

Overall Score:

75 - Moderate

Legal Framework Score:

88 - Strong

Actual Implementation Score:

61 - Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁸Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

According to Article 25 of Georgia's Constitution:

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. The authorities shall have the right to break up a public assembly or manifestation only in case it carries an illegal character.

References:

Constitution of Georgia, Article 25.

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

The legislation of Georgia does not envisage any legal or regulatory restrictions for civil society organizations (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 NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:
The law does not oblige civil society organizations (CSOs) to disclose their sources of funding. CSOs have discretion to voluntarily publicize their financial sources.

References:
Legislation of Georgia.

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

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

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

67

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:
There is no evidence that the government creates barriers to the organization of any anti-corruption/good governance group. Civil society organizations (CSOs) focused on promoting good governance or anti-corruption can freely operate.

References:
Tamar Kordzaia; Georgian Young Lawyers' Association (GYLA), September 5, 2011.
www.transparency.ge
www.gyla.ge

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "For the purpose of implementation of the Anti-Corruption Action Plan, the government has established a secretariat, which periodically holds meetings with representatives of NGOs. The government considers some recommendations provided by the NGOs, but if the issue is critical, it is impossible to have consensus. Besides there are cases where the communication is just a formality, e.g., the government is sending out a document for the NGOs to provide their recommendations, but a timeframe for producing the recommendations is so short, that it is impossible to take actual and competent participation in the process."

According to Transparency International Georgia, civil society organizations are ineffective at holding government accountable and contributing to policy reform/formulation.

References:

Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Transparency International Georgia

<http://www.transparency.ge/post/report/dainteresebul-mkhareta-seminari-sakartvelos-erovnuli-antikorupsiuli-sistemis-nis-shepas>

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

There were no reports of Georgian NGOs working on anti-corruption issues being shut down for work on corruption-related issues.

References:

Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Transparency International Georgia, www.transparency.ge

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

There are some cases in which NGO activists and journalists have been imprisoned, though there is no evidence showing that these people were imprisoned because of their anti-corruption activities.

These arrests took place during the study period and are related to demonstrations by opposition parties or espionage. The durations of demonstration-related imprisonments were relatively short (two weeks), though espionage charges resulted in the conviction of the arrestees.

References:

Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

www.humanrights.ge/index.php?a=main&pid=13757&lang=eng

www.humanrights.ge/index.php?a=main&pid=13718&lang=eng

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

There were no reports of violence toward NGO activists working on anti-corruption issues.

References:

Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011,

TI Georgia, www.transparency.ge

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

None of the Georgian NGOs working on anti-corruption issues reported any violence toward NGO activists.

References:

Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

TI Georgia, www.transparency.ge

Yes: A YES score is earned if there were no documented cases of NGO 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?

63

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Anyone who does any professional job or studies at a high school, university or technical school has the right to organize into a trade union and participate in its activities. Temporarily unemployed and retired people are allowed to stay members of trade unions.

References:

Constitution of Georgia, Article 26.

Law on Trade Unions, Article 2.

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

According to the U.S. Department of State Human Rights Report on Georgia: "The GTUC and its national unions continued to report some cases of management warning staff not to organize trade unions, and the GTUC cited several instances during the year in which employers allegedly threatened union members with dismissal for union activity."

References:

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

The Georgian Trade Union Movement, February 4, 2010

<http://transparency.ge/sites/default/files/ТИ%20GEORGIA%20Georgian%20Trade%20Union%20Movement%20ENG.pdf>

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

The Constitution of Georgia states:

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

According to the Law of Georgia on the Freedom of Speech and Expression

Article 3:

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 enjoy 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 protection of whistle-blowers; 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.

References:

Constitution of Georgia, Article 24.

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

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

According to Article 19 of the Constitution of Georgia:

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.

References:

Constitution of Georgia, Article 19.

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

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

According to journalist Nestan Tsetskhladze: "The government doesn't create direct barriers, but an environment in which the media exists is itself the barrier and the media cannot develop. For example, a businessman who wants to invest in the media can face numerous problems because there is no free market for media. If a media company is considered to be associated with the opposition, business companies will avoid advertising their products in that media company. These problems are not related to print media only, but the media in general, as well."

The U.S. State Department's Human Rights Report on Georgia also indicates that business owners have been intimidated into not advertising with opposition-leaning media outlets through the threat of lengthy financial audits by government authorities.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011

http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

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.

06b. 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 requiring 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.

06c. 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 requiring a license for print media entities.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Civil Code of Georgia.

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.

06d. 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 requiring a license for print media entities.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Legislation of Georgia.

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?

50

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

According to journalist Nestan Tsetskhladze: "The barriers are indirect. Cable television channels experience pressure from the government. There is a monopoly in the media because a few companies can obtain a license only to broadcast certain sport events. Therefore, the remaining media companies cannot maintain their customers. The government can use its discretion to turn off any TV channel. For example, on May 26, 2011, Aiety TV, a cable TV company, turned off Maestro TV, which is deemed the opposition-associated channel."

The reports of the U.S. Department of State and IREX Board's media sustainability index 2010-2011 also indicate the government wields significant influence over the primary news companies.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

The International Research and Exchanges (IREX) Board's media sustainability index report
<http://www.irex.org/resource/georgia-media-sustainability-index-msi>

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.

07b. 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

Comments:

According to Article 44 of Georgia's Law on Broadcasting:

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

2. The Commission's refusal to issue a license 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.

References:

Law of Georgia on Broadcasting, Article 44, Refusal to Issue a License
http://www.gncc.ge/files/7050_3556_252672_administrative%20procedures%20of%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.

07c. 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:

The media cannot obtain a broadcast media license within a reasonable time period and the final decision is mostly arbitrary and discretionary. For example, the Georgia Media Sustainability Index 2010 indicated that two community radio requests for broadcasting licenses had been pending for three years and the decision has not yet been made by the Georgian National Communications Commission. The 2011 index and the journalist Nestan Tsetskhladze has also mentioned the same problems.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Georgia Media Sustainability Index 2010-2011
<http://www.irex.org/resource/georgia-media-sustainability-index-msi>

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost for a broadcast license is reasonable considering that it costs no more than 2,000 GEL (approximately \$1,200), depending on the kind of license.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Law of Georgia on Broadcasting.

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

There have been no cases of the government preventing citizens from accessing content published online.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Freedom House, Country Report

<http://www.freedomhouse.org/template.cfm?page=22&country=7827&year=2010>

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government does not censor citizens creating content online. There is no legislation that regulates the Internet.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Freedom House, Country Report

<http://www.freedomhouse.org/template.cfm?page=22&country=7827&year=2010>

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?

50

09a. 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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is no specific evidence regarding self-censorship of corruption-related stories, although the Georgia National Integrity System (NIS) Assessment indicates that the most influential media entities are not independent and show a strong bias in their reporting.

According to journalist Nestan Tsetsckhadze: "There is no direct censorship, but sometimes the media doesn't have an opportunity to attend some governmental events. Sometimes the government itself provides the media with the materials."

The U.S. Department of State also reports the existence of a governmental editorial policy.

References:

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia, Draft for Public Comment, May 30, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

Interview with Nestan Tsetsckhadze, journalist, August 15, 2011.

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

According to journalist Nestan Tsetskhladze: "There is no direct censorship, but sometimes the media doesn't have an opportunity to attend some governmental events. Sometimes the government itself provides the media with the materials."

According to the Human Rights Report: "The three largest television broadcasters in the country were the state-owned GPB and the privately owned Rustavi 2 and Imedi TV, the country's two most popular television stations. All three were generally considered to have a pro-government editorial policy."

The Georgia Media Sustainability Index 2010-2011 also indicates governmental influence over the media, though there is no specific evidence that the government restricted the publishing of corruption-related stories.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

Georgia Media Sustainability Index 2010-2011
<http://www.irex.org/resource/georgia-media-sustainability-index-msi>

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?

45

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

Yes | No

Comments:

There is no provision in Georgian legislation requiring 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

Comments:

According to Article 60 of Georgia's Broadcasting Law:
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:

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 holder's) 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.

References:

Law of Georgia on Broadcasting, Chapter VII, Media Ownership, Article 60, Prohibition of Media Ownership Concentration, and Article 61, Transparency of Media Ownership.

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:

Journalist Nestan Tsetsckladze, the U.S. Department of State, TI Georgia and CRRC all reported a lack of professionalism in the media.

The Georgia Media Sustainability Index 2010 also reports that journalism in Georgia falls short of fundamental standards of fairness, objectivity and fact-based reporting. The same report also raises ethical issues in journalism; e.g., when Irakli Alasania, declined an interview request from the allegedly pro-government Real TV, the channel taunted him by conducting an interview with his effigy.

References:

Interview with Nestan Tsetsckladze, journalist, August 15, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

Caucasus Research Resource Centers (CRRC) Georgia Comprehensive Media Research: Summary Findings, August-November 2009.

Georgia Media Sustainability Index
http://www.irex.org/system/files/EE_MSI_2010_Georgia.pdf

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:

According to the OSCE/ODIHR Election Observation Mission Report on Georgia Municipal Elections: “The Georgian Public Broadcaster provided an overall balanced picture of the campaign in its news. The campaign coverage in the news of all other monitored television channels, by contrast, lacked balance, with some supporting the government and others the opposition. Most monitored broadcasters provided extensive and favorable coverage of the activities of the authorities, indirectly benefiting candidates with a pro-government orientation.”

Journalist Nestan Tsetskhladze and the U.S. Department of State reported a lack of such balance as well.

References:

OSCE/ODIHR Election Observation Mission Report, Georgia Municipal Elections, May 30, 2010
<http://www.osce.org/odihr/elections/71280>

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

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, nonpartisan board.

References:

Nestan Tsetskhladze, journalist, August 15, 2011.

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:

There were some cases in which NGO activists and journalists have been imprisoned, though there is no evidence showing that these people were imprisoned because of their anti-corruption activities.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011
http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

Human Rights Center reports
<http://www.humanrights.ge/index.php?a=main&pid=13414> <=eng

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:

Journalist Nestan Tsetskhladze mentioned some cases in which journalists were injured, but those cases are not related to the journalists' anti-corruption activities but rather opposition demonstrations.

The Human Rights Center also reports violence and harassment against journalists, but there is no evidence that those cases are related to the journalists' anti-corruption activities.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

Human Rights Center reports

<http://www.humanrights.ge/index.php?a=main&pid=13414> <=eng;
<http://www.humanrights.ge/index.php?a=main&pid=13694> <=eng

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

Comments:

There were no reports of journalists killed while working on corruption-related stories.

References:

Interview with Nestan Tsetskhladze, journalist, August 15, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011

http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

Freedom House, Country Report, 2010 edition.

Georgia Media Sustainability Index 2010-2011 <http://www.irex.org/resource/georgia-media-sustainability-index-msi>

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.

77
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

Chapter III of the General Administrative Code of Georgia (GACG), Freedom of Information, determines the 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 a 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.

In addition, the Law on Public Service also specifies the general rule of conduct concerning providing public information. Article 73 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 case 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 obligation for public servants to protect confidentiality of certain specific types of information.

References:

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

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

According to Article 41 of the General Administrative Code of Georgia:

1. The applicant shall be immediately informed of the denial of 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, governs the 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, covers what is meant by a 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 a commercial secret. A public agency shall within 10 days categorize the information specified in Paragraph 1 of this Article as a 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.

References:

General Administrative Code of Georgia, Articles 27 and 41.

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

Comments:

According to the 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 the period of 10 days, the public agency shall immediately inform the applicant thereof upon his request.

References:

General Administrative Code of Georgia.

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 to information requests effective?

50

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

100 | 75 | 50 | 25 | 0

Comments:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "In most cases the information is not timely and fully provided."

Transparency International Georgia's National Integrity System (NIS) Assessment also identified low responsiveness of most ministries and the Office of the Public Prosecutor. Responsiveness and quality of information vary depending on the agency and the kind of information requested. Some information that is supposed to be public cannot be obtained at all, such as information on bonuses of public officials.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

TI Georgia, bureaucratic freedom of information

<http://transparency.ge/en/blog/pbureaucratic-freedom-information>

TI Georgia, National Integrity System (NIS) Assessment

<http://transparency.ge/en/post/press-release/access-information-georgia-results-foi-tests-public-agencies>

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "The cost of photocopying is reasonable but not the procedures. For example, if a person is required to pay 0.30 for photocopying, he/she also has to pay an additional 1 GEL for bank services, which substantially increases the cost of obtaining the information."

Even though Kordzaia expressed complaints regarding the cost for obtaining public information, the cost cannot be deemed unreasonable. Besides, some public information is available online, free of charge.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "In most cases, responses to information requests are not of high quality. Usually, the information is incomplete and frequently we have to reapply for the same information."

According to TI Georgia research, in many cases public agencies refused to grant public information. Such cases amounted to 21 percent of all results during the research.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

TI Georgia, bureaucratic freedom of information

<http://transparency.ge/en/blog/pbureaucratic-freedom-information>

TI Georgia, National Integrity System (NIS) Assessment

<http://transparency.ge/en/post/press-release/access-information-georgia-results-foi-tests-public-agencies>

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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no specific information on resolved appeals to information requests, but in 2010 TI Georgia conducted a field test about access to information. According to the results of the test: "The most responsive institutions were the Chamber of Control, Central Election Commission and the Supreme Court (all of which responded fully to all requests submitted). The Parliament also did very well with only one unsatisfactory response out of 16 requests. By contrast, the Prosecutor's Office was the least responsive, responding to only one request out of four. Low response rates were also observed at the Ministry of Defense (50 percent), Ministry of Internal Affairs (50 percent) and Ministry of Justice (25 percent)."

References:

Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011.

http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

TI Georgia, bureaucratic freedom of information

<http://transparency.ge/en/blog/pbureaucratic-freedom-informationp>

TI Georgia, National Integrity System (NIS) Assessment

<http://transparency.ge/en/post/press-release/access-information-georgia-results-foi-tests-public-agencies>

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:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "Administrative appeal procedures are free of charge, though the situation is different when a person is applying to the court, because the minimum cost for filing the appeal to the court is 100 GEL, which is difficult to pay for ordinary citizens."

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

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:

In 2010, TI Georgia conducted a field test about access to information. The test reveals that "unsatisfactory outcomes (21.2 percent of all outcomes) included mute refusals (no response to the request at all), oral or written refusals without an acceptable reason, incorrect referrals and incomplete answers."

References:

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011
http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

TI Georgia, bureaucratic freedom of information
<http://transparency.ge/en/blog/pbureaucratic-freedom-information>

TI Georgia, National Integrity System (NIS) Assessment
<http://transparency.ge/en/post/press-release/access-information-georgia-results-foi-tests-public-agencies>

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 2. Elections

2.1. ⁸¹Voting and Party Formation

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

Comments:

From the election code:

1. Elections in Georgia are universal.
2. Citizens of Georgia have the right to an active vote after they reach the age of 18, regardless of their race, skin color,

language, gender, religion, political or other opinions, education, ethnic or social affiliation, descent, property or occupation.
3. Citizens of Georgia who have been deemed incapable by a court or are in a penitentiary establishment by sentence of a court shall not be entitled to suffrage.

References:

Election Code of Georgia, Article 5, Universal Suffrage.

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

Comments:

From the election code:

4. The date of new elections and the time frame for holding these election are appointed by ordinance of the Central Election Commission of Georgia, no later than two months before holding of the poll.
5. New elections in single-mandate election districts are held twice a year in May-June and October-November. Elections must be held in the nearest time period.
6. If the Member of Parliament is withdrawn six months before termination of authority of the Parliament, new elections are not held.

References:

Election Code of Georgia, Article 106.

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:

The OSCE/ODIHR Election Observation Mission Report identifies some issues regarding voter registration. According to the report, "certain issues pertaining to civil registration of Georgian citizens need to be addressed in order to fully enable all eligible voters to exercise their voting rights."

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010
<http://www.osce.org/odihr/elections/71280>

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:

Lela Taliuri of the Georgian Young Lawyers' Association didn't indicate any problems in this regard, but according to the OSCE/ODIHR Election Observation Mission Report, in 6 percent of polling stations visited, not all voters marked their ballots in secrecy during the recent municipal elections.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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:

There are no reports from international organizations or from NGOs indicating that there were any delays during the recent elections.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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?

75

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

Yes | No

Comments:

From 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.

References:

Constitution of Georgia, Article 26

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:

No information is available about problems with respect to forming political parties.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

TI Georgia, Georgia National Integrity System (NIS) Assessment, Transparency International Georgia, May 30, 2011.

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:

According to Transparency International Georgia: "While parties normally operate without government pressure, there have been cases of intimidation and violence against opposition activists which have not been addressed properly by the law enforcers. Political parties also lack effective procedures for internal democratic governance and their ability to aggregate and represent social interests is very limited."

According to the U.S. State Department report: "During the year persons and members of organizations linked to the opposition asserted that they were unduly singled out for prosecution. There were no developments in the Ministry of Internal Affairs investigation into the August 2009 kidnapping and wounding of well-known karate and wrestling champion Amiran Bitsadze by unknown assailants. Bitsadze, a member of the non-parliamentary opposition party Democratic Movement-United Georgia (DMUG), was found alive with two bullet-like wounds on his back, a broken leg, and a broken arm."

References:

TI Georgia, Georgia National Integrity System (NIS) Assessment, Transparency International Georgia, May 30, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011

http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

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 139 active members in the Parliament of Georgia at the moment, including 118 held by the ruling party, Unified Nationalist Movement. Opposition party counts are as follows: Christian Democrats, 6; Unified Opposition, 6; National-Democratic Party, 1; Labour Party of Georgia, 6; Republic Party of Georgia, 2.

Considering the fact that the ruling party represents an absolute majority in the parliament, opposition parties have almost no influence on the proceedings of the legislature.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association, September 5, 2011.

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.

2.2. Election Integrity

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

100

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

Yes | No

References:

Organic Law of Georgia.

Election Code of Georgia, Article 3, Definition of Terms.

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.

18. Is the election monitoring agency effective?

75

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

Yes | No

Comments:

From Article 17:

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.

References:

Organic Law of Georgia.

Election Code of Georgia, Article 17, Status and System of Election Administration 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 the law, the Central Elections Commission is composed of a chairperson and 12 members. The CEC chairperson is a member of the CEC. The chairperson and five members are elected by the Georgian Parliament upon the submission of the president of Georgia, and seven other members are appointed by parties, according to the procedure prescribed by the law. The district and precinct election commissions are composed of 13 members who, within the term and procedure established by the law, shall be appointed/elected as defined by law. At present, the majority in the parliament is represented by the ruling party, and consequently members in the agency have very influential power when voting.

References:

Election Code of Georgia, Article 26.

The Messenger Online

http://www.messenger.com.ge/issues/2427_august_24_2011/2427_edit.html

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:

The Central Election Commission has a full-time staff. District election commissions also have full-time staff (partly). As for the precinct election commissions, their staff is usually renewed prior to elections.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

http://www.cec.gov.ge/index.php?sec_id=32&lang_id=ENG

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:

There is no information reflecting complaints as to whether reports following an election are timely or publicly available. Lela Taliuri of the Georgian Young Lawyers' Association also didn't express any dissatisfaction.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011

<http://www.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:

According to Lela Taliuri of the Georgian Young Lawyers' Association: "Regardless of the gravity of violation of the election code by members of the commissions, supervising commissions generally apply disciplinary penalties rather than administrative measures. Administrative measures (fines) are rarely applied. Administrative measures are almost never applied against public officials, on the grounds of insufficient evidence."

Generally, election commissions are reluctant to impose any disciplinary penalties on public officials, even if there is clear evidence of a violation.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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?

75

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

100 | 75 | 50 | 25 | 0

Comments:

According to Lela Taliuri of the Georgian Young Lawyers' Association: "Usually prior to elections, voters are given time and opportunity to check whether they and their family members are present in the voters list."

While the OSCE/ODIHR Election Observation Mission Report refers to a lack of precise regulations in certain cases, there are some positive developments with regard to the voter registration system. For example, during the recent elections, political parties were granted an opportunity to check voter lists; now, the owners of premises have the right to unregister any citizen registered as living in their premises.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010
<http://www.osce.org/odihr/elections/71280>

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 64, Claims and appeals on violation of the procedures of voting and counting of votes; review of the claim/appeal in relation to counting of votes and summarizing the election results.

http://www.cec.gov.ge/files/TEA/ELECTION_CODEOF_GEORGIA.pdf

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:

According to Lela Taliuri of the Georgian Young Lawyers' Association: "There are special terms for appeal procedures. Despite the fact that these terms are very short, this shouldn't be regarded as a problematic issue."

Even though the representative form GYLA didn't indicate any complaints with regard to appeal procedures, in practice, appeal procedures are problematic. In some cases, complaints are duly investigated. In others, no proper investigation takes place. In most cases, dismissing complaints doesn't include the factual circumstances and legal reasoning. Most appeals are dismissed by the courts, even if substantial evidence and testimonies on violations are presented.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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:

There are no reports from international organizations or NGOs indicating that military and security forces showed bias in favor of any political party during the recent elections, but generally it is believed that law enforcement and military forces support the ruling party.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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 overly 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

Comments:

From Article 68 of the Election Code of Georgia on Domestic and Foreign Observers:

1. The right to observe elections shall be provided to those domestic and international observation organizations, which 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 two 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 sakrebulo;
 - ee) Heads and Deputy Heads of the bodies of local governance;
 - ff) Judges;
 - gg) Staff of the Ministries of Internal Affairs and Defense 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 two representatives — international observers.
7. International observers may be accompanied by an interpreter, who undergoes registration at the CEC together with the international observers.

References:

Election Code of Georgia on Domestic and Foreign Observers, Article 68.

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:

According to Lela Taliuri of the Georgian Young Lawyers' Association: "Election observers are able to monitor elections, though in certain cases they are deprived of their rights (dismissal from a polling station, prevention from identifying violation in the record book, etc.)."

Mostly, observers can familiarize themselves with all procedures and are given the opportunity to perform their duty, although there are cases in which observers were restricted in their observation.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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.

83
2.3. Political Financing Transparency

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

100

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

Yes | No

Comments:

From Article 27 of the Organic Law of Georgia on Political Unions of Citizens:

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

a) 30,000 lari from a natural person; b) 100,000 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 per year.

4. It is prohibited to make a donation on other persons/entities behalf.

References:

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

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

Comments:

From Article 26 of the Organic Law of Georgia on Political Unions of Citizens:

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

- a) physical and legal 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 the venture, in which the share of the state is above 10 percent, except cases envisaged by this Law.

From 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 from a legal entity.

References:

Organic Law of Georgia on Political Unions of Citizens, Articles 26 and 27.

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 didn't envisage any limits on total political party expenditures until very recently. According to the new amendments to the law, expenditures of a political party cannot exceed 0.2 percent of GDP.

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

Comments:

From Article 26 of the Organic Law of Georgia on Political Unions of Citizens:

2. The legal 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.

From Article 32:

1. Each party shall, before February 1 of each year, publish in the press its financial declaration together with an auditors (auditing firms) 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 auditors (auditing firms) conclusion to the Central Election Commission of Georgia and local tax body (in accordance with the party's legal address).

From Article 34:

If a party fails to timely publish its financial declaration, it shall not be entitled to receiving state funds indicated in Article 30 of this

Law for subsequent one year.

References:

Organic Law of Georgia on Political Unions of Citizens, Articles 26, 32 and 34.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Comments:

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

1. Party shall annually conduct the financial audit of its activities.
2. For the purpose of conducting an audit, a party is entitled to address to 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.

References:

Organic Law of Georgia on Political Unions of Citizens, Article 33.

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

Comments:

From Article 30 of the Organic Law of Georgia on Political Unions of Citizens:

11. The party shall receive 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 25 November.

From Article 32:

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

From 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.

References:

Organic Law of Georgia on Political Unions of Citizens, Articles 30, 32 and 33.

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 non-governmental organizations.

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

100

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

Yes | No

Comments:

From Article 47 of Georgia's Election Code:

3 prima 1. Financial and material volume of donations received at election funds of party/election bloc and the presidential candidate shall not exceed:

- a) for each individual person, including individual entrepreneur – 30,000 lari;
- b) for each legal entity – 100,000 lari.

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

- a) for each natural person – 10,000 lari;
- b) for each legal person – 30,000 lari.

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.

References:

Election Code of Georgia, Article 47.

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

Comments:

From Article 47:

3 prima 1. Financial and material volume of donations received at election funds of party/election bloc and the presidential candidate shall not exceed:

- a) for each individual person, including individual entrepreneur – 30,000 lari;
- b) for each legal entity – 100,000 lari.

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

- a) for each natural person – 10,000 lari;
- b) for each legal person – 30,000 lari.

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.

References:

Election Code of Georgia, Article 47.

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

Comments:

From Article 46 of the Election Code of Georgia:

3. Funds received by an election subject shall be deposited to the account of the election campaign fund, which shall be opened at the National Bank of Georgia or at 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 five days of registration of the election subject at the relevant election commission. The account shall be opened only in the national currency.

4. Within two days from opening of the election campaign fund, the election subject shall submit to the relevant election commission a document issued by the bank confirming the opening of an election campaign fund, the number of the account, also shall notify the identity and address of the manager and accountant of the election campaign fund.

From 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 eight 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 election campaign fund of electoral subject. CEC is also obliged to ensure the publication of the following information on web page within two business days of its adoption.

References:

Election Code of Georgia, Articles 46 and 48.

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes | No

Comments:

From Article 48 of the Election Code of Georgia:

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 and 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 the 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 eight days after the election day. An audit examination can be carried out by an auditor (audit company) functioning on the territory of Georgia.

References:

Election Code of Georgia, Article 48.

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

Comments:

According to the Election Code of Georgia Article 48 10 prima 1:
Within five 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 group of social representative, lawyers and licensed financial audits is created that studies an information and holdings presented at election commissions during election period. The statute of financial monitoring group is established by the CEC that is presented by the same group no later than five day of the creation of the group.

References:

Election Code of Georgia, Articles 46, 47 and 48.

http://www.cec.gov.ge/files/TEA/ELECTION_CODEOF_GEORGIA.pdf

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 non-governmental organizations.

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

54

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:

The evaluation report of GRECO discusses limits on individual donations to political parties in detail, though the report doesn't indicate any problems in this respect.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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:

Neither the representative from GYLA nor the GRECO evaluation report identified any problems in this regard. Moreover, the evaluation report indicates positive developments with regard to newly adopted legislation on party financing.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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

Comments:

The legislation didn't envisage any limits on total political party expenditures until very recently. According to the new amendments to the law, expenditures of a political party cannot exceed 0.2 percent of GDP. Insofar as this is a quite new provision, it is impossible to evaluate its effectiveness at this point.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

Legislation of Georgia.

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:

The monitoring group is not entitled to investigate and respond to a revealed violation. It can only submit a report to the election commissions.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

Election Code of Georgia.

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:

The monitoring group is not entitled to investigate and respond to a revealed violation. It can only submit a report to the election commissions.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

Election Code of Georgia.

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:

Contributions to political parties are audited, but reportedly the audits are not carried out in line with international auditing standards and therefore are not reliable.

The GRECO Evaluation Report also indicates that there is no quality control of the audit profession and the quality of the audits cannot be relied upon.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report
<http://www.osce.org/odihr/elections/71280>

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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?

50

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

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report
<http://www.osce.org/odihr/elections/71280>

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011.

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_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

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report
<http://www.osce.org/odihr/elections/71280>

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011.

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, 23-27 May 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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:

The representative from GYLA indicated that the monitoring groups are not authorized to conduct investigations. They can report only to election commissions.

The mechanism to investigate and impose sanctions for violations of the Election Code and the Organic Law of Georgia on Political Unions of Citizens can be found in different laws, although there is no clear authority to enforce these provisions, nor can evidence of their enforcement be found.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections May 30, 2010, OSCE/ODIHR Election Observation Mission Report
<http://www.osce.org/odihr/elections/71280>

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:

According to the representative from GYLA, the monitoring groups are not entitled to investigate and respond to a revealed violation. It can submit a report only to the election commissions.

The mechanism to investigate and impose sanctions for violation of the Election Code and the Organic Law of Georgia on Political Unions of Citizens can be found in different laws, although there is no clear authority to enforce these provisions, nor can evidence of their enforcement be found.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

Election Code of Georgia.

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:

Contributions to individual candidates' campaigns are audited, but reportedly they are not carried out in line with international auditing standards and therefore are not reliable.

The GRECO Evaluation Report also indicates that there is no quality control of the audit profession and that the quality of the audits cannot be relied upon.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report <http://www.osce.org/odihr/elections/71280>

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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?

88

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

100 | 75 | 50 | 25 | 0

Comments:

By law, political parties are obligated to disclose data relating to financial support and expenditures within a reasonable time period. The law envisages responsibilities for failing to fulfill the obligation. Nevertheless, in practice, published reports lack details and don't provide sufficient information on parties' finances.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

Election Code of Georgia.

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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

Comments:

Citizens can access the financial records of political parties after the information is submitted to the CEC, usually following February 11 of each year.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

http://www.cec.gov.ge/index.php?lang_id=GEO&sec_id=115

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

Comments:

Accessing the records of political parties via the CEC website is free of charge.

References:

http://www.cec.gov.ge/index.php?lang_id=GEO&sec_id=115

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 NGOs. 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 NGOs 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

Comments:

The publicly available records of political parties' finances lack details and don't provide sufficient information on parties' finances.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

http://www.cec.gov.ge/index.php?lang_id=GEO&sec_id=115

GRECO Evaluation Report on Georgia on Transparency of party funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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?

75

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

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

Comments:

According to Article 47 of the Election Code, candidates are required to set up an election campaign fund within five days of their registration and report to the CEC on a monthly basis. Taking into consideration that the candidates have to be registered less than two months before the elections, reports on finances are submitted only once, a month before the election. The GRECO Evaluation Report indicates that "this requirement to provide information on donations well in advance of the elections is unfit for its purpose of providing the electorate with information that may be of importance to their voting decisions."

The representative from GYLA didn't indicate any problems in this respect, though.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report
<http://www.osce.org/odihr/elections/71280>

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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

Comments:

The financial records of individual candidates are public and available upon request. Some information is published on the website of the CEC.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report

<http://www.osce.org/odihr/elections/71280>

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

Comments:

Citizens can obtain the financial records of individual candidates at a reasonable cost, as they are required to pay only for photocopying of the requested materials. Some information is published on the website of the CEC.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report

<http://www.osce.org/odihr/elections/71280>

http://www.cec.gov.ge/index.php?lang_id=GEO&sec_id=115

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 NGOs. 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 NGOs 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

Comments:

Contributions to individual candidates' campaigns are audited, but reportedly they are not carried out in line with international auditing standards and therefore are not reliable.

The GRECO Evaluation Report also indicates that there is no quality control of the audit profession and quality of the audits cannot be relied upon. Therefore, records of political candidates' campaign finances cannot be deemed of high quality.

References:

Interview with Lela Taliuri, Georgian Young Lawyers' Association, September 5, 2011.

OSCE/ODIHR Georgia: Municipal Elections, May 30, 2010, OSCE/ODIHR Election Observation Mission Report
<http://www.osce.org/odihr/elections/71280>

http://www.cec.gov.ge/index.php?lang_id=GEO&sec_id=115

GRECO Evaluation Report on Georgia on Transparency of Party Funding, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf)

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁶⁸Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes | No

Comments:

From Article 42 of the Georgia Constitution:

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

From Article 178 of the General Administrative Code of Georgia:

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

References:

Constitution of Georgia, Article 42.

General Administrative Code of Georgia, Article 178.

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.

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

50

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

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

Comments:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "The chief executive gives reasons for his/her policy decisions if there is a high degree of public interest in the issue(s)."

By law, executives are obligated to provide explanations for their decisions, though in practice they frequently fail to do so.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011

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

Comments:

From Article 42 of the Georgia Constitution:

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

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

References:

Constitution of Georgia, Article 42.

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:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "The judiciary reviews the actions of the executive if a complaint is submitted to the court."

The constitutional court has an authority to review normative acts adopted by the executive, though judicial review takes place only if a complaint regarding unconstitutionality of these acts is submitted to the court. Because the independence of the judiciary is still undermined by the political pressure, even though many positive steps have been taken in order to ensure judicial independence, the outcome of the judicial reviews is likely to be favorable to the government.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Freedom House, Nations in Transit 2010

<http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Georgia-proof-II.pdf>

Statistics

http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=243

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:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "Generally, executive orders have a limited scope, but frequently they regulate specific procurement procedures as well."

There is no need for the chief executive to abuse executive orders, considering the fact that the executive's party is represented in the parliament by the majority and it can easily amend the law at its whim. Therefore, bills proposed by the executive pass without any substantial obstacles.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Freedom House, Nations in Transit 2010

<http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Georgia-proof-II.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?

50

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

Yes

No

Comments:

From Article 63 of the Georgia Constitution:

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.

From Article 64:

1. In case of the violation of the Constitution, commission of high treason and other criminal offenses, 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.

From 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.

References:

The Constitution of Georgia, Articles 63, 64 and 75.

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

Comments:

From Article 144 of the Georgian Code of Criminal Procedure:

- 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.

References:

Georgian Code of Criminal Procedure, Article 144.

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?

66

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

Yes | No

Comments:

The Law of Georgia on Conflict of Interests and Corruption in Public Service sets up the basis for preventing, revealing and suppressing of corruption, and the main principles and legal regulation of responsibility for corruption offenders in public service.

Under Article 2 of the law, the term "public official" implies the following people: The president of Georgia; a member of the 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; a minister of Georgia and his/her deputy; the head of Georgian State Chancellor's Office and his/her deputy; chairmen of the Georgian State Department, the head of Georgian State Inspection and their deputies; the leader of the Structural Division of Georgian Ministry, also a person equal thereto; the leader of the Structural Division of Chancery, also a person equal thereto; the heads and their deputies of departments, bureaus and divisions of the Ministries of Interior, Security and Defense of Georgia, also a person equal thereto; the chairmen of the Chamber of Control of Georgia; judges; the leaders of district and cities local representative bodies and others.

According to Article 14 of the law, a public official should, in a period of within two months of taking office, complete and present an asset declaration.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Articles 2 and 14.

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

Comments:

Under Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, the term "public official" implies the following people: The president of Georgia; a member of the 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; a minister of Georgia and his/her deputy; the head of Georgian State Chancellor's Office and his/her deputy; chairmen of the Georgian State Department, the head of Georgian State Inspection and their deputies; the leader of the Structural Division of Georgian Ministry, also a person equal thereto; the leader of the Structural Division of Chancery, also a person equal thereto; the heads and their deputies of departments, bureaus and divisions of the Ministries of Interior, Security and Defense of Georgia, also a person equal thereto; the chairmen of the Chamber of Control of Georgia; judges; the leaders of district and cities local representative bodies and others.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 2.

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

Comments:

Article 5 of the Georgia Law on Conflicts of Interest and Corruption in Public Service prohibits the acceptance of gifts with a (total) value in a given year of more than 15 percent of the annual income of the public official and gifts with an individual value of more than 5 percent of the annual income of the public official.

References:

Law of Georgia on Conflicts of Interest and Corruption in Public Service, Article 5.

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

Comments:

There is no provision in the law that stipulates requirements for the independent auditing of the executive branch asset disclosure forms.

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

Comments:

Article 65 of the Georgia Law on Public Service states that within a period of three 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 three years. During this period, he is not authorized to receive any income from such an institution or establishment.

References:

Law of Georgia on Public Service, Article 65.

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:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "There are cases where high public officials took employment in companies which were previously affected by decisions they made while they were public officials."

For example, a former senior member of the president's administration became head of Imedi TV, a broadcast channel, but such post-governmental employment practices are rare.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011

http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

Freedom House, Nations in Transit 2010

<http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Georgia-proof-II.pdf>

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:

Tamar Kordzaia of the Georgian Young Lawyers' Association didn't indicate any issues in this regard, though no research has been done to evaluate effectiveness of the provisions governing gifts and hospitality.

It should be noted that according to the statistics regarding the number of criminal investigations and prosecutions initiated in the period 2008-2010, only two cases of violations of regulations governing gifts and hospitality have been identified. Either these regulations are not enforced or they are rarely breached.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

GRECO, Third Evaluation Round, Evaluation Report on Georgia on Incriminations, Strasbourg, May 23-27, 2011.

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

Comments:

The Public Service Bureau doesn't have an auditing authority. There is no mechanism to monitor the accuracy of the asset declarations. The bureau can check only whether public officials meet the deadline for submitting the declarations.

First-round recommendations of GRECO and the final assessment of its fulfillment, adopted in 2006, refer to the establishment of an effective mechanism for testing accuracy of income declarations made by public officials. The final assessment states that the recommendation was satisfactorily implemented, though no such mechanism existed then. Nothing has changed since then.

References:

Law of Georgia on Conflict of Interest and Corruption in Public Service.

Final Overall Assessment of Information Provided by the Delegation of Georgia, Strasbourg, June 19-23, 2006
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2005\)4_GeorgiaFinalOverallAssesment_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2005)4_GeorgiaFinalOverallAssesment_EN.pdf)

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.

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

Yes | No

Comments:

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

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 19.

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:

The declarations are public and available online, though Tamar Kordzaia, of the Georgian Young Lawyers' Association, indicated that it is important to monitor the accuracy of the content.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Website of Public Service Bureau

<http://www.declaration.ge/csb/main.seam>

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

Comments:

Asset disclosure records of the heads of state and government are free of charge and available online.

References:

<http://www.declaration.ge/csb/main.seam>

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 NGOs. 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 NGOs 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:

Not every source of income is present in the declarations, but rather only total income assets are listed.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Website of Public Service Bureau,

<http://www.declaration.ge/csb/main.seam>

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.

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

25

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

100 | 75 | 50 | 25 | 0

Comments:

Formally official government functions are kept separate from the functions of the ruling party, but the OSCE/ODIHR Election Observation Mission reports that the distinction between the state and the ruling party is sometimes blurred, and there is not always a clear distinction between the official and party functions of the public official.

The representative from GYLA indicated the same.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

OSCE/ODIHR Election Observation Mission Report, Municipal Elections, May 30, 2010

<http://www.osce.org/odihr/elections/71280>

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

50

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

Yes

No

Comments:

From Article 83 of Georgia's Constitution:

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.

From 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.

From Article 19:

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.

References:

Constitution of Georgia, Articles 19, 83 and 89.

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:

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 Constitutional Legal Proceedings, the judiciary cannot initiate investigations on its own. Investigations are prompted only if a complaint is lodged.

Bearing in mind that the judiciary and legislature are still under the influence of the executive, the authority of the judiciary to review adopted laws is limited, in practice.

References:

Constitutional Court of Georgia
<http://www.constcourt.gov.ge/>

Freedom House, Nations in Transit 2010
<http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Georgia-proof-II.pdf>

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

Comments:

From Article 52 of Georgia's Constitution:

1. A member of the Parliament of Georgia shall be a representative of the whole of 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.

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).

References:

Constitution of Georgia, Article 52.

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?

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

Yes | No

Comments:

Under Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, the term “public official” also implies members of parliament of Georgia.

According to Article 14 of the mentioned law, a public official should, in a period of within two months of taking office, complete and present an asset declaration. A public official also should complete and represent an asset declaration within two months after leaving office.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Articles 2 and 14.

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

Comments:

Article 65 of Georgia’s Law on Public Service states that within a period of three 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 during the past three years. During this subsequent three-year period, he also is not authorized to receive any income from such an institution or establishment.

References:

Law of Georgia on Public Service, Article 65.

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

Comments:

Article 5 of the Georgia Law on Conflicts of Interest and Corruption in Public Service prohibits the acceptance of gifts with a (total) value in a given year of more than 15 percent of the annual income of the public official (which also includes members of the national legislature) and gifts with an individual value of more than 5 percent of the annual income of the public official concerned.

References:

Law of Georgia on Conflicts of Interest and Corruption in Public Service, Article 5.

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 provision in the legislation of Georgia requiring the independent auditing of the asset disclosure forms of members of the national legislature.

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:

No information is available regarding the effectiveness of the regulations restricting post-government private sector employment for national legislators. Apparently, enforcement of these regulations is not monitored. Besides, it should be noted that there is a legal gap in the legislation, as a public servant is prohibited to enter private sector work over which he/she exerted only regular, direct supervision. Considering the fact that a member of parliament of Georgia never supervises any private company directly, this provision is not applicable with regard to MPs.

References:

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia, Draft for Public Comment, May 30, 2011.

Evaluation Report on Georgia on Incriminations (Theme I) Adopted by GRECO, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

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:

No evaluation has been done on the effectiveness of the regulations governing gifts and hospitality offered to national legislators. There is not a single case identified during the study period in which members of parliament violated these regulations.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.
http://justice.gov.ge/index.php?lang_id=ENG&sec_id=647

Evaluation Report on Georgia on Incriminations (Theme I) Adopted by GRECO, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

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

Comments:

No mechanism exists to check whether the declaration reports are consistent with reality, but the bureau monitors whether public officials meet the deadline for submitting the declarations.

References:

Law of Georgia on Conflict of Interest and Corruption in Public Service.

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?

88

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

Comments:

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

The declarations are public and available online.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 19.

<http://www.declaration.ge/csb/main.seam>

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, non-governmental 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:

The information is public and available online.

References:

<http://www.declaration.ge/csb/main.seam>

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 declarations are available free of charge on the website of the Public Service Bureau.

References:

<http://www.declaration.ge/csb/main.seam>

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 NGOs. 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 NGOs 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:

Not every source of income is present in the declarations, but rather only total income is presented.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

<http://www.declaration.ge/csb/main.seam>

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?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

Chapter III of the General Administrative Code of Georgia (GACG) Freedom of Information determines the notion of public information, and defines the 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 a 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.

References:

Chapter III of the General Administrative Code of Georgia.

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 website of the government.

References:

Parliament website: 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:

Records of legislative processes and documents are published on the website of the government and available free of charge.

References:

Parliament website: 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 NGOs. 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 NGOs trying to access this information.

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

The High Council of Justice of Georgia appoints a candidate selected through the competition.

References:

Organic Law on Common Courts of Georgia, Articles 35 and 47

<http://www.supremecourt.ge/files/upload-file/pdf/saertosasamart.pdf>

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:

Many positive steps have been taken by the government to enhance the independence and professionalism of courts, though in some administrative and criminal cases, professionalism and independence are tainted by the executive's influence.

Tamar Kordzaia, of the Georgian Young Lawyers' Association, didn't indicate any issues with regard to professional criteria in the selection process.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Website of the High Council of Justice (available in Georgian only)

<http://hcoj.gov.ge/?l=2&i=60>

Freedom House, Nations in Transit 2010

<http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>

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

Comments:

The High Council of Justice of Georgia appoints a candidate selected through the competition.

References:

Organic Law on Common Courts of Georgia, Articles 35 and 47.

<http://www.supremecourt.ge/files/upload-file/pdf/saertosasamart.pdf>

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?

92

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

According to Article 249 of the Code of Civil Procedures of Georgia, adjudication must indicate the legal reasoning and laws the judge applied. Under Article 394 of the same law, a judicial decision shall be considered illegal if it is not properly justified. Article 496 states that the verdict must be legal, justified and fair.

References:

Code of Civil Procedures of Georgia, Articles 249 and 394.

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:

By law, judges must give reasons for their decisions, though Transparency International Georgia reports that this is not always the case and judges sometimes fail to explain a reason for their decisions.

The representative from GYLA didn't indicate any complaints in this respect though.

References:

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011.

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

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

Comments:

According to Article 2 of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Commons Courts of Georgia:

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. There are the following types of a disciplinary violation:

- 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 professional secrets;
- g) Hindering the activity of bodies (agencies) having disciplinary authority, or showing disrespect towards 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.

References:

Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Commons Courts of Georgia.

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

Comments:

According to 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.

References:

Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Commons Courts of Georgia.

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:

The High Council of Justice of Georgia annually publishes disciplinary statistics. The statistics contain the number of complaints submitted to the agency as well as the results of investigation.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

<http://www.hcoj.gov.ge/?l=2&i=113>

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:

The High Council of Justice of Georgia annually publishes statistics of disciplinary actions. The statistics contain the number of complaints submitted to the agency as well as the results of investigation.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

<http://www.hcoj.gov.ge/?l=2&i=113>

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

Comments:

Under Article 2 of Georgia's Law on Conflict of Interests and Corruption in Public Service, the term "public official" also implies members of the national-level judiciary.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 2.

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

Comments:

Article 5 prohibits the acceptance of gifts with a (total) value in a given year of more than 15 percent of the annual income of the public official and gifts with an individual value of more than 5 percent of the annual income of the public official concerned.

References:

Law of Georgia on Conflicts of Interest and Corruption in Public Service, Article 5.

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

Comments:

Asset disclosure forms are not audited. There is no such requirement in the law.

References:

Law of Georgia on Conflicts of Interest 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

Comments:

Article 65 of Georgia's Law on Public Service states that within a period of three 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 during the past three years. During this subsequent three-year period, he also is not authorized to receive any income from such an institution or establishment.

References:

Law of Georgia on Public Service, Article 65.

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

Comments:

There are no specific regulations for judges restricting post-government private sector employment other than the provision for public servants in the Law on Public Service.

No information is available regarding the effectiveness of the regulations restricting post-government private sector employment for judges. Enforcement of these regulations is not monitored. Moreover, a public servant is prohibited from entering a private establishment over which he/she exerted only regular, direct supervision. Considering the fact that a judge never supervises any private company directly, this provision is not applicable with regard to the judiciary.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

<http://www.csb.gov.ge/ge/>

Evaluation Report on Georgia on Incriminations (Theme I) Adopted by GRECO, Strasbourg, May 23-27, 2011
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

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 involved in the Law on Procedure of Communication with the Judges of Common Courts, which establishes another limitation for judges to accept illegal gifts and hospitality. Therefore, the regulations are more effective for judges. Besides, the High Council of Justice oversees unethical conduct by members of the judiciary.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers’ Association (GYLA), September 5, 2011.

<http://www.hcoj.gov.ge>

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. No such requirement exists in the legislation. The Public Service Bureau only checks the timeliness of the submission of the declarations.

References:

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

Website of Public Service Bureau

<http://www.declaration.ge/csb/main.seam>

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?

88

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

Comments:

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 officials except for cover pages and confidential parts of the declarations.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 19.

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:

The information is public and available online free of charge.

References:

<http://www.declaration.ge/csb/main.seam>

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:

The information is public and available online free of charge.

References:

<http://www.declaration.ge/csb/main.seam>

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 NGOs. 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 NGOs 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:

Not every source of income is present in the declarations, but rather only total income is listed.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Website of Public Service Bureau

<http://www.declaration.ge/csb/main.seam>

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.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

33

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

Parliament is not authorized to amend the budget. It only adopts, rejects and reviews it. The amendments are made by the executive authorities only.

References:

Budget System Law of Georgia, Article 5.

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:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "Significant public expenditures require legislative approval by law, though in practice it doesn't happen."

There is also a presidential fund that can be allocated at the president's whim and the law doesn't require approval of its allocation by parliament. Moreover, expenditures from this fund are not fully transparent.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Batumelebi news article, Oct. 4, 2011 (available in Georgian)

<http://batumelebi.ge/2011/10/04/3რეზიდენტის-ფონდის-სახე-ზე-3/>

Ambibi news article, Jan. 22, 2011 (available in Georgian)

<http://geo.ambibi.ge/sazogadoeba/31109-ratom-daafinansa-prezidentma-sakuthari-fondidan-musikaluri-klipi-yazakhethis-dedaqalqze.html>

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:

The representative from GYLA didn't indicate any complaints in this respect.

According to the bylaws of the Committee On Budget and Finance of the parliament, the committee is also involved in the budget process.

The legislature also provides the opportunity for citizens to participate in the budget process.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=255

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=877&info_id=31510

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:

The representative from GYLA didn't express any complaints in this respect. Nevertheless, it should be noted that transparency of the state budget always has been an issue in Georgia and the public has never had the full picture of the budget. Based on the Open Budget Survey 2010 score, the situation has improved in recent years.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

<http://www.eurasianet.org/node/62604>

Open Budget Survey 2010

<http://internationalbudget.org/what-we-do/open-budget-survey/>

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:

According to Tamar Kordzaia of the Georgian Young Lawyers' Association: "Citizens can be involved in the budgetary hearing, but only in terms of receiving information, rather than actually be involved in the process."

There is some progress (at least formally) in this regard, though. The Finance-Budget Committee of Parliament of Georgia now provides the opportunity for citizens to define priorities of the state budget and participate in the budgetary process through online forums.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=877&info_id=31510

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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 as a law and it is public. The information about a state budget is also available on the parliament's website.

The representative from GYLA indicated that the budget is quite general and lacks particularities.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011

http://www.pbo.parliament.ge/index.php?lang_id=GEO&sec_id=59

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Finance and Budget Committee of Parliament of Georgia provides oversight of public funds.

References:

Statute of Finance and Budget Committee of Parliament of Georgia.

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=255

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

42

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Chamber of Control, prime minister and the Ministry of Finance submit reports to parliament about the state of budgetary processes. There is no other department or agency responsible for submitting the reports.

References:

Law of Georgia on Budgetary Systems.

<http://www.control.ge/eng/legal-basis/regulations/>

Reports submitted by the Chamber of Control to the Parliament (available in Georgian)

<http://www.control.ge/reports/reports-on-budget-execution/>

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 are only two members of the committee from an opposition party; the others are from the ruling party.

References:

Website of Parliament

http://www.parliament.ge/index.php?sec_id=254

Eurasianet news article

<http://www.eurasianet.org/node/62604>

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

Comments:

There is no evidence regarding investigation initiated by Budget and Finance Committee of the Parliament during the study period. The Chamber of Control of Georgia has direct authority to supervise the use and expenditure of state funds. If there is a necessity, parliament establishes an ad hoc investigative committee.

References:

Website of the Budget and Finance Committee

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=257

Website of Chamber of Control

<http://www.control.ge/legal-basis/regulations/>

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.

Category 4. Public Administration and Professionalism

4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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

Comments:

Article 13 of the Law on Public Service establishes fairness and impartiality as one of the main principles of public service.

References:

Law on Public Service, Article 13.

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

Comments:

In order to further ensure transparency and streamline procedures for recruitment and promotion within the civil service, the 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 Feb. 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 determine principles, procedures and conditions for holding competitive selection for recruitment and appointment on positions in public service. The rules also ensure publicity of the selection process.

The rules define conditions and terms for announcing a competitive selection in details and list all needed documentations applicants are required to submit. They also consider types of competitive selection and set terms and the mechanism for filing complaints regarding procedures and results of the selection.

The Appraisal Rules for Public Servants aim at evaluating the compatibility of professional habits, skills, capabilities and personal characteristics of public officials with the position he occupies. The objectives of the rules are also assessing duties performed by public officials and promoting their professional skills, as well as offering incentives to them.

The rules determine procedures for conducting an appraisal and set the terms for evaluation of a public official. They also include a standard form of application and set procedures for filing complaints against the result of an appraisal.

References:

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)

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:

According to Article 20 of Georgia's General Administrative Code:
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 organ competent thereto should examine the case within the shortest reasonable terms, as established under the legislation and its statute. In case of absence of such rules the case should be examined according to formal administrative procedure provided in Georgian General Administrative Code.

2. If the organ, which examined the case, decides that the violation committed by the exposed person can serve as the bases for the imposition of civil, administrative or criminal responsibility, it should refer the case to the competent authorities.

References:

General Administrative Code, Law of Georgia on the Conflicts of Interests and Corruption in Public Services, Article 20.

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

Comments:

According to Article 43 of the Criminal Code of Georgia:

1. Deprivation of the right to hold office or pursue activity is prohibition of a convict from occupying appointive office at civil service or local government and self-government 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 one to five years or as an additional punishment from six months to three 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 in view of the dangerousness of a crime, degree of a crime and personality of a criminal, the court considers impossible preservation of this right.

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 as an additional punishment such deprivation shall extend over. The entire term of serving of the principal punishment and the said term shall be calculated from the day of serving those punishments.

References:

Criminal Code of Georgia, Article 43, Deprivation of the Right to Hold Office or Pursue Activity.

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.

45. Is the law governing the administration and civil service effective?

50

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The OECD Anti-Corruption Network for Eastern Europe and Central Asia Monitoring report indicates that the senior management of public institutions enjoys large discretion, "which can lead to undue influence of political officials on the professional decisions of public servants."

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring report, March 31, 2010 <http://www.oecd.org/dataoecd/8/6/44997416.pdf>

TI Georgia NIS Report 2011

<http://transparency.ge/nis/2011/public-administration>

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:

Presidential orders "on Approval of the Rules for Holding Competition for Recruitment and Appointment on Positions in Public Service" and "on Approval of Appraisal Rules for Public Servants" have been adopted. Moreover, the Law on Public Service also provides a mechanism to ensure that appointments and professional assessments are based on professional qualifications. Nevertheless, NGOs and international organizations report that in practice, professional qualifications are not decisive during appointments or promotions of public servants.

References:

TI Georgia NIS Report 2011

<http://transparency.ge/nis/2011/public-administration>

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring report, March 31, 2010

<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

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:

The law provides various mechanisms to ensure that appointments and professional assessments are based on professional qualifications, though nepotism and patronage cannot be eradicated through the legal provisions, taking into consideration that public officials enjoy large discretion in the appointment and promotion of their employees.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

National Security and the Social Sector in Georgia

http://pdf.usaid.gov/pdf_docs/PNADS503.pdf

OECD Anti-Corruption Network for Eastern Europe and Central Asia,
Monitoring report, March 31, 2010

<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

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:

A statute of a specific public service describes functions of a particular division or agency, though it is general and doesn't define particular duties of a civil servant. For example, the statute of the Department of Economics under the Ministry of Justice provides a job description for the head of the department and his deputies, while it fails to mention specific duties of other employees. Some departments don't have a statute at all.

According to Kordzaia, different public officials frequently perform identical duties.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Website of the Ministry of Justice, where you can find statutes of departments under the Ministry of Justice (available in Georgian)

http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=14

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:

According to Tamar Kordzaia, of the Georgian Young Lawyers' Association, the bonuses frequently exceed or are equal to a monthly salary.

It's worth mentioning that the government generally refuses to give detailed information on civil servant bonuses.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Public Information Database

http://www.opendata.ge/en#!lang/en/cat/text_info/name_array/%7ESee+the+2011+data~Salaries+and+Bonuses+of+the+Ministry+of+Internal+Affairs+of+Ministry+of+Internal+Affairs+of+Georgia%7E9%7E12

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 doesn't have an obligation to proactively publish lists of positions, but this information is public and can be accessed by every interested person.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Public Information Database

http://www.opendata.ge/en#!lang/en/cat/text_info/name_array/%7ESee+the+2011+data~Staff+of+the+Ministry+of+Justice+of+Georgia+%28second+quar+Ministry+of+Justice+of+Georgia%7E24%7E14

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:

The independent redress mechanism for the civil service are general inspections under the public agencies, though IGs are part of those agencies and lack independence. Therefore, this mechanism cannot be deemed effective enough.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Monitoring report, March 31, 2010.

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:

Since 2003 the situation in this respect has dramatically improved. Civil organizations also have not reported any complaints.

References:

Reforming the Civil Service in Georgia, SIGMA
<http://www.oecd.org/dataoecd/61/21/44570257.pdf>

National Integrity System – T1 Georgia
<http://transparency.ge/nis/2011/public-administration>

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 report indicating that civil servants convicted of corruption are employed by the government.

The representative from GYLA also didn't have any information in this regard.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011

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

Comments:

The Law of Georgia on Conflict of Interests and Corruption in Public Service sets up the basis for preventing, revealing and suppressing corruption, and the 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; Members of Parliament; 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; the head of Georgian State Chancellor's Office and his/her deputy; Chairmen of Georgian State Department, the head of Georgian State Inspection and their deputies; the leader of Structural Division of Georgian Ministry, also a person equal thereto; the leader of Structural Division of Chancery, also a person equal thereto; the 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; and the leaders of District and Cities Local Representative Bodies and other.

According to Article 14 of the mentioned law states that public officials should within two months of taking office complete and present an asset declaration.

Public officials also should complete and submit an asset declaration within two months after living office.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 14.

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

Comments:

According to Article 11 of Georgia's Law on Conflict of Interests and Corruption in Public Service, a civil servant is obliged to recuse himself from policy decisions where their personal interests may be affected and to report about such cases to their supervisor, though this article doesn't apply to the president and members of Parliament, or some other high-level 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 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

Comments:

The Law of Georgia on Public Service, Article 65, states that within a period of three 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 three years. During this period, he also is not authorized to receive any income from such an institution or establishment.

References:

Law of Georgia on Public Service, Article 65.

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

Comments:

Article 5 of Georgia's Law on Conflicts of Interest and Corruption in Public Service prohibits the acceptance of gifts with a (total) value in a given year of more than 15 percent of the annual income of the public official and gifts with an individual value of more than 5 percent of the annual income of the public official concerned.

References:

Law of Georgia on Conflicts of Interest and Corruption in Public Service, Article 5.

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:

Tamar Kordzaia, of the Georgian Young Lawyers' Association, couldn't verify the effectiveness of these regulations.

Enforcement of these regulations is not monitored. The annual report of the Civil Service Bureau doesn't indicate such practices. Moreover, a public servant is prohibited from entering into a business relationship with a company over which he/she exerted only regular, direct supervision. Considering the fact that not every public servant supervises private companies directly, this provision is not applicable to other public officials who can potentially have a conflict of interest.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Evaluation Report on Georgia on Incriminations

(Theme I) Adopted by GRECO, Strasbourg, May 23-27, 2011

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

Civil Service Bureau, Annual Report 2009-2010

http://projects.digitaldesign.ge/csb/uploads/Civil_Service_Bureau_Publicatrimon-FINISH-ENG.pdf

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:

There is no report indicating ineffectiveness of the provisions governing gifts and hospitality offered to civil servants, although it should be noted that these provisions were amended in 2009 and now cover all public officials rather than high public officials only.

It's worth mentioning that according to the statistics regarding the number of criminal investigations and prosecutions initiated in the period 2008-2010, only two cases of violations of regulations governing gifts and hospitality have been identified. Either these regulations are not enforced or they are rarely breached.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia,
Monitoring report, March 31, 2010
<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

GRECO, Third Evaluation Round, Evaluation Report on Georgia on Incriminations, Strasbourg, May 23-27, 2011.
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)9_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)9_Georgia_EN.pdf)

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:

According to Tamar Kordzaia, of the Georgian Young Lawyers' Association: "Even though the regulations are well-defined, there are cases where a public official is lobbying for his/her personal interest."

Regulations for civil service recusal from policy decisions affecting personal interests are not effective in practice. This is evidenced by a monitoring report produced by GYLA. The monitoring report revealed that the head of the National Communications Commission owns a substantial amount of shares in the company, which is subject to the regulations of the commission. The report also suggests evidence of how the conflict of interest affected the decision-making process of the commission.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Civil Monitoring for Improvement of TV Media Environment (available in Georgian) http://gyla.ge/attachments/1084_ANGARISHI%20SABOLOO.pdf

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:

There is no legislative requirement that civil service asset disclosures be audited.

References:

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

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?

81

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

Under Article 19 of Georgia's Law 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 a cover page and a confidential part of the declaration.

The information is also available online.

References:

Law of Georgia on Conflict of Interests and Corruption in Public Service, Article 19.

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 is public and available online.

References:

www.declaration.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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The information is free of charge and available on the PSB website.

References:

www.declaration.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 NGOs. 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 NGOs 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:

The quality can be assessed through auditing, though there is no such mechanism in law or in practice.

References:

Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

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

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.

4.2. Whistle-blowing Protections

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

Comments:

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 comes to conformity with reality and is confirmed by the shown evidence;
 - b) is done honestly and with believing that the whistle-blowing will contribute to the and suppression of the infractions of law and the rules of due conduct of public officials, protect public and private interests and the protected value overweighs 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, which was known or should have been known by the whistle-blower;
 - b) A whistle-blower acts for his personal profit unless there exist the case where granting special reward is established by the law.
- Article 20 prima 3
1. It is prohibited to intimidate, oppress or threaten a whistle-blower in a discriminatory manner.
 2. The whistle-blower may not be subject to disciplinary or administrative procedures, civil action or prosecution or hold 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 grant and to release or temporarily release from the job, derangement of legal relationships, until proving the untruthfulness of the information provided by whistle-blowing.
 3. The disciplinary, civil, administrative and criminal procedures shall be suspended if such takes place unless there exist 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 in the democratic society for the interests of justice, protection of the state, commercial and personal information.
 - c) The purpose of enjoying the protection guaranteed by this article is aimed to infringe the state sovereignty and public order, coup d'etat, to kindle ethnical and religious discord.
 4. During disciplinary, civil, administrative and criminal procedures against a whistleblower, 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.

References:

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

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 protection of whistle-blowers was adopted in 2008 and no evaluation has been conducted of its effectiveness yet.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia,
Monitoring report, March 31, 2010
<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

GRECO, Third Evaluation Round, Evaluation Report on Georgia on Incriminations, Strasbourg, May 23-27, 2011.
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)9_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)9_Georgia_EN.pdf)

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 whistle-blowers' protection is applicable only to public servants.

References:

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

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-blowers' protection is applicable only to public service.

References:

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

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.

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

49a. 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:

According to Georgia's Law 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 (exposed) about the infractions of the law or the rules of due conduct of the public employees, which 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.

These institutions are usually General Inspections under the ministries that have their hotline.

References:

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

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

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 for the public sector are provided by general inspections, which have full-time staff.

References:

http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=360

<http://www.police.ge/index.php?m=203>

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 are part of the ministries and receive regular funding as a subdivision of the ministry.

References:

<http://geninspeqcia.security.gov.ge>

http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=69

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:

Amendments to the Law on Conflict of Interests and Corruption in Public Service were made in 2008. The new amendments provide internal reporting mechanisms for civil servants in the provisions on whistle-blowers. No evaluation has been done on how these provisions are enforced in practice.

References:

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

OECD Anti-Corruption Network for Eastern Europe and Central Asia,
Monitoring report, March 31, 2010

<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

GRECO, Third Evaluation Round, Evaluation Report on Georgia on Incriminations, Strasbourg, May 23-27, 2011

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)9_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)9_Georgia_EN.pdf)

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

Comments:

By law, general inspections are authorized to initiate an investigation, though only a few of these inspections publicize information about their activities in practice.

References:

<http://geninspeqcia.security.gov.ge/>

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.

71

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

88

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.

http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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

Comments:

According to Georgia's Law on State Procurements, Article 4:

6. Main functions of the Agency shall be as follows:

- a) develop and pass sub-legal acts and standard tender documents required for the operation of this Law, harmonization thereof with international standards;
- b) on the basis of reports received from procuring entity perform study, analysis of situation in the field of procurement within the country on a regular basis and submission of suggestions to the Government of Georgia to inform the making of relevant decisions;
- c) develop special training programs, training-methodological materials and standard forms of documentation, holding workshops and trainings for central authorities and local self-government bodies, mass media representatives and other interested entities

References:

Law of Georgia on State Procurements, Article 4.

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

Comments:

Asked whether conflicts of interest regulations for public procurement officials are enforced, Tamar Kordzaia, of the Georgian Young Lawyers' Association, replied: "Yes, but sometimes there are exceptions. Eventually the electronic procurement system should eliminate these shortcomings."

The State Procurement Agency has recently established the electronic procurement system, which will promote effective enforcement of conflicts of interest regulations for public procurement officials.

References:

Interview with Tamar Kordzaia, Georgian Young Lawyers' Association (GYLA), September 5, 2011.

Medianews news article (available in Georgian)

<http://medianews.ge/index.php/ka/content/82195/>

Website of State Procurement Agency

http://procurement.gov.ge/index.php?sec_id=1&lang_id=ENG

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

Comments:

There is no mechanism that monitors the assets, incomes and spending habits of public procurement officials other than submitting asset declarations.

References:

Law on Conflict of Interest and Corruption in Public Service
Law on Public Service.

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:

The Law of Georgia on State Procurement, Chapter II, Methods of Procurement
http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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:

The Law of Georgia on State Procurement, Chapter II, Methods of Procurement
http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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:

The Law of Georgia on State Procurement, Chapter VI, Procedure of Challenging an Action related to procurement and that of Consideration of Disputes, Article 23, Rule of Appeal and Dispute Review
http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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:

The Law of Georgia on State Procurement, Chapter VI, Procedure of Challenging an Action related to procurement and that of Consideration of Disputes, Article 23, Rule of Appeal and Dispute Review
http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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

Comments:

According to Georgia's Law on State Procurement, Article 3.

1) The registry of dishonest participants of the procurement process (hereafter – referred to as the Black List) – the Black List is maintained electronically and posted on its official web page by the authorized body set forth in the present law. The Black List includes the data on those dishonest entities, bidders and suppliers participating in state procurement, which are not authorized to participate in state procurement and award a contract on state procurement for a year period after their entry into the Black List. The Black List is available for any person. The rule and conditions of maintaining the Black List shall be prescribed under a sub-legal act approved by the chairman of an authorized body set forth under the present law.

References:

The Law of Georgia on State Procurement, Article 3
http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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 "black list" of companies guilty of major violations of procurement regulations on the website of the State Procurement Agency.

References:

http://procurement.gov.ge/index.php?sec_id=14&lang_id=GEO

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?

100

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

According to Article 6 of Georgia's Law on State Procurement:

The Supervisory Board of the Agency:

b) in relation with procurement takes into account basic directions of state policy and enables parties of state procurement to freely present their interests at its sittings;

c) draws up an annual performance report and submits to the Government of Georgia before April 1 of each following year. The report must be available for public access.

References:

The Law of Georgia on State Procurement, Article 6, Supervisory Board of the Agency

http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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:

The Law of Georgia on State Procurement, Article 22, Procurement Report

http://procurement.gov.ge/files/_data/eng/legalacts/Law_of_Georgia_on_State_Procurement.pdf

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 the State Procurement Agency. Moreover, the agency has recently established the electronic procurement system, which also promotes transparency of the procurement process.

References:

Website of the State Procurement Agency
<http://procurement.gov.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. 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 information is free of charge and available on the website of the agency. The cost of a hard copy includes only photocopy expenses.

References:

<http://procurement.gov.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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs 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 the State Procurement Agency on their websites and in periodical journals.

References:

<http://www.economy.ge/>
<http://procurement.gov.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:

It is available on the website of the State Procurement Agency.

References:

<http://procurement.gov.ge/>

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

92

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

References:

Law of Georgia on State Property, Article 3.

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 Article 11 of Georgia's Law on Conflict of Interests and Corruption in Public Service, a civil servant is obliged to recuse himself from policy decisions where their personal interests may be affected and to report about such cases to their supervisor, though this doesn't apply to the president, members of Parliament or some other high-level 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

Comments:

The representative from the Georgia Young Lawyers' Association didn't indicate any complaints in this respect. Nevertheless, civil society organizations reported that the privatization process was not always transparent, though no direct evidence was suggested that the government officials had a personal stake in the privatization deals.

References:

Interview with Tamar Kordzaia, GYLA, September 5, 2011.

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia
<http://transparency.ge/nis/2011/business>

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?

80

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

Privatization auctions are advertised on the website of the Ministry of Economy and Sustainable Development.

According to the Law of Georgia on State Property, information on state property to be privatized through an auction also shall be published in a newspaper.

References:

Law of Georgia on State Property, Article 5.

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:

Privatization auctions are advertised on the website of the Ministry of Economy and Sustainable Development, though civil society organizations report a lack of effectiveness of the advertising process.

References:

Website of Ministry of Economy and Sustainable Development <http://www.privatization.ge/>

Interview with Tamar Kordzaia, GYLA, September 5, 2011.

The Problematic Privatization of Alfa-Com, July 29, 2011.

<http://transparency.ge/en/blog/pwho-will-manage-georgias-airwaves-problematic-privatization-alfa-comp>

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

References:

Order of the Minister of Economy and Sustainable Development N 1–1/1487, September 7, 2010 (available in Georgian)

http://privatization.ge/files/pdf/leg_15_ge.pdf

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 period, as they are published on the website, though sometimes the privatization process is not transparent.

References:

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

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011.

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 information is free of charge and available on the website of the Privatization Department of the Ministry of Economy and Sustainable Development.

References:

<http://www.privatization.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 NGOs. 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 NGOs trying to access this information.

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

According to Georgia's Constitution, 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, 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.

References:

Constitution of Georgia, Article 43.

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.

56. Is the national ombudsman effective?

80

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

According to Article 4 of the Organic Law of Georgia on the Public Defender, the public defender shall be independent in exercising the functions of the office and bound only by the constitution and law. Any undue pressure or interference in the public defender's activities shall be prohibited and punished by law.

References:

Organic Law of Georgia on the Public Defender, Article 4.

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 Tata Khuntsaria, deputy public defender: "Yes, the public defender (ombudsman) of Georgia is established under the Constitution of Georgia as an independent National Human Rights Institution. Any unlawful influence on the work of the public defender (ombudsman) is prohibited by the Georgian Organic Law on Public Defender and by the Georgian Criminal Code. According to the Article 5.7 of the Georgian Organic Law on Public Defender, preventing in any way the work of the public defender shall be punished by law. According to Article 352 of the Georgian Criminal Code, exerting pressure upon the public defender in whatever form, intended to obstruct his/her official activities, shall be punishable by fine or corrective labor or restriction of freedom."

The U.S. Department of State reports progress in terms of strengthening the public defender's office.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

U.S. Department of State, 2010 Human Rights Report: Georgia, April 8, 2011
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154425.htm>

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:

According to Tata Khuntsaria, deputy public defender: "Yes, the circumstances which lead to the removal of the public defender (ombudsman) from the office is strictly predetermined by the Georgian Organic Law on Public Defender. According to Article 10 of the Georgian Organic Law on Public Defender, the tenure of the Public Defender shall be subject to premature termination in the event he/she:

1. loses citizenship;
2. is unable to serve for four consecutive months;
3. is found guilty in the final judgment of the court;
4. is recognized to be lacking legal capacity, missing or deceased by the court;
5. has accepted or holds a position or carries out activities incompatible with the public defender's office;
6. resigns;
7. dies."

Such a practice has not been identified during the study period. The recent ombudsman served his term defined by law.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

U.S. Department of State, 2010 Human Rights Report: Georgia, April 8, 2011
<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154425.htm>

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:

According to Tata Khuntsaria, deputy public defender: "Yes, the public defender (ombudsman) has a professional full-time staff, which is part of the Office of the Public Defender (Ombudsman). The structure of the office and the staff is regulated by Chapter 5 of the Georgian Organic Law on Public Defender and by the Statute of the Office."

Ti Georgia reports that the human resources of the public defender's office do not meet the needs of the office's responsibilities.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

Ti Georgia National Integrity System — Georgia — <http://transparency.ge/nis/2011/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:

According to Tata Khuntsaria, deputy public defender: "Recently, there have been no serious cases of unlawful pressure exercised by the state agencies on the public defender (ombudsman) which have undermined its independence."

Civil society organizations do not report a lack of independence of the ombudsman.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

Ti Georgia National Integrity System — Georgia
<http://transparency.ge/nis/2011/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:

According to Tata Khuntsaria, deputy public defender: "Yes, according to Article 25 of the Georgian Organic Law on Public Defender, the public defender's office is financed from the state budget of Georgia in the amount required for appropriate exercise of its functions."

According to the civil society reports, the ombudsman's office has sufficient financial resources.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

TI Georgia National Integrity System — Georgia

<http://transparency.ge/nis/2011/ombudsman>

U.S. Department of State, 2010 Human Rights Report: Georgia, April 8, 2011

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154425.htm>

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:

According to Tata Khuntsaria, deputy public defender: "Yes, once per year the public defender (ombudsman) submits to the Parliament of Georgia a public report on the human rights and freedoms situation in the country. According to the Georgian Organic Law on Public Defender, the public defender (ombudsman) can also issue a special report besides the annual parliamentary one."

The public defender regularly makes reports that are available on the website of the public defender.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

TI Georgia National Integrity System — Georgia

<http://transparency.ge/mis/2011/ombudsman>

Website of the Public Defender

<http://www.ombudsman.ge/index.php?page=21&lang=1&n=0&id=0>

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:

According to Tata Khuntsaria, deputy public defender: "The public defender (ombudsman) cannot initiate the investigation by itself; however, according to the law, it can address the respective investigative bodies with a proposal requesting initiation of the preliminary investigation and/or criminal proceedings if characteristics of a crime are revealed as a result of the case examination."

It should be noted that even though the public defender's office is not authorized to initiate investigative proceedings, it does investigate cases by means of making inquiries into the matters concerning human rights violations.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

Organic Law on Public Defender, Article 21

<http://www.ombudsman.ge/index.php?page=777&lang=1&n=7>

Website of the Public Defender news article (available in Georgian)

<http://www.ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1356>

News article (available in Georgian)

<http://www.civil.ge/geo/article.php?id=24090>

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.

Comments:

According to Tata Khuntsaria, deputy public defender: "The only cases when the public defender (ombudsman) can impose penalties include disobedience of the public defender's lawful request, which, according to Article 1734 of the Georgian Administrative Code shall be punishable by a fine. The public defender (ombudsman) has applied Article 1734 of the Georgian Administrative Law Infringement Code in practice for imposing a fine on the relevant state agency."

According to the law, the public defender is authorized "to submit to the relevant authorities proposals on disciplinary or administrative measures against employees responsible for the violation of human rights and freedoms," though the governmental authorities sometimes fail to cooperate with the public defender and impose appropriate penalties on the offenders.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

Medianews news article (available in Georgian)
<http://medianews.ge/index.php/ka/content/76818/>

Humanrights news article
<http://www.humanrights.ge/index.php?a=main&pid=13518&lang=eng>

TI Georgia, National Integrity System
<http://transparency.ge/nis/2011/ombudsman>

The Situation of Human Rights and Freedoms in Georgia –
 2010 <http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxajhpx.pdf>

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).

Comments:

According to Tata Khuntsaria, deputy public defender: "The findings of the public defender (ombudsman) have a recommendatory nature. In practice, the rate of their implementation varies according to the concerned issues and the relevant state agencies."

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011

TI Georgia, National Integrity System
<http://transparency.ge/nis/2011/ombudsman>

The Situation of Human Rights and Freedoms in Georgia –
 2010 <http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxajhpx.pdf>

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:

According to Tata Khuntsaria, deputy public defender: "Yes, according to June 7, 2011, Order #57 of the Public Defender (Ombudsman) of Georgia, the office reacts within 18 working days from submission of the citizen complaint."

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011

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

Comments:

According to Article 22 of the Organic Law of Georgia on the Public Defender:

1. Once per year, in March, the Public Defender shall submit to the Parliament a report on the human rights and freedoms situation in the country.
2. The report of the Public Defender shall include information about those state and local self-government bodies and officials 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 report shall provide a general assessment of the human rights and freedoms situation in the country, a summary of the findings and recommendations to address the identified problems.
4. During the spring session of the Parliament the Public Defender shall make a speech on the human rights and freedoms situation in the country described in the annual report;
5. The report of the Public Defender shall be published in the official journal of the Parliament. Publishing of a special report shall be subject to the Public Defender's discretion.

References:

Organic Law of Georgia on the Public Defender, Article 22.

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:

According to Tata Khuntsaria, deputy public defender: "Yes, upon submission of the report to the Parliament of Georgia, it is instantly accessible to public."

The reports of the ombudsman are published on the website and also submitted to the parliament twice a year. Parliament is also obliged to publish the reports.

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

The Situation of Human Rights and Freedoms in Georgia – 2010
<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpx.pdf>

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:

Citizens can access the reports of the public defender (ombudsman) free of charge at the official website of the public defender (ombudsman).

References:

Interview with Tata Khuntsaria, deputy public defender, September 7, 2011.

The Situation of Human Rights and Freedoms in Georgia – 2010
<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpx.pdf>

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The Constitution of Georgia, Article 97, states:

1. The Chamber of Control of Georgia 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, submit proposals on improving tax legislation to the Parliament.

The Law of Georgia On Chamber of Control of Georgia, Article 3:

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 or/and 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.

References:

The Constitution of Georgia, Article 97.

The Law of Georgia on Chamber of Control of Georgia, Article 3.

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.

59. Is the supreme audit institution effective?

84

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Article 3 of Georgia's Law on the Chamber of Control of Georgia (CCG) states:

2. The CCG shall be independent in its activities and comply only with the Law. Any interference in or/and 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.

References:

The Law of Georgia on Chamber of Control of Georgia, Article 3.

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 has not been removed from his office without relevant justification during the study period.

It's worth mentioning that monitoring reports of civil society and international organizations indicate positive developments with regard to the independence of the Chamber of Control.

References:

Interview with Tamar Kordzaia, GYLA, September 5, 2011.

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, adopted on March 31, 2010
<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

TI Georgia, National Integrity System Report 2011
<http://transparency.ge/nis/2011/chamber-control>

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:

According to the Capacity Development Plan, the Chamber of Control needs at least 160 experienced auditors, though at present it employees only 105 auditors. The same document also indicates that "In spite of the fact that vast majority of the auditors of Chamber of Control owns experience of revision spanning many years, very little fraction of those have theoretical and practical knowledge of the modern audit."

References:

Organizational Chart of the Chamber of Control of Georgia
<http://www.control.ge/eng/about-the-ccg/structure/>

Chamber of Control of Georgia, Capacity Development Plan For 2010-2011
<http://www.control.ge/files/upload-file/pdf/cdp-eng.pdf>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders it 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:

The representative from GYLA didn't indicate any complaints in this respect, though it should be noted that there is no legal provision in the law that would protect employees of the Chamber of Control from arbitrary removal from the office.

Civil society organizations have not reported that such practice exists in the agency.

References:

Interview with Tamar Kordzaia, GYLA, September 5, 2011.

Law of Georgia on Chamber of Control

<http://www.control.ge/files/upload-file/pdf/the-law-on-the-ccg.pdf>

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:

Neither civil society organizations nor international monitoring reports have indicated any problems with regard to regular funding of the Chamber of Control. Moreover, new amendments to the law on the Chamber of Control provide an additional guarantee of regular funding.

References:

Budget of the Chamber of Control for 2011 (available in Georgian)

<http://www.control.ge/files/upload-file/pdf/ccg2011biujeti.pdf>

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, adopted March 31, 2010

<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

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:

<http://www.control.ge/reports/>

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

Comments:

According to the Chamber of Control, the governmental agencies comply with the recommendations, though the representative from GYLA indicated that the government doesn't always take into consideration recommendations from the Chamber of Control.

TI Georgia reports that it isn't clear whether the government always responds to the findings of the Chamber of Control.

References:

Interview with Tamar Kordzaia, GYLA, September 5, 2011.

Annual Report 2010 (available in Georgian)

<http://control.ge/files/upload-file/pdf/annual-report-2010-geo.pdf>

TI Georgia, National Integrity System Report 2011

<http://transparency.ge/nis/2011/chamber-control>

News article (available in Georgian)

<http://24saati.ge/index.php/category/business/2010-09-24/9647>

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:

There is some progress in this respect, which is evidenced by the increasing amount of cases investigated by the Chamber of Control, as well as due to the recent legal amendments. Nevertheless, the Chamber of Control isn't immune from political interference, taking into consideration the dominance of the ruling party and the executive over the other branches of the government.

References:

Annual reports of the Chamber of Control
<http://www.control.ge/eng/reports/annual-reports/>

OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, adopted March 31, 2010
<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

News article (available in Georgian) – <http://new.internet.ge/?p=12401>

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?

75

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Article 32 of the Law on the Chamber of Control of Georgia states:

1. The 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 two 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 legality and 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 first of June 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 publishing office of the press of the Parliament.

References:

Law on the Chamber of Control of Georgia, Article 32.

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 annual activity reports are public. They are published on the website of the Chamber of Control, though it is difficult to obtain a full version of audit reports.

References:

Audit reports of the Chamber of Control
<http://www.control.ge/eng/reports/audit-reports/>

Interview with Tamar Kordzaia, GYLA, September 5, 2011.

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:

Citizens can access the audit reports free of charge.

References:

<http://www.control.ge/eng/reports/>

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 NGOs. 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 NGOs trying to access this information.

86
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

61a. In law, is there a national tax collection agency?

Yes | No

References:

Law on Revenue Agency

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

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.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Neither civil society organizations nor international organizations report any issues in this respect. Nevertheless, it should be noted that there is no information available on the evaluation and training of employees of the Revenue Agency. The annual report of the agency indicates that more than 130 employees attended trainings abroad, but it doesn't specify any details.

References:

Structure of the Revenue Agency

<http://www.rs.ge/structure.aspx>

Annual report of Revenue Agency

<http://www.rs.ge/pdf/2010AnnualReport.pdf>

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 Georgia 2011

Public Information Database

http://www.opendata.ge/#lang/ka/cat/text_info/id/956/categories/+შემოსავლების+სამსახურის+ბიუჯეტი/

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

25

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

This has been a problematic issue so far and there is no evidence of any progress yet. The administration of the Revenue Agency has recently changed and the effectiveness of its work has not been evaluated yet.

References:

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011 http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011.

<http://www.eurasianet.org/node/64235>

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

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Customs authority is exercised by the Revenue Agency.

References:

Law on Revenue Agency, Articles 2, 3.

Statute on Revenue Agency approved by the Minister of Finance of Georgia, Article 2.

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.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Customs authority is exercised by the Revenue Agency. There is no information available on the evaluation and training of employees of the Revenue Agency. The annual report of the agency indicates that more than 130 employees attended training sessions abroad, but it doesn't specify any details.

References:

Structure of the Revenue Agency
<http://www.rs.ge/structure.aspx>

Annual report of Revenue Agency
<http://www.rs.ge/pdf/2010AnnualReport.pdf>

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:

Customs authority is exercised by the Revenue Agency. The Revenue Agency receives regular funding from the state budget.

References:

Law on State Budget of Georgia, 2011.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Civil society and international organizations have reported unfair treatment of businesses by the government. According to the credible reports, businesses in Georgia have been constantly harassed by the government with the threatened use of extensive financial audits or by imposing harsh penalties on companies. Such cases are frequently politically motivated.

The president has recently appointed a new head of the Revenue Service and instructed him to take a new approach with regard to dealing with taxpayers. Considering the facts that the changes have taken place quite recently, it is hard to evaluate whether the situation has improved. Nevertheless, it's worth mentioning that a new program of the Revenue Agency that aims at turning shoppers into tax-fraud Informants cannot be regarded as evidence of positive developments in this respect.

References:

News article

<http://civil.ge/eng/article.php?id=23212>

Eurasianet news article

<http://www.eurasianet.org/node/64235>

Website of the Revenue Service

<http://www.rs.ge/articles.aspx?ID=348>

TI Georgia NIS Report 2011

<http://transparency.ge/nis/2011/business>

U.S. Department of State, 2010 Human Rights Report: Georgia

<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154425.htm>

OSCE/ODIHR Election Observation Mission Report

<http://www.osce.org/odihr/elections/71280>

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Article 6 of the Law on the Chamber of Control (CCG), addressing the authority of the Chamber of Control, states:

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.

General supervision upon state-owned companies is exercised by the Ministry of Economy and Sustainable Development.

References:

Law on the Chamber of Control of Georgia, Article 6.

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.

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 Economy and Sustainable Development, which is part of the executive authority, is overseeing state-owned companies, therefore it cannot be protected from political interference.

References:

<http://economy.ge/?category=15&lang=eng>

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 Department of State Property Management Policy is one of the subdivisions of the Ministry of Economy and Sustainable Development, which is in charge of overseeing state-owned companies. The professionalism of the staff of the department has not been evaluated, although it's worth mentioning that the administration of the ministry has been changed several times in recent years.

References:

Website of Ministry of Economy and Sustainable Development
<http://economy.ge/?category=121&lang=geo>

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:

According to the State Budget 2011, the Ministry of Economy and Sustainable Development receives regular funding.

References:

State Budget 2011
<http://www.mof.ge/4161>

Public information Centre

http://www.opendata.ge/#lang/ka/cat/text_info/name_array/%7E0b0c0e0d+2011+წლის+მონაცემები-ეკონომიკის+და+მდგრადი+განვითარების+სახელმწიფო+ფინანსების+პროგრამები+-+ეკონომიკის+და+მდგრადი+განვითარების+სამინისტრო%7E9%7E17

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 Economy and Sustainable Development is not authorized to initiate investigations.

References:

About the Ministry

<http://economy.ge/?category=15&lang=eng>

Statute of the Ministry of Economy and Sustainable Development (available in Georgian)

<http://economy.ge/files/legislation/debuleba.pdf>

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 Economy and Sustainable Development doesn't have authority imposes to impose penalties on offenders.

References:

About the Ministry of Economy and Sustainable Development

<http://economy.ge/?category=15&lang=eng>

Statute of the Ministry of Economy and Sustainable Development (available in Georgian)

<http://economy.ge/files/legislation/debuleba.pdf>

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?

69a. In law, citizens can access the financial records of state-owned companies.

Yes | **No**

Comments:

The law imposes such an obligation on public institutions based on the General Administrative Code, but it is not clear whether state-owned companies are required to disclose their financial records. The law doesn't provide clear provisions in this respect.

References:

General Administrative Code of Georgia, Chapter III

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**

Comments:

State-owned companies do not publish their financial data. Such information is available only with regard to privatization of these companies.

References:

Website of Department of Privatization (available in Georgian)
<http://www.economy.ge/?category=18&lang=geo>

Result of state auctions (available in Georgian)
<http://www.economy.ge/?category=4&lang=geo&item=891>

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

Comments:

According to the Chamber of Control of Georgia's Annual Report 2010, state-owned companies are audited in compliance with international accounting standards.

References:

The Chamber of Control of Georgia Annual Report 2010.

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

Comments:

Access to the financial records of state-owned companies is not discussed in the civil society reports, though this issue can be considered in the context of access to the public information in general.

References:

The Institute for Development of Freedom of Information, Access to Public Information In Georgia – Information Bulletin No. 2 <http://www.idfi.ge/uploadedFiles/files/opendata%20EN.pdf>

T1 Georgia findings on access to information in Georgia

http://transparency.ge/sites/default/files/post_attachments/Press_Release-Access_to_Information_20100622_Eng.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.

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

Comments:

If such information is available, a person should pay only for photocopying, or it is free of charge and available online.

References:

The Institute for Development of Freedom of Information http://www.idfi.ge/?cat=foi_legislation&topic=48&lang=en

The General Administrative Code of Georgia.

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 NGOs. 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 NGOs trying to access this information.

57
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

100

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

There is no discriminatory provision in the law on licenses and permits.

References:

Law of Georgia on 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:

Civil society organizations and international organizations indicate dramatic improvement in citizens' ability to obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

According to the Doing Business 2011 report, Georgia has been recognized as one of the top 10 Doing Business reformers. In recent years, the most significant progress was made with regard to property registering and construction-related procedures, as well as getting credit, protecting investors, enforcing contracts and closing a business.

References:

The World Bank's Doing Business Survey 2010, Georgia Country Report. <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=74>

The International Bank for Reconstruction and Development / The World Bank, Doing Business 2011 <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/annual-reports/english/db11-fullreport.pdf>

TI Georgia, National Integrity System <http://transparency.ge/nis/2011/business>

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:

The World Bank's Doing Business 2010 survey of Georgia, as well as civil society organizations, confirm the low cost and quick time period for starting a business in Georgia.

References:

The World Bank's Doing Business 2010, Georgia Country Report. <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=74>

TI Georgia, National Integrity System <http://transparency.ge/nis/2011/business>

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 basic business regulatory requirements for meeting public 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 doesn't 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 doesn't 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 and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The law doesn't establish uniform public health standards, therefore business inspections are not carried out in a uniform manner.

The Statute of the Ministry of Labour, Health and Social Affairs states that development of state sanitary-hygiene norms is one of the ministry's objectives, though these norms and regulations are outdated and not in line with international standards.

References:

Law on Licenses and Permits.

Law on Medical and Pharmaceutical Licensing.

News article

http://regions.ge/Imereti&newsid=1915&year=2009&position=news_category

Decree of the Government of Georgia N 249 on Approval of the Statute of the Ministry of Labour, Health and Social Affairs of Georgia

http://www.moh.gov.ge/index.php?lang_id=ENG&sec_id=47&info_id=279

List of sanitary regulations and norms (available in Georgian)

<http://www.momxmarebelli.ge/?rec=241>

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:

Since 2001, the norms and regulations on environmental standards have changed many times. Nevertheless, there are no uniform public environmental regulations.

References:

List of norms and regulations

<http://www.momxmarebelli.ge/?rec=383>

Website of the Ministry of Labour, Health and Social Affairs (in Georgian)

http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=174&info_id=512

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.

References:

List of norms and regulations

<http://www.momxmarebeli.ge/?rec=383>

Website of the Ministry of Labour, Health and Social Affairs (in Georgian)

http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=174&info_id=512

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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ~~77~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

According to Article 339 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 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 labour for a term of two years or the restriction of liberty for the same term or the deprivation of liberty for a term up to three years.
2. Giving a 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 four to seven 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 five to eight years.

According to the Article 338 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 six to nine 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 seven 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.

References:

Criminal Code of Georgia, Articles 338, 339 .

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

Comments:

The Criminal Code of Georgia, Article 181, states:

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 relative 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 a 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.

References:

Criminal Code of Georgia, Article 181.

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

Comments:

According to the Article 339 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 favour 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 favour a bribe giver or a third person, shall be punished with fine or corrective labour for a term of two years or the restriction of liberty for the same term or the deprivation of liberty for a term up to three 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 four to seven 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 five to eight years.

References:

Criminal Code of Georgia, Article 339.

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

Comments:

According to the Article 338 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 six to nine 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 seven 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.

References:

Criminal Code of Georgia, Article 338.

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:

For the purposes of the Articles 338 and 339 and 339 prima 1 of the Criminal Code of Georgia the person with an equal status to public officials 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, judges or an official of an international court or that of a judicial body.

The definition of foreign public official as equal in status to 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:

Criminal Code of Georgia, Note 2 to Article 332.

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:

According to Article 332 of the Criminal Code of Georgia:

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 a fine or deprivation of liberty up to three years, deprivation of the right to hold the office or of the business license up to three years.
2. Abuse of official power committed by anyone holding a state political position is punishable with a fine or deprivation of liberty from three to five years, deprivation of the right to hold the office or of the 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 victimare punishable with deprivation of liberty from five to eight years, deprivation of the right to hold the office or of the business license for up to three years.

Using public resources for private gain that didn't 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.

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

Comments:

The Law of Georgia on Public Service, Article 73 prima 3, the General Code of Conduct Regarding the Issuance and Usage of Public Information, states:

5. Public servants shall take all necessary measures in order to provide confidentiality of information (containing state secrets, concerning 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 public servants from office.

The Criminal Code of Georgia, Article 313, Disclosure of State Secrets, states:

1. Disclosure of state secrets, i.e. transferring state secrets 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 secrets accessible to an outsider, perpetrated by the one who had the knowledge of such secrets 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 15 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 20 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.

References:

Law of Georgia on Public Service, Article 73 prima 3.

Criminal Code of Georgia, Article 313.

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

Comments:

Criminal Code of Georgia, Article 194, Legalization of Illegal Income (money laundering), states:

1. Legalization of illegal income, i.e. converting illegal or/and ungrounded property into 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.

References:

Criminal Code of Georgia, Article 194.

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.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. 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 corruption. Those are:

1. Anti-corruption Department of the Prosecution Service under the Ministry of Justice of Georgia;
2. Department of Constitutional Security of the Ministry of Internal Affairs of Georgia;
3. Investigative Division of the Revenue Service.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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.

75. Is the anti-corruption agency effective?

39

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

There is no independent anti-corruption agency in Georgia. All the agencies fighting corruption are subdivisions of the ministries, which are part of the executive branch. Therefore, they are not independent from political influence.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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:

There is no independent anti-corruption agency. All the agencies fighting corruption are subdivisions of the ministries, which are part of the executive branch. Therefore, they are not independent from political influence.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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:

As was indicated before, the anti-corruption agencies are part of the executive branch. The heads of the agencies are appointed and dismissed by ministers. Therefore, they are not protected from removal without relevant justification.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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 agencies are more or less (depending on the specific agency) based on professional criteria. Nepotism and patronage remain an issue in public service in general.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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, as anti-corruption is a separate structural entity under the ministries.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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:

The ministries receive regular funding from the budget, therefore anti-corruption agencies under these institutions are provided with regular funding as well.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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:

The anti-corruption agencies make public reports, but these reports are not published consistently and are not comprehensive.

References:

www.rs.ge

www.police.ge

http://justice.gov.ge/index.php?lang_id=GEO&sec_id=170&lang_id=ENG

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 OECD Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan states: "While institutional arrangement whereby the prosecution service is placed under the executive branch is acceptable, it requires special attention to verify whether public prosecutors are able to perform their professional duties and responsibilities without unjustified interference."

Nevertheless, the ACN report states that Georgia is largely compliant with the recommendations in this respect.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia
Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, March 31, 2010
<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

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

Comments:

There are statistics regarding the number of criminal investigations and prosecutions initiated and persons convicted in the period 2008-2010, though if the case is politically sensitive, the executive authorities can always interfere, as these agencies don't enjoy full autonomy.

References:

GRECO Evaluation Report on Georgia on Incriminations, May 23-27, 2011

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_One_EN.pdf)

OECD Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, March 31, 2010

<http://www.oecd.org/dataoecd/8/6/44997416.pdf>

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?

63

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The responsiveness of these agencies is evaluated by NGOs, international organizations and the public defender's office. All of them report a lack of accountability on the part of law enforcement agencies.

References:

The Situation of Human Rights and Freedoms in Georgia – 2010

<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxcwxayjhpj.pdf>

TI Georgia, National Integrity System

<http://transparency.ge/nis/2011/law-enforcement>

News article

http://www.article42.ge/index.php?action=news_item&news_id=56&lang=eng

News article
http://www.media.ge/en/content/institute_of_democracy

News article
<http://www.humanrights.ge/index.php?a=text&pid=13465&lang=eng>

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:

If such a complaint results in criminal proceedings and the person who reported about such suspicions appears as a witness, legislation provides a comprehensive package of guarantees for witness protection (Criminal Procedure Code).

There are no reports about violations of the aforementioned provisions by law enforcement agencies.

The Law of Georgia on Corruption and Conflict of Interest in Public Service provides for the protection of whistle-blowers as well.

References:

Criminal Procedure Code

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

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.

67
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

Yes | No

References:

Criminal Procedure Code of Georgia

Civil Procedure Code of Georgia

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:

TI Georgia reports that judicial positions appear to be inadequate and courts face a heavy caseload, though there is no evidence that it affects timeliness of appeal resolutions. On the website of the Court of Appeals of Tbilisi, you can see a timetable of pending cases in the Court of Appeals. You also can find statistics on all appeal cases in Georgia on the website of the Supreme Court of Georgia.

References:

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011

<http://www.supremecourt.ge/eng/statistics/2010>

http://www.tbappeal.court.ge/upload/r_1222.pdf (Available only in Georgian)

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 judgments are appealed without any fees or costs. As for the appeals against judgment on civil and administrative cases, the cost typically is 4 percent of the subject of complaint, with a minimum 150 GEL and maximum 5,000 GEL for an individual and 7000 GEL for a legal person. Bearing in mind that according to statistics, the average monthly income of an individual in Georgia is only 126 GEL, the cost for appeals set by the Civil Procedure Code can be regarded as quite a harsh impediment for access to justice.

References:
Civil Procedure Code, Article 39

www.statistics.gov.ge

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?

50

78a. In practice, do judgments in the criminal system follow written law?

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

Comments:

Georgia is a country with a civil law system, therefore all judgments have to be made based on legal provisions found in different pieces of law. Unfortunately, sometimes because of political concern or lack of impartiality of the judiciary, a judgment is not supported by valid legal arguments or it contains a wrong interpretation of legal provisions.

Courts generally apply official guidelines of the Supreme Court of Georgia when interpreting certain provisions of law.

References:

Website of the Supreme Court of Georgia
<http://www.supremecourt.ge/eng/uniform-court-practice/>

Report by Thomas Hammarberg, commissioner for human rights of the Council of Europe, April 20, 2011
<https://wcd.coe.int/ViewDoc.jsp?id=1809789>

Public defender's report, the Situation of Human Rights and Freedoms in Georgia, 2010
<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpj.pdf>

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?

50

79a. In practice, are judicial decisions enforced by the state?

Comments:

There is considerable progress with regard to enforcement of judicial decisions, though NGOs and the public defender report cases of delay in the enforcement of court judgments.

The public defender report indicates that “the Public Defender received numerous complaints from individuals to the effect that the court judgment made in their favor remained unenforced. Typically, these complaints pertained to the court judgments involving payment obligations by budgetary organizations in favor of a physical person or a private legal person.”

References:

Constitution of Georgia, Article 82.

Statistics of National Bureau of Enforcement

http://nbe.gov.ge/index.php?lang_id=ENG&sec_id=194&info_id=3156

News article

<http://24saati.ge/index.php/category/news/justice/2009-11-10/1207> (In Georgian)

Public defender’s report, the Situation of Human Rights and Freedoms in Georgia, 2010

<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpx.pdf>

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

Comments:

According to Article 84 of the Constitution of Georgia:

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 authorized to repeal, change or suspend a court judgment in accordance with a procedure determined by law.

These principles are further reflected in 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.

References:

Article 84 of the Constitution of Georgia

Law on Common Courts of Georgia, Articles 1, 7, 8

Civil Procedure Code, Article 6

Criminal Procedure Code

Criminal Code of Georgia, Articles 364, 365

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:

Criminal and administrative proceedings are mostly subject to influence from the executive branch, prosecutor's office or high-level officials, though judges are considered to be independent when adjudicating civil cases.

References:

U.S. Department of State, Human Rights Report 2010 Section on Georgia, April 8, 2011 http://georgia.usembassy.gov/officialreports/hrr2010_georgia.html

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia Draft for Public Comment, May 30, 2011.

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

Comments:

The 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.

References:

Law of Georgia Concerning the Rule of Distribution of Powers and Cases.

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:

According to the Constitution of Georgia, judges are appointed for 10-year terms. A judge can be removed from office only if he is imposed a disciplinary responsibility, 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 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 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 Article 57: "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).

References:

Constitution of Georgia.

Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia.

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:

No such cases have been reported.

References:

Public defender's report, the Situation of Human Rights and Freedoms in Georgia, 2010
<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpj.pdf>

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

Comments:

There has been no report of judges having been killed because of adjudicating corruption cases.

References:

Public defender's report, the Situation of Human Rights and Freedoms in Georgia, 2010
<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpjpx.pdf>

Human Rights Watch, World Report 2011
<http://www.hrw.org/sites/default/files/reports/wr2011.pdf>

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?

82

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The government generally respects the rights of ethnic minorities. There is no report indicating any problems in this respect.

References:

Freedom House, County Report 2010
<http://www.freedomhouse.org/template.cfm?page=22&country=7827&year=2010>

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

Comments:

There is no report indicating that women are treated differently by the judicial system.

References:

Public Defender's report, the Situation of Human Rights and Freedoms in Georgia, 2010
<http://www.ombudsman.ge/files/downloads/en/rthhchgjdjhxwaxayjhpj.pdf>

Human Rights Watch, World Report 2011
<http://www.hrw.org/sites/default/files/reports/wr2011.pdf>

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

Comments:

Law of Georgia on Legal Aid, Article 5.1, states:

"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 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."

References:

Law of Georgia on Legal Aid, Article 5.1.

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:

In 2007, the government established a legal aid service, which provides free legal aid for the socially vulnerable population. Such

service is also provided by NGOs but it was reported that lawyers sometimes face obstruction by the government in assisting arrestees. There is also doubt with regard to the quality and independence of the free legal aid service.

References:

http://www.legalaid.ge/index.php?action=page&p_id=14&lang=eng

Report by Thomas Hammarberg, commissioner for human rights of the Council of Europe, April 2011
<https://wcd.coe.int/ViewDoc.jsp?id=1809789>

GYLA news article (in Georgian)

http://gyla.ge/index.php?option=com_content&view=article&id=919:2011-05-26-14-47-01&catid=1:latest-news&Itemid=177&lang=ka

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:

Most economically vulnerable individuals are able to get legal aid from the state in criminal proceedings. Moreover, recently the Law on State Filing Fees has been amended. According to the amendments, economically underprivileged people registered by relevant agencies are exempt from filing fees at trial courts. According to recent legal amendments, some fees have been reduced or abolished. Nevertheless, it should be noted that for the general public, filing fees are still high, taking into consideration citizens' average incomes.

References:

Law on State Filing Fees.

News article (in Georgian)

<http://24saati.ge/index.php/category/news/justice/2011-11-14/21634>

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

Comments:

The maximum filing fee at trial courts for legal persons is 5,000 GEL; it is 7,000 GEL in appellate courts. The law also considers certain types of lawsuits in which legal entities are exempt from filing fees.

References:

Law on State Filing Fees

News article (in Georgian)

<http://24saati.ge/index.php/category/news/justice/2011-11-14/21634>

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

Comments:

On the website of the High Council of Justice of Georgia, there is a list of courts located in the different regions of Georgia. Courtrooms are accessible to citizens in every region of the country.

References:

<http://hcoj.gov.ge/?l=2&i=1053>

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There is the Police Academy under the Ministry of Internal Affairs, which provides law enforcers with regular training and study visits. There also is a training center under the Ministry of Justice that systematically provides training for its employees and civil servants from other institutions. The majority of individuals appointed have clear party loyalties, though mostly they are professionals.

References:

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

<http://www.tcj.gov.ge/>

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:

Law enforcement agencies have sufficient financial resources provided by the state budget.

References:

State Budget of Georgia (in Georgian)

http://www.mof.gov.ge/budget/by_year

Budget of the Ministry of the Interior for the year 2011 (second half, available in Georgian)

http://www.opendata.ge/pdf_files/shss_budget.pdf

Budget of the Prosecution Service of Georgia for the year 2011 (second half, available in Georgian)

http://www.opendata.ge/pdf_files/procuratura_budget.pdf

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:

Civil society organizations report that in practice, law enforcement agencies are not independent from political influence. There are cases of politically motivated prosecutions. For example, the report by Thomas Hammarberg, commissioner for human rights of the Council of Europe, raises concerns with regard to the administration of justice and indicates "serious deficiencies marring

the criminal investigation and judicial processes in a number of criminal cases against opposition activists, which casts doubt on the charges and the final convictions of individuals concerned.”

References:

Human Rights Watch

<http://www.hrw.org/news/2011/05/26/georgia-police-used-excessive-force-peaceful-protests>

Georgia National Integrity System (NIS) Assessment, Transparency International Georgia

<http://transparency.ge/nis/2011/law-enforcement>

Report by Thomas Hammarberg, commissioner for human rights of the Council of Europe

<https://wcd.coe.int/ViewDoc.jsp?id=1809789>

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?

71

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Citizen complaints about police action can be submitted to the general inspection of the Ministry of Internal Affairs, which is one of the units of the ministry, or if the action constitutes crime, to the prosecutor's office. This mechanism is independent from the national police system, but it is not completely independent, as it is a subordinate unit of the Ministry of Interior.

References:

Statute of the Ministry of Internal Affairs.

Website of the General Inspection

<http://geninspeqcia.security.gov.ge/>

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 are hotlines at the Ministries of Justice and Internal Affairs, though no evaluation of these services' effectiveness has been carried out.

Generally, civil society organizations report a lack of accountability of law enforcement agencies.

References:

http://geninspeqcia.security.gov.ge/index.php?option=com_contact&Itemid=79

http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=360

The Situation of Human Rights and Freedoms in Georgia – 2010

<http://www.ombudsman.ge/files/downloads/en/rthhchgjhxwaxayjhpj.pdf>

TI Georgia, National Integrity System

<http://transparency.ge/nis/2011/law-enforcement>

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:

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.

The 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.

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:

General inspections under the Ministry of Justice and Ministry of Interior are in charge of initiating such investigations. According to the General Inspection of Ministry of Interior of Georgia, 46 police officers were criminally charged in 2010. Nevertheless, law enforcement employees remain immune from criminal responsibilities if they are enforcing directives of the ruling political party.

References:

Statistics of General Inspection of MIA

http://geninspeqcia.security.gov.ge/index.php?option=com_content&task=view&id=27&Itemid=42

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

Comments:

Immunities from prosecution apply to the following public officials: judges, president, members of parliament, chairmen of the Chamber of Control, and public defender.

References:

Georgian Code of Criminal Procedure, Article 144.

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:

General inspections under the Ministry of Justice and Ministry of Interior are in charge of initiating such investigations. According to the General Inspection of Ministry of Interior of Georgia, 46 police officers were criminally charged in 2010. Nevertheless, law enforcement employees remain immune from criminal responsibilities if they are enforcing directives of the ruling political party.

References:

Statistics of General Inspection of MIA

http://geninspeqcia.security.gov.ge/index.php?option=com_content&task=view&id=27&Itemid=42

Human Right Watch

<http://www.hrw.org/en/news/2007/12/17/georgia-government-used-excessive-force-protesters>

Restricted Rights: Annual Human Rights Report for 2010

<http://www.humanrights.ge/admin/editor/uploads/files/RESTRICTED%20RIGHTS%20-%20HRIDC%202011.pdf>

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.
