

Overall Score:

73 - Moderate

Legal Framework Score:

86 - Strong

Actual Implementation Score:

58 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸¹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

References:

Article 25, Constitution of Georgia

1. Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission.
 2. The necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare.
 3. Only the authorities shall have the right to break up a public assembly or manifestation in case it assumes an illegal character.
- The legislation of Georgia entitles any legal person of private law whether it is commercial or non-commercial to perform any activities which are not considered to be illegal by Georgian law. (Article 25, Civil Code of Georgia)

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Legislation of Georgia does not envisage any legal or regulatory restrictions on the ability of CSOs to raise or accept funds from any foreign or domestic sources.

References:

Civil Code of Georgia, Chapter II

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The law does not obligate CSOs to disclose their sources of funding. CSOs may voluntarily publicize their financial sources at their discretion.

References:

Legislation of Georgia

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

92

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

Comments:

There is no evidence that the government creates barriers to the organization of any anti-corruption/good governance CSO. CSOs that are focused on promoting good governance or anti-corruption can freely operate.

References:

Tamar Gurchiani, Georgian Young Lawyers' Association (GYLA), September 8, 2009

www.transparency.ge

www.gyla.ge

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

The government of Georgia encourages CSOs to get involved in anti-corruption/good governance activities. On December 28, 2008, the Anti-Corruption Interagency Council was established under the Ministry of Justice.

Members of this Council are highly placed public officials and are also associated with key CSOs in Georgia (Decree of the President of Georgia, No. 622, 26.12.2008). These organizations are: Transparency International Georgia, Georgian Young Lawyers Association, Open Society Georgia Foundation, American Bar Association and Liberty Institute.

In addition, all other CSOs can participate in the council's working processes.

References:

Anti-Corruption Policy: Recommendations by Civil Society Representatives and Experts, TI Georgia, http://www.transparency.ge/index.php?search_string=corruption+council&sec_id=50100_id=ENG

GEPAC: Support to the Anti-Corruption Strategy of Georgia, 3rd Progress Report – http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/GEPAC/gepac_en.asp

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

None of the Georgian non-governmental organizations that are working on anti-corruption issues have reported that CSOs have been shut down for their work on corruption-related issues.

References:

GYLA, www.gyla.ge

TI Georgia, www.transparency.ge

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

None of the Georgian non-governmental organizations that work on anti-corruption issues have reported any acts of violence toward CSO activists.

References:

GYLA, www.gyla.ge

TI Georgia, www.transparency.ge

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

None of the Georgian non-governmental organizations that work on anti-corruption issues have reported any acts of violence toward CSO activists.

References:

GYLA

TI Georgia

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

None of the Georgian non-governmental organizations that work on anti-corruption issues have reported any acts of violence toward CSO activists.

References:

GYLA

TI Georgia

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES

NO

Comments:

Any person who works at any professional job or is a student at a high school, university or technical school has a right to organize into trade unions and participate in its activities. Temporarily unemployed and retired persons are allowed to remain as members of trade unions.

References:

Article 26, Constitution of Georgia

Article 2, Law on Trade Unions

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100

75

50

25

0

Comments:

Irakli Petriashvili, president of the Georgian Trade Union Confederation (GTUC), has stated that legislative gaps create barriers

that keep trade unions from being effective. In addition, there have been alleged cases where employees of various companies and public agencies were dismissed from their jobs for joining the trade union.

References:

Annual Survey of Trade Union Violations, 2009, <http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=GEO&Lang=EN>

Irakli Petriashvili, President of the Georgian Trade Union Confederation (GTUC)

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES

NO

References:

Constitution of Georgia, Article 24:

1. Everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by in any other means.
2. Mass media shall be free. The censorship shall be impermissible.
3. Neither the state nor particular individuals shall have the right to monopolise mass media or means of dissemination of information.

4. The exercise of the rights enumerated in the first and second paragraphs of the present Article may be restricted by law on such conditions which are necessary in a democratic society in the interests of ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice.

Law of Georgia on the Freedom of Speech and Expression, Article 3, Freedom of Speech and Expression:

1. The State recognizes and protects the freedom of expression as an inherent and supreme human value. In the course of discharge of the authority, people and the State are bound by these rights and freedoms as by directly applicable law.

2. Everyone except for administrative agencies enjoys the right to freedom of expression that implies the following: a) Absolute freedom of opinion; b) Freedom of political speech and debates; c) Obtaining, receipt, creation, keeping, processing and dissemination of any kind of information and ideas; d) Prohibition of censorship, editorial independence and pluralism of the media; the right of a journalist to keep confidential the source of information and make editorial decisions based on his own conscience; e) Academic freedom of learning, teaching and research; f) Freedom of art, mastery and inventions; g) The right to speak any language, use any alphabet; h) The right to charity; i) The right to report crimes and instances of corruption and to be protected from retaliation for doing so; j) freedom from coercion, freedom to express opinions on religion, belief, conscience, ethnic, cultural and social belonging, origin, family, property and social position as well as all the facts that may become a ground for restriction of his rights and freedoms.

3. This Law does not disregard other rights, freedoms and guarantees provided for by the Constitution of Georgia and other universally recognized rights freedoms and guarantees related to the freedom of expression, which are not reflected herein but naturally derive from the universally recognized rights and freedoms.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of Georgia, Article 19 :

1. Everyone has the right to freedom of speech, thought, conscience, religion and belief.

2. The persecution of a person on the account of his/her speech, thought, religion or belief as well as the compulsion to express his/her opinion about them shall be impermissible.

3. The restriction of the freedoms enumerated in the present Article shall be impermissible unless their manifestation infringes upon the rights of others.

Law of Georgia on the Freedom of Speech and Expression

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

94

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Ia Antadze, a journalist, has stated that to her knowledge that the government does not create any formal or informal barriers to form a print media entity; this is evidenced by the increasing number of print media. There are some other problems in this area but not with the establishment of the print media. We used to face some obstacles with print media, but they were abolished in early 1990s after the adoption of the new legislation that included regulations regarding the issue."

Zviad Koridze, a journalist, says, "From a legal point of view the Government does not create any barriers. The only problem that print media entities face is the lack of financial sources to set up a distribution network. The government has attempted to create a monopolized distribution system. Many distributors who had their own newsstands on the street were forced to remove them. If the government monopolizes retail sales, it will be able to manipulate print media.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

There is no provision in Georgian legislation that requires a license for print media entities.

References:

Civil Code of Georgia

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no provision in Georgian legislation that requires a license for print media entities.

References:

Ia Antadze, Journalist

Zviad Koridz, Journalist

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no provision in Georgian legislation that requires a license for print media entities.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Ia Antadze, a journalist, says, "The government creates artificial barriers for obtaining licenses for radio and TV broadcasting. The licenses are issued by the Communications Regulation National Commission of Georgia whose decisions are sometimes politically biased."

According to Zviad Koridze, "The government does not create barriers to form a broadcast station for radio and TV media entities, though there is a problem with obtaining licenses. Since 2004, no new licenses have been issued for TV companies. Only one radio license have been issued.

"In 2004, the Georgian National Communications Commission, with a new composition of members, declared a moratorium on a frequency for 2 years. Until 2006, the commission was reviewing which frequencies were empty and which were not; however, the results of this inspection has never been made public.

After the inspection was done in 2006, the government decided to conduct a survey to identify what kind of programs and shows the public were interested in. They then categorized the types of licenses to be issued. As a result of the survey, which was concluded in June 2008, it turned out that the public is more interested in entertainment programs. Therefore, one of the TV companies that had a license for broadcasting entertainment programs and was eager to obtain a license for general broadcasting had its application denied. Later, after several trials at court, the government made a political decision and the company was granted the license for general broadcasting, though the license was only for satellite broadcasting. Considering the fact that satellite broadcasting is quite expensive to operate, the company provides service only for the capital of Georgia."

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | **NO**

References:

Georgian Law on Broadcasting, Article 44, Refusal to Issue a License:

1. The Commission shall refuse to issue a license if the seeker does not win an open competition. Refusal to issue a licence shall be approved by resolution of the Commission.

2. The Commission's refusal to issue a licence may be appealed to the court. The appeals mechanism is governed by Administrative Procedures Code of Georgia and is the same as for any other appeals filed to the court, http://www.gncc.ge/files/7050_3556_252672_administrative%20procedures%20code%20of%20georgia.pdf

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Ia Antadze named several cases of unjustified procrastination regarding license issuing and denial (e.g., Maestro TV and the Community Radios project).

According to Zviad Koridze, the time period it takes to apply for a license is unreasonable in practice: In 2006, we applied to the commission to obtain a license for the Community Radios Project. We have been refused three times so far."

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Ia Antadze says that, The cost for broadcast license is not burdensome for the media entities.”

According to Zviad Koridze, the cost is reasonable.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

According to Antadze, the government does not prevent citizens from accessing content published online. The only exception was for a few weeks during the war in South Osetia in August 2008, when the government blocked access to Russian websites and TV broadcasts.

Zviad Koridze mentioned the same case at <http://www.freedomhouse.org/template.cfm?page=384&key=207&parent=19&report=79>

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist, FreedomHouse report, <http://www.freedomhouse.org/template.cfm?page=384&key=207&parent=19&report=79>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There is no provision in the legislation that regulates Internet.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

References:

Constitution of Georgia, Article 24, Law of Georgia on the Freedom of Speech and Expression

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

75

50

25

0

Comments:

Ia Antadze says, Generally, media companies tend to broadcast only the information that the government wants to disseminate. When we talk about corruption-related news, we consider investigative journalism. In practice, investigative journalism does not exist in those broadcasting companies that cover the whole country.

"There is an investigative journalists' unit in Georgian Public Broadcasting (one of the central TV stations that are funded from the state budget), which has only existed formally for years and has never broadcast to the public. There are a couple of studios that employ independent journalists who investigate corruption cases, though they have very limited means for publicizing them."

Zviad Koridze says that a good example is the TV project "60 Minutes," which reported on corruption related cases. The project was shut down in 2004 after the government declared that they had already fought corruption and they had no need for these kind of TV projects anymore. None of the TV broadcasting companies have investigative projects.

Censorship is not that evident and, formally, the companies can broadcast projects made by investigative studios though they do not do so because commercials amount to only 50% of their budget and the availability of other financial sources is unclear. The owner of one of the TV companies is the former Minister of Economy, the actual shareholders of another company is the government and the formal owner is a minister of parliament. So, it is clear why we don't see any corruption-related stories on TV.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Ia Antadze says, "There are three central television stations in Georgia. In all of them, generally, the information to be broadcast is controlled. Information that is unfavorable for the government is broadcast only by the two cable TV stations, but they do not cover the whole country."

Zviad Koridze says that if one works on corruption-related stories, obstacles are inevitable. In those cases, reporters do not have access to many public institutions. Even if a reporter manages to conclude an investigation, there will be problems in broadcasting it to the public. Nevertheless, some journalists manage to do some corruption-related investigations but these reports are not broadcast by the central TV companies.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

55

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

There is no provision in Georgian legislation that requires print media companies to publicly disclose their ownership.

References:

Legislation of Georgia

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

Georgian Law on Broadcasting, Chapter VII Media Ownership, Article 60, Prohibition of Media Ownership Concentration:

A person/legal entity may possess independently or with an interdependent person/legal entity no more than one terrestrial broadcasting license for television and one for radio in any one service area.

Article 61, Transparency of Media Ownership:

1. A broadcasting license holder shall annually disclose information to the Commission about:

a) partners, shareholders with the shares of more than 5% and directors of the organization, if the license holder is a commercial legal entity of private law;

b) founders, other members, sponsors and managerial staff of the organization if the broadcasting license holder is a non-commercial, legal entity of private law;

- c) ownership of another broadcasting license;
 - d) ownership of a share in the capital of another broadcasting license holder;
 - e) ownership of a newspaper;
 - f) ownership of a share in the capital of a newspaper;
 - g) ownership of a news agency;
 - h) ownership of a share in the capital of a news agency;
 - i) ownership of another enterprise or possession of 5% or more of the shares in another enterprise;
2. A broadcasting license holder shall also publish information and submit it to the Commission if its (license holders) shareholders, top managers, investors, founders, other members or their family members simultaneously own:
- a) a share in the capital of another broadcasting license holder;
 - b) a share in the capital of a newspaper;
 - c) a share in the capital of a news agency.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

According to Ia Antadze, newspapers enjoy a more liberal environment and can maintain their independence. As for a code of ethics, standards for ethics were written in 2002 and were signed by journalists. In 2006, the Media Council was established to see that these standards were fulfilled. However, journalists did not trust the members of the Council and so it became ineffective body. In 2008, with the assistance of the Council of Europe, a Charter of Journalism Ethics was drafted, which is going to be signed in September 2009.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

http://media.ge/eng/page.php?m=news_detailed&id_numb=4241&&case=search&&tomark=charter

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

The OSCE report states, The news coverage of those private broadcasters who were monitored showed imbalance in favor of the ruling party's candidate. Although, the news on public TV was somewhat more balanced in regards to the time that was allocated to all the candidates, the tone of its coverage favored the former President."

References:

Nino Lomjaria, GYLA

OSCE report, http://www.osce.org/documents/html/pdftohtml/29182_en.pdf.html

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | **75** | 50 | 25 | 0

Comments:

There are no state-owned media outlets in Georgia. Georgian Public Broadcasting, which is funded from the state budget, has a statutory independence and is governed by an independent non-partisan board. A few print media outlets established by municipalities are usually politically biased, but because of limited edition, they are not influential.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES

NO

Comments:

It is really difficult to arrest a journalist. Once, a journalist could have been arrested for defamation. But, in 2004, a new law on the freedom of speech was adopted and today defamation is not a crime. So, there is no legal basis to arrest journalists for their professional activities. There is no evidence that these types of arrests are taking place.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

www.gyla.ge

www.Media.ge

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

No facts or information are available to indicate that any journalist has been physically harmed for investigating corruption.

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

http://media.ge/geo/page.php?m=news_detailed&id_numb=4806&&case=search&&tomark=%E1%83%AA%E1%83%94%E1%83%9B%E1%83%90

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Ia Antadze, Journalist

Zviad Koridze, Journalist

www.media.ge

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

In addition to the General Administrative Code of Georgia (GACG), the Law on Public Service also specifies the general rule of conduct concerning the provision of public information. Article 73, prima 3, of the law obliges the head of the state agency to ensure unlimited access information by the public and for its unimpeded provision.

The article imposes an obligation on civil servants to impart public information according to both the Georgian legislation and the requirements of the respective state agency's internal regulations. Furthermore, in cases where public servants are authorized to limit the release of information, they are obliged to follow the criteria that is strictly stipulated by the law. The article also envisages obligations for public servants to protect the confidentiality of certain specific types of information.

References:

Chapter III of the General Administrative Code of Georgia (GACG), Freedom of Information:

Determines notion of public information, defines rules for public agencies to keep, manage and impart public information upon requests from public. Furthermore according to the law each public agency is obliged to designate a person in charge for ensuring access to public information (GAC article 36). At the same time, on December 10 of every year, state agencies are obliged to submit report on the release of public information to the Parliament and President of Georgia (GAC article 49). Administration of the President of Georgia assesses the status of information release and develops recommendations if necessary.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Article 41, General Administrative Code of Georgia, Denying Access to Public Information:

1. The applicant shall be immediately informed of the denial by a public agency to release public information.

2. If access to public information was denied, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies which provided their suggestions regarding the decision.

Article 41, prima 1, Decision to Release or Deny Access to Public Information:

In the events prescribed by Paragraph 3 of Article 27, prima 2, a public agency shall render a decision to release or deny access to public information immediately after expiration of the term prescribed by the above-referenced article.

Article 27, prima 2, Commercial Secret:

1. Commercial secret means any information concerning the plan, formula, process, or means that constitute a commercial value, or any other information that is used to produce, prepare, or reproduce goods, or provide service, and/or which represents an innovation or a significant technical accomplishment, or any other information, disclosure of which could reasonably be expected to cause competitive harm to a person.

2. No information concerning an administrative agency shall be considered a commercial secret.

3. When submitting particular information, a person shall indicate whether it constitutes commercial secret. A public agency shall within 10 days categorize the information specified in Paragraph 1 of this Article as commercial secret, unless the applicable law requires the information to be open. If after submission of the information by the person the public agency does not consider it a commercial secret, the agency shall make the information open and immediately inform the concerned person thereof. The information shall become open in 15 days after the decision is made, unless the person who submitted the information appeals the agency's decision in a higher administrative agency or court before expiration of that term. In this case the person shall immediately inform the agency about the appeal.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

References:

General Administrative Code of Georgia, Article 36, Ensuring Access to Public Information:

A public agency shall designate a public servant who will be responsible for ensuring the accessibility of public information.

Article 37, Request for Public Information:

1. Everyone may request public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information. If there is the danger of damaging the original, a public agency shall provide access to the original under supervision or provide a duly certified copy of the document.

2. In order to obtain public information, a person shall submit a written request. The applicant shall not be required to specify grounds or purpose for requesting the information. When seeking to obtain personal data of another person or commercial secret, the applicant shall also submit a written consent of the information subject, certified by a notary or an administrative agency, except for the events prescribed by the law.

Article 38, Access to the Copy of Public Information:

A public agency shall provide access to the copy of public information. No fees shall be charged for distributing public information, except for copying costs.

Article 39, Access to Personal Information:

A person may not be denied access to the public information, which allows his identification, and which shall not be accessible to other persons according to this Code. A person may have access to his personal information that is kept in a public agency, and may obtain copies of such information free of charge.

Article 40, Release of Public Information:

1. A public agency shall release public information immediately, or not later than ten days if responding to a request for public information requires:

(a) acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information,

(b) acquisition and processing of separate and large documents that are not interrelated, or

(c) consultation with its subdivision that operates in another area, or with another public agency.

2. If release of public information requires more than the period of 10 days, the public agency shall immediately inform the applicant thereof upon his request.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

58

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Tamuna Gurchiani says that the situation in this regard is gradually becoming worse. She named several cases where GYLA was denied access to public information (the Ministry of Energy, the State Procurement Agency, etc.)

One of the problems highlighted by Transparency International was raising the level of adherence to the freedom of information regulation.

However, according to the Compliance Report adopted by GRECO for Second Evaluation Round In 2008, 649 state agencies submitted the reports. Requests for public information amounted to 258,463. Out of these requests, 94.6% were honored.

References:

Tamuna Gurchiani

GYLA report, <http://gyla.ge/foi>

TI report, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=142&info_id=504

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Tamuna Gurchiani says that the cost for obtaining public information is reasonable though paying procedures are problematic because each public institution has different regulations in this regard. Some of them request payment be made in banks, some of them that payments be made to the cashier, and so on.

References:

Tamuna Gurchiani, GYLA, <http://gyla.ge/foi>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

As usual, the information is inadequate and is not of high quality. The updated report about it should be available by the end of September 2009 at www.gyla.ge/foi.

References:

Tamuna Gurchiani, GYLA, www.gyla.ge/foi

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

According to Tamar Gurchiani, even though the time period is established by law, administrative bodies violate the terms and so it cannot be considered to be a reasonable time period.

2008 Human Rights Report: Georgia: The law provides for public access to government meetings and documents; however, the government sometimes did not provide access. Although the law states that a public agency shall release public information immediately or no later than 10 days from request, the release of requested information could be delayed indefinitely, and requests were sometimes ignored in practice."

References:

Tamuna Gurchiani, GYLA

2008 Human Rights Report: Georgia

Bureau of Democracy, Human Rights, and Labor; February 25, 2009

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Tamuna Gurchiani says that, for administrative bodies, filing an appeal is free of charge; however, at the courts, the cost to file an appeal is at minimum 100 GEL (US\$60) with a maximum of 50,000 GEL (US\$30,000). She named several cases where GYLA could not help journalists file an appeal against a public agency for the denial of public information because of the high cost.

There have been several cases where citizens have refused to file an appeal to the court for the same reason.

References:

Tamuna Gurchiani, GYLA, www.gyla.com/foi

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government does not give reasons for denying an information request. However, there are some agencies that make exceptions for this, such as the Ministry of Justice and the Ministry of Finance.

References:

Tamuna Gurchiani, GYLA

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷⁹Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES

NO

References:

Election Code of Georgia, Article 5, Universal Suffrage:

1. Elections prescribed by this Law are universal:

a) Any citizen of Georgia who by the elections has attained or is on the day of election attaining the age of 18 years and who meets the requirements prescribed by this Law enjoys the active electoral right, except for the persons who, under the Constitution of Georgia and/or in accordance with this Law complying therewith (Articles: 10, 56, 110) have restricted suffrage;

b) Any citizen of Georgia who meets the requirements of this Law enjoys the passive electoral right, except for the persons who, under the Constitution of Georgia and/or in accordance with this Law complying therewith (Articles: 73, 76, 78, 80, 92, 94, 98, 109), or by the Law of Georgia on Combating Drugs Crimes have restricted passive suffrage. (3.07.2007 N5186)

2. A person who has been declared incapable by the court or is being placed in a penitentiary institution in accordance with a court judgment is not eligible to take part in elections and referendum, <http://cec.gov.ge/?que=eng/elections-2008/library/laws&info=3510>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES

NO

References:

Election Code of Georgia, Article 106:

4. By-elections shall be held within two months after the declaration of elections as canceled or after invalidation of the election results. By its ordinance, the CEC shall appoint the election day and time frames for election arrangements, but no later than 7 days after the declaration of the election as canceled or the invalidation of the election results.

5. By its ordinance, the CEC shall appoint the by-election Election Day and time frames for election arrangements for a majoritarian election district, no later than 2 months prior to the Election Day.

6. By its ordinance, the CEC shall appoint the by-election date and time frames for election arrangements no later than 2 months prior to the election day. By-elections are held in September-October.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100

75

50

25

0

Comments:

GYLA could not name a case where someone could not vote though there were some problems with the list of voters.

References:

Nino Lomjaria, GYLA

OSCE, Observation of parliamentary elections in Georgia, Final Report on the May 21, 2008 parliamentary elections in Georgia, page 9, http://www.osce.org/odihr-elections/item_12_30564.html

http://www.osce.org/odihr-elections/item_12_28671.html

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | **50** | 25 | 0

Comments:

Nino Lomjaria says that ballots were secret and protected equally, but in those regions that are inhabited by ethnic minorities, there were cases of voting outside of polling stations or group voting.

OSCE report: A court left unconsidered a complaint that alleged vote buying on behalf of the UNM at a polling station, on grounds that private citizens are not legally permitted to file such complaints.”

References:

Nino Lomjaria, GYLA]

OSCE, Observation of Parliamentary Elections in Georgia, Final Report on the May 21, 2008, Parliamentary Elections in Georgia, pages 22-23, http://www.osce.org/odihr-elections/item_12_30564.html

http://www.osce.org/odihr-elections/item_12_28671.html

TI Electoral System Reform Pages 3,11, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | **50** | 25 | 0

Comments:

Nino Lomjaria says that the last two elections were not held on a regular schedule because of the political situation. Also, the election in Ajara was postponed because of the war in August

References:

Nino Lomjaria, GYLA,

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

http://www.osce.org/odihr-elections/item_12_28671.html

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

YES

NO

References:

Constitution of Georgia, Article 26:

2. Citizens of Georgia have the right to create political parties or other political organizations and participate in their activities in accordance with the Organic Law.
3. The creation and activities of such public and political entities whose goal is to overthrow or change the Constitutional order of Georgia by force or violate the independence of the country or violate the country's territorial integrity or advocate war and violence, or attempt to induce ethnic, racial, social and national unrest is impermissible.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES

NO

References:

Constitution of Georgia, Article 26

Organic Law of Georgia on Political Unions of Citizens Article 5

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100

75

50

25

0

Comments:

Nino Lomjaria: To our knowledge, there is no obstacle to forming political parties.”

No information is available about problems in this respect.

References:

Nino Lomjaria, GYLA

<http://www.isfed.ge/>

www.transparency.ge

www.gyla.ge.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties’ political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

There is no information available about problems in this area.

References:

Nino Lomjaria, GYLA

<http://www.isfed.ge/>

www.transparency.ge

www.gyla.ge.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There are 133 active members in the Parliament of Georgia at the moment. Of them, the ruling party — Unified Nationalist Movement — has 112 members; Of the opposition parties, Powerful Georgia has 6 and the Christian Democrats have 6. The remaining 9 members are of various opposition parties from other factions. There were 12 politicians who gained enough votes to become members of the Parliament in the last parliamentary elections in 2008 but who refused to enter the Parliament to protest alleged election fraud that was favorable to ruling party.

According to the article 66.1 of the Constitution of Georgia, A draft law or a draft resolution shall be deemed to be adopted if it is supported by the majority of the members of the Parliament present, but not be less than one third of the total number of the members of Parliament unless the Constitution determines another procedure for the adoption of the draft law or draft resolution.”

For various types of decisions, different quorum requirements are set by the Georgian legislation varying from one- third to a majority to two-thirds of the total number of members. Bearing in mind the imbalance between ruling and opposition party members, it is practically impossible for the opposition to push any legislative or other decisions without the political support of the ruling party.

References:

Nino Lomjaria, GYLA

http://www.parliament.ge/index.php?lang_id=ENG&sec_id=2

http://www.parliament.ge/index.php?sec_id=1217_id=ENG

Constitution of Georgia

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

70

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES

NO

Comments:

According to the Election Code of Georgia composition of the Central Election Commission (CEC) is partisan. As every colegial body the CEC makes it's decisions with the majority of its members, so whichever party is represented in the CEC with the majority of members it has powerful leverage to political influence over its activities. Georgian set up of the central election body to have formal organizational independence, is legally independant but its partisan membership creates the room for political biases in practice.

References:

Organic Law of Georgia

Election Code of Georgia, Article 17, Status and System of Election Administration of Georgia:

1. The election administration of Georgia is an independent administrative body, which is established in accordance with this Law. The authority of the election administration is prescribed by this law.
2. The election administration shall perform the duty assigned to it under the election law and shall secure the holding of a referendum/plebiscite, holding of the general elections for election of members of the representative bodies of the public authority and officials of the public authority, the free exercise of their legal interests by elections and referendum participants in accordance with this law. The election administration shall control, within its terms of reference, the execution of the election law all over the territory of Georgia and shall secure its unambiguous application.
3. The election administration is independent, within the limits of its authority, from other government agencies.
4. Georgian election administration is a centralized system which consists of Georgian Central Election Commission (CEC), staff of the Commission, and District and Precinct Election Commissions. The highest election administration body of Georgia is the Central Election Commission, which heads and controls election commissions at all levels within the whole territory of Georgia.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

According to Nino Lomjaria, the rule regarding the appointment of members of the agency has to be changed because it does not support the independence of the agency because, according to the law, the Central Elections Commission (CEC) is composed of its chairperson and 12 members. The CEC chairperson is, at the same time, also a member of the CEC.

The chairperson and 5 of the members are elected by the Georgian Parliament upon the recommendation of the president of Georgia and 7 other members are appointed by parties according to the procedure prescribed by the law. District and Precinct Election Commissions are composed of 13 members who, within the term and procedure established by the law, shall be appointed/elected by the subjected defined by the Law.

At present, the majority in the parliament is represented by the ruling party. Consequently, members of the agency exert significant power when they vote because 7 of them are from the ruling party. They always vote unanimously and their vote is always decisive.

This was not the case during the election in Ajara in November 2008 because the composition of the agency at that time included a variety of political parties.

References:

Nino Lomjaria, GYLA

OSCE Statement of Preliminary Findings and Conclusions on the May 21, 2008, Parliamentary Elections in Georgia, page 4, http://www.osce.org/odihr-elections/item_12_30564.html

International Society for Fair Elections and Democracy (ISFED), the Final Report on Monitoring the November 3, 2008, Adjara, <http://www.isfed.ge/eng/elections/reports/>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

According to Nino Lomjaria, the Central Election Commission of Georgia (CEC) has a professional, full-time staff that receives training regularly. However, there is a problem with regional election commissions, because they have 5 full-time staff members plus other employees who are hired on contractual basis only during elections.

References:

Nino Lomjaria, GYLA

<http://cec.gov.ge/?que=eng/cec/administration/cec/stuff>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The reports are available on the website of Central Election Commission of Georgia (CEC).

No report is available regarding complaints on this issue. The nongovernmental organization representative also did not express any dissatisfaction.

References:

Nino Lomjaria, GYLA

Central Election Commission, <http://cec.gov.ge/>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

There were many complaints about violations. Disciplinary sanctions should have been imposed. None of the complaints that were submitted by observers have been responded to. Individuals against whom complaints had been lodged and who had sanctions imposed on them were still holding their same positions at the time of the following election.

Fines were also imposed on some of them, but none of these sanctions were actually enforced. In addition, the legislation does not include enforcement mechanisms for these sanctions.

References:

Nino Lomjaria, GYLA

OSCE, Observation of Parliamentary Elections in Georgia, Final Report on the May 21, 2008 Parliamentary Elections in Georgia, page 26, http://www.osce.org/odihr-elections/item_12_30564.html

Parliamentary Elections, Georgia, 2008

International Society for Fair Elections and Democracy (ISFED), the Final Report on Monitoring the May 21, 2008 Parliamentary Elections, page 22, <http://www.isfed.ge/eng/elections/reports/>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The registration system has been improved. Since the presidential election, the time period for registration has been extended. The active campaign concerning the procedures was conducted before the public on TV. The only problem that remains concerns the time period for filing an appeal in cases where registration is denied. The law envisages one day which is quite short.

The voter registration has overall been improved in Georgia in the last decade. However, many stakeholders continued to express concerns regarding the accuracy of the voter list, claiming that the number of records was inflated due to records of deceased persons in the list, multiple records, and non-existing buildings as registration addresses. OSCE/ODIHR EOM observers substantiated cases of the latter.”

References:

Nino Lomjaria, GYLA

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

International Society for Fair Elections and Democracy (ISFED), <http://www.isfed.ge/eng/elections/reports/>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES

NO

References:

Organic Law of Georgia

Election Code of Georgia, Article 61, Applications and Complaints Regarding Violation of Procedures of Voting and Counting of Votes:

1. An application/complaint regarding an observed violation of voting procedures shall be filed upon detection of violations of this Law from 7:00 a.m. on election day until the opening of the ballot box.

2. In the application/complaint shall be included the following:

- a) Date and time of filing the application/complaint;
- b) First name, last name and address of the applicant/complainant;
- c) Number and address of the election precinct;
- d) A description of the violation and the time when it was committed;
- e) In case of the existence of a witness, the first name, last name and place of registration of the witness;
- f) In case of having determined the person who violated the Law — his/her data, whatever is possible to obtain;
- g) Explanatory notes given by the person who violated the Law (in case of existence of such);
- h) Other additional information.

3. An application/complaint regarding observed violations of voting procedures before the opening of the ballot box shall be handed to the precinct election commission Chairperson, Deputy Chairperson or Secretary, who will register it in the Record Book and will provide the applicant/complainant with a Notice indicating the date and time that the application/complaint was accepted at the commission in accordance with paragraph 16 of Article 22 of this Law.

4. The head of the PEC is obliged to make the immediate and relevant reaction on the appeal/complaint and to eradicate the existing violation. If the head of the commission will not or cannot eradicate the violation or refuses to react on the appeal/complaint in any other way, the appellant/complainant and the representative in the case of the authorized organization (also the party/election block) has the right to make the same appeal/complaint to the higher DEC. The DEC is authorized in the discussion of the appeals, to consider the annulment of the relevant precinct.

5. Appeal/complaint on the violations during the vote count, the summarizing of the voting results, the review of voting results or the demand for the annulment of voting results shall be submitted before filling the summary protocols and the following shall be considered there:

- a) The date and time of filling the appeal/complaint;
- b) The surname, name and address of the appellant/complainant;
- c) The number and address of the PEC;
- d) The essence of violation and the time of its committing;
- e) The surname, name and address of the witness;
- f) The data of the violator in case of his/her reveal;
- g) The explanatory of the violator (if such exists);

h) Other supplementary information.

6. The application/complaint mentioned in paragraph 5 of this Article shall be registered by the PEC Secretary in the Record Book and shall be forwarded by the PEC to the higher level DEC by 18:00 p.m. of the day following Election Day. In case the results are not summed up by this time, by 18:00 p.m. of the day following the day the summary protocol of the voting and election results is completed. The application/complaint can be delivered to the DEC directly by the applicant/complainant within the same period.

7. The PEC Record Book is closed with the signatures of the commission Secretary and commission members and is approved with the PEC seal.

8. The PEC Record Book and any applications/complaints received are sealed separately and bound into a single package.

9. The seal of the PEC is sealed in a separate package. The package is signed by the PEC Chairperson, Secretary and other members of the Commission.

Article 62, Adjudication of Application/Complaints on the Consolidation of the Election Results:

1. On the receipt of the appeal/complaint specified in paragraphs 2 and 5 of Article 61 by the DEC, the secretary of the DEC will register it in the register book. The commission considers the appeal/complaint and makes its decision a day after the registration. The DEC makes its decision in the form of the ordinance that can be appealed only in the court as prescribed by this law.

11. If the rule for presenting information established by subparagraphs a, b, c and e of paragraphs 2 and 5 of Article 61 of this Law is violated, the person who received complaints at the election commission is obliged to identify flaws for the person who filed an application/complaint, and establish a reasonable time frame for fixing the problems. Special note is made in the registration book, which is signed by the person who files the complaint and the person who receives this complaint. In cases where the existing problems are not solved within the established time frame, the corresponding election commission acts as defined in section 2 of this article.

2. An application/complaint filed in violation of the procedures established by section 1, subsection d of the section 2, 3, subsection d of the section 5, and 6 of Article 61 of this Law will not be considered. The relevant Election Commission shall issue an ordinance on this matter.

Article 77, Time Frames and Procedures for Consideration of Disputes

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

During an election, results can not be effectively appealed. An appeal was filed in the court concerning the election campaign but none of them were resolved. Sometimes some provisions of the law were interpreted in a manner that is absolutely inconsistent with the principle of the Election Code. As for the appeals concerning procedures, they were mostly rejected by the court during the parliamentary election. During the presidential election, all of the appeals were rejected.

References:

Nino Lomjaria, GYLA

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

Interference by law enforcement personnel was not that evident during the elections, though it was noticed that the police were attending the voting stations, which had some sort of influence on the elections. There were some alleged cases where a law enforcer intimidated an observer.

As for the military, there were no procedural violations evidenced during the elections.

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

OSCE, Observation of Parliamentary Elections in Georgia, Final Report on the May 21, 2008 Parliamentary Elections in Georgia, <http://www.osce.org/odihr> page 11-elections/item_12_30564.ht

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES

NO

References:

Election Code of Georgia, Domestic and Foreign Observers, Article 68:

1. The right to observe elections shall be provided to those domestic and international observation organizations that comply with the provisions of this Law, and will pass registration at the CEC or appropriate DEC.

2. A domestic observation organization may be a local non-profit legal person, registered in accordance with Georgian legislation no later than 2 years prior to election day, the charter or provision of which, at the time of undergoing registration, includes election monitoring and/or protection of human rights and who is registered at the CEC or a relevant DEC for the purpose of observing elections.

3. A domestic observation organization shall implement observation of the elections through its representative — a domestic observer. One organization shall have the right to have no more than one observer at an election precinct simultaneously.

4. A domestic observer of a domestic observation organization may be any citizen of Georgia above the age of 18, except for the following:

bb) Persons occupying State-political positions;

cc) Members of the Parliament of Georgia;

dd) Members of the representative bodies of local self-governance;

ee) Heads and Deputy Heads of the bodies of local governance;

ff) Judges;

gg) Staff of the Ministries of Internal Affairs and Defence of Georgia, Special Services of Foreign Intelligence and State Security;

hh) Officials of the Prosecutor's Office;

ii) Election subjects and their representatives;

jj) Election commission members.

5. An international observer organization may be a representative of another State, organization registered in another State or an international organization, the founding document of which includes monitoring of elections and/or protection of human rights and which is registered at the CEC for the purpose of observing elections.

6. An international observer organization observes elections by means of the organization's representatives or international observers.

7. International observers may be accompanied by an interpreter, who undergoes registration at the CEC together with the international observers.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

There are some districts which are problematic and there some which are not. For example, in Tbilisi, observers did not experience any obstacles excluding some exceptions. As for those regions with ethnic minorities, observers were under pressure. Sometimes they could not exercise their functions effectively. In addition, the existing legislation does not contain any sanctions for intimidating an observer.

References:

Nino Lomjaria, GYLA

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

International Society for Fair Elections and Democracy (ISFED), <http://www.isfed.ge/eng/elections/reports/>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

Organic Law of Georgia

Election administration, the Central Election Commission of Georgia (CEC), High Election Commission of the Autonomous Republic of Abkhazia and Adjara, District Election Commissions (DEC) and Precinct Election Commissions, <http://cec.gov.ge/?que=eng/elections-2008/home>

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

79 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

83

20a. In law, there are limits on individual donations to political parties.

YES

NO

References:

Organic Law of Georgia on Political Unions of Citizens, Article 27:

1. An overall value of financial and material donations received by a party in a year shall not exceed:
 - a) 30,000 (US\$17,887) Lari from a natural person;
 - b) 100 000 (US\$59,623) Lari from a legal entity.
2. The restrictions defined in paragraph 1 of the present Article concern all kind of donations, including the services provided for the party purposes and on party's behalf (with party's name).
3. The party membership fees, as well as money donations from the natural persons and legal entities shall be paid only via banks. This restriction does not concern the contributions made by a natural person, if the amount does not exceed 300 lari (US\$179) per year.
4. It is prohibited to make a donation on another person's/entity's behalf.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

References:

Organic Law of Georgia on Political Unions of Citizens, Article 26:

1. It is forbidden to accept physical and material contributions from:

a) physical and juridical persons of other countries, international organizations and movements, except when/if lectures, workshops and other public arrangements are held;

b) a state entity, juridical person of public legislation, state organization and ventures in which the share of the state is above 10%, except cases envisaged by this Law.

Article 27:

1. An overall value of financial and material donations received by a party in a year shall not exceed:

b) 100 000 Lari (US\$59,623) from a legal entity

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

Comments:

The legislation does not contain any limits on total political party expenditures.

References:

Organic Law of Georgia on Political Unions of Citizens

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES

NO

References:

Organic Law of Georgia on Political Unions of Citizens, Article 26:

2. The juridical person making a contribution shall indicate its name and juridical address; as for physical persons, they shall indicate their name, address, number of the ID card of a citizen of Georgia (Passport of a citizen of Georgia) and personal numbers.

6. Information on the financial donations of a party, including the information on the data provided in paragraph 2 of the present Article is public. The Central Election Commission of Georgia shall ensure the accessibility of the mentioned information in accordance with the legislation.

Article 32:

1. Each party shall, before February 1 of each year, publish in the press its financial declaration together with an auditor's (auditing firm's) conclusion. The declaration shall indicate the yearly income (including the membership fees and amount of donations, data of the natural persons and legal entities who provided donations, the finances allocated by the state as well as finances received as a result of publications or other party activities) and expenditure of the party (spent on elections, financing of various activities, remuneration, official trips and other expenditures) as well as a report on its existing property (owned buildings, quantity and type of means of transportation, their total value, the amount of money the party has on the bank accounts).

2. Income and expenditure relating to elections shall be shown separately in the declaration.

3. In case party unites in a bloc for the elections, the following amount shall be considered to be received and used by the party: the amount of money received and used by a party before uniting in a bloc and the amount of money received and used by the bloc divided by the total number of parties in the bloc.

4. Within 10 days of publication, the party shall send copies of the published declaration and auditor's (auditing firm's) conclusion to the Central Election Commission of Georgia and local tax body (in accordance with party's legal address) .

Article 34

If a party fails to timely publish its financial declaration, it shall not be entitled to receive state funds indicated in Article 30 of this Law for a subsequent 1 year.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES

NO

References:

Organic Law of Georgia on Political Unions of Citizens: Article 33:

1. Party shall yearly conduct the financial audit of its activities
2. For the purpose of conducting an audit, a party is entitled to address any independent auditor.
3. The conclusion of an independent auditor on the financial status of a party shall be submitted to the Central Election Commission of Georgia.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES

NO

References:

Organic Law of Georgia on Political Unions of Citizens, Article 30:

11. The party shall get the state funding only based on the prior written consent which shall be submitted to the Central Election Commission of Georgia annually, not later than November 25.

Article 32:

4. Within 10 days of publication, the party shall send copies of the published declaration and auditor's (auditing firm's) conclusion to the Central Election Commission of Georgia and local tax body (in accordance with party's legal address).

Article 33:

3. The conclusion of an independent auditor on the financial status of a party shall be submitted to the Central Election Commission of Georgia.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

21a. In law, there are limits on individual donations to political candidates.

YES

NO

References:

Election Code of Georgia, Article 47:

3 prima 1. Financial and material volume of donations received at election funds of party/election block and candidate for President shall not exceed:

a) for each individual person, including individual entrepreneur 30 000 Lari (US\$17,887);

3 prima 2. Financial donations to election campaign funds of majoritarian candidate in parliamentary elections and candidate in local self-government representative body Sakrebulo elections shall not exceed: (8.06.2007 N4919 shall be in force from October 1, 2007):

a) 10,000 lari (US\$5,962) per each natural person;

3 prima 3. Restrictions envisaged by provisions 3 prima 1 and 3 prima 2 of this Article shall not apply to the sums given by parties from their resources for the election fund of their election subject.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES

NO

References:

Election Code of Georgia, Article 47:

3 prima 1 Financial and material volume of donations received at election funds of party/election block and candidate for President shall not exceed:

a) for each individual person, including individual entrepreneur, 30 000 Lari (US\$17,887);

3 prima 2. Financial donations to election campaign funds of majoritarian candidate in parliamentary elections and candidate in local self-government representative body Sakrebulo elections shall not exceed: (8.06.2007 N4919 shall be in force from October 1, 2007):

a) 10,000 lari (US\$5,962) per each natural person;

3 prima 3. Restrictions envisaged by provisions 3 prima 1 and 3 prima 2 of this Article shall not apply to the sums given by parties from their resources for the election fund of their election subject.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Election Code of Georgia, Article 46:

3. Funds received by an election subject must be deposited to the account of the election campaign fund, which is opened at the National Bank of Georgia or a commercial bank, or its relevant branch office (during presidential elections, interim parliamentary elections, and elections of local self-government representative body Sakrebulo from the date of submission of application by the registered party) within 5 days of registration of the election subject at the relevant election commission. The account is opened only in the national currency.

4. Within 2 days of opening of an election campaign fund, the election subject submits to the relevant election commission a document issued by the bank confirming the opening of an election campaign fund, the number of the account, the identity and address of the manager and accountant of the election campaign fund.

Article 48:

6. No later than one month after the publication of election results, the election subject shall submit to the relevant election commission a report on the funds used for elections, together with the audit report (of the audit company), with a statement of the source of the funds deposited to the election campaign fund. The election subjects, which, according to preliminary data, receive the necessary number of votes established by this Law, must do the same, not later than 8 days after the election day. An audit examination can be carried out by an auditor (audit company) functioning on the territory of Georgia.

11. Information concerning election contribution is open, public and available for everyone. CEC is obliged to give information to all interested persons concerning the election campaign fund of electoral subject. CEC is also obliged to ensure the publication of the following information on a web page within 2 business days of its adoption.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

References:

Election Code of Georgia, Article 48:

1. For the purposes of effective use and disposal of election campaign funds, an election subject appoints (elects) a manager and accountant of the election campaign fund.
2. Funds in an election campaign fund are disposed of by the manager and accountant of the fund, upon the instruction of the election subject. The manager and accountant are also responsible for the proper use of the election campaign fund.
3. The rules for appointment (election) by an election bloc of the manager and accountant of the election campaign fund are determined by the bloc's charter.
4. The election campaign fund manager is obliged to transfer illegally received contributions to the state budget within 10 days time, to inform on a monthly basis, from the moment of setting up an election campaign fund, the appropriate election commission in compliance with the regulations of the Central Election Commission of Georgia of the source and amount of the contribution and the date of receipt, and, after the completion of the elections, to submit the report to the fund within the time limit prescribed by the law. The responsibility of a manager and an accountant of the election campaign fund for receiving and concealing financial and material contributions shall be determined by the law of Georgia.
5. The manager of an election campaign fund processes documents on all transactions. If any expense cannot be documented, it must be processed through a bilateral Act.
6. No later than one month after the publication of election results, the election subject shall submit to the relevant election commission a report on the funds used for elections, together with the audit report (of the audit company), with a statement of the source of the funds deposited to the election campaign fund. The election subjects, which, according to preliminary data, receive the necessary number of votes established by this Law, must do the same, not later than 8 days after the election day. An audit examination can be carried out by an auditor (audit company) functioning on the territory of Georgia.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

Election Code of Georgia, Article 48:

10 prima 1. Within 5 days after the appointment of the election date, based on an ordinance of CEC, for the monitoring of fund account used by electorate subjects for elections with a group of social representatives, lawyers and licensed financial audits is created that studies the information and holdings presented at election commissions during an election period. The statute of the financial monitoring group is established by the CEC that is presented by the same group no later than 5 day of the creation of the group.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

42

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Bearing in mind the 120 GEL (US\$72) minimum income rate in Georgia, 30,000 GEL limit (US\$17,887) for individual donations to political parties is quite sufficient, though the limits may be too high in the context of the overall costs of running a campaign.

References:

Election Code of Georgia, Article 47, Contributions to the Election Campaign Fund:

3(1) Financial and material volume of donations received at election funds of party/election block and candidate for President shall not exceed:

a) for each individual person, including individual entrepreneur, 30,000 Lari (US\$17,887);

b) for each legal entity 100,000 Lari (US\$59,623).

3(2). Financial donations to election campaign funds of majoritarian candidate in parliamentary elections and candidate in local self-government representative body Sakrebulo elections shall not exceed: (8.06.2007 N4919 shall be in force from October 1, 2007):

a) 10,000 lari (US\$5,962) per each natural person;

b) 30,000 lari (US\$17,887) per each legal person.

33. Restrictions envisaged by provisions 31 and 32 of this Article shall not apply to the sums given by parties from their resources for the election fund of their election subject. (8.06.2007 N4919 shall be in force from October 1, 2007).

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The law does not mention a permitted maximum amount of corporate donation.

References:

Article 47, Contributions to the Election Campaign Fund:

3 prima 1. Financial and material volume of donations received at election funds of party/election block and candidate for President shall not exceed:

b) for each legal entity 100,000 lari (US\$59,623).

3 prima 2. Financial donations to election campaign funds of majoritarian candidate in parliamentary elections and candidate in local self-government representative body Sakrebulo elections shall not exceed:

b) 30,000 lari (US\$17,887) per each legal person.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

Expenditures of political parties are not limited by law.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is the Monitoring Council under the Central Election Commission of Georgia (CEC), which is independent though there are legal gaps in this regard as the Council is not authorized to check the accuracy of the reports that are submitted by parties. The council only checks whether a report includes all the necessary information and it is not empowered to conduct investigations.

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524.

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

International Society for Fair Elections and Democracy (ISFED), <http://www.isfed.ge/eng/elections/reports/>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

According to the representative from GYLA, there were some cases of sanctions though no specific information is available in this regard.

References:

Nino Lomjaria, GYLA

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

An audit is usually conducted by an audit company that is hired by the parties themselves. The result of that audit is not quite reliable. GYLA discovered some incorrect data which was not mentioned in the audit's conclusions.

References:

Nino Lomjaria, GYLA

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

Final Report on the May 21 2008 Parliamentary Elections in Georgia.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

40

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | **50** | 25 | 0

Comments:

Bearing in mind the 120 GEL (US\$72) minimum income, limits on individual donations to political candidates are reasonable, though they are too high in the context of the overall costs of running a campaign.

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

Georgia Parliamentary Elections, May 21, 2008, OSCE/ODIHR Election Observation Mission Final Report, http://www.osce.org/documents/odihr/2008/09/32898_en.pdf

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The ceiling is 100,000 GEL (US\$59,623) and it is effective.

References:

Nino Lomjaria, GYLA,

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no information available concerning whether such investigations were ever initiated.

TI report: Based on the experience of the past elections, the OSCE/ODIHR Election Observation Mission and the domestic observer organizations have urged the Georgian authorities to take a number of steps towards addressing the issue of administrative resources: to draw a clear line between the government's activities and the ruling party's campaign, to impose additional restrictions on the involvement of political and public officials in the campaign, to prevent the use of state funds to the advantage of individual election subjects and to investigate all allegations of pressure on the opposition's activists and supporters and state employees."

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

No information is available on specific cases, although the reports of international organizations and local NGOs refer to misuse of administrative resources.

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

International Society for Fair Elections and Democracy (ISFED), <http://www.isfed.ge/eng/elections/reports/>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

An audit is usually conducted by an audit company that is hired by the parties themselves. The result of that audit is not quite reliable. GYLA discovered some incorrect data which wasn't mentioned in the audit's conclusions.

References:

Nino Lomjaria, GYLA

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

81

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Tamuna Gurchiani, GYLA

<http://cec.gov.ge/?que=geo/archive/elections-2008&info=3965>

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Tamuna Gurchiani, GYLA

<http://cec.gov.ge/?que=geo/archive/elections-2008&info=3965>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Tamuna Gurchiani, GYLA

<http://cec.gov.ge/?que=geo/archive/elections-2008&info=3965>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Tamuna Gurchiani, GYLA

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

Final Report on the May 21, 2008, Parliamentary Elections in Georgia, page 28

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

88

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

Final Report on the May 21, 2008 Parliamentary Elections in Georgia, page 28

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Nino Lomjaria, GYLA

Georgia's Electoral System: Recurrent Challenges, TI Georgia, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=524

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Nino Lomjaria, GYLA

<http://cec.gov.ge/?que=geo/archive/elections-2008&info=3965>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | **50** | 25 | 0

References:

Nino Lomjaria, GYLA

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

Final Report on the May 21, 2008 Parliamentary Elections in Georgia, page 28

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁶⁵Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | **25** | 0

Comments:

All interviewed respondents indicated that usually the chief executive does not give reasons for his policy decisions.

References:

Ia Antadze, Journalist

Tamuna Gurchiani, GYLA

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Constitution of Georgia, Article 42:

1. Each individual has the right of appeal to the court to protect his rights and freedoms.

9. Any individual who suffers damage illegally caused by state and self-governing bodies and officers is guaranteed full compensation through the court from state resources.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

In practice, it does not happen.

References:

Tamuna Gurchiani, GYLA

TI Georgia, Anti-Corruption Policy: Recommendations by Civil Society Representatives and Experts, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=490

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Orders adopted by the executive have to be in conformity with the laws of Georgia. According to the General Administrative Code of Georgia, executive orders must include the explanations for the decision and references to the relevant provisions of the law based on which specific decision was made.

The GYLA report discusses cases that took place in recent years when executives circumvented the requirements of the law. Sometimes, there is no need for the chief executive to approve orders that do not comply with the legislation. The laws give wide discretion to the chief executive to make decisions at his will. Besides, the majority of members of parliament are under the influence of the chief executive. Therefore, any law can be amended and adjusted to the decision of the executive.

References:

GYLA report, December 9 2009, <http://www.gyla.ge/files/3/fjfyhe1j83.pdf>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES

NO

References:

The Constitution of Georgia, Article 63:

1. Under the circumstances defined in the second paragraph of Article 75, not less than one-third of the total number of the members of the Parliament shall be entitled to raise the question of the dismissal of the President of Georgia in accordance with impeachment procedure. The case shall be submitted to the Supreme Court or Constitutional Court for a conclusion.
2. If, by its conclusion, the Supreme Court confirmed corpus delicti in the act of the President or the Constitutional Court confirmed the violation of the Constitution, after having discussed the conclusion, the Parliament shall adopt a decision by the majority of votes of the total number of the members of the Parliament on putting the issue of impeachment of the President to the vote.
3. The President shall be deemed to be dismissed from the office in accordance with impeachment procedure, if not less than two-thirds of the total number of the members of the Parliament supported the decision.
4. The issue shall be deemed stricken off if the Parliament fails to adopt the decision within a term of 30 days. Bringing of the same charge against the President shall be impermissible during the following one year.
5. Discussion of the charge brought against the President and the adoption of the decision in the Parliament shall be impermissible during war, a state of emergency or martial law.

Article 64:

1. In case of the violation of the Constitution, commission of high treason and other criminal offences, not less than one-third of the total number of the members of the Parliament shall be entitled to raise the question about the dismissal in accordance with impeachment procedure of the Head of the Supreme Court, members of the Government, the Prosecutor General, the President of the Chamber of Control and members of the Council of National Bank.

2. After having received the conclusion in accordance with a procedure envisaged in the second paragraph of Article 63, the Parliament shall be authorized to dismiss the officials listed in the first paragraph of the present Article by the majority of the total number of the members of the Parliament. The requirements of the fourth paragraph of Article 63 shall apply to such cases as well.

Article 75:

1. The President has personal immunity. While occupying his position, his arrest or bringing criminal proceedings against him is impermissible.

2. Parliament has the right to relieve the President of his duties according to the procedures of Article 63 of the Constitution and according to orders determined by organic law, for gross or continuing violation of the Constitution and law, or high treason or other capital crimes:

a. for violation of the Constitution if this is confirmed by the Constitutional Court.

b. On high treason or other capital crimes by the Supreme court.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

a) Immunities from prosecution apply to the following public officials: judges, President, Members of Parliament, Chairmen of the Chamber of Control, Public Defender (Article 144 of Georgian Code of Criminal Procedure)

b) Immunities of above persons are not functional, they apply to all acts perpetrated by the person enjoying immunity, whether committed during the performance of official functions or not.

c) Immunities can be lifted. The written rules defining the process and criteria for lifting immunities vary in accordance with the positions of the public official.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law of Georgia `on Conflict of Interests and Corruption in Public Service sets up basis for prevention, revealing, suppression of corruption and main principles and legal regulation of responsibility for corruption offenders in public service.

Under Article 2 of the same law term — Public Official — implies the following persons : The President of Georgia; Member of Parliament of Georgia; Leaders and their Deputies of Supreme Representative Bodies of Autonomous Republics of Adjara and Abkhazia; Leaders and their Deputies of Executive Power of Autonomous Republics of Adjara and Abkhazia; Minister of Georgia and his/her Deputy; Head of Georgian State Chancellor's Office and his/her Deputy; Chairmen of Georgian State Department, Head of Georgian State Inspection and their Deputies; Leader of Structural Division of Georgian Ministry, also a person equal thereto; Leader of Structural Division of Chancery, also a person equal thereto; Heads and their Deputies of Departments, Bureaus and Divisions of the Ministries of Interior, Security and Defense of Georgia, also a person equal thereto; Chairmen of Chamber of Control of Georgia; Judges; Leaders of District and Cities Local Representative Bodies and other.

According to Article 14 of the mentioned law, a Public Official should within a period of one month of taking office complete and present an Asset Declaration. Herewith, Public Official should, by being in his/her office, complete and present the Declaration.

By the same article, Public Official should complete and represent Asset Declarations, within a term of one month after leaving office.

Declarations should be submitted to the Public Service Bureau.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Under Article 2 of the Law of Georgia `on Conflict of Interests and Corruption in Public Service term — Public Official — implies following persons : The President of Georgia; Member of Parliament of Georgia; Leaders and their Deputies of Supreme Representative Bodies of Autonomous Republics of Adjara and Abkhazia; Leaders and their Deputies of Executive Power of Autonomous Republics of Adjara and Abkhazia; Minister of Georgia and his/her Deputy; Head of Georgian State Chancellor's Office and his/her Deputy; Chairmen of Georgian State Department, Head of Georgian State Inspection and their Deputies; Leader of Structural Division of Georgian Ministry, also a person equal thereto; Leader of Structural Division of Chancery, also a person equal thereto; Heads and their Deputies of Departments, Bureaus and Divisions of the Ministries of Interior, Security and Defense of Georgia, also a person equal thereto; Chairmen of Chamber of Control of Georgia; Judges; Leaders of District and Cities Local Representative Bodies and other.

According to Article 14 of the mentioned law, Public Official should within a period of one month of taking office complete and present Asset Declaration. Herewith, Public Official should by being in his/her office complete and present the Declaration.

By the same article, a Public Official should complete and represent Asset Declarations, within one month after leaving office.

Declarations should be submitted to the Public Service Bureau.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law of Georgia `on Conflict of Interests and Corruption in Public Service, Article 5:

1. For the purposes of this article, a present is a free or privileged property or service given, partial or full release from the property obligation to a public servant (it also covers public officials) or his/her family members, which appears as an exception from the general rule.
2. Throughout the whole year, the sum of the received presents shall not exceed 15% of the whole year's wages. A present received once shall not exceed the 5% of a whole year's wages, if these presents are not received from the same source.
3. Throughout the whole year, the sum of the received presents shall not exceed 1,000 GEL (US\$596) to each member of the public official's family. A present received once shall not exceed 500 GEL (US\$298), if these presents are not received from the same source.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

Law of Georgia on Civil Service, Article 65 states that within a period of 3 years starting from the date of dismissal, a dismissed public servant may not enter the institution or conduct any activities in the establishment over which he exerted regular direct supervision within his terms of reference for the past 3 years. During this period, he/she is not authorized to receive any income from such an institution or establishment either.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is no established monitoring mechanism and there were no such cases identified.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

Tamuna Gurchiani, GYLA

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Regulations governing gifts and hospitality have been adopted quite recently and it is really difficult to evaluate their effectiveness.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

94

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES

NO

References:

Under the article 19 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, any individual or legal person has a right to demand and receive a copy of asset declarations of public official, except for the cover page and confidential part of the declaration.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100

75

50

25

0

Comments:

This information falls under the category of public information and there were no cases on delays reported by any nongovernmental organizations.

References:

Tamuna Gurchiani, GYLA

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Tamuna Gurchiani, GYLA

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

They are considered to be high quality from the technical point of view.

According to the article 15 of the law on Conflict of Interests and Corruption in the Public Service, the asset declaration of public official should contain the following information:

- a) Name, Surname and address, phone number;
- b) Official's agency and position, address, office phone number;
- c) Name and surname of the family member, dates of birth and relationship;
- d) Real estate owned by the public official and his/her family member. Name of the owner;
- e) Any kind of personal estate exceeding 10,000 GEL (US\$5,962) owned by the official and his/her family member. Name of the owner;
- f) Securities in the ownership of the official and his/her family members. Name of the owner;
- g) Banking accounts of the official and family members in the banking and financial institutions of Georgia and foreign countries. Amount of the money on the accounts;
- h) Cash possessed by the public official and family member amount of over 4,000 GEL (US\$2,385);
- i) Detailed information of the Entrepreneurship in which public official and his/her family member is involved. Name of the enterprise and address. Amount of income;
- j) Any kind of paid job performed by the official and his/her family member. Income received from the job;
- k) Any contract concluded by the official and his/her family member subject to which exceeds 3,000 GEL (US\$1,789);
- l) Gift received by the official and his/her family member amounting over 500 GEL (US\$298);
- m) Total annual income of the official and his/her family member;
- n) Confidential block;
- o) Date and signature.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

http://csb.gov.ge/index.php?lang_id=GEO&sec_id=13&info_id=27

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

26. In law, can citizens sue the government for infringement of their civil rights?

YES

NO

References:

Constitution of Georgia, Article 42:

1. Each individual has the right of appeal to the court to protect his rights and freedoms.

General Administrative Code of Georgia, Article 178:

3. Any Person can refer to a court to protect his/her rights and freedom pursuant to the Administrative Procedural Code of Georgia.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Almost all of the reports directly state that official government functions were not separate and distinct from the functions of the ruling political party.

OSCE report: There were numerous allegations that regional governors engaged in campaigning for the UNM, which, as they are public servants, and not political officials, is prohibited. In villages near Kareli on 5 May, the OSCE/ODIHR EOM observed the Governor of Shida Kartli campaigning together with the UNM majoritarian candidate."

References:

Nino Lomjaria, GYLA

Observation of Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

International Society for Fair Elections and Democracy (ISFED) <http://www.isfed.ge/eng/elections/reports/>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

42

32a. In law, the judiciary can review laws passed by the legislature.

YES

NO

References:

Article 83 of the Constitution of Georgia:

1. The Constitutional Court of Georgia shall be the judicial body of Constitutional review. Its authority, the procedures of its creation and activity shall be determined by the Constitution and the Organic Law.

Article 89:

1. The Constitutional Court of Georgia on the basis of a constitutional claim or a submission of the President of Georgia, the Government, not less than one-fifth of the members of the Parliament, a court, the higher representative bodies the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, the Public Defender or a citizen in accordance with a procedure established by the Organic Law:

a. adjudicate upon the constitutionality of a Constitutional Agreement, law, normative acts of the President and the Government, the normative acts of the higher state bodies of the Autonomous Republic Abkhazia and the Autonomous Republic of Ajara.

Organic Law of Georgia on the Constitutional Court of Georgia, Authority of the Constitutional Court, Article 19:

1. On the basis of a constitutional claim or a constitutional submission, the Constitutional Court shall be authorized to consider and adjudicate upon:

a. conformity with the Constitution of Georgia of a constitutional agreement, laws of Georgia, normative resolutions of the Parliament of Georgia, normative acts of the President of Georgia, the Government of Georgia and those of the higher state

bodies of the Autonomous Republics of Abkhazia and Ajara as well as conformity of adoption/enactment, signing, promulgation and entry into force of legislative acts of Georgia and resolutions of the Parliament of Georgia with the Constitution of Georgia.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary can investigate the legality of laws passed by the legislature but only when an appeal is brought. It cannot start these investigations on its own.

On the website of the Constitutional Court of Georgia, there is a library of cases and conclusions about judiciary reviews on constitutionality of various articles of legislation of Georgia. According to the Law of Georgia on the Constitutional Legal Proceedings, the judiciary cannot initiate investigations on its own. Investigations are only prompted if a complaint is lodged.

Article 15, 1: Lodging a constitutional claim or a constitutional submission with the Constitutional Court shall be the ground for initiation of a case before the Constitutional Court.

11: Adoption of a decision by the Plenum or a Board of the Constitutional Court at the sitting on preliminary issues about admission of a case for the consideration of the merits shall be deemed to be the admission of a constitutional claim or a constitutional submission by the Constitutional Court for the consideration of the merits.

References:

www.constcourt.gov.ge

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Immunities from prosecution apply to the following public officials: judges, President, Members of Parliament, Chairmen of the Chamber of Control, Public Defender (Article 144 of Georgian Code of Criminal Procedure).

Constitution of Georgia, Article 52:

1. A member of the Parliament of Georgia shall be a representative of the whole Georgia. He/she shall enjoy a free mandate and his/her recall shall be impermissible.

2. Arrest or detention of a member of the Parliament, the search of his/her apartment, car, workplace or his/her person shall be permissible only by the consent of the Parliament, except in the cases when he/she is caught flagrante delicto which shall immediately be notified to the Parliament. Unless the Parliament gives the consent, the arrested or detained member of the Parliament shall immediately be released.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

43

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Under Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service term, a Public Official also implies a Member of the Parliament of Georgia; According to Article 14 of the mentioned law, a Public Official should in period of one month by taking office complete and present an Asset Declaration. Herewith, a Public Official should by being in his/her office complete and present the Declaration.

By the same article, a Public Official should complete and represent Asset Declarations, within one month after leaving office. Declarations should be submitted to the Public Service Bureau.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES

NO

References:

Law of Georgia on Civil Service, Article 65 states that within a period of 3 years starting from the date of dismissal, a dismissed public servant may not enter the institution or conduct any activities in the establishment over which he exerted regular direct supervision within his terms of reference for the past 3 years. During this period, he/she is not authorized to receive any income from such an institution or establishment either.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES

NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 5:

1. For the purposes of this article, a present is a free or privileged property or service given, partial or full release from the property obligation to a public servant (it also covers public officials) or his/her family members, which appears as an exception from the general rule.

2. Throughout the whole year, the sum of the received presents shall not exceed 15% of the whole year's wages. A present received once shall not exceed 5% of the whole year's wages, if these presents are not received from the same source.

3. Throughout the whole year, the sum of the received presents shall not exceed 1,000 GEL (US\$596) by each member of the public official's family. A present received once shall not exceed 500 GEL (US\$298), if these presents are not received from the same source.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

There is no such provision in the Legislation of Georgia.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Enforcement of regulations restricting post-government private sector employment for national legislators is not monitored.

References:

Tamuna Gurchiani, GYLA

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no cases of any sanctions being imposed on an individual for violation of these provisions.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of the Public Service Bureau

Tamuna Gurchiani, GYLA

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent

or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

100

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Under Article 19 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, any individual or legal person has a right to demand and receive a copy of the asset declaration of public official except for the cover page and the confidential part of the declaration.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This information falls under the category of public information and there were no cases on delays reported by any nongovernmental organization.

References:

Tamuna Gurchiani, GYLA

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The copy of one page costs approximately 7 cents

References:

Tamuna Gurchiani, GYLA

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

They are considered to be of high quality from the technical point of view.

According to the Article 15 of the Law on Conflict of Interests and Corruption in the Public Service, the asset declaration of public official should contain the following information:

a) Name, Surname and address, phone number;

b) Official's agency and position, address, office phone number;

c) Name and surname of the family member, dates of birth and relationship;

- d) Real estate owned by the public official and his/her family member; name of the owner;
- e) Any kind of personal estate exceeding 10,000 GEL (US\$5,962) owned by the official and his/her family member; name of the owner;
- f) Securities in the ownership of the official and his/her family members; name of the owner;
- g) Banking accounts of the official and family members in the banking and financial institutions of Georgia and foreign countries; amount of the money on the accounts.
- h) Cash possessed by the public official and family member amount of over 4,000 GEL (US\$2,385);
- i) Detailed information of the entrepreneurship in which public official and his/her family member is involved; name of the enterprise and address; amount of income;
- j) Any kind of paid job performed by the official and his/her family member; income received from the job;
- k) Any contract concluded by the official and his/her family member subject to which exceeds 3,000 GEL (US\$1,789);
- l) Gift received by the official and his/her family member amounting over 500 GEL (US\$298);
- m) Total annual income of the official and his/her family member;
- n) Confidential block;
- o) Date and signature.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

http://csb.gov.ge/index.php?lang_id=GEO&sec_id=13&info_id=27

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

In addition to the General Administrative Code of Georgia (GACG), the Law on Public Service also specifies the general rule of conduct concerning providing public information. Article 73, prima 3 of the law obliges the head of the state agency to ensure unlimited access to the public information and its unimpeded provision. The article imposes obligation on civil servants to impart public information according to the Georgian legislation following the requirements of the respective state agency's internal regulations.

Furthermore, in cases where the public servant is authorized to limit publicity of information, he/she is obliged to follow the criteria strictly stipulated by the law. The article also envisages the obligation of public servants to protect the confidentiality of certain specific types of information.

References:

Chapter III of the General Administrative Code of Georgia (GACG), Freedom of Information determines notion of public information, defines rules for public agencies to keep, manage and impart public information upon requests from public. Furthermore, according to the law, each public agency is obliged to designate a person in charge for ensuring access to public information (GAC article 36). At the same time, on December 10 of every year, state agencies are obliged to submit report on the release of public information to the Parliament and President of Georgia (GAC Article 49). The administration of the President of Georgia assesses the status of information release and develops recommendations if necessary.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records of legislative processes and documents are published on the government's website.

References:

<http://www.parliament.ge/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Insofar as the records of legislative processes and documents are mostly published on the website, they are free. In cases where a citizen needs a hard copy of a specific document, the price of obtaining this kind of public information is very low.

References:

www.parliament.ge

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

69 III-3. Judicial Accountability

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

According to the Article 60 of the law on Common Courts of Georgia:

2. The High Council of Justice of Georgia shall be composed of the Parliament of Georgia, the President of Georgia and 15 members assigned by the judiciary. The Chairperson of the High Council of Justice of Georgia shall be the chairperson of the Supreme court of Georgia.

3. More than half of the membership of the High Council of Georgia is composed of members elected by self-governing bodies of judges of common courts of Georgia according to the rule aniseeds by law . Two members of the Council are appointed by the President of Georgia, another four members by the Head of the Legal Issues Committee ex officio and three parliamentarians are elected by the Parliament of Georgia. Eight members of the High Council of Justice are elected from the judges of common courts by the Conference of Judges of Georgia after being nominated by the Chairman of the Supreme Court of Georgia.

Article 47 sets the Rules of Judge's Selection and Appointment to the Office as following:

1. The selection of judges of Regional (City) Court and Appellate Court is competitive.

2. The High Council of Justice shall, when vacancy of the position of a judge in Regional (City) and Appellate Courts are created, announce a competition by means of official printed media of Georgia. The term of registration is defined by the High Council of Justice of Georgia while announcing the competition. A candidate shall submit an application for participation in the competition, and within 7 days from the moment of registration as a candidate, shall submit a certificate on filing the asset declaration in the Public Service Bureau in accordance with the existing legislation. The text of the declaration, without the consent of that person, and except for the circumstances prescribed by the law, is not available to anyone until the appointment of this person to a position.

3. The High Council of Justice of Georgia shall arrange the competition for judicial appointments after the term of registration of candidates for the judicial appointment expires.

4. Selection of a candidate for a judge's position through a competition shall be made on the basis of qualification exam results, his/her professional and moral reputation, ability to assess the issues presented before him/her freely and impartially, professional work experience and physical health.

5. The High Council of Justice of Georgia shall appoint a candidate selected through the competition to the judge's office.

6. After the announcement of the competition results, if a candidate is not selected through the competition, the High Council of Justice within a three month term shall announce a new competition through the official print media. The registration terms for the participation in the competition shall be determined by the High Council of Justice of Georgia.

8. A judge who is appointed in accordance to the rules determined by this law shall commence carrying out his/her authority only upon completion of special education course.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Professional criteria is established by law. No information is available on problems regarding selecting national-level judges though the judiciary remains one of the least trusted authorities.

References:

Tamuna Gurchiani, GYLA

TI Georgia, Reform or Retouch New Wave of Democracy, Sept. 22, 2009, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=50050&info_id=183

Freedom House, Nations in Transit 2009, Georgia, June 30, 2009, <http://www.unhcr.org/refworld/docid/4a55bb3d9.html>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES

NO

References:

According to the Article 60 of the Law on Common Courts of Georgia:

2. The High Council of Justice of Georgia shall be composed of the Parliament of Georgia, the President of Georgia and of 15 members assigned by judiciary. The Chairperson of the High Council of Justice of Georgia shall be the chairperson of the Supreme court of Georgia.

3. More than half of the membership of the High Council of Georgia is composed of members elected by self-government bodies of judges of common courts of Georgia according to the rule aniseeds by law .

Two members of the Council are appointed by the President of Georgia, another four members by the Head of the Legal Issues Committee ex officio and three parliamentarians are elected by the Parliament of Georgia. Eight members of the High Council of Justice are elected from the judges of common courts by the Conference of Judges of Georgia after being nominated by the Chairman of the Supreme Court of Georgia.

Article 47 sets the Rules of Judge's Selection and Appointment to the Office as following:

1. The selection of judges of Regional (City) Court and Appellate Court is competitive.

2. The High Council of Justice shall, when vacancy of the position of a judge in Regional (City) and Appellate Courts are created, announce a competition by means of official printed media of Georgia. The term of registration is defined by the High Council of Justice of Georgia when they announce the competition. A candidate shall submit application for participation in the competition and within 7 days from the moment of registration as a candidate, shall submit a certificate on filing of their asset declaration in the Public Service Bureau in accordance with the existing legislation. The text of the declaration, without the consent of that person, and except for the circumstances prescribed by the law, is not available to anyone until the appointment of this candidate to a position.

3. The High Council of Justice of Georgia shall arrange the competition for judicial appointments after the registration of candidates for the judicial appointment expires.

4. Selection of a candidate for a judge's position through a competition shall be made on the basis of qualification exam results, his/her professional and moral reputation, ability to assess the issues presented before him/her freely and impartially, professional

work experience and physical health.

5. The High Council of Justice of Georgia shall appoint a candidate selected through the competition to the judge's office.

6. After the announcement of the competition results, if a candidate is not selected through the competition, the High Council of Justice within a three month term shall announce a new competition by means of the official print media. The registration terms for the participation in the competition shall be determined by the High Council of Justice of Georgia.

8. A judge who is appointed in accordance to the rules determined by this law shall commence carrying out his/her authority only upon completion of a special education course.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

63

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

According to Article 249 of Code of Civil Procedures of Georgia, adjudication must indicate the legal reasoning and the laws that the judge applied.

Under the article 394 of the same law, a judicial decision shall be considered illegal if it is not properly justified.

Article 496 states that verdict must be legal, justified and fair.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Judges sometimes give unjustified reasons for their decisions even though they are obliged to do so by law.

OSCE report: In a notable case, three opposition parties filed complaints in court requesting annulment of the Central Election Commission of Georgia (CEC) decree that registered the United National Movement (UNM) party list, alleging that the list had not been submitted in line with legal procedure.

The judges refused to hear any witnesses proposed by the complainant to substantiate the allegations on the grounds that there was a lack of time during the election period; that the witnesses were not relevant; and that no opposition-appointed CEC member had attached a dissenting opinion to the CEC session minutes.

The court then rejected the cases on the grounds that the complainants should have provided relevant evidence for the purpose of proving the circumstances mentioned in the claim, which they had not done.

According to the same report, A court left unconsidered a complaint that alleged vote buying on behalf of the UNM at a polling station, on the grounds that private citizens are not legally permitted to file such complaints.”

References:

Tamuna Gurchiani, GYLA

OSCE Election Observation Mission, Final Report on the May 21, 2008 Parliamentary Elections in Georgia, http://www.osce.org/odihr-elections/item_12_30564.html

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES

NO

References:

Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, Article 2:

Basis for Disciplinary Responsibility of a Judge and the Types of Disciplinary Violation:

1. Disciplinary responsibility and measures can be imposed over a judge of a common court for having committed a disciplinary violation.

2. The following types of a disciplinary violation are:

a) gross violation or repeated violation of law in the process of discussion of a case;

b) corruption law violation, or a misuse of a public office doing harm to justice and official interests;

- c) activity incongruent with the position of a judge or incongruence of interests with the duties of a judge;
- d) an action inappropriate for a judge which abuses the prestige and authority of a court or promotes the loss of confidence towards a court;
- e) groundless extension of a case discussion, improper fulfillment of duties of a judge or other kinds of violation of official duties;
- f) disclosure of confidences of a meeting of judges or of professional secrets;
- g) hindering the activity of bodies (agencies) having disciplinary authority, or showing disrespect toward them;
- h) Other kinds of violation of norms of judicial ethics.

Chapter II, Inquiry of the Disciplinary Case, Article 6, The Right to Commence a Disciplinary Prosecution:

1. The following people can commence a disciplinary prosecution against a judge of a common court under any ground except the grounds determined in subsection a of section 2 of Article 2 of this law:

- a) the Chairman of the Supreme Court of Georgia (or his/her replacement) against the judges of the Supreme Court of Georgia, Appellate Courts and the Regional (City) Courts;
- b) the Chairmen of Appellate Courts (or their replacement) against the judges of relevant Appellate Courts; also the judges of regional (city) courts operating in the territory of their authority;

2. The High Council of Justice of Georgia commences disciplinary prosecution against all judges of the Common Courts of Georgia under any grounds determined in section 2 of Article 2 of this law.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, Inquiry of the Disciplinary Case, Article 6. The Right to Commence a Disciplinary Prosecution:

1. The following people can commence a disciplinary prosecution against a judge of a common court under any ground except the grounds determined in subsection a of section 2 of Article 2 of this law:

- a) the Chairman of the Supreme Court of Georgia (or his/her replacement) against the judges of the Supreme Court of Georgia, Appellate Courts and the Regional (City) Courts;

b) the Chairmen of Appellate Courts (or their replacement) against the judges of relevant Appellate Courts; also the judges of regional (city) courts operating in the territory of their authority;

2. The High Council of Justice of Georgia commences disciplinary prosecution against all judges of the Common Courts of Georgia under any grounds determined in section 2 of Article 2 of this law.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Every year, the Highest Council of Justice of Georgia publishes Disciplinary Statistics. The statistics contain a number of complaints that have been submitted to the agency as well as results of the investigations.

According to the statistics, 1,150 complaints were filed in 2008 and all of them were investigated. According to Parliamentary reports of the Public Defender for second half of 2008, the judiciary still remains the least trustworthy institution in Georgia.

According to the report, despite the fact that on July 5, 2008, it was decided to involve a member of opposition party in the Council, the involvement of one person from the opposition party will not promote effectiveness of the council and that other institution should participate in the working process of the Council. It is also necessary to depoliticize the Courts.

References:

<http://www.hcoj.gov.ge/?l=2&i=113>

Parliamentary Reports of the Public Defender, State of Human Rights in Georgia, 2008, <http://ombudsman.ge/index.php?m=332&lng=geo>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

See statistics at the website of the Highest Council of Justice of Georgia.

According to Parliamentary reports of the Public Defender for the second half of 2008, the judiciary still remains the least trustworthy institution in Georgia.

According to the report, despite of the fact that on July 5, 2008, it was decided to involve a member of opposition party in the Council, the involvement of one person from the opposition party will not promote effectiveness of the council and that other institution should participate in the working processes of the Council. It is also necessary to depoliticize the Council.

References:

<http://www.hcoj.gov.ge/?l=2&i=113>

Parliamentary Reports of the Public Defender, State of Human Rights in Georgia, 2008, <http://ombudsman.ge/index.php?m=332&lng=geo>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

61

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Under Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, the term "Public Official" also implies a Judge.

According to Article 14 of mentioned law, a Public Official should within period of one month of taking office, complete and present an Asset Declaration. Herewith, a Public Official should while they are in his/her office complete and present the Declaration.

By the same article Public Official should complete and present an Asset Declarations, within one month after leaving office. Declarations should be submitted to the Public Service Bureau.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 5:

1. For the purposes of this article, a present is a free or privileged property or service given, partial or full release from the property obligation to a public servant (it also covers public officials) or his/her family members, which appears as an exception from the general rule.
2. Throughout the whole year, the sum of the received presents shall not exceed the 15% of the whole year's wages. A present received once shall not exceed 5% of the year's wages, if these presents are not received from the same source.
3. Throughout the whole year, the sum of the received presents shall not exceed 1,000 GEL (US\$596) by each member of the public official's family. A present received ones shall not exceed 500 GEL (US\$298), if these presents are not received from the same source.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

Law of Georgia on Civil Service, Article 65 states that within a period of 3 years starting from the date of dismissal, a dismissed public servant may not enter the institution or conduct any activities in the establishment over which he exerted regular direct supervision within his terms of reference for the past 3 years. During this period he/she is not authorized to receive any income from such an institution or establishment either.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

There are no specific regulations for judges that restrict post-government, private sector employment other than the provisions for public servants in the Law on Public Service. Enforcement of the provision has not been monitored.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Regulations governing gifts and hospitality offered to members of the national-level judiciary are also included in the Law on Procedure of Communication with the Judges of Common Courts, which establishes another limitation on judges regarding the acceptance of illegal gifts and hospitality. Therefore, the regulations are more effective for judges. No reports are available on this problem.

References:

Law on Procedure of Communication with the Judges of Common Courts

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Assets of judges, as well as other public officials, are not audited.

References:

There is no such requirement in the legislation of Georgia.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

100

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Under the Article 19 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, any individual or legal person has a right to demand and receive a copy of the asset declaration of a public official except for the cover page and confidential part of the declaration.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This information falls under the category of public information and it is available at the Public Service Bureau.

References:

No reports are available on obstacles to accessing these records.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Interested citizens pay only for photocopying.

References:

No reports are available on this issue.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Upon its submission, the disclosure is always checked by the Public Service Bureau. If it does not provide all of the required information, the asset disclosure form is returned to the civil servant.

References:

Lasha Mgeladze, Deputy Head of Public Service Bureau

No information is available regarding this problem.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

17

40a. In law, the legislature can amend the budget.

YES

NO

Comments:

The Parliament is not authorized to amend the budget. It only reviews and then adopts or rejects it. The amendments are made by the executive authorities only.

References:

Budget System Law of Georgia, Article 5, Budgetary Process:

1. The budgetary process shall be an integral part of the budgetary system. The budgetary process shall be the responsibility of the participants in the budgetary system, and shall include the preparation, presentation, discussion and approval of the draft budget, and the execution, reporting and monitoring of the budget.

2. The preparation of draft budgets and the execution and reporting of approved budgets shall be the responsibility of appropriate executive authorities, as follows:

a) the State Budget shall be the responsibility of the Government;

b) the budget of an autonomous republic shall be the responsibility of the supreme government body of the relevant autonomous republic;

c) the budget of a territorial entity shall be the responsibility of the relevant local government executive;

3. The discussion, approval and oversight of a budget shall be the responsibility of the appropriate legislature, as follows:

a) the State Budget shall be the responsibility of the Parliament;

b) the budget of an autonomous republics shall be the responsibility of the supreme representative body of the relevant autonomous republic;

c) the budget of a territorial entity shall be the responsibility of the relevant local assembly.

4. The Ministry of Finance shall supervise and coordinate State budget preparation, execution and reporting. The Minister shall issue appropriate legal acts to ensure that the budgetary process is uniform and complies with this Law at all levels of the budgetary system.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Tamuna Gurchian says that this is a huge problem. For instance, one million GEL (US\$596,232) have been allocated from the reserve fund of the state budget for a private company (Sweeming Pool) as a credit at very low interest. This happened despite the fact that the law says that money from the reserve funds should be allocated only in case of natural disasters and other major situations.

Even considering the fact that Georgia's state budget totals 6 billion GEL (US\$3,577,390,721), one million GEL (US\$596,232) is still quite a substantial amount of money. This credit was approved by a government decision. The Parliament approves the budget but it is not involved in the expenditure process. The reserve funds are under the control of the Government and the President and they are free to use it at their will. Even though the Parliament is empowered by the constitution to monitor this process, in practice it does not happen.

References:

Tamuna Gurchiani, GYLA

<http://openbudgetindex.org/cms/index.cfm?fa=view&id=2393&hd=1>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Tamuna Gurchiani says that the legislation provides an opportunity for citizens to participate in the budget hearings though the government does not act in a proactive manner to encourage citizens to get involved in forming the budget. The budget is not quite an understandable document for ordinary citizens.

David Azmaiparashvili noted that the Parliament has sufficient capacity to monitor the budget process and provide input or changes.

References:

Tamuna Gurchiani, GYLA

David Azmaiparashvili, Head of the Office of the Committee On Budget and Finance

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

50

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Tamuna Gurchiani says that according to the law, it is quite possible to conduct a budgetary process in a transparent manner during the debating stage, though this phase is not conducted well. The pre-budgetary process is conducted quite well by the Ministry of Finance though the Parliament cannot hold debates.

David Azmaiparashvili noted that budgetary process is conducted in a transparent manner during the debating stage.

According to the Survey conducted by TI in 2008, citizens have little information about the parliament's activities (http://www.transparency.ge/index.php?lang_id=ENG&sec_id=210&info_id=412)

According to the Open Budget Index, important improvements in budget transparency have been documented: The right has been codified into law, but it is sometimes not possible for citizens in practice to obtain government information, including budget information."

References:

Tamuna Gurchiani, GYLA

David Azmaiparashvili, Head of the Office the Committee on Budget and Finance of the Parliament

<http://openbudgetindex.org/cms/index.cfm?fa=view&id=2393&hd=1>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

Comments:

The legislation provides an opportunity for citizens to participate in the budget hearings though the government does not act in a proactive manner to encourage the citizens to get involved in the budget process. The budget is not a very understandable document for ordinary citizens.

References:

Tamuna Gurchiani, GYLA

http://www.pbo.parliament.ge/index.php?lang_id=ENG&sec_id=1

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The budget is adopted according to the law and it is available for review by any citizen.

References:

http://www.pbo.parliament.ge/index.php?lang_id=GEO&sec_id=59

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

25

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Control, the Prime Minister and the Ministry of Finance submit reports to the Parliament about the state of budgetary processes. There is no other department or agency responsible for submitting the report.

References:

Law of Georgia on Budgetary Systems

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

There is only one member on the committee who is from an opposition party. The others are from the ruling party.

References:

http://www.parliament.ge/index.php?sec_id=254_id=ENG

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

There is no evidence that investigations have been initiated by the Budget and Finance Committee of the Parliament.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES

NO

Comments:

The Finance-Budget Committee of Parliament of Georgia provides oversight of public funds. Also, there is the Budget Office under the Finance and Budget Committee of Parliament.

References:

1. Statute of Finance-Budget Committee of Parliament of Georgia

2. Statute of Parliament Budget Office existing with Finance-Budget Committee of Parliament of Georgia, Article I

Parliament Budget Office of Georgia existing with Finance and Budget Committee of Parliament of Georgia (Hereafter the Budget Office) has been established to provide financial, budget and economic information to committees, factions, Members of Parliament and staff of the Parliament of Georgia.

Article 2:

In its activity, the Budget Office is governed (guided) by the Constitution of Georgia, the regulation of the Parliament of Georgia, by other legal acts, statute of the staff of the Parliament of Georgia, statutes of Finance and Budget Committee and the staff of Finance and Budget Committee, this statute and other acts of the head of the Parliament of Georgia.

Chapter II, Article 3:

The main goal of the Budget Office is to provide financial, budgetary, economic and other types of analytical information to the Parliament of Georgia. The Budget Office conducts this goal through monitoring and economic analysis.

Article 4:

Budget Office analysis:

a) the creation, consideration, adoption and execution of the state budget of Georgia, budgets of Abkhazia and Adjara autonomous republics, as well budgets of other territorial units of Georgia; also budget assignments with regard to spending efficiency and their correspondence with legislature of Georgia;

b) derivations from set budget parameters and elaborates suggestions for their elimination;

c) macroeconomic development conditions of country and projected parameters;

d) basic directions and mid-term strategies of fiscal and monetary policy determined by Basic Data and Directions (BDD) document;

e) accordance of state budget project with main parameters of macroeconomic development of Georgia;

f) position of the balance of payments of Georgia;

g) monetary, tax and custom policy of Georgia;

h) state debt issues;

i) budget surplus/deficit issues;

j) situation on legal acts concerning state budget, their possible amendments and changes, as well economic substantiations of other draft laws.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁷⁵Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES

NO

References:

Article 13 of the Law on Public Service establishes legality and impartiality as one of the main principles of public service.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES

NO

References:

In order to further ensure transparency and the streamlining of procedures for recruitment and promotion within the civil service, Presidential Orders on Approval of the Rules for Holding Competitive Selection for Recruitment and Appointment on Positions in Public Service (#46) and on Approval of Appraisal Rules for Public Servants (#47) were approved on February 5, 2009. The rules aim at elaborating detailed provisions of the legislation by providing procedural rules for recruitment, appraisal and promotion within the public service.

The Rules for Holding Competitive Selection for Recruitment and Appointment on Positions in Civil Service determines principles, procedures and conditions for holding competitive selection for recruitment and appointment for positions in public service. The Rules also insures publicity for the selection process.

The rules define conditions and terms for announcing a competitive selection in detail and list all needed documentations that applicants are required to submit. They also consider types of competitive selection and set terms and mechanism for filing complaints regarding procedures and the results of the selection.

The Appraisal Rules for Public Servants aim at evaluating the compatibility of professional habits, skills, capabilities and personal characteristics of a public official with the position he/she occupies. The rules are also designed to assess the duties performed by public officials and to help promote their professional skills as well as offer them incentives.

The rules determine procedures for conducting appraisals and set the terms for the evaluation of public officials. They also include standard forms of application and set the procedures for filing a complaint against the result of an appraisal.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES

NO

Comments:

For instance:

- a) Office of the Inspector General of the Ministry of Internal Affairs;
- b) Office of the Inspector General of the Prosecution Service of Georgia;
- c) High Council of Justice of Georgia;
- d) Office of the Inspector General of the Ministry of Finance of Georgia;
- e) Ministry of Economic Development of Georgia.

References:

General Administrative Code, Law of Georgia on the Conflicts of Interests and Corruption in Public Services
Article 20, prima 1:

The terms used in this chapter shall have the following meanings:

b) Institution which examines the complaints: Structural subdivision of the corresponding public institution, which performs the control, audit and work inspection.

Article 20, prima 7:

1. The competent office should examine the case within the shortest reasonable terms, as established under the legislation and its statute. In case of the absence of such rules, the case should be examined according to formal administrative procedures that are provided for in Georgian General Administrative Code.

2. If the office that examined the case decides that the violation committed by the exposed person can serve as the basis for the imposition of civil, administrative or criminal responsibility, it should refer the case to the competent authorities.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Criminal Code of Georgia, Article 43, Deprivation of the Right to Hold Office or Pursue Activity:

1. Deprivation of the right to hold office or pursue activity is prohibition of a convict from occupying appointive office at the civil service or a local government and self-governing bodies or pursuing professional or other kind of activities.

2. Deprivation of the right to hold office or pursue activity may be imposed as a principal punishment for 1 to 5 years or as an additional punishment from 6 months to 3 years.

3. Deprivation of the right to hold office or pursue activity may also be imposed as an additional punishment in those cases where this is not provided as a sanction by the relevant article of this Code but are imposed in view of the dangerousness of a crime, degree of a crime and the personality of the criminal, or where the court considers the preservation of this right to be undesirable.

4. Where socially useful work or correctional labor is imposed as a principal punishment, or where in probationary sentence deprivation of the right to hold office or pursue activity is imposed as an additional punishment, the term of this punishment is counted from the moment of coming into force of the judgment. Where restriction of liberty, incarceration or imprisonment is imposed as a principal punishment and deprivation of the right to hold office or pursue activity is imposed as an additional punishment, such deprivation shall extend over the entire term of the principal punishment and the said term shall be calculated from the day of serving those punishments.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Tamar Gurchiani, GYLA

Irakli Petriashvili, President of the Georgian Trade Union Confederation

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There is no unified system for the evaluation of civil servants. The law obliges all public services to establish evaluation criteria; however, in practice, not all of them do this, even though public officials in interviews have declared that civil servants are appointed and evaluated according to professional criteria.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | **25** | 0

Comments:

Tamuna Gurchian says that there is no unified system for the evaluation of civil servants. Nepotism and patronage are quite acceptable. According to established practice, a new head of a public service brings along his/her own team which is comprised of trusted people and friends. Even so, officials have declared in interviews that civil service management actions are based on standards of professionalism.

References:

Vato Lejava, Chief Advisor of the Prime Minister

Lasha Mgeladze, Deputy Head of Public Service Bureau

Tamuna Gurchiani, GYLA

Anti-Corruption Policy: Recommendations by Civil Society Representatives and Experts, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=490

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

There are no written job descriptions, but all public servants know their responsibilities, which are derived from the statute of the specific public service and subdivision. The statute does describe the role of the particular division or agency although the description is generic and does not describe a particular civil servant's specific duty. Therefore, the statute cannot be deemed to be a job description.

References:

Vato Lejava, Chief Advisor to the Prime Minister

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The civil servant bonuses fund never exceeds 10 to 15% of the total salary fund. During the budgetary process, the 13th salary is usually considered as a bonus.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government does not have an obligation to proactively publish lists of positions, but this information is public and can be accessed by any interested person. According to Mr. Lejava, citizens can obtain this information by applying to any state institution.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Another alternative mechanism for redress is through a court, though it is not effective. (See the ombudsman's report.) The Trade Union of Georgia is not effective either.

References:

No information is available on effectiveness of General Inspections in this respect.

State of Human Rights in Georgia, www.ombudsman.ge

Irakli Petriashvili, President of the Georgian Trade Union Confederation (GTUC)

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

No information is available regarding problems with this issue.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

There is no information available about whether civil servants who have been convicted of corruption are still employed by the government.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

56

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES

NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service sets up a basis for prevention, exposure, and suppression of corruption and the main principles and legal regulation of the responsibility for corruption offenders in the public service.

Under Article 2 of the same law, the term "Public Official" refers to the following persons: The President of Georgia; Member of Parliament of Georgia; Leaders and their Deputies of Supreme Representative Bodies of Autonomous Republics of Adjara and Abkhazia; Leaders and their Deputies of Executive Power of Autonomous Republics of Adjara and Abkhazia; Minister of Georgia and his/her Deputy; Head of Georgian State Chancellery's Office and his/her Deputy; Chairmen of Georgian State Department, Head of Georgian State Inspection and their Deputies; Leader of Structural Division of Georgian Ministry, also a person equal thereto; Leader of Structural Division of Chancellery, also a person equal thereto; Heads and their Deputies of Departments, Bureaus and Divisions of the Ministries of Interior, Security and Defense of Georgia, also a person equal thereto; Chairmen of Chamber of Control of Georgia; Judges; Leaders of District and Cities Local Representative Bodies and others.

According to Article 14 of the law, a Public Official should within a period of one month after taking office, complete and present an Asset Declaration.

According to the same article, a Public Official should complete and represent an Asset Declaration within one month after leaving office.

Declarations should be submitted to the Public Service Bureau.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES

NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 11:

According to this article, a civil servant is obliged to recuse themselves from policy decisions where their personal interests may be affected and to report such cases to their supervisor; however, this article does not apply to the President and MPs, in addition to some other high executives.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES

NO

References:

The Law of Georgia on Civil Service, Article 65 states that within a period of 3 years, starting from the date of dismissal, a dismissed public servant may not enter an institution or conduct any activities in an establishment over which he exerted regular direct supervision within his terms of reference for the past 3 years. During this period he/she is not authorized to receive any income from such an institution or establishment either.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES

NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 5:

1. For the purposes of this article, a present is a free or privileged property or service given, partial or full release from the property obligation to a public servant (it also covers public officials) or his/her family members, which appears as an exception from the general rule.
2. Throughout the whole year, the sum of the received presents shall not exceed the 15% of the whole year's wages. A present received once shall not exceed 5% of the year's wages, if these presents are not received from the same source.
3. Throughout the whole year, the sum of the received presents shall not exceed 1,000 GEL (US\$596) by each member of the public official's family. A present received once shall not exceed 500 GEL (US\$298), if these presents are not received from the same source.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES

NO

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100

75

50

25

0

Comments:

In practice, there is no established monitoring mechanism and no such cases involving regulations restricting post-government private sector employment for civil servants were identified.

References:

Vato Lejava, Chief Advisor to the Prime-minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | **50** | 25 | 0

Comments:

Regulations governing gifts and hospitality have been adopted quite recently and it is really difficult to evaluate their effectiveness.

References:

Lasha Mgeladze, Public Service Bureau

GRECO Second Evaluation Round, Evaluation Reports/Compliance Reports adopted by GRECO, Page 7, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp)

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Such cases regarding the effectiveness of the requirements for civil service recusal from policy decisions affecting personal interests have not been identified.

References:

Vato Lejava, Chief Advisor to the Prime Minister

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Civil service asset disclosures are not audited.

References:

Vato Lejava, Chief Advisor to the Prime Minister

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

94

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Under the Article 19 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, any individual or legal person has a right to demand and receive a copy of the asset declaration of a public official except for the cover page and confidential part of the declaration.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This information on citizen access of asset disclosure records of senior civil servants within a reasonable time period falls under the category of public information and there were no cases on delays reported by any nongovernmental organizations.

References:

Vato Lejava, Chief Advisor to the Prime Minister of Georgia

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens pay only for photocopying of asset disclosure records of senior civil servants.

References:

There is no evidence of such problems.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Upon submission of an asset disclosure record, it is always checked by Public Service Bureau and if it does not provide all the needed information, the form is returned to the civil servant.

References:

There is no evidence of such problems.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

38

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES

NO

References:

Law of Georgia `on Conflict of Interests and Corruption in Public Service, Article 20 prima 2:

1. This law shall afford the protection of whistle blowing, which:

a) in essence conforms with reality and is confirmed by the shown evidence;

b) is done honestly and in the belief that the whistle-blowing will contribute to ending the infractions by the public officials of the law and rules of due conduct, protect public and private interests and whose value outweighs the harm caused by the whistle-blowing;

2. Whistle-blowing is not protected under this law, if:

a) the information received from a whistle-blower is wrong in essence and was known, or should have been known, to have been wrong by the whistle-blower;

b) a whistle-blower acts for his personal profit except in cases where granting special reward has been established by the law.

Article 20 prima 3:

1. It is prohibited to intimidate, oppress or threaten a whistle-blower in discriminatory ways.

2. The whistle-blower may not be subject to disciplinary or administrative procedures, civil action or prosecution or be held responsible otherwise for the circumstances related to the acts of the whistle-blowing until the end of the investigation. It is also forbidden to worsen the conditions of the agreements, license and grants and to release or temporarily release from a job, cause the derangement of legal relationships, until the end of the investigation.

3. The disciplinary, civil, administrative and criminal procedures shall be suspended if such acts take place unless there exists one of the following circumstances:

- a) Disciplinary, civil, administrative and criminal procedures are not related to the conditions of whistle-blowing of the exposed person.
- b) It is necessary for the interests of justice, protection of the state, commercial and personal information in the democratic society.
- c) The purpose of enjoying the protection guaranteed by this article is aimed at infringing the state sovereignty and public order, carrying out a coup d'état, or to kindle ethnic and religious discord.
4. During disciplinary, civil, administrative and criminal procedures against a whistle-blower, a public institution must prove, that:
- a) The fact of whistle-blowing is not a reason for disciplinary, civil, administrative and criminal procedures.
- b) There are bases foreseen in the legislation to impose disciplinary responsibility and the initiation of the procedures under the same conditions would be fair for a third individual.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

The provision on the protection of whistle-blowers has been adopted quite recently and there is no information about its effectiveness in practice.

References:

There is no information about such cases.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The provision on the protection of whistle-blowers protection is applicable only to public servants.

References:

No information is available on such cases.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The provision on whistle-blower protection is applicable only to public service.

References:

No information is available regarding such cases.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

56

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Internal reporting mechanisms regarding corruption in the public sector are provided by General Inspections offices, which employ a full-time staff.

References:

<http://www.justice.gov.ge/geninspection.html>

<http://www.police.ge/geninsph hotline.aspx>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

General Inspections offices for reporting cases of public corruption are part of the ministries and receive regular funding as a subdivision of that ministry.

References:

Vato Lejava, Chief Advisor to the Prime Minister

Lasha Mgeladze, Deputy Head of Public Service Bureau

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The provision regarding internal complaints was adopted a few months ago and there is no information on how it works in practice.

References:

Article 20 prima 7:

1. The body competent thereto should examine the case within the shortest reasonable times, as established under the legislation and its statute. In case of the absence of such rules, the case should be examined according to formal administrative procedure provided in Georgian General Administrative Code.
2. If the office that examined the case decides that the violation committed by the accused person can serve as the basis for the imposition of civil, administrative or criminal responsibility, it should refer the case to the competent authorities.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

By law, General Inspections are authorized to initiate investigations.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES

NO

Comments:

These institutions are usually General Inspections offices working under the ministries; these offices have a hotline for reporting corruption.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 20, prima 1:

The terms used in this chapter shall have the following meanings:

a) Whistle-blowing: To inform the public institution which examines the complaints against the public official (the accused) about the infractions of the law or the rules of due conduct of the public employees, actions which are alleged to have caused harm to public interests or reputation of public institution.

b) Institution which examines the complaints: Structural subdivision of the corresponding public institution, which performs the control, audit and work inspection.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

51. Is the public procurement process effective?

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES

NO

References:

Law of Georgia on State Procurements, Article 8:

Conditions and rules to prevent conflict of interests:

1. Conditions and rules to prevent conflict of interests are applied to the following activities related with implementation of procurements:

- a. preparatory works for procurement, including establishment of characteristics and presumable cost of procurement object;
- b. selection of tender commission members and other persons responsible for implementation of procurement;
- c. preparation of tender announcement, tender documentation and other material;
- d. consideration and evaluation of qualification data and tender proposals;
- e. conduct of negotiations in cases provided for by the present law;
- f. control and supervision on implementation of agreements;
- g. other activities related with procurement implementation.

2. It is prohibited for a person who is willing to participate or/and is participating in the procurement to address procuring organization (its chairman and employees) or the structures of state management and their representatives with a request for mediation, or to impose direct or indirect (hidden) influence over them in any form, to gain to conclude a contract favorable for him.

3. It is prohibited for a procuring organization to entrust the preparation of a procurement or/and its supervision to a person or invite a person as a consultant (expert), if he/she:

- a. is a close relative of a chief, employee or direct participant of any juridical person participating in the procurement;
- b. for the last 3 years has been working in the organization that is participating in the procurement;
- c. is linked with personal or business interests or carries out negotiations for establishing such links with juridical or persons participating to the procurement;

4. It is prohibited that juridical or physical persons, who have participated in procurement preparation to participate in the procurement;

5. The requirements of paragraphs 3 and 4 of the present article also apply to:

- a) participants in the control over procurement implementation;
- b) participants of negotiations on implementation of procurements by means of negotiations with a single person.

6. Upon completion of the terms of accepting documents ascertaining the qualification data and tender proposals, and as soon as envelopes are opened, all members of the tender commission, the invited consultant (expert) and all those employees of

procuring organizations who are involved in the implementation of this procurement are obliged to confirm in writing that his/her participation in this procurement does not contradict the above-mentioned requirements.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Law of Georgia on State Procurements, Article 4:

Agency of the State Procurement:

1. Activities related to procurement are coordinated and monitored by a permanent independent body and legal person of public law, the Agency of State Procurement (hereinafter the Agency); the Agency's chairman is appointed and removed from the position by the Prime Minister of Georgia.

6. Main functions of the agency are:

c) Preparation of special educational programs, educational-methodological material, standard forms of documentation, conducting of seminars and trainings for central and local self-governing institutions, mass media representatives and other interested members of the public.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

No information is available on enforcement of the regulations.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

There is no mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Law of Georgia on State Procurements, Article 10:

Means of procurement:

1. Procurement is implemented by means of a tender if not otherwise stipulated by this article.
2. The quotation of prices may be used under the decision of the chief of procuring organization for the procurement of goods and services, presumable cost of which amounts to less than 100,000 GEL (US\$59,623), as well as for the procurement of works, presumable cost of which is less than 200,000 GEL (US\$119,246).
3. The procurement may be implemented by means of negotiation with a single person if:
 - a) the presumable cost of goods or services to be procured does not exceed 50,000 GEL (US\$29,812), whereas presumable cost of works does not exceed 100,000 GEL (US\$59,623).
 - b) provision of goods, implementation of works or rendering a service is the exclusive right of only one person;
 - c) there exists an urgent necessity, and at that, in such cases, the amount of goods, works or services to be procured shall not exceed terms needed for settlement of problems caused by the urgent necessities;

d) to avoid worsening of procured object's quality or/and to ensure its further exploitation, it is necessary to implement procurement with the same provider, except in cases when the presumable cost of this procurement exceeds the cost of initial procurement;

e) for the unimpeded organization of events of state and public importance within limited terms, the implementation of procurement was decided under the legal act of the president of Georgia or /and the government of Georgia;

f) one or more procured vehicle or computer appliances is being replaced with a new one or more vehicle or computer appliances with the same or upgraded parameters; in this case, part of costs of new vehicles and computer appliances is compensated for by returning the previously procured vehicles and computer appliances to the provider or by means of handing these over to another juridical person, which is involved in the retail of similar products (goods);

4. procedures of negotiation with a single person and price quotations are implemented by the chief of the procuring organization or a person (persons) duly authorized by him/her in the order established by the legislation of Georgia.

5. It is prohibited to artificially divide the means of procurement with the purpose of avoiding monetary limits, determined by this article. After conclusion of the procurement contract, procurement by remaining financial resources is allowed with respect of monetary limits as determined by this article. During the procurement of works, a case in which the presumable cost of each similar procurement object exceeds 200,000 GEL (US\$119,246) and procurement of this object is implemented through a tender will not be considered as artificial dividing.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Law of Georgia on State Procurements, Article 10:

Means of procurement:

1. Procurement is implemented by means of a tender if not otherwise stipulated by this article.

2. The quotation of prices may be used under the decision of the chief of procuring organization for the procurement of goods and services, presumable cost of which amounts to less than 100,000 GEL (US\$59,623), as well as for the procurement of works, presumable cost of which is less than 200,000 GEL (US\$119,246).

3. The procurement may be implemented by means of negotiation with a single person if:

a) the presumable cost of goods or services to be procured does not exceed 50,000 GEL (US\$29,812), whereas presumable cost of works does not exceed 100,000 GEL (US\$59,623).

b) provision of goods, implementation of works or rendering a service is the exclusive right of only one person;

c) there exists an urgent necessity, and at that, in such cases, the amount of goods, works or services to be procured shall not exceed terms needed for settlement of problems caused by the urgent necessities;

d) to avoid worsening of procured object's quality or/and to ensure its further exploitation, it is necessary to implement procurement with the same provider, except in cases when the presumable cost of this procurement exceeds the cost of initial procurement;

e) for the unimpeded organization of events of state and public importance within limited terms, the implementation of procurement was decided under the legal act of the president of Georgia or /and the government of Georgia;

f) one or more procured vehicle or computer appliances is being replaced with a new one or more vehicle or computer appliances with the same or upgraded parameters; in this case, part of costs of new vehicles and computer appliances is compensated for by returning the previously procured vehicles and computer appliances to the provider or by means of handing these over to another juridical person, which is involved in the retail of similar products (goods);

4. procedures of negotiation with a single person and price quotations are implemented by the chief of the procuring organization or a person (persons) duly authorized by him/her in the order established by the legislation of Georgia.

5. It is prohibited to artificially divide the means of procurement with the purpose of avoiding monetary limits, determined by this article. After conclusion of the procurement contract, procurement by remaining financial resources is allowed with respect of monetary limits as determined by this article. During the procurement of works, a case in which the presumable cost of each similar procurement object exceeds 200,000 GEL (US\$119,246) and procurement of this object is implemented through a tender will not be considered as artificial dividing.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES

NO

References:

Law of Georgia on State Procurements, Article 23:

Procedure of appeal and dispute consideration:

1. Prior to conclusion of the contract, legal and physical persons willing to participate in the tender and contenders shall be authorized to appeal the actions of the procuring organization or the tender commission before the procuring organization or the agency, if they deem that rules established under the present law and relevant normative acts have been violated or/and their rights have been infringed in the process of procurement.

2. Legal and physical persons willing to participate in the tender, contenders and providers shall be authorized to appeal the actions of the procuring organization or the tender commission before the court, if they deem that rules established under the present law and relevant normative acts have been violated or/and their rights have been infringed in the process of procurement.

3. In cases determined under the first paragraph of the present article, a claimant shall be authorized to appeal to the procuring organization no later than within 20 calendar days from the moment of learning about a circumstance or adoption of a decision, which gave rise to the claim.

4. Prior to conclusion of the contract, legal and physical persons willing to participate in a tender and contenders shall be authorized to address the agency for considering the dispute related to procurement.

5. In cases under paragraphs 1 and 3 of the present article, the procurement organization shall take a justified decision in writing no later than within 10 calendar days from the receipt of the claim and communicate it to the claimant.

6. In cases under paragraphs 4 of the present article, the agency shall take an argued decision in writing no later than within 20 calendar days from the receipt of the claim and communicate it to the claimant and the procurement organization.

7. If as result of detailed consideration of claim and related circumstances by the agency, the claim proves to be grounded, the agency is entitled to:

- a. point out the improper actions of the procuring organization and request the implementation of procurement procedures in compliance with the legislation;
 - b. request the procuring organization to review or revoke adopted decision;
 - c. in case of violation of requirements of the present law, raise the question of responsibility of procurement participants before the relevant agencies under the legislation of Georgia;
8. Upon the expiration of term under paragraph 3 of the present article, as well as following conclusion of the contract, consideration of any claim is permitted solely in front of a court.
9. Action shall not be liable to appeal, if the if the claim relates to:
- a. the choice of means of procurement respecting the order established under the present law and relevant normative acts;
 - b. the decision of the procuring organization on suspension or discontinuation of the procurement procedure, which had been adopted in the order established under this law and relevant normative acts;
10. The claim shall be legally grounded and be annexed with the motivated explanation of the claimant that he/she will suffer significant loss if the claim is not satisfied. The claim shall not be subject to consideration if the procuring organization in accordance with this law decides to discontinue the procurement procedure.
11. In case a complaint is submitted to the procuring organization or the Agency prior to conclusion of a state procurement contract, the procuring organization is obliged to suspend procurement for the duration of the term of the claim consideration procedure. The term of suspension of procurement may be extended by the decision of the chief of procurement organization or the agency, while its total duration shall not exceed 30 days.
12. Legal and physical persons willing to participate in the tender, contenders and providers are entitled to appeal to court against the decisions of the procurement organization or the agency adopted in relation to the claim.
13. Damage that can be compensated to the claimant as a result of consideration under the present article shall be limited to the expenses related to participation in the procurement only and shall not envisage compensation-presumed profit.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES

NO

References:

Law of Georgia on State Procurements, Article 23:

Procedure of appeal and dispute consideration:

12. Legal and physical persons willing to participate in the tender, contenders and providers are entitled to appeal to court against the decisions of procurement organization or the agency adopted in relation to the claim.

13. Damage that can be compensated to the claimant as a result of consideration under the present article shall be limited to the expenses related to participation in the procurement only and shall not envisage compensation-presumed profit.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES

NO

References:

Law of Georgia on State Procurements, Article 3:

l) A register will be kept of unreliable persons, contenders and providers participating in the procurement register, which is filled in by state procurement agency, that will reflect data on those unreliable persons, contenders and providers participating in procurement who have been deprived of the right to participate in the procurement of same goods, work or services for the period of two years following their inclusion in the register. The register is accessible to any procuring organization.

Article 4: Agency of the State Procurement:

6. Main functions of the agency are:

k) Maintaining a register of unreliable persons, contenders and providers participating in the procurements.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100

75

50

25

0

Comments:

There is a blacklist of companies who have been found guilty of major violations of procurement regulations. It is on the State Procurement Agency's website.

References:

<http://spa.ge/index.php?m=159>

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

88

52a. In law, citizens can access public procurement regulations.

YES

NO

References:

Law of Georgia on State Procurements, Article 6:

2. The Board of the agency:

a) Discusses, during its sessions, draft normative acts to be published by the chairman of the agency, regulations of structural sub-divisions of the agency and results of their activities;

b) in relation with state procurements, takes into consideration main directions of the state policy and, during its sessions, gives opportunities to all sides participating in state procurements to represent their interests unhindered;

c) files in an annual report on its activities and presents it to the government of Georgia before April 1 of each consecutive year; the report shall be accessible to the public;

d) within the scope of its competence, requests from procuring organizations any information related to procurements and checks its accuracy;

3. Sessions of the board of the agency are public and its decisions are published in accordance with established order. The order of confidentiality of information within the board is established by the Legislation of Georgia.

4. The order of activity of the Board of the Agency is determined by the regulations of the board.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES

NO

References:

Law of Georgia on State Procurements, Article 22:

Procurement Report

1. The procurement process shall be reflected in the procurement report, the procedure for drawing up, presentation and filing of which shall be determined by the bylaw normative act.
2. In case of holding tender, the protocols of the tender commission's meetings, the conclusions of experts and consultants participating in the tender, as well as other documents envisaged by the bylaw normative act under the first paragraph of the present article, shall be enclosed in the procurement report.
3. The procurement report shall be submitted to the agency in following time frames:]
 - a. When the procurement is carried out by means of tender, no later than 10 calendar days following the conclusion of the contract;
 - b. When the procurement is carried out by means of negotiations with a single individual and the price of goods or services does not exceed 100,000 GEL (US\$59,623), and the price of the procured works with a price less than 200,000 GEL (US\$119,246), no later than 10 calendar days following the conclusion of the contract;
 - c. When procuring goods or services with the price less than 100,000 GEL (US\$59,623) or works with the price less than 200,000 GEL (US\$119,246) (in case such a situation occurs): quarterly, no later than the 30th day of the first month of the following quarter;
 - d. Progress report on execution of the contract: quarterly, no later than 30th day of the first month of the following quarter;
4. The procurement reports shall be available for every concerned individual upon their request, whereas a short overview of those reports shall regularly be published by procuring organizations in the media;
5. The chief of the procuring organization shall submit the procurement report regarding an object with a price exceeding 2,000,000 GEL (US\$1,192,464) to the government of Georgia in a written form, within 20 days following conclusion of the state procurement contract.
6. The Ministry of Finance of Georgia, the Ministries responsible for the financial sphere of the Autonomous Republics of Abkhazia and Adjara and the financial units of local self-governance entities shall, on a quarterly basis, provide the Agency with the information on resources factually allocated to the budgetary organizations and institutions.
7. The Agency is entitled to request from the procuring organization or the participants of procurement any document and information related to the procurement, including the information related to execution of the contract.
8. With a view of ensuring transparency of procurement process, the agency shall, in the procurement process, monitor the compliance with such principles as publicity, justice, non-discrimination, full adherence to the established procedures and reporting, thereby guaranteeing open and effective competition, and the possibility of making rational and free choices.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Information on public procurement is usually published on the website of State Procurement Agency. Generally, there is a

problem with access to public information in practice. Information on some procurement transactions are not available and the request to obtain this information is always denied. see Transparency International report.

References:

www.spa.ge

Ti Report, Anti corruption Policy, http://www.transparency.ge/files/215_498_815736_Anti-Corruption%20Policy%20Recommendations%20by%20Civil%20Society%20GEO.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost to access public procurement regulations includes only photocopy expenses.

References:

No information is available on this problem.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Major public procurements are advertised by the Ministry of Economical Development as well as State Procurement Agency on their website and in periodical journals.

References:

www.economy.ge

www.spa.ge

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The results of major public procurement bids are available on the State Procurement Agency's website.

References:

<http://spa.ge/index.php?m=134>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

References:

Law of Georgia on State Property Privatization, Article 2:

A physical or a legal person of Georgia or foreign country, and an owner of property where the share of the Georgian government or the local authorities concludes is less than 25% is authorized to buy the State property.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES

NO

Comments:

According to this article, a civil servant is obliged to recuse themselves from policy decisions where their personal interests may be affected and to report such cases to their supervisor. However, this article does not apply to the President and Ministers of parliament as well as some other high executives.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 11

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

References:

No information is available on infringement of conflicts of interest regulations by government officials involved in privatization.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

70

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Law of Georgia on State Property Privatization, Article 9:

Information on Property to be Privatized:

1. Information on state property that is to be privatized by auction shall be published in the official publication of the Ministry of Economic Development and in publications that cover major territories of the country or in a local publication (in cases where the privatization is carried out by territorial unit of the Ministry of Economic Development). It shall also be published on the Ministry's website. Also the information can be broadcast on public television. Other forms of media can also be used.

2. Information on privatization of state property by auction shall be published at least 30 days prior to the established date of privatization.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatizations are advertised on the website of the Ministry of Economic Development.

References:

<http://privatization.ge/spp/spp/entities.php?lang=ge>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

In practice, results of privatization decisions are announced on the website of the Ministry of Economical Development.

References:

Law on Privatization of State Property and Property of the Local Government.

Law on Privatization of the Agricultural Land

<http://privatization.ge/spp/spp/entities.php?lang=ge>

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access privatization regulations within a reasonable time period since they are published on a website.

References:

<http://privatization.ge/spp/spp/entities.php?lang=ge>

Some privatization deals are not conducted in transparent manner. See TI report, Anti-corruption Policy, http://www.transparency.ge/files/215_490_158736_Anti-Corruption%20Policy%20Recommendations%20by%20Civil%20Society%20ENG.pdf

See Also TI report, Promoting Civil Society Monitoring of Secondary Healthcare Reform, http://www.transparency.ge/index.php?lang_id=ENG&sec_id=190&info_id=484

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of accessing privatization regulations information is not an issue. If it is not available on the website, it can be obtained through an application to the Ministry of Economic Development. The cost of such information includes only paperwork.

References:

<http://privatization.ge/spp/spp/entities.php?lang=ge>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁸National Ombudsman

56. Is the national ombudsman effective?

68

56a. In law, the ombudsman is protected from political interference.

YES

NO

References:

Organic Law of Georgia on the Public Defender, Article 4:

The Public Defender shall be independent in exercising the functions of the office and bound only by the Constitution and by law. Any undue pressure or interference in the Public Defender's activities shall be prohibited and punished by law.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100

75

50

25

0

Comments:

According to Giorgi Chkheidze, during the election process of a public defender, political interference cannot be excluded as he/she is elected by the Parliament. However, after the election, there is no mechanism for interference. It mostly depends on the individual character of the ombudsmen whether he/she accepts such influence.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is protected from removal without relevant justification.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Ombudsman agency has a professional, full-time staff in the capital and in the other regions of the country as well.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Giorgi Chkheidze says that this is a complicated issue. The ombudsman is elected by the Parliament. Only the president and prime ministers has a right to introduce a candidate. There is no open competition or any other procedures in this respect. The selection process is closed and it does not support the independence of the ombudsman.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding of the ombudsmen agency is quite a serious problem, in spite of the fact that law says that ombudsmen must have adequate funding. The budget of the ombudsman's office has been reduced by 300,000 GEL (US\$178,870) for 2010. The problem has been partly solved by international grants but considering the fact that the ombudsman's office is a budgetary institution, the grants cannot cover main expenditures such as salary, gas, utilities and other expenses.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Any report produced by the ombudsman's office is made public. They are published on the website and distributed through the media. As for hard copies of the report, sometimes the office cannot provide the printing because of its financial problems. The reports are also published by the Parliament.

References:

Giorgi Chkheidze, Deputy Ombudsman

<http://ombudsman.ge/>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Giorgi Chkheidze says that the ombudsman's office does not have authority to initiate investigations. It can study and provide expertise on the specific case and make inquiries about it. It can also request documents from public institutions. The results of the study are then introduced to public institutions which is where grounds are provided for initiating an investigation.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Any undue pressure on, or interference in, the Public Defender's activities is punishable by law. There were some cases when a request for public information was denied by a public institution and the ombudsman's office appealed to a court, but the court did not impose any sanctions on those institutions.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Statistically, the amount of fulfilled recommendations introduced by the ombudsmen is quite small. There were some cases where the government took some of the ombudsman's recommendations into consideration. But mostly the government does not act on the findings of the ombudsman's office.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law does not set the terms for citizens complaints, although the study of a specific case usually takes about one month, which is quite reasonable time period. The Ombudsmen's increasing reputation and trust from the public refers to the fact the ombudsman agency's activity is quite responsive even though the government is reluctant to cooperate with it.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES

NO

References:

Organic Law of Georgia on the Public Defender, Article 22:

1. Semi-annually, in March and in October, the Public Defender shall submit to the Parliament a periodic report on the human rights situation in the country.
2. The periodic report of the Public Defender shall include information about those national and local authorities, public officials and legal persons that were found to have violated human rights and freedoms and failed to act upon the Public Defender's recommendations concerning the measures of redress.
3. The periodic report shall provide a general assessment of the human rights situation in the country and a summary of the findings and recommendations to address the identified problems.
4. The Public Defender shall also prepare and submit to the Parliament special reports dealing with the situation in any particular field of human rights.
5. Periodic reports of the Public Defender shall be published in the public journal of the Parliament. Publishing of a special report shall be subject to the Public Defender's discretion.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman's reports are published on the website and also submitted to the parliament twice a year. Parliament is also obliged to publish the reports. There is also a library available at the ombudsman's agency.

References:

Giorgi Chkheidze, Deputy Ombudsman

<http://ombudsman.ge/>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman's office provides citizens with public information free of charge.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

References:

Constitution of Georgia, Article 43:

1. The protection of human rights and fundamental freedoms within the territory of Georgia shall be supervised by the Public Defender of Georgia who shall be elected for a term of five years by the majority of the total number of the members of the Parliament of Georgia.
2. The Public Defender shall be authorized to reveal facts of the violation of human rights and freedoms and to report on them to corresponding bodies and officials. The creation of impediments to the activity of the Public Defender shall be punishable by law.
3. The authority of the Public Defender shall be determined by the Organic Law

Organic Law of Georgia on the Public Defender, Article 3:

1. The Public Defender shall be mandated to oversee the effective observance of human rights and freedoms on the territory of Georgia and to identify and assist in redressing the violations of human rights.
2. For the purposes of protecting and promoting human rights and freedoms and ensuring that these rights are adequately secured by the State, the Public Defender shall within the authority as defined by the Constitution of Georgia, the present Law and other relevant statutes, monitor the activities of national and local authorities, public officials and legal persons, review acts and decisions adopted by them and provide appropriate recommendations and proposals.
3. The Public Defender shall undertake and support educational efforts aimed at strengthening the protection of human rights and freedoms.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

The Law of Georgia on the Chamber of Control of Georgia, Article 3:

tatus of the CCG

2. The CCG shall be independent in its activities and comply only with the Law. Any interference in and/or control of its activities and request for reports related to the said activities shall be inadmissible, if this is not explicitly provided for by the law. Any political pressure as well as any other actions that may encroach on its independence shall be prohibited.

3. The CCG shall have departmental, financial, functional and organizational independence.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the Chamber of Control is protected from being removed without relevant justification.

References:

Tamar Gurchiani, GYLA

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Control has a professional, full-time staff.

References:

www.control.ge/

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

By law, the Chamber of Control enjoys independence, although there is no evidence of its functioning effectively.

References:

By law the Chamber of Control is independent.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Control receives regular funding from the State Budget.

References:

State Budget of 2009, www.mof.ge

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Control makes regular public reports and publishes them on its website.

References:

www.control.ge

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

No information is available on the imposition of sanctions on any public institutions by the government based on the findings of the Chamber of Control.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Control has conducted many investigations (mostly of middle-level public entities). Its report of 2008 talks about numerous violations of procurement or other financial regulations by the public agencies, although the problem is that no evidence of any reaction from the respective governmental agencies has been found. There is no evidence that the government acts on the Chamber's findings.

References:

Activity report 2008, Chamber of Control, http://www.control.ge/files/511_31566_901566_2008%20saqmianobis%20angarishi.pdf (Available in Georgian only)

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

92

60a. In law, citizens can access reports of the audit agency.

YES

NO

References:

The Law of Georgia on Chamber of Control of Georgia, Article 32:

Reports, Accounts and Information:

1. The Chamber of Control of Georgia (CCG), at latest within one month after presentation by the Government of an account on completion of the state budget to the Parliament, shall submit to the Parliament a report on the said account.
2. Together with the report on ongoing state budget implementation made by the Government, the CCG shall submit its report to the Parliament no later than 2 days prior to the final session of the Committee of Finance and Budget. Together with the report the opinion of the CCG on the draft state budget and on the legality and the soundness of revenues and expenditures envisaged by the draft shall be submitted to the Parliament.
3. The CCG shall submit to the Parliament an annual account on its activity. This account is to be submitted on or before the June 1 next year of the accounting year. The annual report shall be published.
4. The accounts of the CCG submitted to the Parliament shall be published in the formal organ of the press of the Parliament.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100

75

50

25

0

Comments:

The audit reports are public. Also, they are published on the Chamber of Control's website.

References:

www.control.ge

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of accessing the audit reports is reasonable as is the accessing of public information generally.

References:

Tamuna Gurchiani, GYLA

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

The Constitution Of Georgia, Article 97:

1. The Chamber of Control of Georgia (CCG) shall supervise the use and expenditure of state funds and of other material values. It shall also be authorized to examine activity of other state bodies of fiscal and economic control and submit proposals on improving tax legislation to the Parliament.

The Law of Georgia on the Chamber of Control of Georgia, Article 3:

Status of the CCG:

1. The CCG is a supreme body of state financial and economic control which conducts audits.
2. The CCG shall be independent in its activities and comply only with the Law. Any interference in and/or control of its activities and request for reports related to the said activities shall be inadmissible, if this is not explicitly provided for by the law. Any political pressure as well as any other actions that may encroach on its independence shall be prohibited.
3. The CCG shall have departmental, financial, functional and organizational independence.

Article 4. General Goals and Principles of the Activity of the CCG

1. The general goals of the activity of the CCG shall be: to provide protection of legality and purposefulness, and effectiveness of use and spending of state funds and other state material values, to protect of national wealth, property of state, autonomous republic and local (municipal) entities; to improve management of public finances.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

86 V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The Revenue Agency has a professional, full-time staff.

References:

www.mof.ge/3663

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Revenue Agency receives regular funding from the State Budget.

References:

Law on State Budget of 2009

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As far as citizens can tell, the Revenue Agency has a professional, full-time staff.

References:
www.mof.ge/3663

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
The Revenue Agency receives regular funding from the State Budget.

References:
Law on State Budget of Georgia of 2009

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

Law on Revenue Agency of the Ministry of Finance of Georgia

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

There are rumors claiming the opposite however, I don't know of any credible reports that prove this.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

Customs authority is exercised by the Revenue Agency of the Ministry of Finance.

References:

Law on Revenue Agency of the Ministry of Finance of Georgia

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

There is no evidence proving the opposite.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The Ministry of Economic Development, which is part of executive authorities, oversees state-owned companies. Therefore, it cannot be protected from political interference.

References:

Law on Privatization of State Property, <http://www.economy.ge/geo/page.php?page=1>

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

The Enterprises Management Agency, which is a subdivision under the Ministry of Economic Development, has a professional, full-time staff.

References:

http://www.economy.ge/geo/main_sub.php?key=5

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Ministries receive regular funding from the state budget.

References:

www.mof.ge/default.aspx?sec_id=3159)=1

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Economic Development is not authorized to initiate investigations.

References:

www.economy.ge

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Economic Development is not authorized to impose penalties; neither is the Chamber of Control, although they can submit information to the prosecution.

References:

There is no such provision in the legislation of Georgia.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

5

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

0

References:

State-owned companies are not obliged by law to disclose their financial records.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

State-owned companies are not obliged by law to disclose their financial records.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Some companies are audited according to international accounting standards and some are not. There are no uniform standards.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

State-owned companies are not obliged by law to disclose their financial records.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

State-owned companies are not obliged by law to disclose their financial records.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES

NO

Comments:

According to privatization legislation, the management and general supervision of state-owned companies are exercised by the Ministry of Economic Development.

Enterprise Management Agency, which is an agency under the Ministry of Economic Development of Georgia, is responsible for managing the state enterprises or those with the share of the state, defending interests of state in those entities, ensure dividends increase; coordinate management of state owned shares and stocks and promote privatization process. The agency keeps track of the state owned enterprises, state owned shares and stocks and all the changes related to them, it coordinates and monitors business processes in state owned enterprises through the State Representatives in each enterprise which appointed by the Agency (articles 2 and 3 of the charter of the Agency)

The agency is established according to the requirements of the law on privatization by the Decree of the President of Georgia on approval of the charter of the legal entity of public law Enterprise Management Agency and the rules for transferring stocks and shares by the Enterprise Management Agency on other actors with the authority to manage #203 May 11 2003.

References:

The Law of Georgia on Chamber of Control of Georgia, Article 6:

Authority of the Chamber of Control of Georgia (CCG):

1. The authority of the CCG, within its competence, shall be applied to bodies of the legislative, executive and juridical branch, legal entities of public law, local self-governing entities, National Bank of Georgia, legal entities of private law, in which the state, autonomous republics and the local self-governing bodies hold more than 50 percent of shares and other legal and natural persons, organizations and institutions.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

70. Are business licenses available to all citizens?

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

There is no provision against discrimination in the Law On Licenses and Permits.

References:

Law of Georgia on the Licenses and Permits, www.gncc.ge/files/7050_6827_449892_licese%20of%20georgia.pdf

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Constitution of Georgia, Article 42

Administrative Procedure Code

Law on Licenses and Permits

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Vato Lejava says, Georgia has dramatically simplified licensing and permitting requirements to ease constraints on business. The total number of licenses and permits was reduced by 84 percent in reforms that eliminated 756 licenses and permits and streamlined procedures. Only 86 licenses and 50 permits now exist."

The World Bank's Doing Business 2010 survey of Georgia confirms the low cost and short time period required for starting a business in Georgia.

References:

Vato Lejava, Chief Advisor to the Prime Minister, http://www.investinggeorgia.org/doing_business/legislation/

World Bank's Doing Business Survey 2010, Georgia Country

Report, <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=74>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to Vato Lejava, the cost only covers paperwork. The government does not make any profit from this service.

The World Bank's Doing Business 2010 survey of Georgia confirms the low cost and quick time period required for starting a business in Georgia.

References:

Vato Lejava, Chief Advisor to the Prime Minister, http://www.investinggeorgia.org/doing_business/legislation/

World Bank Doing Business 2010, Georgia Country

Report, <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=74>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

0

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | **NO**

Comments:

There are no clear regulations on health standards.

References:

Law on Licenses and Permissions

Law on Medical and Pharmaceutical Licensing

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | **NO**

Comments:

The Law does not establish clear public environmental standards.

References:

Law on Regulation of Entrepreneurial Activities

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The law does not establish clear public safety standards.

References:

Law on Regulation of Entrepreneurial Activities

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

0

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The law does not establish uniform public health standards; consequently, business inspections are not carried out in a uniform manner.

References:

Law on Licenses and Permissions

Law on Medical and Pharmaceutical Licensing

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Considering the fact that there is no uniform public environmental regulations, inspections cannot be carried out in a uniform manner.

References:

No reports or statistics are available on business inspections by government officials.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There are no uniform regulations in regard to public safety standards.

References:

No reports or statistics are available on business inspections by government officials.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷³Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES

NO

References:

According to the Article 339 (Bribe giving) of the Criminal Code of Georgia:

1. Direct or indirect promising, offering or giving money, securities, property or any other material benefit to an official or a person with an equal status, in favor of the bribe-receiver or third person, in order that the official or a person with an equal status to perform or not to perform any action or to use his official position for that end or to exercise official patronage in favor a bribe-giver or a third person, shall be punished with fine or corrective labor for a term of 2 years or the restriction of liberty for the same term or the deprivation of liberty for a term up to 3 years.
2. Giving a bribe to an official or a person with an equal status in exchange for the commission of an illegal act shall be punished with fine or the deprivation of liberty for a term from 4 to 7 years.
3. The conduct defined in paragraphs 1 and 2 of the present Article committed by an organized group shall be punished with the deprivation of liberty for a term from 5 to 8 years.

According to the Article 338 (Bribery) of the Criminal Code of Georgia:

1. Direct or indirect demanding or accepting money, securities, property or any other material benefit, or accepting such a promise or offer, committed by a public official or a person with an equal status, in exchange for performing or not performing, in favor of the bribe-giver or a third person, any action as well as using his official position for that end or exercising official patronage, shall be punished with the deprivation of liberty from 6 to 9 years.

2. Bribery committed:

a) by a state official with political status;

b) in respect of a large amount of bribe;

c) by a group, due to an agreement in advance
shall be punished with the deprivation of liberty for a term from 7 to 11 years.

3. the conduct defined in paragraphs 1 and 2 of the present Article, committed:

a) by the person previously convicted for bribery;

b) repeatedly;

c) by extortion;

d) by an organized criminal group;

e) in respect of an especially large amount of money, shall be punished with the deprivation of liberty for a term from 11 to 15 years.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES

NO

References:

Criminal Code of Georgia, Article 181:

Extortion:

1. Extortion, i.e. claiming other's object or property right or property use that is attached by the threat of using violence against the victim or victim's close relatives, or that of destroying or damaging their object or that of making a defamatory information public or spreading other such information that may substantially prejudice their rights, shall be punishable by fine or by jail sentence for up to six months in length or by imprisonment for up to four years in length.

2. The same action perpetrated:

a) by a group;

b) repeatedly;

c) in order to receive property in large quantities;

d) by the one who has been twice or more than twice convicted of illegal appropriation or extortion of other's movable object, shall be punishable by imprisonment for up to six months in length.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES

NO

References:

Criminal Code of Georgia, Article 339:

Bribe giving:

1. Direct or indirect promising, offering or giving money, securities, property or any other material benefit to an official or a person with an equal status, in favor of the bribe-receiver or third person, in order that official or a person with an equal status to perform or not to perform any action or to use his official position for that end or to exercise official patronage in favor a bribe-giver or a third person, shall be punished with fine or corrective labor for a term of 2 years or the restriction of liberty for the same term or the deprivation of liberty for a term up to 3 years.
2. Giving bribe to an official or a person with an equal status in exchange of the commission of an illegal act shall be punished with fine or the deprivation of liberty for a term from 4 to 7 years.
3. The conduct defined in paragraphs 1 and 2 of the present Article committed by an organized group, shall be punished with the deprivation of liberty for a term from 5 to 8 years.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES

NO

References:

The Criminal Code of Georgia, Article 338:

Bribery:

1. Direct or indirect demanding or accepting money, securities, property or any other material benefit, or accepting such a promise or offer, committed by a public official or a person with an equal status, in exchange for performing or not performing, in favor of the bribe-giver or a third person, any action as well as using his official position for that end or exercising official patronage, shall be punished with the deprivation of liberty from 6 to 9 years.
2. Bribery committed:
 - a) by a state official with political status;
 - b) in respect of a large amount of bribe;

c) by a group, due to an agreement in advance,
shall be punished with the deprivation of liberty for a term from 7 to 11 years.

3. the conduct defined in paragraphs 1 and 2 of the present Article, committed:

a) by the person previously convicted for bribery;

b) repeatedly;

c) by extortion;

d) by an organized criminal group;

e) in respect of especially large amount of money, shall be punished with the deprivation of liberty for a term from 11 to 15 years.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES

NO

Comments:

The definition of a foreign public official as being equal in status to a national public official is found in Note 2 to Article 332 of the Criminal Code and extends to all crimes provided in Chapter XXXIX (Crime in Public Office).

References:

For the purposes of the Articles 338, 339 and 3391 of the Criminal Code of Georgia, the person with an equal status to a public official includes foreign state officials (members of the national legislative or administrative body), officials of international organization or organ or employees hired by contract, or any person on mission or without it, performing the functions equivalent to that of an official or other employee, member of international parliamentary bodies, judge or an official of an international court or that of a judicial body.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES

NO

Comments:

Using public resources for private gain which did not cause substantial damage to third persons or legitimate public or state interests constitutes to violation of Code of Ethics for Public Servants and entails disciplinary sanctions.

References:

Criminal Code of Georgia, Article 332:

Abuse of official power:

1. Abuse of official power by a public official or anyone equal in the same status committed against public interests for the benefit or advantage of that official or for third person, which caused substantial damage to third persons or legitimate public or state interests is punishable with fine or deprivation of liberty up to three years, deprivation of right to hold the office or of their business license up to three years.

2. Abuse of official power committed by anyone holding state political position is punishable with fine or deprivation of liberty from three to five years, deprivation of right to hold the office or of their business license up to three years.

3. Crimes envisaged in the preceding paragraphs committed:

- a) repeatedly;
- b) using violence or threat of violence;

c) humiliating the victim

is punishable with deprivation of liberty from five to eight years, deprivation of right to hold the office or of their business license up to three years.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES

NO

References:

Law of Georgia on Public Service, Article 73 prima 3:

General Code of Conduct Regarding the Issuance and Usage of Public Information:

5. Public servant shall take all necessary measures in order to provide confidentiality of information (containing state secrets, concerning the reputation of public servants received during the accomplishment of work and other information that is determined in the code of conduct). The aforementioned regulation applies also after the discharge of the public servant from office.

Criminal Code of Georgia, Article 313:

Disclosure of State Secret:

1. Disclosure of the state secret, (i.e. transferring the state secret of Georgia to a foreign state, foreign organization or their representative or its public disclosure) to the detriment of the national interests of Georgia as well as any other action for this purpose that makes the state secret accessible to an outsider, perpetrated by the one who had the knowledge of such secret due to his/her official position or to whom it was made known with respect to a special circumstance) shall be punishable by prison sentences ranging from five to fifteen years in length, by deprivation of the right to occupy a position or pursue a particular activity for the term not in excess of three years.

2. The same action perpetrated amid war, or that has given rise to any grave consequence, shall be punishable by prison sentences ranging from eight to twenty years in length, by deprivation of the right to occupy a position or pursue a particular

activity for a term not in excess of three years.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES

NO

References:

Criminal Code of Georgia, Article 194:

Legalization of Illegal Income (money laundering):

1. Legalization of illegal income (i.e., converting illegal or/and ungrounded property into a legal one by using, purchasing, owning, conversing, holding over or any other action in order to hide its illegal origin, as well as its real nature, source of origin, location, investment, movement, hiding or disguising its ownership or any other right related to it) is punishable by a fine or by imprisonment from three to six years.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES

NO

References:

Law on Organized Crime, Criminal Code of Georgia

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

75. Is the anti-corruption agency effective?

31

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES

NO

Comments:

All these anti-corruption agencies are subdivisions of the Ministries, which are part of the executive authorities. Therefore, they cannot be independent from political influence.

References:

www.justice.gov.ge

www.police.ge

www.mof.ge

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100

75

50

25

0

Comments:

All these anti-corruption agencies are structural entities under the ministries, which are part of executive authorities. Therefore, they cannot be independent from political influence.

References:

www.justice.gov.ge

www.police.ge

www.mof.ge

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The heads of these agencies are appointed and dismissed by ministers. Consequently, they are not protected from removal without relevant justification.

References:

www.justice.gov.ge

www.police.ge

www.mof.ge

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the anti-corruption agency are more or less (depending on the specific agency) based on professional criteria.

References:

www.police.ge

www.justice.gov.ge

www.mof.ge

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Anti-corruption agencies have a professional, full-time staff since it is a separate structural entity under the ministries.

References:

www.police.ge

www.justice.gov.ge

www.mof.ge

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All these ministries receive regular funding from the budget. Therefore, anti-corruption agencies under these institutions are provided with regular funding as well.

References:

www.police.ge

www.justice.gov.ge

www.mof.ge

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Activities of these anti-corruption agencies do not include making regular public reports.

References:

www.police.ge

www.justice.gov.ge

www.mof.ge

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The mandate of anti-corruption agencies is always limited, taking into consideration the fact that they are accountable to the ministers and do not enjoy any kind of structural and administrative independence.

References:

www.police.ge

www.justice.gov.ge

www.mof.ge

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

These agencies are not authorized to independently initiate investigations.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

It depends on the case. There is no information or statistics available in order to evaluate responsiveness of these agencies.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The Law of Georgia on Corruption and Conflict of Interest in Public Service provides for the protection of whistle-blower. The special chapter concerning the issues was introduced into the mentioned law at the beginning of 2009.

References:

Criminal Procedure Code Chapter 14I:

Regarding cases where reports of suspicions of corruption result in criminal proceedings and the person who reports such suspicions appears as a witness, legislation provides with comprehensive package of guarantees on witness protection.

There are no reports about violation of mentioned provisions by law enforcement agencies.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES

NO

Comments:

There are specialized units/divisions that deal with the corruption offenses inside the Prosecution Service of Georgia, Ministry of Internal Affairs of Georgia and Ministry of Finance of Georgia. Those are:

1. Investigative Divisions of the Prosecution Service of Georgia;
2. Department for the Procedural supervision of investigations over the Office of the Chief Prosecutor of Georgia;
3. Department of Constitutional Security of the Ministry of Internal Affairs of Georgia;
4. Investigative Division of the Revenue Service of the Ministry of Finance of Georgia.

References:

www.mof.ge

www.police.ge

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

56 VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Criminal Procedure Code of Georgia, Article 517

Civil Procedure Code of Georgia, Article 364

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Kaxa Kojoridze a lawyer, says that the appeals are usually resolved within the terms envisaged by the legislation. The only problem is that first instance courts usually transfer the appeals to the appellate court after a certain delay, which causes some procrastination.

References:

Kaxa Kojoridze, Lawyer, Information About the Average Length of the Court Hearings in Georgia and European Countries”, Study carried out and organized by the Supreme Court of Georgia, <http://www.supremecourt.ge/georgian/VADEBI-ENG.pdf>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

According to the legislation, criminal judgements are appealed without any fees or costs. As to the appeals against judgments on civil and administrative cases, the cost for appeal is typically is 4 percent of the subject of complaint, but is a minimum of 150 GEL (US\$89) and a maximum of 5,000 GEL (US\$2,981) for individuals and 7,000 GEL (US\$4,173) for a legal person.

Bearing in mind that, according to statistics, the average monthly income of an individual in Georgia is only 126 GEL (US\$75) (www.statistics.gov.ge, households) the cost for appeal set by the Civil Procedure Code can be regarded as quite a harsh impediment for access to the justice system.

Kakha Kozhoridze, Lawyer, Director of the Legal Aid Centre of the GYLA says that bearing in mind economic conditions of the major part of population, the costs for lawsuits are quite high: In practice, I had a few cases where my client was constrained not to file an appeal because she couldn't afford paying the cost. One positive aspect is that, according to the legislation, in certain cases, the judge can exempt a party from costs. But the problem is that only a very narrow circle of extremely poor people can enjoy this privilege. Sometimes individuals fail in getting official proof, such as documents that show their social vulnerability; for example, an unemployed person who cannot provide any official documents proving his status won't be released from paying the fees.

As for the attorney fees, most socially vulnerable individuals are able to get the help of a defense counsel in criminal proceedings. The situation is different with respect to civil or administrative cases.

References:

Kakha Kozhoridze, Lawyer, Director of the Legal Aid Centre of the GYLA

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Because Georgia has a civil law system, all judgments have to be based on the existing legal provisions that are spread out in different pieces of the law. Unfortunately, sometimes, because of political concerns or a lack of impartiality on the part of the judiciary, the judgments are not augmented or contain the wrong interpretation of legal provisions.

The official guidelines of the Supreme Court of Georgia are used as a source for interpreting certain provisions of the law.

References:

www.supremecourt.ge/default.aspx?sec_id=919)=2

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Giorgi Chkheidze says that in comparison with previous years, there has been considerable progress with regard to the

enforcement of judicial decisions.

References:

Giorgi Chkheidze, Deputy Ombudsman

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES

NO

References:

The Constitution of Georgia, Article 84:

1. A judge shall be independent in his/her activity and shall be subject only to the Constitution and law. Any pressure upon the judge or interference in his/her activity with the view of influencing his/her decision shall be prohibited and punishable by law.

2. The removal of a judge from the consideration of a case, his/her pre-term dismissal or transfer to another position shall be permissible only in the circumstances determined by law.

3. No one shall have the right to demand from a judge an account as to a particular case.

4. All acts restricting the independence of a judge shall be annulled.

5. Only a court shall be authorised to repeal, change or suspend a court judgment in accordance with a procedure determined by law.

These principles are furthermore reflected by the Law on Common Courts of Georgia (articles 1, 7, 8), Civil Procedure Code (article 6) and Criminal Procedure Code (article 8).

According to the Criminal Code of Georgia (articles 364 and 365) Obstruction to Administration of Justice or Preliminary Investigation and Threatening or Violence with Respect to Administration of Legal Proceedings or Preliminary Investigation is considered a crime and is punishable.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

According to Giorgi Chkheidze, Deputy Public Defender of Georgia, national level judges are not protected from the influence of the executive branch.

According to Kakha Kozhoridze, in civil proceedings, the situation is more or less predictable, while criminal and administrative proceedings are mostly subject to influence from the executive branch, the prosecutors' office or high officials:

I have had many cases where it was obvious that the decision should have been favorable to the complaining party according to the legislation, but we lost anyway. In these types of cases, the decisions are usually not well motivated or not motivated at all. We can logically think of two possible reasons why this happens: a lack of qualified judges or a lack of independent judges.

"The problems with qualified judges, however, are less likely to be the real reason, as judges are very carefully selected. They have to pass a very complicated professional exam and an interview before their appointment and continue with frequent training afterward. Furthermore, if there is a qualification gap, then the appellate court has to alter the decision or the High Council of Justice has to act on these cases and impose disciplinary action on that judge upon the complaint of a party. But this usually doesn't happen when politically sensitive cases are at stake."

References:

Giorgi Chkheidze, Deputy Ombudsman

Kakha Kozhoridze, Lawyer

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

System for distributing cases to national level judges is determined by the law of Georgia: Concerning the Rule of Distribution of Powers and Cases between the Judges of General Courts.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Yes criteria above set several conditions for scoring yes". The first condition is existence of formal rules for removal of judges. Georgia fully satisfies this condition as the judicial removal procedures are stipulated by the law.

The second condition is that the removal must be related to abuse of power or other offences related to job performance.

According to the article 56.1 of the law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia "The Disciplinary Panel makes the decision to dismiss a judge if due to the severity and quantity of a certain disciplinary violation and general official or moral reputation of the judge, the Panel believes that the person should not continue working as a judge. The Disciplinary Panel shall take into consideration that only a serious and repeated violation of law can serve as a ground for such decision"

Looking at the issue in a very formalistic manner the law requires for strong, solid justifications for judicial removal. Though the point of the peer reviewer is correct too as early in 2004-05 just after the Rose Revolution with the aim of the fight against corruption mass purges in judiciary took place, in the course of this process a few cases occur when based of the law on disciplinary violations of judges justices of the Supreme Court of Georgia were found liable for gross violation of the law and dismissed. In those cases (having a political background in reality) interpretation of legal provisions and their application in concrete court decisions by these judges were considered as Violation of the law.

These vague provisions of the law on disciplinary procedures against judges got a lot of criticism of Venice Commission (see. Opinion of the Venice Commission on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia 48 Strasbourg, 19 March 2007-09-27, Opinion No. 408/2006) The criticism was followed with the amendments to the law. Despite of the fact that according to the statistics there are very few cases of judicial removals in 2009, according to some expert the law is still vague and leaves the room for abuse against judges (see. JUDICIARY IN GEORGIA: IS THE GEORGIAN JUSTICE INDEPENDENT AND WHAT IS THE GUARANTEE OF ITS INDEPENDENCE? 2007, the Georgian Young Lawyers Association)

References:

According to the Constitution of Georgia, judges are appointed for 10 year terms. A judge can be removed from office only in cases where a disciplinary responsibility is imposed on him, according to the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia:

Article 56 of the law determines the grounds for dismissal of a judge:

1. The Disciplinary Panel makes the decision to dismiss a judge if, due to the severity and quantity of a certain disciplinary violation and the general official or moral reputation of the judge, the Panel believes that the person should not continue working as a judge. The Disciplinary Panel shall take into consideration that only a serious and repeated violation of law can serve as a ground for such decision.

2. If a judge was a subject of disciplinary penalty in the form of a severe reprimand as an independent penalty or in conjunction with additional penalty pursuant to law for a disciplinary violation committed previously, and this penalty has not yet been

annulled, while deciding upon imposing primary disciplinary penalty for a new disciplinary violation, the Panel shall consider the dismissal of the judge.

According to the article 57 of the law Decision of the Disciplinary Panel has to be well grounded:

The decisions of the Disciplinary Panel may be revised by means of the appeal of the decisions at the Disciplinary Chamber of the Supreme Court (Article 60).

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES

NO

Comments:

There is no information from the NGO's and ombudsmen's office doesn't refer to such case either.

References:

Giorgi Chkheidze

Tamar Gurchiani

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES

NO

References:

Giorgi Chkheidze

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

75

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Giorgi Chkhaidze

Tamar Gurchiani

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Giorgi Chkhaidze

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Law of Georgia on Legal Aid, Article 5.1:

In criminal cases, Legal Aid shall be provided in circumstances provided for by the Georgian legislation on Criminal Procedure; also as prescribed by this Law in cases where a suspect, accused or defendant is indigent.

According to the article 81 of the Criminal Procedure Code of Georgia, it is mandatory to be represented by lawyer in certain categories of criminal cases:

A defendant or a person subject to the application of a compulsory medical measure shall be obliged to have a defense counsel (mandatory defense):

- a) if the defendant is a juvenile;
- b) if the defendant does not speak the language of the proceedings;
- c) if the defendant has a physical or mental disability that prevents him/her from exercising a defense;
- d) prior to a ruling being rendered on conducting a mental examination;
- e) if life imprisonment is considered as a penalty for the particular offense according to the Criminal Code of Georgia;
- f) if the defendant is in the process of negotiating a plea bargain;
- g) if the defendant is charged with a crime for which this Code provides a jury trial;
- h) if the defendant is a public official or a racketeer avoiding an appearance before the investigative bodies;
- i) if a special measure of protection is applied to a participant in the proceedings (except the measures of physical protection);

- j) if the defendant is removed from the courtroom;
- k) at the time a cassation appeal is being considered (for the term of consideration);
- l) in the other cases directly referred to in this code.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

According to Giorgi Chkheidze, the state guaranteed legal aid system is still in a transitional stage, though it has made considerable progress during the last two years.

Rusudan Tabatadze, regarding the Legal Aid Service, says that, in practice, most of the indigent defendants can get legal representation by a public attorney who is contracted by the state. All the public defenders are contracted through open contests where their knowledge and professional abilities are assessed.

Furthermore, all public defenders attend a variety of periodic training programs organized by the Legal Aid Service and donor organizations. They are updated about recent changes in legislation, as well as trained to develop advocacy skills.

The legal aid offices are well equipped, which helps the lawyers improve the effectiveness of their work. The reformed state guaranteed legal-aid system started functioning only two years ago, so there are a few regions where legal aid has yet to be made accessible. The agency that runs the legal aid system in Georgia needs to establish an effective management system, develop legal aid quality standards, etc., to fully realize its functions.

References:

Giorgi Chkheidze

Rusudan Tabatadze, Legal Aid Expert, Former Head of the State Guaranteed Legal Aid Agency

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Giorgi Chkheidze says that affordability of access depends on the type of litigation. Fees for civil/administrative cases are quite high for the average citizen and may prevent them from bringing a case to the court

The cost for bringing a civil or administrative lawsuit in the first instance court is typically 3 percent and for the appeal is 4 percent of the subject of complaint (Davis Sagnis, sasarchelo moTxovnis odenobis 4%ia). The costs range from a minimum 100 GEL (US\$60) for the first instance and 150 GEL (US\$89) for the appellate court to a maximum of 3,000 Gel (US\$1,789) for individuals, 5,000 Gel (US\$2,981) for legal persons in first instance court and 5,000 GEL (US\$2,981) for individual and 7,000 GEL (US\$4,174) for a legal person in the appellate court.

Bearing in mind that, according to statistics, the average monthly income of an individual in Georgia is only 126 GEL (US\$75) (www.statistics.gov.ge, Households) the cost of justice" that has been set by the Civil Procedure Code can be regarded as quite a harsh impediment to accessing justice.

Kakha Kozhoridze says that, bearing in mind the economic conditions of the major part of population, the costs for lawsuits are quite high:

"In practice, I had a few cases where my client was constrained not to file an appeal because she couldn't afford the cost. One positive feature is that, according to the legislation, in certain cases a judge can exempt a party from costs. But the problem is that only a very narrow circle of extremely poor can enjoy this privilege. Sometimes individuals fail to get official proof, such as documents that show their social vulnerability; for example, an unemployed person who cannot provide any official documents proving his status won't be released from paying fees.

Rusudan Tabatadze says that attorney fees vary a lot depending on the lawyer's qualifications and the location of his practice. Usually the fee is considerably high in comparison to the average income of individuals and is sometimes an impediment to accessing the courts.

Most socially vulnerable individuals are able to get the help of a defense counsel from the state legal aid system in criminal proceedings only. The state does not provide legal representation for civil and administrative cases, but individuals can get legal advice and consultations free of charge and even get legal documents drafted. There are a few nongovernmental organizations in Georgia that are trying to fill the gap and offering legal representation to the poor in strategically important civil and administrative cases.

References:

Giorgi Chkheidze

Kakha Kozhoridze, Lawyer

Rusudan Tabatadze, Legal Aid Expert, Former Head of the State Guaranteed Legal Aid Agency, Legal Aid Service

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Kakha Kozhoridze, Lawyer

Giorgi Chkheidze

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Rusudan Tabatadze, Legal Aid Expert, Former Head of the State Guaranteed Legal Aid Agency, Legal Aid Service

Giorgi Chkheidze, Deputy Ombudsman

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The staff of law enforcement agencies are quite professional. There is a Police Academy under the Ministry of Internal Affairs that provides law enforcement personnel with regular training and courses of study. In addition, there is a training center under the Ministry of Justice that also systematically provides training for its employees and civil servants from other institutions. The majority of appointed individuals have clear party loyalties, though mostly they are professionals.

References:

Natia Gvazava, Head of International Cooperation Unit, Ministry of Internal Affairs

<http://www.policeacademy.ge/>

Compliance Reports adopted by GRECO,
2009, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The budget for the law enforcement agencies is more than sufficient.

References:

Law on State Budget of Georgia, 2009

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies are not protected from political influence, as there is no clear border between the interests of the ruling political party and the policy implemented by the highest governmental officials through their employees.

In addition, the law enforcement agency often becomes a tool for political oppression by the government.

References:

Georgia: Justice Is Not Negotiable, Human Rights Watch, May 11, 2009, <http://www.hrw.org/en/news/2009/05/11/georgia-justice-not-negotiable>

Letter to Georgian Authorities Regarding Attacks on Protesters, Human Rights Watch, May 7, 2009, <http://www.hrw.org/en/news/2009/05/07/letter-georgian-authorities-regarding-attacks-protesters>

The Public Defender Demands Inquiry into the Forgery of Court Hearing Minutes and Pressure on the Part of Police Officers, <http://ombudsman.ge/index.phpm=8&newsid=1119&lng=eng>

Georgia's European Choice: Zero Tolerance for People, Impunity And Uncontrolled Power For The Authorities, Talk Delivered at the Georgia-EU Joint Conference Georgia's European Way, Sozar Subari, the Public Defender of Georgia, July 4, 2009, Batumi <http://ombudsman.ge/index.php?m=8&newsid=1105>

Anti-Corruption Policy: Recommendations by Civil Society Representatives and Experts, Transparency International, March 30, 2009, www.transparency.ge

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES

NO

Comments:

Citizen complaints about police actions can be brought to the general attention of the Ministry of Internal Affairs, which is one of the units of the ministry; or, if an action constitutes a crime, it can be brought to the prosecutors' office.

This mechanism is independent from the national police system but it is not completely independent, as it is a subordinate unit of the Minister of Interior. There is a right of complaint to the ombudsman but he/she does not have the authority to settle the issue.

References:

Statute of the Ministry of Internal Affairs

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100

75

50

25

0

Comments:

There is no information available on the effectiveness of the General Inspections. There is a hot line at the Ministries of Justice and Internal Affairs.

References:

<http://www.police.ge/en/geninsphonline.aspx>

<http://www.justice.gov.ge/geninspection.html>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Ministry of Finance of Georgia:

The General Inspection of the Ministry of Finance of Georgia conducts internal inspection (investigation of facts, obtaining clarifications, on-spot examination) or/and carries out disciplinary prosecution in cases of infringement of constitutional rights by the employees of the system of Ministry of Finance.

Office of the Chief Prosecutor of Georgia:

The Department of the Internal Inspection of the Office of the Chief Prosecutor of Georgia serves both preventive and investigative functions. It is entrusted with the tasks of preventing violations, investigating and exposing the illegal conduct of employees, and taking appropriate measures to address them in accordance with the law.

Ministry of Internal Affairs:

General Inspection of Ministry of Internal Affairs investigates the violations of disciplinary norms, undue fulfillment of obligations and unlawful acts conducted by the employees of the Ministry. It also examines lawfulness of usage of financial resources in the system of the Ministry and observes protection of rights of its personnel.

References:

Statute of the Ministry of Justice

Statute of the Ministry of Internal Affairs

Statute of the Ministry of Finance

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

Usually this kind of information is published on the website of the Ministry of Internal Affairs. the last case was reported on October 6, 2008.

References:

www.police.ge

http://rustavi2.com/news/news_textg.php?id_news=28177&im=main&ct=25

There is no information available on corruption related crimes committed by law enforcement officials in the last year.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Georgia Code of Criminal Procedure, Article 144:

Immunities from prosecution apply to the following public officials:

Judges, President, Members of Parliament, Chairmen of the Chamber of Control, Public Defender.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | **25** | 0

Comments:

According to the reported information, in practice, law enforcement officials enjoy immunity from criminal proceedings.

References:

The Public Defender Demands Investigation Against Law Enforcers Who Took Part in the Case of the Aprasidze, <http://ombudsman.ge/index.php?m=8&newsid=1120&lng=eng>

The Public Defender Demands Resumption of the Case Against the Police Officers Who Took Part in the Special Operation at the Courts, <http://ombudsman.ge/index.php?m=8&newsid=1110&lng=eng>

The Public Defender Demands that the Head of the General Inspection of the MIA Vasil Sanodze Be Held Responsible, <http://ombudsman.ge/index.php?m=8&newsid=1040> <http://ombudsman.ge/index.php?m=8&newsid=1008>

Presentation of Mr. Giorgi Chkheidze, the Deputy Public Defender (Ombudsman) of Georgia Intervention to the 10th Session of the HRC on the report submitted by the UN SR on Torture Mr. Manfred Nowak, NHRI, Public Defender (Ombudsman) of Georgia, April 2009

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.