judgment", which was then repealed. It was general practice to prosecute judges for rendering decisions that were not favorable to the prosecution, irrespective of the possibility of appeal to the higher court.²¹⁸ Theoretically, this is still possible because of the interpretation of the provisions of the Criminal Code of Georgia by the Supreme Court.²¹⁹ In 2013, there was one attempt by the Prosecutor's Office of Georgia to prosecute a judge for rendering an erroneous decision, but it was later abandoned.²²⁰ GYLA has recommended creating a special consent procedure in order to start criminal proceedings against judges²²¹. This can be regarded as the best solution to prevent arbitrariness and to ensure independence of the judiciary.

3. Prosecutors Office

After 2008, the Prosecutor's Office of Georgia became a subordinate body of the Ministry of Justice of Georgia. In 2013, the 'Law on Prosecution Service' was amended and the Minister of Justice was granted the power to be Attor-

217 Page 29-34.

218 Public statement of Transparency International - Georgia: <http://transparency.ge/blog/ch-veniganmartebebi-potis-mosamartlis-prokuraturashi-dabarebastian-dakavshirebit> > [Last accessed 18/08/2013].

219 Judgment of the Supreme Court of Georgia, Criminal Chamber, October 10, 2007, # 283-saz.

220 Available online: < <http://www.supremecourt.ge/news/id/325> > [Last accessed 15/08/2013].

221 Justice in Georgia, p 34.

ney General of Georgia. Now the POG is headed by the Chief Prosecutor and after the 2013 amendments, more independence is entrusted to the Office. This aspect of the reform should be assessed positively. In 2009, the Venice Commission presented its opinion on the Legislation of the Prosecutor's Office of Georgia (POG).²²² Some problems identified are still ongoing and need further attention. For instance, there are no constitutional provisions for the organization of the POG, which would guarantee institutional independence, tenure of the Chief prosecutor, etc.²²³ An additional issue that was noted by the Venice Commission is the appointment²²⁴ and dismissal²²⁵ of the Chief Prosecutor of Georgia. The President appoints and dismisses the Chief Prosecutor upon the nomination by the Minister of Justice. No technical input exists for electing the Chief Prosecutor and no criteria is set respectively for the nomination. The same is problematic when dismissing him/her and the Venice Commission has stressed the necessity of remedying this situation. Otherwise, solely political considerations may be used for selecting and dismissing the Chief Prosecutor, which would make the process arbitrary²²⁶. Initiated in the Parliament of Georgia, the Draft Law states that the Prime Minister will appoint and dismiss the Chief Prosecutor upon the nomination of the Minister of Justice, but no respective criteria are presented again.²²⁷

4. Implementation of ECHR judgments

The Codes of Civil²²⁸ and Criminal²²⁹ Procedure of Georgia contain clauses that regard Judgments of the European Court of Human Rights (ECHR) as

222 Opinion On Four Constitutional Laws Amending The Constitution Of Georgia', CDLAD(2009)017, 2009.

223 Ibid. par 27-30.

224 Ibid. par 27-30.

225 Ibid. par 27-30.

226 Recommendation Rec(2000)19, Committee of Ministers of Council of Europe, October 6, 2000

227 Draft Law on the Amendments of the Law on Prosecution Service of Georgia, 07-3/213, September 5, 2010.

228 Art 423, Par 1, Subparagraph 'Z'.

229 Art 310, Subparagraph 'E'.

a ground for reopening cases when the European Court finds a violation of conventional rights in concrete cases. However, the Code of Administrative Procedure clearly indicates that the same regulation does not apply to administrative proceedings.²³⁰ The application of human rights is becoming widespread as it also covers a substantial part of administrative proceedings. Thus, reasonable justification for such a provision is truly absent; therefore, it must be repealed. Additionally, some problems also arise in the process of implementation of ECHR judgments in criminal cases. The National Courts of Georgia consider only the *modus operandi* of ECHR judgments. As a result, they reopened only those cases where the European Court directly ruled and required it.²³¹ This approach is very narrow and it excludes the *erga omnes* effect of ECHR judgments. For example, the Supreme Court of Georgia did not reopen a case of a convicted person²³² whose judgment was rendered by 'the court' and was not established by the law, according to European standards.²³³ The national court made its own interpretation of the clause - 'tribunal established by law' - which disregarded the ECHR's approach. This practice should be abolished and necessary legislative measures should be adopted to prevent similar situations in the future.

5. Judicial review of investigation

According to the European Court of Human Rights, several rights enshrined in the European Convention on Human Rights and Fundamental Freedoms have procedural aspects that derive from contracting states' positive obligations.²³⁴ One of the most prominent aspects of procedural rights is the victims access to the court, in order to appeal prosecutors' decisions to not start

230 Art 34 *ter*.

231 Annual Report of the Public Defender of Georgia, 'The Situation of Human Rights and Freedoms in Georgia', 2011, p 21-24.

232 Judgment of the Supreme Court of Georgia, Criminal Chamber, March 22, 2011, # 7AG-11

233 *Inter alia*, Gorgiladze v. Georgia, Judgment of the European Court of Human Rights, October 29, 2010.

234 *Inter alia*, Eric Svanidze, 'Effective investigation of ill-treatment Guidelines on European standards', Council of Europe, 2009.

criminal proceedings against perpetrators, or otherwise control a prosecutor's involvement in the investigatory process.²³⁵ According to the Criminal Procedure Code of Georgia, no such right exists for the victims of the crime. Chapter 7 of the Code regulates victims' rights and obligations but no such guarantee exists. This creates a substantial problem when prosecutorial authorities are unable to conduct effective and prompt investigation of crimes that constitute serious human rights violations. Georgia's recent history has clearly revealed the widespread nature of ill-treatment in institutions. One of the causes for this was the impunity that existed at the time. Therefore, it is necessary to create special guarantees for victims of crimes to initiate judicial review proceedings of the prosecutorial decisions, in order to protect human rights in a more efficient way.

III. Reform of the judiciary

Reform of the judiciary is an ongoing process in Georgia. Many systemic problems were solved; nevertheless, some aspects require additional solutions. For that reason, the President of Georgia issued ordinance #591 for further reform of the Criminal Justice system.²³⁶ According to this ordinance, a special coordinating council was created between government authorities.²³⁷ The Council has its own legal capacity, functions under its own competencies and has an obligation to meet at least twice per year. The Council acts under its secretariat and can also invite experts. By the Council's decision, special working groups can be created. Currently there are 8 such groups which work intensively and productively on many aspects of criminal procedure and judicial administration. It is highly desirable and recommended to continue this process in the future.

235 *ibid.* p 69.

236 Adopted on December 13, 2008.

237 Similar body is created for reforming Civil Legislation of Georgia by the Order of the Minister of Justice of Georgia, #25, April 23, 2013.

RECOMMENDATIONS:

The recommendations presented below must be considered by the Government of Georgia:

- A special procedure should be introduced regarding the negotiation of the judicial budget;
- Salaries of judges should be increased to the highest possible extent;
- Increase the number of judges;
- Implement clear regulations about initiating the process of judicial promotion;
- The regulation on the transfer of judges should comply with international standards; multiple assignments to other courts must be prohibited without an individual judge's consent;
- Transfer of judges should be used after reserve judges' resources have been exhausted; Temporal Judges should be given special guarantees for their independence after the October, 2013 constitutional amendments enter into force;
- The judiciary should take further steps to promote itself to gain public trust ;
- The legislation on the Constitutional Court of Georgia should be reformed to create a more effective system.
- The Parliament of Georgia should refrain from adopting such measures, which will contradict the Principle of Separation of Powers and acquire the functions of the judiciary;
- The Parliament of Georgia must take into account constitutional

principles enshrined in the Constitution of Georgia and respectfully adopt transitional justice mechanisms;

- The Parliament of Georgia should amend legislation in order to prevent any ambiguity with the grounds of disciplinary liability of the judges;
- Necessary legislative measures should be adopted in order to avoid criminal liability of judges for rendering 'erroneous decisions';
- Appointment and dismissal of the Chief Prosecutor of Georgia must comply with European standards;
- ECHR judgments should be implemented fully and this process must cover administrative proceedings also;
- The judiciary should be accorded with certain rights in criminal proceedings in order to achieve an effective balance between the principle of discretionary prosecution and victims' rights.

PRIORITY AREAS: COMMON FOREIGN AND SECURITY POLICY; INTEGRATED BORDER MANAGEMENT

INTRODUCTION

Successive governments of Georgia have been cooperating with the European Union since the last decade of the 20th century and European integration has been declared as a state foreign policy goal²³⁸. In June 2004 Georgia was invited to participate in the newly launched European Neighbourhood Policy (ENP) along with other eastern European, Southern Mediterranean and Middle Eastern countries. The ENP was launched during the so-called “big bang enlargement” in order to avoid creation of new divisive lines in Europe and the alienation of neighbours that were left out of an enlarged union. After a long negotiation process Georgia and the EU concluded the European Neighbourhood Policy Action Plan (ENP AP) in November 2006. ENP AP listed activities which should have been implemented by the Georgian Government in 8 different priority areas in the period of 5 years.

In order to enhance the eastern dimension of cooperation within the ENP, in 2008 the European Union came up with a new initiative – the Eastern Partnership, which aimed at offering a “more ambitious partnership”²³⁹ to the six states on the Eastern flank of the EU – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The Eastern Partnership offers cooperation in two parallel dimensions: bilateral and multilateral. The bilateral track is designed to deepen relations between the EU and the partner country by means of upgrading contractual relations towards Association agreements, creation of free-trade areas, visa-liberalisation, energy security and support from the

238 See: National Security Concept of Georgia; Foreign Policy Strategy of Georgia 2006-2009

239 Communication from the Commission to the European Parliament and the Council, Eastern Partnership, COM (2008) 23 final

EU in comprehensive institution building. The multilateral track provides a framework where common challenges could be addressed by the EU and the six partners. Four policy platforms on 1) democracy good governance and stability; 2) economic integration and convergence with EU policies; 3) energy security; and 4) contacts between people were established, along with several flagship initiatives and thematic panels under these initiatives. In Georgia, respective line ministries are responsible for cooperation under different policy platforms – Platform 1 – State Ministry for European and Euro-Atlantic Integration; Platform 2 – Ministry of Economy and Sustainable Development; Platform 3 – Ministry of Energy and Platform 4 – Ministry of Culture.

On May 15, 2012 the European Commission presented a roadmap for the Eastern Partnership Summit to be held at the end of November 2013. The aim of the roadmap is to guide and monitor the reform progress in the partner countries and it sets out “the objectives jointly agreed by the EU and its European partners under the Eastern Partnership framework arising from the 2009 Prague and 2011 Warsaw Summit Declarations; the reforms and progress that the partner countries would aim at to meet the objectives of the jointly agreed steps contained in the relevant Association Agendas and ENP Action Plans; the various instruments and support that the EU will provide through EU financial cooperation and policy dialogue; an indication of how far the EU and partner countries expect to have come in achieving the objectives by the end of the second half of 2013, through the identification of targets, outputs or timelines”²⁴⁰.

Similar to the set-up of the Eastern Partnership policy this document is divided into two – bilateral and multilateral sections listing activities to be carried out by the respective countries in the run-up to the next EaP Summit to be held in Vilnius on November 28-29, 2013.

This report is examining Georgia’s progress in implementing both bilateral and multilateral dimensions of the roadmap. Two specific fields - Common Foreign and Security Policy (A.4) and Integrated Border Management (B.2.e)

240 Joint Communication to the European Parliament and the Council, the Economic and Social Committee and the Committee of the Regions, Eastern Partnership: A Roadmap to the Autumn 2013 Summit, JOIN (2012) 13 final

are the focus of the report falling under thematic areas of Political association and economic integration (Area A) as well as Enhancing Mobility in a Secure and well-managed Environment (Area B) in the bilateral section. The same fields are covered under the multilateral roadmap, whereas in that section both Common Foreign and Security Policy (CFSP) and Integrated Border Management (IBM) fall under the same platform – democracy, good governance and stability. This report examines country progress in the aforementioned two fields starting from May 15, 2012, when the Joint Communication on Roadmap was published.

METHODOLOGY

This paper is produced as a result of qualitative research. Analysis of new and amended internal legislation, international agreements as well as secondary legal acts were instrumental for understanding the progress of the reforms carried out by the Government of Georgia. Furthermore, country progress reports as well as assessment reports of different international organizations and ministerial implementation reports were consulted during the research.

Interviews with the officials of Georgian ministries involved and responsible for implementation of activities listed in the roadmap were conducted in order to obtain information on the process of negotiations and present state-of-play in certain areas of CFSP and IBM.

Site visits to the border crossing points is another method used for the data collection for the IBM section of the report.

RESULTS

This report covers two separate fields of the Roadmap and therefore the chapter below is divided into two sub-chapters. The first sub-chapter provides the results achieved under the CFSP area in bilateral and multilateral

track, whereas the second sub-chapter presents the achievements in the field of border management in the same sequence.

Common Foreign and Security Policy

Bilateral Roadmap

The CFSP Section of the bilateral roadmap is devoted to the exploration of possibilities for partners' participation in civilian and military EU-led operations. Georgia is requested to "conclude a framework participation agreement as an important step for extending the EU-Georgia cooperation to the area of Common Security and Defence Policy (CSDP)", which would in its turn lead to the increased possibilities for involvement in CSDP operations and missions, as stated under the target column of the document. Negotiations on framework participation agreement (FPA) between Georgia and the EU are still ongoing. Negotiations are conducted by the Ministry of Foreign Affairs (MFA) and the Ministry of Defence (MoD), the Ministry of Interior (MIA), the Ministry of Justice (MoJ), the National Security Council (NSC), the State Ministry of European and Euro-Atlantic Integration (MoEU) as well as State Ministry for Reintegration (SMR) are all involved in the negotiation process. According to the officials of the MFA and the MoEU, negotiations are in the final stage. The Georgian side submitted its final remarks to the text of the draft agreement and awaits response from the EU. The agreement itself is expected to be signed and endorsed before the Vilnius Summit. Endorsement of the FPA will open the possibility for Georgian citizens to be seconded to military missions carried out under the CSDP. Surprisingly, even though the FPA is not signed yet, Georgia has already received an official invitation from the EU to participate in CSDP missions EUTM - European Union Training Mission to Mali and EUCAP NESTOR – the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa²⁴¹. EUTM Mali is a military mission, which trains and advises the Malian Armed Forces, in order to contribute to the restoration of their military capacity with a view to enabling

241 Interview with the MFA official on 19.06.2013

them to engage in combat operations aiming at restoring the country's territorial integrity²⁴². EUCAP NESTOR – is a civilian mission which assists states in the Horn of Africa and the Western Indian Ocean, to develop a self-sustainable capacity to enhance their maritime security and governance, including judicial capacities²⁴³.

It is worth mentioning that the text of political cooperation chapter of the Georgia-EU draft association agreement, which includes cooperation in the field of CFSP has already been agreed by the parties²⁴⁴. Consultations were also held on the text of the draft association agenda, but the document has not been officially provided by the EU yet²⁴⁵.

Multilateral Roadmap

Under the CFSP multilateral dimension the EU and partner countries are called on to 1) step up cooperation and dialogue on international security issues and 2) to explore the scope for setting up a dedicated panel on the CSDP. Both of these actions should result in enhanced cooperation in international security issues and the CSDP – an outcome of the action.

Georgia continues to cooperate with the EU in the field of the CFSP. A CSDP European Union Monitoring Mission (EUMM) plays an important role in stabilising the situation at the administrative boundary line with the conflict regions. It monitors the implementation of 6 point cease-fire plan, unfortunately only at the Georgian controlled territory, due to the refusal of de-facto authorities of Abkhazia and Tskhinvali Region to let the mission members into those territories. The EUMM mandate was recently prolonged until December 14, 2014.

242 http://www.eutmmali.eu/?page_id=228

243 <http://www.consilium.europa.eu/eeas/security-defence/eu-operations/eu-cap-nestor?lang=en>

244 Interview with MoEU official on 18.06.2013

245 Interview with the MFA official on 19.06.2013

Georgia's alignment to CFSP declarations has intensified. Throughout 2012 Georgia aligned itself with 35 out of 62 declarations it was invited to support²⁴⁶, whereas according to statistics received from MFA, Georgia aligned itself already with 113 declarations out of 156 in the first 8 months of 2013.

Georgia and other partner countries officially supported the EU initiative on establishing a CSDP panel at the EaP Platform 1 meeting held in May 2013 and agreed to the Terms of References for the panel. The panel will gather twice a year and would primarily serve the goal of consulting the partners and experience-sharing. The first meeting of the panel is expected to be held before the end of the year and Georgia will most likely be represented by the relevant officials of the MFA, MIA and MoD – agencies which would participate in the work of the panel in the future.

Integrated Border Management

Bilateral Roadmap

According to the Roadmap, Georgia is encouraged to continue implementation of the integrated border management strategy and update its action plan. The Georgian Border Management Strategy was elaborated by the Temporary Interagency Commission on Border Reforms under the National Security Council of Georgia in 2008 based on the European Integrated Border Management concept. Due to significant structural changes in border agencies that occurred after the Georgia-Russia war, the strategy was updated in 2012 to reflect the new realities in the field. Remarkably, the EU provided its expertise and was involved in both the drafting and updating process of the document through EU Special Representative's Border Support Team and EU-funded South Caucasus Integrated Border Management Programme (SCIBM) respectively. In order to implement the strategy a detailed action plan was designed in 2009, but after the 2012 update of the strategy it became necessary to update the action plan as well. The action plan is being

246 Joint Staff Working Document: Implementation of the European Neighbourhood Policy in Georgia Progress in 2012 and recommendations for action, SWD (2013) 90 Final

currently updated by the above interagency commission and is expected to be finalised in the first half of October and submitted for endorsement. Similar to the strategy elaboration process, the EU has been involved in the action plan drafting process as well through EUSR BST and SCIBM. That document is designed according to the EU guidelines on integrated border management for external cooperation.

The National Security Council of Georgia is responsible for monitoring the implementation of the strategy and all line ministries are obliged to submit progress reports to the NSC every 6 months. The progress in implementation of the action plan is demonstrated in eleven out of twelve directions of the document. More than half of the actions listed in the plan are already implemented. Delimitation and demarcation of state border with the neighbouring countries is the only direction of the action plan, where no progress has taken place so far. Obviously, this is a bilateral process and it would be wrong to blame only Georgian authorities for the lack of progress, but nevertheless the lack of progress in talks with Armenia and Azerbaijan is alarming. The situation is even worse concerning negotiations with Russia, as they have been stalled indefinitely since Russia's recognition of Abkhazia and South Ossetia as independent states in August 2008 and the subsequent cut of diplomatic relations between Georgia and Russia.

In terms of institutionalisation of the strategy elaboration process, an important step was taken by including border management in the national security review process, which envisages mainstreaming the elaboration of all security-related strategic documents in the same period. The next cycle of the NSR will start in 2014 and consequently the new border management strategy of Georgia will also be prepared. The potential for Georgia to assist in the development of its regional partners' IBM adoption is worthy of mention. This would not only be of use to the partner countries but would also serve as a motivating tool to ensure Georgia's ongoing progress in IBM.

Below, some important achievements in strategy implementation are listed. In order to introduce a standing mechanism for interagency cooperation, which is one of the pillars of Integrated Border Management, the Memorandum of Understanding on "general rules of cooperation on the issues of

state border protection between the Patrol Police Department, Border Police Department of Ministry of Internal Affairs and Revenue Service of Ministry of Finance” was signed by the ministers of internal affairs and finance in July 2013. The MoU sets up permanent working groups at local and central levels, which are responsible for cooperation, exchange of information, coordination of work at BCPs and joint trainings. The MoU has been drafted according to recommendations provided by European experts, but it should be underlined that the Memorandum is not a legally binding document, but rather a declaratory one. In a similar vein, to improve coordination in maritime border protection, a Presidential Order on establishing a Joint Maritime Operations Centre (JMOC) was approved in August 2013. The main tasks and responsibilities of the JMOC will include - preventing, revealing and eliminating all kinds of illegal activities, maritime incidents and grave violations of the maritime space regime of Georgia. The Coast Guard of the Border Police of Georgia will be the lead agency in the JMOC, where all line ministries are taking part.

A new Georgian Police Code of Ethics has been approved in May 2013 in line with international standards, which provides for main ethical standards required to be followed by police officers, including those serving at the border. It covers areas of legality of police action; protection of and respect for human rights; the principle of non-discrimination; confidentiality and privacy; breaches of the Code; corruption; use of force and firearms; investigations; and treatment of detainees. In addition, the MIA has also developed separate instructions for the employees of the Border Police, Patrol Police and officials (patrol-inspectors/border control officers) working at border crossing points, which describes in detail their code of conduct, respect for human rights, their obligation with regards to responding to bribery, cases of organized crime, etc.

In terms of strengthening another pillar of IBM namely, international cooperation, Georgia and Armenia signed an agreement on the joint use of land border crossing points in January 2013, which aims at abolishing outgoing customs control for cargo traffic. This on the one hand points at increasing confidence of the customs authorities of the two countries in each other's work and on the other hand would decrease the time of control at the bor-

der. Draft of a similar agreement has been submitted by the Georgian Revenue Service to Azerbaijani counterparts for consideration as well.

Georgian Border Police has also initiated drafting of border delegate agreements with its South Caucasus neighbours. Drafts of both documents have been prepared with the assistance of European experts and the agreements are expected to be officially submitted to Armenian and Azeri authorities in the next couple of months for endorsement.

Multilateral Roadmap

The objectives stated in this section are a) to step up dialogue on border related issues between EaP countries and EUMS through an IBM panel, b) boost the operational capacity of border and customs officers by providing training, c) support training institutions of the EaP countries, d) improve the infrastructure at the borders between the partners states and e) develop long-term IBM strategies aligned to EU standards in the EaP countries.

The Georgian Ministry of Interior and the Revenue Service are actively participating in the IBM panel meetings and share experience and lessons learned during the implementation of border management reform. Georgia has submitted three pilot project proposals in the last two years together with its neighbours, two with Armenia and one with Azerbaijan. The first project – “Enhancement of border management capabilities between Georgia and Armenia at Ninotsminda-Bavra border crossing point” (NBIBM) was launched in November 2012 and is ongoing. A similar pilot project between the two countries on Sadakhlo-Bagratashen border crossing point will start in November 2013. The third pilot project “Better coordination of protection of the land border between Georgia and Azerbaijan” is now being contracted and expected to start in March 2014. All three projects target capacity building of the border agencies as well as provide equipment and infrastructure for crossing points and border sectors. The former two projects target primarily border crossing points, whereas the latter aims at improving security at the green border.

At the last IBM panel meeting held in June 2013, Georgian representatives signalled readiness to submit two new project proposals, namely a joint Georgian-Azeri project on improving sanitary, phyto-sanitary and veterinary capabilities at Red Bridge and a project on the establishment of an IBM regional excellence centre in Georgia. Both project proposals will be officially submitted for consideration soon. Possible establishment of IBM excellence centre would improve the capacity of the Georgian MIA Academy and Finance Academy in providing advanced training in the field of IBM and other related topics.

The Academy of the Ministry of Internal Affairs remains the principal border agency training facility and continues to provide border and patrol police personnel with basic induction as well as refresher and specialist training as required. In early 2013, the MIA Academy prolonged the duration of the basic training courses for officers of the Patrol Police Department from 12 weeks (376 hours) to 20 weeks (600 hours). Training courses for Border Police officers were extended from 6 weeks (235 hours) to 14 weeks (420 hours). The Common Core Curriculum of the EU border agency FRONTEX has been incorporated into the training curricula of the Academy. Apart from policemen, the MIA Academy provides basic training also for Customs recruits at the Customs Faculty within the Academy as well as training for incumbent Customs officers in inspection of travel documents.

In March 2013, a mock border crossing point equipped with standard BCP equipment and designed after a standard BCP model was constructed at the MIA Academy for training purposes. The Academy of the Ministry of Finance carried out specialised and ad-hoc trainings inter alia on customs related issues. Both academies have modern infrastructure and equipment as well as facilities, but unfortunately, the Ministry of Finance Academy is placed in a rented building, which could be a hindrance for long-term development planning.

In terms of EU training assistance, two capacity building and a twinning project were carried out in the reporting period. SCIBM, IBM FIT and the twinning project on "Strengthening the national Customs and SPS border control system in Georgia" provided trainings to high and mid-level managers of the

beneficiary agencies as well as to operational staff. In all three projects the cooperation with the national authorities proved to be very successful as stated at the closing conferences. In total, 615 Georgian officials were trained in the framework of SCIBM project out of which more than 100 officers were trained on inspection of travel documents. These trainings were instrumental for creating a document inspection capacity in the country²⁴⁷. The ongoing flagship initiative pilot project NBIBM is also carrying out trainings for beneficiary officials in the fields of risk analysis, intellectual property rights, document inspection, treatment of refugees and asylum-seekers at the border, mechanisms of international border cooperation, etc²⁴⁸.

According to assessment of independent EU experts, "the national academies have established the use of good quality assessment mechanisms, such as training needs analyses, which feed directly into the design of curricula and programmes thus ensuring the ability to flexibly respond to specific requirements on an ongoing basis. As such, the range of training available through in-house means encompasses the majority of necessary subjects and instructional competence is judged to be well-developed"²⁴⁹.

Modernisation of border infrastructure has been ongoing in the reporting period. Construction of a new, modern border crossing point at Georgian-Armenian border in Ninotsminda was launched in 2012 and is expected to be completed in autumn 2013. Modernisation of Vale BCP at Georgian-Turkish border was completed in 2012 and reconstructed Kazbegi BCP at Georgian-Russian border was officially opened in early September. There is a standard design model applied to all Georgian BCPs, which stipulates safe and well-organized movement of passengers and cargoes as witnessed by the author of this report during site visits²⁵⁰. Infrastructure including buildings, access roads and booths are adapted for organized movement of dif-

247 Interview with SCIBM national expert on 21.06.2013

248 NBIBM Project Document, available at: http://www.ge.undp.org/content/georgia/en/home/operations/projects/democratic_governance/enhancement-of-the-border-management-capabilities-at-ninotsminda.html,

249 SCIBM Final Assessment Report P.34, available at: http://scibm.org/?attachment_id=250

250 Visits were conducted to Sadakhlo, Red Bridge, Ninotsminda, Sarpi and Kazbegi BCPs throughout April-June 2013

ferent entry and exit flows. All road, sea, railroad and air BCPs are equipped with radiation detection equipment and second-line document inspection equipment. Video-control (CCTV) cameras at the BCPs are connected to the central database allowing for 24/7 control. The Personal Identification and Registration System (PIRS) is installed at all BCPs. The facilities at modernised BCPs consist of specific work areas for customs and police officers with first and second line equipment and as well as standard examination/control equipment. This not only expedites immigration formalities, but enables the border officials to efficiently detect fraudulent documents, maintain a database on exits and entries into the country, therefore allowing for data analysis and exchange of information on migration trends. Software allowing linking of the border crossing database with other MIA databases as well as “live” (online) regime verification of persons entering or leaving Georgian territory is operational at every BCP. The number of electronic gates allowing for the smart crossing of the border for holders of Georgian biometric travel documents increased and presently the automatic crossing is available at Tbilisi International Airport, Batumi International Airport, Red Bridge, Sadakhlo, Vale and Sarpi. The upgrade of border crossing infrastructure and simplification of procedures improved the perception of the general public towards border agencies. A passenger satisfaction survey conducted by the SCIBM project at Tbilisi airport and Sadakhlo BCP in August 2012, resulted in 94% approval rate for the work of border agencies²⁵¹.

Unfortunately, the situation at green border sectors is different. Due to the lack of budgetary funds, some sectors at Georgian-Azerbaijani and Georgian-Armenian segments of the border are in dire conditions. In April 2013, the Border Police of Georgia tabled a 5-year infrastructure development plan, which envisages the modernisation of all old sectors in the country, but it is still unclear whether the agency would get sufficient funds from the state budget to cover construction costs.

Development of long-term IBM strategy has already been described in the above sub-chapter.

251 SCIBM Survey Analysis in Georgia, P.28 available at http://scibm.org/?attachment_id=252

Georgia's progress in IBM reforms was recently acknowledged by the European Commission, which funded a 16 million Euro programme for "Enhancing Georgia's capacity in border management and migration" in July 2013. This programme is funded under the "More for More" principle, launched in the frame of the Eastern Partnership Integration and Cooperation Programme (EAPIC) and supporting those countries of the EaP, which have shown tangible progress in their reforms. The programme, which will be carried out by the International Organisation for Migration and International Centre for Migration Policy Development would target the improvement of green border surveillance and the increase of government capacity in managing migration for the next four years.

CONCLUSION

The research shows that Georgian progress in implementation of the Eastern Partnership roadmap in CFSP and IBM fields is quite visible. In the CFSP, the text of the Framework Participation Agreement in the CSDP missions is almost finalised pending the EU's response. Georgia already expressed its consent towards setting up a CSDP panel and continues to increasingly align itself with CFSP declarations.

In the field of IBM, current structural mechanisms used for strategy development and review are functioning well with the NSC assuming the coordination role with obvious efficiency. The involvement of relevant state agencies within the process is deemed adequate with all bodies enjoying good levels of representation. Effectiveness of these structural mechanisms will be once again tested in 2014 when the new IBM strategy is due to be elaborated. Certain documents on improving inter-agency cooperation in the country have been developed and endorsed. Important cooperation agreements have been elaborated with both South Caucasus neighbours. Despite the fact that borders with neither Armenia nor Azerbaijan are delimited, the willingness of the sides to create legal grounds for deeper cooperation in the border field is existent, which is a very good sign for further improvement. The current border management training capacities of Georgia are considered to be broadly adequate, both academies having good infrastructure and equipment and having continued to grow throughout the reporting period. The developmental emphasis is made on the institutional training capacity development in combination with targeted assistance from international partners. Georgia actively participates in Eastern Partnership IBM panel meetings and regularly initiates new cross-border project proposals in partnership with its regional partners. The infrastructure of the border crossing points is improving and with the accomplishment of ongoing construction projects, all international road crossings will comply with European standards. Infrastructure at green border sectors requires major overhaul and refurbishment in order to bring it to above standards. Unfortunately the current budget of Border Police is not able to cover these costs and therefore resources should be mobilised elsewhere.

RECOMMENDATIONS

To continue good progress towards achieving the objectives set in the roadmap and consolidate the achievements to date in the fields of CFSP and IBM, the following steps should be taken by the Georgian Government:

- Finalise the text of framework participation agreement for signature before November
- Continue alignment to CFSP declarations
- Raise public awareness on Georgia's possible participation in CSDP missions
- Continue implementation of IBM strategy provisions
- Endorse the updated IBM Action Plan before October 2013
- Start preparations for drafting the new Border Management Strategy
- Improve training capacity of the MIA Academy in IBM field
- Ensure sustainability of training by conducting Training of Trainers
- Increase the budget of border agencies and mobilise donor resources to modernise infrastructure at green border sectors
- Continue partnership with Armenia and Azerbaijan in designing new flagship initiative proposals
- Improve the legal basis of border cooperation with Armenia and Azerbaijan
- Intensify border cooperation with other EaP and EU states.

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